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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. CAA-09-2019-0005
	)	
BMS MOTORSPORTS, INC.	)	**CONSENT AGREEMENT**
	)	**AND**
Respondent.	)	**FINAL ORDER**
	)	

CONSENT AGREEMENT

Preliminary Statement

1. This is a civil administrative penalty assessment proceeding instituted under section 205(c)(1) of the Clean Air Act ("CAA" or the "Act"), 42 U.S.C. § 7524(c)(1), and 40 C.F.R. Part 22. The issuance of this Consent Agreement and attached Final Order ("CAFO") simultaneously commences and concludes this proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

2. Complainant in this matter is the United States Environmental Protection Agency ("EPA"). On EPA's behalf, the Assistant Director of the Air, Waste & Toxics Branch of the Enforcement Division, U.S. Environmental Protection Agency, Region 9, is authorized by lawful delegation to institute and settle civil administrative penalty assessment proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1).

3. Respondent in this matter is BMS Motorsports, Inc. ("BMS"). Respondent is a corporation organized under the laws of the State of California with an office at 1151 Spruce Street, Riverside, CA 92507. Respondent imports and sells nonroad vehicles.

4. The EPA and Respondent, having agreed to settle this action, consent to the entry of this Consent Agreement and the attached Final Order before taking testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this Consent Agreement and the attached Final Order.

Jurisdiction

5. This Consent Agreement is entered into under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22 ("Consolidated Rules").

6. The Regional Judicial Officer is authorized to issue consent orders memorializing settlements between the Complainant and Respondent resulting from administrative enforcement actions under the CAA, and to issue final orders assessing penalties under the CAA. 40 C.F.R. § 22.4(b).

Applicable Statutes and Regulations

7. This proceeding arises under Part A of Title II of the CAA, sections 202 to 219, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including hydrocarbons, oxides of nitrogen, and carbon monoxide. The Alleged Violations of Law, stated below, regard import of vehicles in violation of Title II of the Act. What follows is a summary of the law that governs these allegations.

8. A manufacturer is prohibited by Section 203(a)(1) of the Act from selling, offering for sale, introducing, or delivering for introduction into commerce, or any person from importing, any new motor vehicle or engine manufactured after the applicable effective date of the regulations unless such vehicle or engine is covered by a Certificate of Conformity ("COC") issued by the EPA. 42 U.S.C. § 7522(a)(1).

9. Section 213(d) of the Act, 42 U.S.C. § 7547(d), provides that nonroad vehicle and engine emission standards shall be enforced in the same manner as the standards prescribed under section 202 of the Act for new motor vehicles and new motor vehicle engines, and that the Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under section 213.

10. The term "manufacturer," as defined under section 216 of the Act, includes persons who import vehicles or engines for resale. 42 U.S.C. § 7550.

11. Beginning with model year 2006, all-terrain vehicles and go-karts are regulated under the provisions at 40 C.F.R. Part 1051 for the *Control of Emissions from Recreational Engines and Vehicles* 40 C.F.R. § 1051.1(a). Under 40 C.F.R. § 1051.801 (*manufacturer*), "Manufacturer" is defined as any person who manufacturers a recreation vehicle for sale in the United States, and includes a person who imports recreational vehicles in the United States for resale. Further, section 1051.15(c) provides that anyone who manufactures, imports, installs, owns, operates, or rebuilds any of the vehicles subject to 40 C.F.R. Part 1051 is also subject to the *General Compliance Provisions for Highway, Stationary, and Nonroad Programs* under 40 C.F.R. Part 1068.

12. Manufacturers may not sell, offer for sale, or introduce or deliver into commerce in the United States, nor may any person import into the United States, any engine or vehicle

unless such engine or vehicle is covered by a valid, EPA-issued COC for its model year and bears the required, permanently affixed EPA emission control information ("ECI") label, or is properly exempted or excluded from the certification requirements. 40 C.F.R. §§ 1068.101(a)(1) and (b)(5). *See also* 40 C.F.R. § 1068.301(b).

13. Nonroad engines and vehicles are considered not covered by a COC unless they are in a configuration as described in the manufacturer's application for certification ("AFC"). 40 C.F.R. § 1068.101(a)(1)(i). Nonroad engines and vehicles are not covered by a COC unless they are produced during the period specified in the COC and conform to the specifications described in the COC and the AFC. 40 C.F.R. § 1068.103.

14. A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import (or cause any of the foregoing with respect to) a recreational vehicle unless it is covered by a COC and properly labeled or is otherwise exempt from certification and labeling requirements. 40 C.F.R. § 1068.101(a)(1). A person who violates 40 C.F.R. § 1068.101(a)(1) after November 2, 2015, is subject to a civil penalty of not more than $46,192 for each violation. 40 C.F.R. § 1068.101(a)(1).

15. The EPA may assess a civil penalty through its own administrative process if the penalty sought is less than $369,532. CAA §§ 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. §§ 19.4, 1068.125(b). The Civil Penalty in this case is less than $369,532.

Stipulated Facts

16. Respondent is a "person," as that term is defined by CAA § 302(e), 42 U.S.C. § 7602(e).

17. Respondent is a "manufacturer," as that term is defined by CAA § 216(1), 42 U.S.C. § 7550(1) and 40 C.F.R. § 1051.801.

18. Respondent imported into the United States 13 all-terrain vehicles (the "Subject Vehicles") as described in Table 1 below. In the EPA Declaration Form 3520-21 that Respondent submitted with entry of the Subject Vehicles, Respondent identified the Subject Vehicles as nonroad spark-ignition engines, and Respondent did not claim any exemptions or exclusions from the certification requirements for the Subject Vehicles.

Table 1: Subject Vehicles

Type	Manufacturer	Model	Model Year	Quantity	Engine Family
ATV	Shandong Liangzi Power Co. Ltd	LZ800-5	2018	13	JLLPX.800CCC

19. Respondent represented that the Subject Vehicles were covered by COCs for off-road engines for the respective model year and engine families as described in Table 1.

20. On or about February 19, 2018, Respondent imported into the United States at the Port of Long Beach, California, the 13 Subject Vehicles under Entry Number ES3-2519596-5.

21. On March 5, 2018, the EPA inspected one of the Subject Vehicles, which was a representative sample. The ECI label on the inspected Vehicle indicated that it was certified under engine family JLLPX.800CCC.

22. BMS did not claim any exemptions or exclusions from the certification requirements for the Subject Vehicles in the EPA Declaration Form 3520-21 that it submitted.

23. At the inspection, the EPA inspectors took a sample of the muffler/exhaust assembly of the inspected Subject Vehicle, and sent it to an EPA contracted laboratory for analysis.

24. Physical and chemical examination of the muffler assembly from the inspected catalyst revealed that the design of the catalyst contained therein was materially different from the design specified in the COC application for engine family JLLPX.800CCC. Specifically, the ratio of precious metals in the tested sample differed significantly from the certified design.

25. Because the inspected catalyst does not conform to the precious metal specifications in the AFC for engine family JLLPX.800CCC, the EPA concludes that the Subject Vehicles are not covered by the COC for this engine family.

Alleged Violations of Law

Complainant alleges:

26. By importing the 13 Subject Vehicles that are not covered by a COC, Respondent committed violations of CAA §§ 203(a)(1) and 213, 42 U.S.C. §§ 7522(a)(1) and 7547(d), and the corresponding regulations codified at 40 C.F.R. §§ 1068.101(a)(1) and (b)(5).

Terms of Agreement

27. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent: admits that the EPA has jurisdiction over this matter as stated above; admits to the stipulated facts stated above; neither admits nor denies the alleged violations of law stated above; consents to the assessment of a civil penalty as stated below; consents to any conditions specified in this Consent Agreement, and to any stated Permit Action; waives any right to contest the alleged violations of law; and waives its rights to appeal the Final Order accompanying this Consent Agreement.

28. For the purpose of this proceeding, Respondent:

a. agrees that this Agreement states a claim upon which relief may be granted against Respondent;

b. waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1);

c. waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action a United States District Court to enforce this Agreement or Order, or both, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action;

d. consents to personal jurisdiction in any action to enforce this Agreement or Order, or both, in the United States District Court for Northern District of California;

e. agrees that Respondent may not delegate duties under this Consent Agreement to any other party without the written consent of the EPA, which may be granted or withheld at EPA's unfettered discretion. If the EPA so consents, the Consent Agreement is binding on the party or parties to whom the duties are delegated;

f. acknowledges that this Agreement constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

g. acknowledges that this Consent Agreement and attached Final Order will be available to the public and agree that it does not contain any confidential business information or personally identifiable information;

h. acknowledges that its tax identification number may be used for collecting or reporting any delinquent monetary obligation arising from this Agreement (see 31 U.S.C. § 7701);

i. certifies that the information it has supplied concerning this matter was at the time of submission, true, accurate, and complete; and

j. acknowledges that there are significant penalties for knowingly submitting false or misleading information, including the possibility of fines and imprisonment (see 18 U.S.C. § 1001).

29. For purposes of this proceeding, the parties each agree that:

a. this Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof;

b. this Consent Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Consent Agreement;

c. its undersigned representative is fully authorized by the party whom he or she represents to bind that party to this Consent Agreement and to execute it on behalf of that party; and

d. each party's obligations under this Consent Agreement and attached Final Order constitute sufficient consideration for the other party's obligations under this Consent Agreement and attached Final Order; and

e. each party will bear their own costs and attorney fees in this action resolved by this Consent Agreement and attached Final Order.

30. Respondent agrees to pay to the United States a civil penalty of **$10,000** (the "Civil Penalty").

31. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the issuance of the attached Final Order (i.e., the effective date of this Consent Agreement and attached Final Order).

32. Respondent agrees to pay the Civil Penalty in the manner specified below:

a. Pay the Civil penalty using any method provided on the following website: http://www2.epa.gov/financial/additional-instructions-making-payments-epa;

b. Identify the payment with the docket number; and

c. Within 24 hours of payment, Respondent must provide a letter containing the title and docket number of this action and proof of payment to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 9 – Office of Regional Counsel (ORC-1)
75 Hawthorne Street
San Francisco, CA 94105

Nathan Dancher
U.S. Environmental Protection Agency
Region 9 – Enforcement Division (ENF 2-1)
75 Hawthorne Street
San Francisco, CA 94105
Dancher.Nathan@epa.gov.

"Proof of payment" means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements.

Effect of Consent Agreement and Attached Final Order

33. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and attached Final Order resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged above.

34. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject Respondent to a civil action to collect any unpaid portion of the proposed civil penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, as described in the following Paragraph of this Consent Agreement, Respondent must timely pay the penalty.

35. If Respondent fails to timely pay any portion of the penalty assessed by the attached Final Order, the EPA may:

a. request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);

b. refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;

c. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (*see* 40 C.F.R. Part 13, Subparts C and H); and

d. suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

36. Penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes. 28 U.S.C. § 162(f).

37. This Consent Agreement and attached Final Order apply to and are binding upon the Complainant and the Respondent. Successors and assigns of Respondent are also bound if they are owned, in whole or in part, directly or indirectly, or otherwise controlled by Respondent. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondent's successor or assignee.

38. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

39. The EPA reserves the right to revoke this Consent Agreement and accompanying settlement penalty if and to the extent the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was or is materially false or inaccurate, and the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.

40. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. In

accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

The foregoing Consent Agreement In the Matter of BMS Motorsports, Inc., is Hereby Stipulated, Agreed, and Approved for Entry.

For BMS Motorsports, Inc.:

(b) (6)

[redacted]

10-10-2018

Date

Patrick Young Kim, President
BMS Motorsports, Inc.
1151 Spruce Street
Riverside, CA 92507

For Complainant:

10-17-18

Date

Joel E. Jones
Assistant Director, Air, Waste & Toxics Branch
Enforcement Division
EPA Region 9
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
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IN THE MATTER OF:	)	DOCKET NO. CAA-09-2019-0005
	)	
BMS MOTORSPORTS, INC.	)	**CONSENT AGREEMENT**
	)	**AND**
Respondent.	)	**FINAL ORDER**
	)	

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the EPA's Consolidated Rules of Practice and section 205(c)(1) of the Clean Air Act, 42 U.S.C. § 7524(c)(1), the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.

Date: 10/23/18

Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order (Docket No. CAA-09-2019-0005) was filed with the Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

A copy was mailed via CERTIFIED MAIL to:

Patrick Young Kim
BMS Motorsports, Inc.
1151 Spruce Street
Riverside, CA 92507

Certified Mail Number: 7015 0640 0001 1121 8519

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Melanie Shepherdson
Assistant Regional Counsel (ORC-2)
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Steven Armsey
Regional Hearing Clerk (Printed)
U.S. EPA, Region 9

Steven Armsey
Regional Hearing Clerk Signature

Oct. 23, 2018
Date