



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

JUN 29 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

OFFICE OF
AIR AND RADIATION

Mr. He Liang
President
Hensim USA, Inc.
5270 Edison Avenue
Chino, CA 91007

Dear Mr. Liang:

This letter is to inform you that the U.S. Environmental Protection Agency (EPA) is voiding two of your certificates of conformity, one for an off-road motorcycle and one for an all-terrain vehicle (ATV).

On December 13, 2006, EPA issued Hensim USA Inc. (Hensim) a certificate of conformity for all-terrain vehicle (ATV) engine family 7CGQX.110AA1 (Certificate Number: 7CGQX.110AA1-004-R01). On January 31, 2007, EPA issued a certificate of conformity for off-road motorcycle engine family 7CGQX.200DM5 (Certificate Number: 7CGQX.200DM5-004). These certificates were issued based upon information and statements you made in your applications for certification, as required in 40 C.F.R. Part 1051. Specifically, you stated that the ATVs and the off-road motorcycles described in the certification applications "have been tested in accordance with the provisions of Subpart E, Part 86 Title 40 of the Code of Federal Regulations (C.F.R.), and on the basis of these tests are in conformity with that subpart." You stated that "[a]ll data records required by that subpart are on file and are available for inspection by the administrator." You further stated that: "The tested and compliant vehicles, with respect to which data are submitted, have been completely tested in accordance with the applicable testing procedures set forth by EPA guidelines. They meet or exceed the minimum requirements of such tests, and on the basis of such tests, they conform and exceed the requirements of the regulations in this part (40 C.F.R. § 86, 1051)."

EPA's decision to issue these certificates of conformity was based on our review of the information and statements in your certification applications, and most importantly, our presumption that the information and statements in the application were true and complete. We concluded that the above-referenced engine families met all the requirements of Part 1051 and the Clean Air Act; consequently, we issued the certificates of conformity.

After issuing these certificates of conformity, EPA received information concerning the certification practices used by your certification consultant, MotorScience. EPA investigated MotorScience and discovered several problematic practices, including inconsistencies between the emissions data vehicle (EDV) described in your certification applications and those vehicles

actually used to generate testing and other data. The above-identified engine families exhibit the exact same inconsistencies between the application data and the actual data.

On July 22, 2009, EPA notified you of these inconsistencies and provided a 30 day opportunity for you to demonstrate or achieve compliance with all the applicable requirements governing these certificates of conformity. We specifically requested that you provide us with evidence that would support the statements of compliance made in your original certification applications. We received your response letter dated September 3, 2009, but that response does not demonstrate that the statements in your certification applications were accurate or that your ATVs and off-road motorcycles comply with the applicable regulations.

In our July 22, 2009 letter, we explained to you that for each certificate, the test vehicle described in the certification application you submitted to EPA did not match the vehicle that was actually tested on behalf of that engine family. We discovered this discrepancy through information obtained in response to our Clean Air Act section 208 information request. Specifically, we obtained the original emissions test reports from Automotive Testing and Development Services, Inc. (ATDS) (the primary laboratory used by MotorScience); these reports enabled us to determine the true identity of the test vehicles used for each engine family. In comparing the information in these reports against the information contained in your certification applications, we discovered that for each engine family, the description of the test vehicle in your certification applications did not match the actual test vehicle used, as described in the original emissions test reports. This demonstrates that you intentionally submitted false or incomplete information and is a basis for voiding these certificates under 40 C.F.R. 1051.255(e).

Additionally, in our July 22, 2009 letter, we explained to you that our investigation determined that no durability mileage accumulation records and no maintenance records had been kept for either of your certificates. In response, your September 3, 2009 letter contains no explanation regarding why maintenance records are not available. This is information that must be maintained for eight years under 40 C.F.R. § 1051.250(c). Failure to maintain these records is further basis for voiding these certificates under 40 C.F.R. § 1051.255(d).

For the reasons set forth above and as described in greater detail in the attachment to this letter, EPA concludes you intentionally submitted false and incomplete information in your applications for certification, and that you failed to maintain the records as required by our regulations.

Therefore, EPA is voiding your certificates of conformity for engine families 7CGQX.110AA1 and 7CGQX.200DM5, effective immediately. By voiding your certificates of conformity, the certificates are deemed void from the beginning of the 2007 model year. 40 C.F.R. § 1068.30. Accordingly, all ATVs and off-road motorcycles introduced into U.S. commerce under those engine families are considered noncompliant.

Sections 203 and 213(d) of the Clean Air Act prohibit the sale of vehicles and engines unless such vehicles and engines are covered by a valid certificate of conformity. *See also* 40 C.F.R. § 1068.101(a)(1). Each introduction of an ATV or off-road motorcycle into U.S. commerce under these certificates during the applicable model year and thereafter is a violation

of sections 203 and 213 of the Clean Air Act, and you may face civil penalties up to \$32,500 per ATV or off-road motorcycle, as well as criminal penalties. CAA §§ 203(a)(1), 205(a), 213(d); 42 U.S.C. §§ 7522 and 7524; 40 C.F.R. § 1068.101(a)(1).

You may request a hearing on EPA's decision to void your certificates in accordance with the procedures set forth in 40 C.F.R. §§ 86.1853-01, 1051.820, and 1068.601. A request for a hearing must be in writing, signed by the certificate holder or authorized representative of the certificate holder, and include a statement, with supporting data, specifying objections to the action taken by EPA. The request must be received by EPA within 30 days of receipt of this letter and should be sent to:

Linc Wehrly, Light-Duty Vehicle Group Manager
Compliance and Innovative Strategies Division
U.S. EPA Office of Transportation and Air Quality
2000 Traverwood Drive
Ann Arbor, MI 48105

Should you have any questions, please contact Mr. Linc Wehrly of my staff at (734) 214-4286.

Sincerely,



Karl Simon, Director
Compliance and Innovative Strategies Division
Office of Transportation and Air Quality

ENCLOSURE

cc: He Liang
Chongqing Hensim Group Co. Ltd.
No. 12 Torch Road, Jiulong Industrial Zone
Jiulongpo District, Chongqing, China

Susannah Johnston
Hensim USA, Incorporated
5270 Edison Avenue
Chino, CA 91007

Herbert Hu
MotorScience Enterprise, Inc.
719 Nogales Street
City of Industry, CA 91748

Bob Bock
MotorScience Enterprise, Inc.
719 Nogales Street
City of Industry, CA 91748

ATTACHMENT

On December 13, 2006, EPA issued Hensim USA, Inc. (Hensim) a certificate of conformity for all-terrain vehicle (ATV) engine family 7CGQX.110AA1 (Certificate Number: 7CGQX.110AA1-004-R01). On January 31, 2007, EPA issued a certificate of conformity for off-road motorcycle engine family 7CGQX.200DM5 (Certificate Number: 7CGQX.200DM5-004). After these certificates were issued, EPA received information regarding the veracity and completeness of the certification practices of MotorScience Enterprise, Inc. (MotorScience),¹ who is Hensim's certification consultant. EPA completed a comprehensive investigation of MotorScience's certification practices and found several problems, including multiple inconsistencies between the emissions data vehicles (EDVs) described in Hensim's certification applications and the EDVs actually used to generate the testing and other data. These inconsistencies indicated that Hensim had intentionally submitted false or incomplete information to EPA as part of the certification process for these engine families. EPA also discovered a complete failure to maintain the requisite records for these engine families. Such behavior violates the regulations governing your certificates of conformity for these vehicles and calls into question the validity of the certificates issued to Hensim. EPA, through its letter dated July 22, 2009, provided Hensim with notice of the facts that we uncovered that demonstrated these violations. We explained that this conduct warranted the voiding of these certificates of conformity. EPA also provided Hensim with an opportunity to demonstrate or achieve compliance with all applicable requirements governing these certificates of conformity before voiding the certificates. While Hensim responded in a letter on September 3, 2009, its

¹ Chongqing Hensim Group Co. Ltd. (Chongqing) is the original engine manufacturer located in China. Chongqing hired Hensim USA Inc. (Hensim) to be the importer of record and MotorScience Enterprises Inc. (MotorScience) to act as consultant. Both Hensim and MotorScience were specifically authorized by Chongqing to serve as authorized representatives on all matters related to the application and certification process. Hensim further authorized MotorScience to act on its behalf as well. Therefore, all acts by MotorScience are imputed to Hensim as the certificate holder. *See* 40 CFR 1051.201(e).

explanation did not sufficiently account for the inconsistencies in the data or the lack of records. Thus, EPA is now taking action to void Hensim's certificates; a detailed explanation for that action follows.

Applicable Statutory and Regulatory Requirements

Section 203 of the Clean Air Act ("CAA" or "Act") prohibits a manufacturer from introducing a new motor vehicle or new motor vehicle engine into commerce "unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under [the] regulations prescribed..." 42 U.S.C. § 7522(a)(1). Section 213(d) of the Act requires that standards for ATVs and other nonroad engines be enforced in the same manner as standards for motor vehicles. 42 U.S.C. § 7547(d); *see also* 40 C.F.R. § 1068.101(a)(1). To obtain a certificate of conformity, an application must be submitted to EPA. Title 40, Part 1051, of the Code of Federal Regulations ("C.F.R.") contains the applicable requirements for recreational vehicles, such as ATVs and off-highway motorcycles. For example, Part 1051 prescribes the specific information that must be included in the application, 40 C.F.R. § 1051.205, the emissions testing that must be performed to demonstrate compliance with the applicable emission standards, 40 C.F.R. § 1051.235, and the records that must be kept and made available to EPA. 40 C.F.R. § 1051.250.

40 C.F.R. § 1051.201(b) requires that "the application must...not include false or incomplete statements or information." Additionally, 40 C.F.R. § 1051.250 specifies that a detailed history of each emission-data vehicle, including the following, must be organized and maintained by the certificate holder for at least eight years following certification:

- (i) The emission-data vehicle's construction, including its origin and buildup, steps you took to ensure that it represents production vehicles, any components you built specially for it, and all the components you include in your application for certification.

(ii) How you accumulated vehicle or engine operating hours, including the dates and the number of hours accumulated.

(iii) All maintenance, including modifications, parts changes, and other service, and the dates and reasons for the maintenance.

(iv) All your emission tests, including documentation on routine and standard tests, as specified in 40 CFR part 1065, and the date and purpose of each test.

(v) All tests to diagnose engine or emission-control performance, giving the date and time of each and the reasons for the test.

(vi) Any other significant events.

40 C.F.R. § 1051.255 specifies what actions EPA may take regarding your certificate of conformity. Under 40 C.F.R. § 1051.255(d), “we may void your certificate if you do not keep the records we require or [you] do not give us information as required under this part or the Act.” Also, under 40 C.F.R. § 1051.255(e), “we may void your certificate if we find that you intentionally submitted false or incomplete information.” A voided certificate is considered never to have been granted and all engines introduced into commerce under the certificate are considered noncompliant. 40 C.F.R. § 1068.30. No vehicles may be introduced into commerce using a voided certificate, and the holder of the voided certificate is liable for all engines/equipment introduced into U.S. commerce under the voided certificate, and may face civil and criminal penalties. 40 C.F.R. §§ 1068.30, 1068.101, and 1068.125.

Facts and Actions Which Warrant Voiding the Certificates

EPA’s investigation into MotorScience’s certification practices found that the specific facts and actions, described below, show that both of Hensim’s certificates of conformity (for engine families 7CGQX.110AA1 and 7CGQX.200DM5) were issued based on the intentional submission of false or incomplete information and that Hensim failed to comply with the

applicable recordkeeping requirements for these engine families. As explained above, these facts and actions warrant the voiding of Hensim's certificates.

Recordkeeping Violations

Herbert Hu of MotorScience signed and delivered certificate of conformity applications for ATV engine family 7CGQX.110AA1 and off-road motorcycle engine family 7CGQX.200DM5 to EPA as the authorized representative of Hensim. EPA's inspection of MotorScience's facilities revealed that MotorScience failed to maintain any durability mileage accumulation and maintenance records on behalf of Hensim for either of these applications, in violation of 40 C.F.R. § 1051.250. In its July 22, 2009 letter, EPA informed Hensim about this lack of records and gave Hensim an opportunity to provide those records to us or explain why those records were not available. Your letter of September 3, 2009, which includes two pages of emission data from "voluntary confirmatory exhaust emission testing for 110cc All-Terrain Vehicles for model year 2008," does not satisfy the requirement of 40 C.F.R. § 1051.250 for model year 2007 ATV engine family 7CGQX.110AA1. Your response does not contain any explanation why these records are not readily available or why these records may never have been kept. Therefore, Hensim has not demonstrated that it complied with the applicable recordkeeping requirements at 40 C.F.R. § 1051.250, and EPA is voiding the certificates of conformity for these two engine families under 40 CFR § 1051.255(d).

Intentional Submission of False or Incomplete Information

As explained above, 40 C.F.R. § 1051.201(b) requires that your "application must...not include false or incomplete statements or information." Additionally, 40 C.F.R. § 1051.255(e) authorizes the voiding of your certificates if we find that you intentionally submitted false or incomplete information. EPA identified such information for these engine families through its

investigation of MotorScience's certification practices. Specifically, EPA identified important inconsistencies between the EDV described in your certification applications and the EDV that was actually used to generate the testing and other data for your engine families. Through its CAA section 208 information request, EPA obtained the original emissions test reports ("original reports") from Automotive Testing and Development Services, Inc. (ATDS), the primary laboratory used by MotorScience, for each EDV used for each engine family. The original reports were generally six to seven pages long and contained ATDS quality assurance stamps with handwritten notes that identified the size and the manufacturer of the EDV used for each engine family, as well as other information regarding the EDV. We compared these original reports with the test reports submitted by Hensim and found that the test reports submitted by Hensim did not match those obtained from ATDS. In other words, the original reports and the test reports you submitted were not identical. For example, the ATDS quality assurance stamps with their accompanying handwritten notes were not present on the test reports you submitted with your certification applications. Additionally, we found that you only submitted two pages of the test reports rather than submitting the whole report. Such discrepancies prompted our investigation of the differences in the data contained in the two reports as well as the differences in other information we obtained through our information request when compared against information you included in your certification applications.

After comparing the data in the original reports with the information contained in the test reports that you submitted, we discovered that—for each engine family discussed herein—the EDVs described in your certification applications were different from the EDVs actually used by ATDS for testing. As you know, the original reports, including the handwritten notes accompanying the ATDS stamps, and other information in the test reports for the EDV actually tested by ATDS, indicate the size and the manufacturer for the EDV for each engine family.

However, since you obscured the ATDS stamp, the handwritten notes and the other pages from the copy of the test report that you submitted, we did not discover this problem until we obtained copies of the original reports through our investigation. Had you submitted a complete copy of the original test report, EPA would have had this information when reviewing your certification applications and could have identified this discrepancy before issuing certificates of conformity for these engine families. Instead, your intentional removal of the ATDS stamps, their accompanying handwritten notes, and other pages from the test reports, led EPA to rely on erroneous information in your certification applications for issuing your certificates of conformity. The information contained in the ATDS stamps, handwritten notes and other pages of the test reports would have enabled EPA to identify these discrepancies before issuing certificates of conformity for these engine families, but your intentional withholding of this information misled EPA into erroneously issuing these certificates. When asked about this missing information, MotorScience admitted to EPA that they intentionally obscured the test reports submitted with Hensim's certification applications to hide the EDV identification information. Additionally, separate and apart from the information missing in the test reports submitted to EPA, we discovered other discrepancies between the information we obtained through our investigation and the information you submitted in your certification applications. This information further verified that the actual EDVs used for testing were different than those described in your certification applications and that the actual EDVs are not representative of the requisite characteristics of the products in your engine families. Examples of these types of discrepancies are detailed below for each engine family.

Engine Family 7CGQX.110AA1. The actual EDV used to generate the test results (ONT06482 and ONT06900) was misrepresented in Hensim's certification application in the following respects:

- The actual EDV had an engine displacement of 150 cc, yet the application listed the EDV engine displacement at 107 cc.
- The manufacturer of the actual EDV was Jinan Qingqi Motorcycle Co., Ltd., yet the application listed the manufacturer of the EDV as Chongqing Hensim Group Co. Ltd.
- The actual EDV had a model year (MY) of 2006, yet the application listed the MY as 2007.

Engine Family 7CGQX.200DM5. The actual EDV used to generate the test results (ONT05271 and ONT05828) was misrepresented in Hensim's certification application in the following respects:

- The manufacturer of the actual EDV was Chongqing Shineray Motorcycle Manufacturing Co, Ltd. (Shineray), yet the application listed the manufacturer of the EDV as Hensim.
- The actual EDV had a model year (MY) of 2006, yet the application listed the MY as a 2007.

The description of the actual EDV for this engine family was further misrepresented in Hensim's application in the following ways:

- The actual EDV had a rated power of 10 kW @ 7500 rpm, yet the application listed the EDV engine rated power at 11 kW @ 7500 rpm.
- The actual EDV had a carburetor with part number PZ27, yet the application listed the carburetor part number as ZT990-52-200.
- The actual EDV had ignition coils 31550-307-0000 made by Chingqing Lihua Automization Tech, yet the application listed ignition coils ZT990-33-200 made by Chongqing Sanmu Huarui Co. Ltd.
- The actual EDV had a Nandi spark plug part number D8TC, yet the application listed the part number as A7TC.

- The actual EDV had a Chongqing East Plastic Co., Ltd. number 16600-307-0000 fuel tank, yet the application listed a Chongqing Rongdi Machine Parts Co. Ltd. number CM200-155-200 fuel tank.
- The actual EDV had a Chongqing Yuanping Cleaner Co. Ltd. number 17100-307-0000 air cleaner, yet the application listed a Chongqing Yijiu Vehicle Parts Co. Ltd. number CV560-60-200 air cleaner.
- The actual EDV had a Chongqing Yuanping Cleaner Co., Ltd. number 17100-307-0000 air cleaner housing cover, yet the application listed the part number as CV560-60-200.
- The actual EDV had a Fenghuan number 22220-307-0000 catalyst, yet the application listed a catalyst with part number ZT990-58-200.
- The actual EDV had a Chongqing East Plastic Co., Ltd. 16640-307-0000 fuel tank cover cap, yet the application listed a Chongqing Rongdi Machine Parts Co. Ltd. CM200-158-200 fuel tank cover cap.

In its July 22, 2009 letter, EPA informed Hensim about these discrepancies, explained that the intentional submission of false or incomplete information is grounds for voiding your certificates, and gave Hensim an opportunity to demonstrate or achieve compliance with applicable regulations. Hensim responded in a letter dated September 3, 2009, but your response did not explain these discrepancies and did not provide any demonstration that your products are in compliance with the applicable regulations. For example, you actually admit in your September 3, 2009 letter that the EDV for engine family 7CGQX.110AA1 that you “sent to MotorScience was a model year 2006 vehicle.” Thus, you admit that the certification application did not include the correct MY for the EDV. For engine family 7CGQX.200DM5, you state that Hensim “has never imported one single unit to North America under this certificate”; nevertheless, EPA did issue the certificate to you, and outlined its reasons for voiding that

certificate, which Hensim has not rebutted. You provide no other specific explanations regarding the discrepancies described above. Instead, you generally state that you are “surprised at the wrongful certification practices alleged in the [l]etter,” claim you had “no knowledge about MotorScience’s actual certification practice,” and assert that “Hensim is a victim of, and therefore not responsible for, any wrongdoing that may have been committed by...MotorScience.” However, as addressed above (*see* footnote 1), and acknowledged in your response letter (“Hensim...signed the service contract and authorization letters to EPA...to authorize MotorScience to serve as Hensim’s certification consultant”), Hensim cannot simply deflect responsibility for these discrepancies since all acts by MotorScience are imputed to Hensim as the certificate holder. *See* 40 C.F.R. § 1051.201(e).

In a final effort at demonstrating that engine family 7CGQX.110AA1 complies with the applicable regulations, Hensim included in its response letter two pages of emissions data resulting from testing of a 110 cc MY 2008 ATV. This testing however is not relevant to our voiding decision because it provides no explanation for the discrepancies found in the information you submitted for certifying this engine family. Additionally, these tests were done on a different model year vehicle and you provide no information to demonstrate that the engine families in the various model years are identical.

Therefore, based on all of the above, we conclude that these discrepancies demonstrate that the information that was not submitted from the original test reports was intentionally withheld, with the intention to mislead. That missing information was critical for evaluating the compliance of the engine families with the regulatory requirements for certification. Therefore, the missing portions of the test reports, as well as other information we obtained during our investigation, makes it clear that you intentionally submitted false or incomplete information to EPA as part of the certification process for these engine families.

Hensim's Certificates are Void Effective Immediately

Therefore, based on your failure to keep records, which is in direct violation of 40 C.F.R. § 1051.250, and your intentional submission of false or incomplete information, the certificates of conformity for engine families 7CGQX.110AA1 (Certificate Number: 7CGQX.110AA1-004-R01) and 7CGQX.200DM5 (Certificate Number: 7CGQX.200DM5-004) are now void pursuant to 40 C.F.R. §§ 1051.255(d) and (e). Each introduction of any ATV or off-road motorcycle into U.S. commerce under these certificates during the model year and thereafter is a violation of sections 203 and 213 of the Clean Air Act, and you may face civil penalties up to \$32,500 per ATV or off-road motorcycle, as well as criminal penalties. *See* CAA §§ 203(a)(1), 205(a), and 213(d); 42 U.S.C. §§ 7522 and 7524; 40 C.F.R. §§ 1068.101(a)(1) and 1068.125. In addition, Hensim may not introduce into commerce any additional vehicles covered by the voided certificates. 40 C.F.R. § 1068.30.

You may request a hearing on EPA's decision to void your certificates in accordance with the procedures set forth in 40 C.F.R. §§ 86.1853-01, 1051.820, and 1068.601. A request for a hearing must be in writing, signed by the certificate holder or authorized representative of the certificate holder, and include a statement, with supporting data, specifying objections to the action taken by EPA. The request must be received by EPA within 30 days of receipt of this letter and should be sent to:

Linc Wehrly, Light-Duty Vehicle Group Manager
Compliance and Innovative Strategies Division
U.S. EPA Office of Transportation and Air Quality
2000 Traverwood Drive
Ann Arbor, MI 48105

Such a request must include a description of your objection and any supporting data. 40 C.F.R. §§ 1051.255(f), 1051.820. We may decide to approve your request if we find that it raises a

substantial factual issue. If we agree to hold a hearing, we will use the procedures specified in 40 C.F.R. part 1068, subpart G, 40 C.F.R. § 86.1853-01, and 40 C.F.R. § 1051.820(c).

Please contact Mr. Wehrly by telephone at (734) 214-4286, or email at wehrly.linc@epa.gov, should you have any questions.