UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL NO. 7012 1640 0001 2190 7403
RETURN RECEIPT REQUESTED

Mr. Michael Yuen, Vice President
BV Powersports, LLC.
1432 Wainwright Way
Suite 116
Carrollton, TX 75007

DEC 26 2018

Dear Mr. Yuen:

Enclosed is your copy of the Consent Agreement and Final Order ("CAFO") filed pursuant to Section 205(c)(1) of the Clean Air Act. The terms of the CAFO require payment of the penalty within 30 days of the effective date (stamped filing date).

If you have any questions concerning the CAFO, please contact Daniel Haskell of my staff at (213) 244-1816 or have your attorney contact Melanie Shepherdson of our Office of Regional Counsel at (415) 972-3923.

Sincerely,

Joel E. Jones
Assistant Director, Enforcement Division

Enclosure

cc via email: Michael Yuen
michael@bvpowersports.com

SYLVIA QUAST
Regional Counsel

Melanie Shepherdson
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 972-3923

** FILED **
26DEC2018 - 01:28PM
U.S.EPA - Region 09

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

IN THE MATTER OF:	)	DOCKET NO. CAA-09-2019-0019
	)	
BV POWERSPORTS, LLC	)	**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 the EPA's behalf, the Assistant Director of the Air, Waste & Toxics Branch of the Enforcement Division, EPA, 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 BV Powersports, LLC ("BV"). Respondent is a corporation organized under the laws of the State of Texas with an office at 1432 Wainwright Way, Suite 116, Carrollton, TX 75007. Respondent imports and sells motorcycles and recreational 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 CAA 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. The term "manufacturer," as defined under Section 216(1) of the CAA, includes persons who import vehicles or engines for resale. 42 U.S.C. § 7550(1).

10. The term, "person," as defined under Section 302(e) of the CAA, includes a corporation. 42 U.S.C. § 7602(e).

11. EPA's Emission Regulations for 1978 and Later New Motorcycles, 40 C.F.R. Part 86, Subpart E, set emissions standards for new on-road motorcycles and established testing, certification, and labeling requirements. These regulations, at 40 C.F.R. § 86.407-78, require that every new motorcycle that is imported into the United States be covered by an EPA-issued COC. The only variation to this requirement is if the motorcycle is properly exempted or excluded from the certification requirements.

12. Pursuant to 40 C.F.R. § 86.437-78(a)(2)(ii), a COC is issued upon such terms as the Administrator deems necessary to assure that any new motorcycle covered by the COC will meet the requirements of the CAA and Part 86, Subpart E.

13. The term "motorcycle," as defined under 40 C.F.R. § 86.402-98, means any motor vehicle with a headlight, taillight, and stoplight, having two or three wheels, and having a curb mass less than or equal to 1,749 pounds.

14. Motorcycles are also subject to the General Compliance Provisions for Highway, Stationary, and Nonroad Programs, 40 C.F.R. Part 1068. *See* 40 C.F.R. § 1068.1(a)(3).

15. The regulation at 40 C.F.R. § 1068.101(a) prohibits the importation into the United States of new engines/equipment after emission standards take effect for the engine/equipment unless it is covered by a valid certificate of conformity for its model year. In addition, 40 C.F.R. § 1068.101(b)(5) prohibits any person from importing into the United States any uncertified engine or piece of equipment if it is defined to be new by the standards for its model year.

16. Engines and vehicles are not covered by a COC unless they conform in all material respects to the specifications described in the COC and the associated COC application. 40 C.F.R. §§ 1068.101(a)(1)(i) and 1068.103(c)(1). Section 1068.101(a)(1)(i) provides that "engine/equipment [i.e., vehicles] are considered not covered by a [COC] unless they are in a configuration described in the application for certification," and Section 1068.103(c)(1) provides that "the engines/equipment must conform in all material respects to the engine/equipment described in your application."

17. Section 205(c) of the CAA, 42 U.S.C. § 7524(c), and the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which implements the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461, as amended, authorize civil penalties not to exceed $46,192 per day for each violation of Section 205(c) of the CAA, that occurred after November 2, 2015, where penalties are assessed on or after January 15, 2018.

18. 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

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

20. 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.

21. Respondent imported into the United States 171 motorcycles (the "Subject Vehicles") as described in Table 1 below. In the EPA Declaration Forms 3520-21 that Respondent submitted with entry of the Subject Vehicles, Respondent identified the Subject Vehicles as motorcycles, 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
Motorcycle	Ningbo Sanjiang Dykon Motorcycle Co. Ltd.	JK50QT-B	2017	63	HDKNC.049J21
Motorcycle	Ningbo Sanjiang Dykon Motorcycle Co. Ltd.	JK50QT-A	2017	108	HDKNC.049J21

19. Respondent represented that the Subject Vehicles were covered by a COC for motorcycles for the respective model year and engine family 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, 63 motorcycles under Entry Number ATG-1019029-2.

21. On or about February 19, 2018, Respondent imported into the United States at the Port of Long Beach, California, 108 motorcycles under Entry Number ATG-1019028-4.

22. On March 6, 2018, the EPA inspected one of the Subject Vehicles. The ECI label on the inspected vehicle indicated that it was certified under engine family HDKNC.049J21. Because the motorcycles in entries ATG-1019029-2 and ATG-1019028-4 were in the same engine family and had similar manufacturing dates, the catalyst tested from entry ATG-1019029-2 was considered a representative sample.

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 HDKNC.049J21. Specifically, the ratio of precious metals in the tested sample differed significantly from the certified design and the rhodium loading was significantly lower than the certified design.

25. Because the inspected catalyst does not conform to the precious metal specifications in the application for certification for engine family HDKNC.049J21, 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 171 Subject Vehicles that are not covered by a COC, Respondent committed 171 violations of CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1), and 40 C.F.R. § 86.407-78(a)(1).

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;

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 **$13,000** (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

Daniel Haskell
Southern California Field Office
U.S. Environmental Protection Agency Region 9
600 Wilshire Blvd., Suite # 940
Los Angeles, CA 90017
Haskell.Daniel@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 BV Powersports, LLC, is Hereby Stipulated, Agreed, and Approved for Entry.

For BV Powersports, LLC:

(b) (6) [redacted]

Michael Yuen
BV Powersports, LLC
1432 Wainwright Way, Suite 116
Carrollton, TX 75007

12/17/18
Date

For Complainant:

12/20/18
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
San Francisco, California 94105

IN THE MATTER OF:	)	DOCKET NO. CAA-09-2019-0016
	)	
BV POWERSPORTS, LLC	)	**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: 12/26/18

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-09-2019-0016) 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:

Michael Yuen
BV Powersports, LLC
1432 Wainwright Way, Suite 116
Carrollton, TX 75007

Certified Mail Number: 7012 1640 0001 2190 7403

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

CORAZON TOLENTINO
FOR: Regional Hearing Clerk (Printed)
U.S. EPA, Region 9

FOR: Regional Hearing Clerk Signature

12/26/18
Date