



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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**VIA HAND DELIVERY**

U.S. Environmental Protection Agency  
Office of the Hearing Clerk  
Office of Administrative Law Judges  
Ronald Reagan Building, Rm. M1200  
1300 Pennsylvania Ave., NW  
Washington, DC 20460

Re: Initiation of Penalty Assessment Proceeding *In the Matter of Jonway Motorcycle (USA) Co., Ltd., Shenke USA, Inc., Jonway Group Co., Ltd., Shanghai Shenke Motorcycle Co., Ltd., Zhejiang JMStar Shenke Motorcycle Co., Ltd., and Zhejiang Jonway Motorcycle Manufacturing Co., Ltd.*, Docket No. CAA-HQ-2014-8032.

To Whom It May Concern:

This letter serves to memorialize the filing of the above-referenced matter by means of hand delivery. I am the attorney assigned to this matter on behalf of the Air Enforcement Division, and I am filing this Complaint in this capacity.

If you have any questions, please contact me at (202) 564-6850 or via e-mail at [Belser.evan@epa.gov](mailto:Belser.evan@epa.gov), or contact Robert G. Klepp at (202) 564-5805.

Sincerely,

*for* Evan Belser, Attorney Advisor  
Air Enforcement Division  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building South, Room 1142C  
1200 Pennsylvania Ave., NW (MC 2242A)  
Washington, DC 20460 (Courier 20004)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.

In the Matter of:

JONWAY MOTORCYCLE (USA) CO.,  
LTD., SHENKE USA, INC., JONWAY  
GROUP CO., LTD., SHANGHAI SHENKE  
MOTORCYCLE CO., LTD., ZHEJIANG  
JMSTAR SHENKE MOTORCYCLE CO.,  
LTD., and ZHEJIANG JONWAY  
MOTORCYCLE MANUFACTURING CO.,  
LTD.,

Respondents.

Docket No.  
CAA-HQ-2013-8032

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**COMPLAINT**

**Preliminary Statement**

1. This Complaint commences this administrative penalty assessment proceeding under section 205(c)(1) of the Clean Air Act (“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”). 40 C.F.R. § 22.13(a).
2. Complainant in this matter is the United States Environmental Protection Agency (“EPA”). On the EPA’s behalf, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute civil administrative penalty assessment proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1). EPA Delegation 7-6-A (Aug. 4, 1994); Office of Enforcement and Compliance

Assurance Redelelegation 7-6-A (March 5, 2013); Office of Civil Enforcement Redelelegation 7-6-A (March 5, 2013).

3. Respondents in this matter are Jonway Motorcycle (USA) Co., Ltd. (Jonway), Shenke USA, Inc. (Shenke), Jonway Group Co., Ltd. (Jonway Group), Shanghai Shenke Motorcycle Co., Ltd. (SSM), Zhejiang JMStar Shenke Motorcycle Co., Ltd. (ZJS), and Zhejiang Jonway Motorcycle Manufacturing Co., Ltd. (ZJM) (collectively, Respondents).
4. Respondents are persons under section 302(e) of the CAA, 42 U.S.C. § 7602(e).
5. Jonway Group, SSM, ZJS, and ZJM are vehicle manufacturers. Jonway and Shenke obtain from the EPA the certificates of conformity required by the CAA to introduce these manufacturers' vehicles into United States commerce. Jonway and Shenke also import some of the manufacturers' vehicles.
6. Jonway and Shenke are incorporated under the laws of Texas and are located at 1503 (or 1501) Kelly Boulevard, Carrollton, Texas 75006. Jonway Group and ZJM are incorporated under the laws of the People's Republic of China (China) and are located at Houruan, Lu'nan, Luqiao District, Taizhou City, Zhejiang, China, 318050. SSM and ZJS are incorporated under the laws of the People's Republic of China and are located at 258 Rongbei Road, Songjiang Rongbei Industrial Area, Songjiang District, Shanghai, China, 201613.
7. Based on the EPA's recent inspections, Jonway or Shenke officers or employees do business at the location of a company named Nitro Powersports, LLC. Nitro Powersports, LLC, is incorporated under the laws of Texas, is registered at 1501 Kelley Boulevard, Carrollton, Texas 75006, and operates at 1942 1-35 E. North, Carrollton, TX 75006.

8. Xiaotong Qi is the registered agent to receive service of process for Jonway and Shenke. Jonway Group, SSM, ZJS, and ZJM have each authorized Jonway or Shenke to receive service of process on its behalf.
9. In correspondence to the EPA, Respondents have stated that Jonway and Shenke are subsidiaries of the manufacturers, and that Jonway Group, SSM, and ZJS have merged into, or otherwise are now known as, ZJM.
10. The EPA makes the Alleged Violations of Law, below, based on approximately nine inspections of Respondents' vehicles between July 2008 and November 2012 performed by the EPA, EPA contractors, or employees of the United States Department of Homeland Security's Bureau of Customs and Border Protection. These inspections occurred at retail locations or at ports of the United States. Additionally, the EPA makes the Alleged Violations of Law based on information Respondents provided to the EPA in response to an October 2010 EPA Request for Information under section 208 of the CAA, 42 U.S.C. § 7542.

#### **Jurisdiction**

11. This action is brought under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), and the Consolidated Rules.
12. The EPA may administratively assess a civil penalty if the penalty sought is less than \$295,000, unless the EPA and the United State Department of Justice jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 1068.125(b); *see also* 40 C.F.R. § 19.4 (adjusting the statutory amount for inflation).



13. The EPA and the United States Department of Justice jointly determined that this matter, although it may involve a penalty assessment above \$295,000, is appropriate for an administrative penalty assessment. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4.
14. The Environmental Appeals Board acts as the Presiding Officer for this proceeding until Respondents file an Answer because Complainant commences this administrative penalty assessment proceeding at EPA Headquarters. 40 C.F.R. § 22.4(a)(1); EPA Delegation 1-38-B.

### **Governing Law**

15. This proceeding arises under Part A of Title II of the CAA, 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.
  - (a) The alleged violations of law regard motor vehicles, specifically highway motorcycles, for which 40 C.F.R. Part 86 sets emission standards and CAA § 203, 42 U.S.C. § 7522, sets compliance provisions. The certification, labeling, and recordkeeping requirements described below became applicable to gasoline-fueled highway motorcycles beginning with the 1978 model year. 40 C.F.R. §§ 86.401-97, 86.407-78(a).
  - (b) The alleged violations of law also regard recreational vehicles, for which 40 C.F.R. Part 1051 sets emission standards and 40 C.F.R. Part 1068 sets compliance provisions. *See* CAA § 213, 42 U.S.C. § 7547 (delegating to the EPA

the authority to implement rules for nonroad vehicles akin to the detailed provisions for motor vehicles found in the CAA itself).

16. Definitions:

- (a) “Adjustable parameter” means any device, system, or element of design that someone can adjust (including those which are difficult to access) and that, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation. 40 C.F.R. § 1051.801.
- (b) “Commerce” means commerce between any place in any State and any place outside thereof. CAA § 216(6), 42 U.S.C. § 7550(6).
- (c) “Engine family” means a group of engines of a single model year that are expected to have similar emission characteristics throughout their useful life. 40 C.F.R. §§ 86.420-78, 1051.230.
- (d) “Manufacturer” means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce. CAA § 216(1), 42 U.S.C. § 7550(1); 40 C.F.R. § 1051.801.
- (e) “Model year” means a manufacturer’s annual production period (as determined by the Administrator) which includes January first of such calendar year. If the

manufacturer has no annual production period, the term model year shall mean the calendar year. 40 C.F.R. §§ 86.402-78, 1051.801.

- (f) “Motor vehicle” has the meaning provided in section 216(2) of the CAA, 42 U.S.C. § 7550(2), and 40 C.F.R. § 85.1703.
- (g) “Motorcycle” means any motor vehicle with a headlight, taillight, and stoplight and having: Two wheels, or Three wheels and a curb mass less than or equal to 793 kilograms (1749 pounds). 40 C.F.R. § 86.402-98.
- (h) Highway motorcycles and recreational vehicles are considered “new” at the time of import. CAA § 216(3), 42 U.S.C. § 7550(3); 40 C.F.R. § 1051.801.
- (i) “Other adjustments” include changes to a recreational vehicle’s air-fuel ratio that can be made by an experienced mechanic in less than one hour and with a few parts whose total cost is under \$50 (in 2001 dollars). 40 C.F.R. § 1051.115(d).
- (j) “Person” includes individuals, corporations, partnerships, associations, states, municipalities, and political subdivisions of a state. CAA § 302(e), 42 U.S.C. § 7602(e).
- (k) “Recreational Vehicle” has the meaning provided in 40 C.F.R. § 1051.801.

17. Certification Requirements:

- (a) The EPA’s certification program is designed to ensure that every vehicle sold or imported into the United States conforms in all material respects to a vehicle that has been approved by the EPA. The EPA approves vehicles by issuing certificates of conformity (COCs).

- (b) To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and each model year that it intends to manufacture and sell in the United States. 40 C.F.R. §§ 86.416-80, 1051.201(a).
- (c) The COC application must include, among other things, identification of the covered engine family, a description of the vehicles and their emission control system, and test results from a prototype emissions data vehicle (EDV) showing that the EDV satisfies the emission standards in 40 C.F.R. § 86.410-2006 (highway motorcycles) or 40 C.F.R. § 1051.107 (all-terrain vehicles, a subset of recreational vehicles). 40 C.F.R. §§ 86.416-80, 1051.205.
- (d) In the case of highway motorcycles, the COC application must also include a description of all fuel system components and the range of available fuel and ignition system adjustments on the vehicle. 40 C.F.R. § 86.416-80. This description must specify all adjustable parameters, and the EPA has determined that adjustment of the following parameters may affect emissions: idle mixture screw (a low-speed, fuel-system adjustment of the air-to-fuel ratio) and a jet needle with multiple grooves for adjustment (a mid-range, fuel-system adjustment of the air-to-fuel ratio). In reviewing a COC application, the EPA evaluates the adjustability of the parameters based on information provided in the COC application. Upon inspection, if and when that occurs, to determine the adequacy of stops, seals, or locks, the EPA will consider whether the average operator or mechanic could deactivate the stops, seals, or locks in a reasonable amount of time using common hand tools. EPA Advisory Circular MC-6 (1978), *available at* [http://iaspub.epa.gov/otaqpub/display\\_file.jsp?docid=14384&flag=1](http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=14384&flag=1).



- (e) In the case of recreational vehicles, the COC application must also describe all adjustable parameters and other adjustments on vehicles in the engine family. 40 C.F.R. § 1051.205(q). Where a recreational vehicle has adjustable parameters or other adjustments, the applicant must demonstrate that the vehicle meets emission standards throughout the adjustable range. 40 C.F.R. § 1051.115(c), (d).
- (f) Once issued, a COC covers only those vehicles that: are within the engine family specified in the application; are marketed with a model name specified in the application; were produced during the model year; and were imported subsequent to the effective date of the COC. 40 C.F.R. §§ 86.407-78(a), 86.437(a)(2), 86.437-78(a)(2)(ii)-(iii), 86.437-78(b)(3)–(4), 1051.201(a), 1051.205, 1068.101(a)(1)(i), (b)(5), 1068.103(a), (c)(2).
- (g) The EPA issues a COC on such terms as the EPA deems necessary to ensure that any new motorcycle covered by the COC will meet the requirements of the CAA and its regulations. 40 C.F.R. § 86.437-78(a)(2)(ii), (b)(3).
- (h) By the terms on the face of each COC, a COC covers only those highway motorcycles that conform in all material respects to the EDV tested for that COC and all other specifications in the COC application. *See also* 40 C.F.R. § 86.437-78(a)(2)(iii), (b)(4).
- (i) A COC covers only those recreational vehicles that conform in all material respects to the specifications in the COC application. 40 C.F.R. § 1068.103.
- (j) The CAA prohibits manufacturers of new motor vehicles from selling, offering for sale, or introducing or delivering for introduction into commerce—or causing any of the foregoing with respect to—any new motor vehicle unless the vehicle is

covered by a COC issued by the EPA under regulations prescribed by the CAA.  
CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1).

(k) The CAA prohibits any person from importing or causing another to import a new motor vehicle into the United States unless that new motor vehicle is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1).

(l) A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import into the United States a recreational vehicle—or cause any of the foregoing—unless that recreational vehicle is covered by an EPA-issued COC. 40 C.F.R. § 1068.101(a)(1).

18. Label Requirements:

(a) A manufacturer may not sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import into the United States a recreational vehicle—or cause any of the foregoing—unless that vehicle bears a compliant emission control information (ECI) label. 40 C.F.R. § 1068.101(a)(1).

(b) An ECI label is compliant only if it states that the recreational vehicle is covered by a COC, includes specific emission-related information, identifies the emission control system, and is attached so that it is not removable without being destroyed or defaced. 40 C.F.R. § 1051.135.

19. Recordkeeping Requirements:

(a) Anyone subject to any of the CAA's requirements for vehicles must provide information to the EPA that the EPA may reasonably require in order to determine whether the manufacturer or other person has acted or is acting in

compliance with the CAA and its regulations. CAA § 208(a), 42 U.S.C. § 7542(a).

- (b) Additionally, highway motorcycle manufacturers must establish, maintain, and retain certain adequately organized and indexed records. 40 C.F.R. § 86.440-78. These records include completed COC applications, identification and description of EDVs, a complete record of all emission tests performed on EDVs including test results, the date of each service accumulation run, a record and description of all maintenance and other servicing performed on the EDV, a record and description of each test performed to diagnose engine or emissions control system performance, and a brief description of any significant events affecting the vehicle during testing. 40 C.F.R. § 86.440-78.
- (c) Upon the EPA's request, the manufacturer of any motorcycle covered by a COC shall, within 30 days, identify by vehicle identification number, the vehicle(s) covered by the COC. 40 C.F.R. § 86.414-78(a).
- (d) Additionally, recreational vehicle manufacturers and COC holders must keep certain records including: (1) certification applications and accompanying summary information; (2) records specified in 40 C.F.R. § 1051.250 but not included in the COC application; (3) a detailed history of each EDV; (4) production figures for each engine family divided by assembly plant; and (5) vehicle identification numbers for all the vehicles produced under each certificate. 40 C.F.R. § 1051.250(b). This data must be kept for eight years, except for routine emission tests which must be kept for one year. 40 C.F.R. § 1051.250(c). A COC

holder's failure to keep these records constitutes a violation. 40 C.F.R. § 1068.101(a)(2).

20. Warranty Requirements: A manufacturer must honor their emission-related warranty under 40 C.F.R. §§ 1051.120 and 1068.115. 40 C.F.R. § 1068.101(b)(6). In the case of recreational vehicles, this includes stating in each vehicle's owners' manual the emission-related warranty.
21. Anyone who, between March 15, 2004, and January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a highway motorcycle or recreational vehicle that was not covered by a COC, was improperly labeled, or violated warranty requirements—or anyone who caused any of the foregoing—is subject to a civil penalty of up to \$32,500 for each such vehicle. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 1068.101(a)(1), (b)(6), (c). This penalty amount increased from \$32,500 to \$37,500 for violations that occur after January 12, 2009. 40 C.F.R. § 19.4.
22. Anyone who, between March 15, 2004, and January 12, 2009, failed to keep or maintain mandatory records or failed to provide the EPA with information reasonably required to assess their compliance with the CAA is subject to a civil penalty up to \$32,500 for each day they are in violation and for each such record. CAA § 205(a)(2)(A), 42 U.S.C. §§ 7522(a)(2)(A), 7524(a), 7542(a); 40 C.F.R. §§ 19.4, 1068.101(a)(2). This penalty amount increased from \$32,500 to \$37,500 for violations that occur after January 12, 2009. 40 C.F.R. § 19.4.

### Alleged Violations of Law

23. Respondents are each “persons.”
24. Respondents are each “manufacturers.”
25. Jonway or Shenke submitted COC applications, and the EPA granted COCs, for every engine family at issue in this matter.
26. Jonway Group, SSM, ZJS, and ZJM produced every vehicle at issue in this matter.
27. Highway Motorcycle Certification Violations: The EPA alleges that Respondents sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to—approximately 10,607 uncertified highway motorcycles (Subject Motorcycles) in violation of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1), and 40 C.F.R. Part 86, Subpart E. Table A, below, details the Subject Motorcycles, their alleged violations, and the year of the alleged violations. Each Subject Motorcycle is a highway motorcycle subject to the CAA. The EPA alleges the following ten counts based on highway motorcycles certification violations:

<b>Table A: Subject Motorcycles</b>		
<b>Purported Engine Family</b>	<b>Year of Violation</b>	<b>Total Vehicles and Violation Type(s)</b>
9JNYC0.05NFG	2009	3,445 (D)
9JNYC0.15NFG	2009	1,817 (D) 50 (B, D)
AJNYC.050SA1	2011	84 (A)
AJNYC0.05NFG	2011	254 (A)
BJNYC0.05NFG	2011	4,955 (C)
CSHKC0.15NFG	2012	2 (C)
<b>Total</b>		<b>10,607</b>

<b>Legend: Types of Violations</b>	
A –	Uncertified: Manufactured After COC Expired
B –	Uncertified: Model Name Violation
C –	Uncertified: Nonconforming Catalyst
D –	Uncertified: Nonconforming Carburetor



- (a) COUNT ONE: 3,445 highway motorcycles purportedly covered by the COC for engine family 9JNYC0.05NFG. These Subject Motorcycles do not materially conform to their certified configuration, and therefore are not covered by the COC for engine family 9JNYC0.05NFG, because they have carburetors equipped with an idle air-fuel mixture screw that could be adjusted in a reasonable amount of time using common hand tools whereas the COC application described a carburetor with a nonadjustable idle air-fuel mixture screw. Adjustments to an engine's air-to-fuel ratio affect emissions, and the presence of this adjustable parameter makes these engines materially different from the certified configuration. No other COC covers these vehicles.
- (b) COUNT TWO: 1,867 highway motorcycles purportedly covered by the COC for engine family 9JNYC0.15NFG. These Subject Motorcycles do not materially conform to their certified configuration, and therefore are not covered by the COC for engine family 9JNYC0.15NFG, because these vehicles have carburetors with an idle air-fuel mixture screw that could be adjusted in a reasonable amount of time using common hand tools whereas the COC application described a carburetor with a nonadjustable idle air-fuel mixture screw. Adjustments to an engine's air-to-fuel ratio affect emissions, and the presence of this adjustable parameter makes these engines materially different from the certified configuration. No other COC covers these vehicles.
- (c) COUNT THREE: 84 highway motorcycles purportedly covered by the COC for engine family AJNYC.050SA1. These Subject Motorcycles are not covered by

the COC for engine family AJNYC.050SA1 because Respondents manufactured these vehicles after the COC expired. No other COC covers these vehicles.

- (d) COUNT FOUR: 254 highway motorcycles purportedly covered by the COC for engine family AJNYC0.05NFG. These Subject Motorcycles are not covered by the COC for engine family AJNYC0.05NFG because these vehicles were manufactured after the COC expired. No other COC covers these vehicles.
- (e) COUNT FIVE: 4,995 highway motorcycles purportedly covered by the COC for engine family BJNYC0.05NFG. These Subject Motorcycles do not materially conform to their certified configuration, and therefore are not covered by the COC for engine family BJNYC0.05NFG, because these vehicles contain a catalyst with significantly less volume or cell density than the certified catalyst design. A smaller, less dense catalyst has less of the surface area needed to chemically react with vehicle exhaust and reduce levels of regulated pollutants leaving the vehicle's tailpipe. Thus, the nonconforming catalyst on these vehicles constitutes a material difference from the certified configuration. No other COC covers these vehicles.
- (f) COUNT SIX: 2 highway motorcycles purportedly covered by the COC for engine family CSHKC0.15NFG. These Subject Motorcycles do not materially conform to their certified configuration, and therefore are not covered by a COC, because these vehicles contain a catalyst with significantly less volume and cell density than the certified catalyst design. A smaller, less dense catalyst has less of the surface area needed to chemically react with vehicle exhaust and reduce levels of regulated pollutants leaving the vehicle's tailpipe. Thus, the nonconforming

catalyst on these vehicles constitutes a material difference from the certified configuration. No other COC covers these vehicles.

28. Recreational Vehicle Certification Violations: The EPA alleges that Respondents sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to—386 uncertified recreational vehicles (Subject Recreational Vehicles) in violation of 40 C.F.R. § 1068.101(a)(1). Table B, below, details the Subject Recreational Vehicles, their alleged violations, and the approximate year of their violations. Each Subject Recreational Vehicle is a recreational vehicle subject to the CAA and its regulations. The EPA alleges the following three counts based on recreational vehicle certification violations.

<b>Table B: Subject Recreational Vehicles</b>		
<b>Purported Engine Family</b>	<b>Year of Violation</b>	<b>Total Vehicles and Violation Type(s)</b>
9SHKX.150AAA	2009	84 (C, D, W)
ASHKX.150AAA	2010	2 (L, W)
ASHKX.250AML	2010	140 (C, D, W)
CSHKX.150ATA	2012	162 (C)
<b>Total</b>		<b>388</b>

<b>Legend: Types of Violations</b>	
C –	Uncertified: Nonconforming Catalyst
D –	Uncertified: Nonconforming Carburetor
L –	Noncompliant Label
W –	Warranty Violation

- (a) COUNT SEVEN: 84 recreational vehicles purportedly covered by the COC for engine family 9SHKX.150AAA. These Subject Recreational Vehicles do not materially conform to their certified configuration, and therefore are not covered by the COC for engine family 9SHKX.150AAA, for two independently sufficient reasons: (1) they contain a catalyst that has significantly less cell density than the

certified catalyst design, and (2) contain carburetors with a replaceable main jet, pilot jet, and a jet needle with five clip position grooves to adjust the engine's air-fuel ratio, whereas the COC application described no adjustable parameters or other adjustments. No other COC covers these vehicles.

(b) COUNT EIGHT: 140 recreational vehicles purportedly covered by the COC for engine family ASHKX.250AML. These Subject Recreational Vehicles do not materially conform to their certified configuration, and therefore are not covered by the COC for engine family ASHKX.250AML, for two independently sufficient reasons: (1) they contain catalysts whose cell density and diameter do not conform to the catalyst specifications described in the COC application, and (2) contain carburetors with a replaceable main jet, pilot jet, and idle mixture screw that could be adjusted in a reasonable amount of time using common hand tools whereas the COC application described carburetors with no adjustable parameters or other adjustments. No other COC covers these vehicles.

(c) COUNT NINE: 162 recreational vehicles purportedly covered by the COC for engine family CSHKX.150ATA. These Subject Recreational Vehicles do not materially conform to their certified configuration, and therefore are not covered by a COC because the vehicles contain a catalyst that has significantly less cell density than the certified catalyst design.

29. Labeling Violations: The EPA alleges Respondents sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported—or caused the foregoing with respect to—2 recreational vehicles (Subject Recreational Vehicles) without compliant emission control information labels. The Subject Recreational

Vehicles are recreational vehicles governed by 40 C.F.R. Part 1051 and must bear an EPA-approved label as required by 40 C.F.R. § 1051.135. The EPA alleges the following one count based on recreational vehicle labeling violation:

(a) COUNT TEN: Respondents violated 40 C.F.R. § 1068.101(a)(1) by selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing—or causing the foregoing with respect to—2 recreational vehicles within engine family ASHKX.150AAA without compliant emission control information labels.

30. Warranty Violations: The EPA alleges that Respondents failed to meet their warranty obligations with regard to 226 recreational vehicles from engine families 9SHKX.150AAA, ASHKX.150AAA, and ASHKX.250AML as required by 40 C.F.R. Part 1051. The EPA alleges the following one count based on warranty violations:

(a) COUNT ELEVEN: Respondents violated 40 C.F.R. § 1068.101(b)(6), (c) by selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing—or causing the foregoing with respect to—226 Subject Recreational Vehicles, whose owners manuals did not contain emissions warranties as required by 40 C.F.R. § 1051.120(e).

31. Recordkeeping Violations: The EPA alleges that Jonway and Shenke failed to adequately keep and maintain mandatory records, failed to timely provide the EPA with information reasonably required to assess their compliance, and failed to provide a complete response to the EPA's Request for Information under section 208 of the CAA, 42 U.S.C. § 7542, in violation of section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), and



40 C.F.R. § 1068.101(a)(2). The EPA alleges the following three counts based on recordkeeping violations:

- (a) COUNT TWELVE: Jonway and Shenke violated 42 U.S.C. § 7522(a)(2)(A) and 40 C.F.R. § 1068.101(a)(2) by failing or refusing to provide information as required by section 208 of the CAA, 42 U.S.C. § 7542, and 40 C.F.R. §§ 86.414-78(a) and 1051.250(b). Specifically, Respondents have failed to provide to the EPA importation records and information about the total quantities of vehicles covered by Respondents' COCs that entered United States commerce for at least 7 engine families (9SHKX.150AAA, 9SHKX.250AML, BJNYC.234MMA, BSHKX0.11ATA, CSHKC0.05NFG, CSHKC0.15NFG, and CSHKC0.25NFG).
- (b) COUNT THIRTEEN: Jonway and Shenke violated section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), and 40 C.F.R. § 1068.101(a)(2) by failing or refusing to keep or provide to EPA certification and testing records specified in 40 C.F.R. §§ 86.440-78 and 1051.250 for at least 16 engine families (9JNYC.050SA1, 9JNYC0.05NFG, 9JNYC0.15NFG, 9JNYC0.25NFG, AJNYC.050SA1, AJNYC0.05NFG, AJNYC0.15NFG, AJNYC0.25NFG, BJNYC.050SA1, BJNYC.234MMA, BJNYC0.05NFG, BJNYC0.15NFG, BJNYC0.25NFG, CSHKC0.05NFG, CSHKC0.15NFG, and CSHKC0.25NFG).
- (c) COUNT FOURTEEN: Jonway and Shenke violated section 203(a)(2)(A) of the CAA, 42 U.S.C. § 7522(a)(2)(A), by failing to timely respond to the EPA's Request for Information under section 208 of the CAA, 42 U.S.C. § 7542. Specifically, the EPA issued its Request for Information on October 18, 2010, and this required a complete response by November 17, 2010. Jonway and Shenke

provided no response whatsoever until January 25, 2011. Jonway and Shenke did not provide a purportedly complete response until June 14, 2011.

### **Relief Sought: Civil Penalty**

32. Complainant seeks an administrative penalty against the Respondents, jointly and severally, for Counts 1–11 of the Alleged Violations of Law. Complainant also seeks an administrative penalty against Jonway and Shenke for Counts 12–14 of the Alleged Violations of Law.
33. Complainant makes no specific penalty demand in this Complaint, as authorized by 40 C.F.R. § 22.14(a)(4)(ii).
34. As detailed above, Respondents are subject to a civil penalty that is the sum of not more than \$32,500 or \$37,500 for each and every Subject Motorcycle and Subject Recreational Vehicle. Additionally, as detailed above, Respondents are subject to a civil penalty that is the sum of not more than \$32,500 or \$37,500 for each and every day they failed to keep or maintain a mandatory record or failed to provide the EPA with information reasonably required to assess their compliance with the CAA.
35. Complainant reserves its right to seek the maximum civil penalty authorized by the CAA.
36. In determining the amount of the civil penalty in this matter, the CAA requires that the EPA take into account certain penalty factors, namely “the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of [Respondents’] business, [Respondents’] history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on [Respondents’] ability to continue in business, and such other matters as justice may require.” CAA § 205(c)(2), 42 U.S.C. § 7524(c)(2).

37. Regarding alleged certification, labeling, and warranty violations, Complainant proposes to account for the CAA's penalty factors by using the EPA's Clean Air Act Mobile Source Civil Penalty Policy - Vehicle and Engine Certification Requirements (2009) (Penalty Policy), *available at* <http://www.epa.gov/compliance/resources/policies/civil/caa/mobile/vehicleengine-penalty-policy.pdf> (last visited November 7, 2013). This Penalty Policy calculates civil penalties based on the number of violative engines, their horsepower, the egregiousness of the violations, remedial action, and other legal and equitable factors. Generally, certification violations are "major" egregiousness, warranty violations are "moderate" egregiousness, and label violations are "minor" egregiousness. Penalty Policy at 13–14. Here, Complainant alleges certification, labeling, and warranty violations for 10,607 highway motorcycles and 388 recreational vehicles.
38. Regarding alleged recordkeeping violations, Complainant proposes to account for the CAA's penalty factors by quantifying the number of records Respondents allegedly failed to keep or provide to EPA. Then, for each record (or category of records, as appropriate), Complainant proposes an individual penalty that accounts for the egregiousness of that failure. Complainant proposes to count recordkeeping violations in this manner separately for each engine family for which there are recordkeeping violations. Further, for the lateness of Respondents' reply to the EPA's Request for Information, Complainant proposes a per-day penalty (that accounts for egregiousness) for each day the response was overdue. Egregiousness increases with the extent of the missing information, the disorganization of the information, the number of vehicles involved, the risk of unlawful emissions from those vehicles, and importance of the missing information to understanding vehicle emissions, assessing compliance, and facilitating

recalls and other remediation. Thus, Complainant proposes a civil penalty for recordkeeping violations that is the sum of individually tailored penalties for each recordkeeping violation. Here, Complainant alleges at least 23 distinct recordkeeping violations and a late response to the EPA's Request for Information that was overdue by at least 209 days.

### **Opportunity to Request a Hearing**

39. Respondents have a right to request a Hearing on any material fact alleged in this Complaint or the appropriateness of a civil penalty. Respondent may request such a Hearing in a written Answer. 40 C.F.R. § 22.15(c).
40. Hearing Procedures are set out in the Consolidated Rules at 40 C.F.R. §§ 22.21 – 22.26. A copy of the Consolidated Rules is enclosed with this Complaint.

### **Answer**

41. If Respondents contest material facts upon which this First Amended Complaint is based, contend that a civil penalty is inappropriate, or contend that Respondents are entitled to judgment as a matter of law, then Respondents must within 20 days after receiving this First Amended Complaint file an original and one copy of a written Answer that conforms to 40 C.F.R. § 22.15. 40 C.F.R. § 22.14(c).
42. Respondents may file an Answer by any method permitted by the Consolidated Rules and the Office of Administrative Law Judges. *See* EPA Office of Administrative Law Judges, *EPA Office of Administrative Law Judges Practice Manual* 9–10, 13–14 (July 2011), available at <http://www.epa.gov/oalj/orders/alj-practice-manual.pdf> (last visited November 7, 2013); *see also* EPA Office of Administrative Law Judges, *Notice of*

*Change of Address, available at [http://www.epa.gov/oalj/orders/MoveNotice\\_3\\_8\\_13.pdf](http://www.epa.gov/oalj/orders/MoveNotice_3_8_13.pdf)*

(last visited November 7, 2013). Filing options include mail, commercial delivery,

overnight mail, or hand delivery, to the following addresses:

If filing by UPS, FedEx, DHL or other courier, or personal delivery, address to:

U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Rm. M1200  
1300 Pennsylvania Ave., N.W.  
Washington, DC 20460

If filing by the United States Postal Service, address to:

U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900R  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

43. Respondents must also send a copy of the Answer to the EPA attorney assigned to this matter, Evan M. Belser. The Answer shall be served personally, by USPS (including certified mail, return receipt requested, Express Mail, and Priority Mail), or by any reliable commercial delivery service. 40 C.F.R. § 22.5(b)(2). If using USPS (except Express Mail), Respondents must use the following address:

Evan M. Belser  
U.S. EPA, Air Enforcement Division  
1200 Pennsylvania Ave., N.W.  
Mailcode 2242A  
Washington, DC 20460

If using USPS Express Mail or any other carrier, Respondents must use the following address:

Evan M. Belser  
U.S. EPA, Air Enforcement Division  
1200 Pennsylvania Ave., N.W.

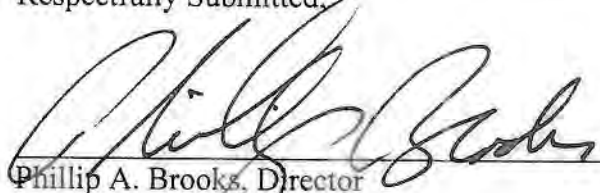


William J. Clinton Federal Building, Room 1142  
Washington, DC 20004

44. Respondents' failure to request a Hearing or to file a written Answer within the 20 days after receiving this Complaint may result in the waiver of their right to contest allegations set forth in this Complaint or a default judgment pursuant to 40 C.F.R. § 22.14(c), 22.17.

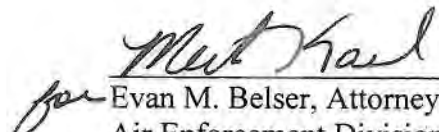
11/18/2013  
Date

Respectfully Submitted,

  
Phillip A. Brooks, Director  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance

1200 Pennsylvania Ave., N.W.  
William J. Clinton Federal Building  
Room 1117, Mailcode 2242A  
Washington, DC 20460  
(202) 564-0652  
brooks.phillip@epa.gov

11/20/2013  
Date

  
for Evan M. Belser, Attorney Adviser  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance

1200 Pennsylvania Ave., N.W.  
William J. Clinton Federal Building  
Room 1142C, Mailcode 2242A  
Washington, DC 20460  
(202) 564-6850  
belser.evan@epa.gov

CERTIFICATE OF SERVICE

I certify that the original and one copy of the foregoing Complaint *In the Matter of Jonway Motorcycle (USA) Co., et al.*, dated, November 20, 2013, was filed this day by hand delivery with the EPA Office of Administrative Law Judges at the address listed below:

U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Ronald Reagan Building, Rm. M1200  
1300 Pennsylvania Ave., N.W.  
Washington, DC 20460


I certify that I sent by United States Postal Service Certified Mail one copy of the foregoing Complaint and a copy of the Consolidated Rules of Practice, 40 C.F.R. Part 22, to each of the six Respondents at each of the following addresses on the date below:

Jonway Motorcycle (USA) Co., Ltd.  
Shenke USA, Inc.  
Attention: Xiaotong Qi  
1503 Kelly Boulevard  
Carrollton, Texas 75006

Jonway Motorcycle (USA) Co., Ltd.  
Shenke USA, Inc.  
Attention: Xiaotong Qi  
c/o Nitro PowerSports, LLC  
1942 1-35 E. North,  
Carrollton, TX 75006

Shenke USA, Inc.  
Attention: Huai Yi Wang or Wei Guo  
1503 Kelly Boulevard  
Carrollton, Texas 75006

11/20/2013  
Date

  
\_\_\_\_\_  
Evan M. Belser, Attorney Adviser  
Air Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance

1200 Pennsylvania Ave., N.W.  
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