

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**

In the Matter of:

PACIFIC RIM INTERNATIONAL WEST
INC., HAILI ICEBEAR INC., and HUZHOU
DAIXI ZHENHUA TECHNOLOGY TRADE
CO., LTD.,

Respondents.

Docket No.
CAA-HQ-2011-7953

CONSENT AGREEMENT

Preliminary Statement

1. This is a civil administrative penalty assessment proceeding instituted under section 205(c)(1) of the Clean Air Act (Act), 42 U.S.C. § 7524(c)(1). The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
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 and settle civil administrative penalty assessment proceedings instituted under section 205(c)(1) of the Act, 42 U.S.C. § 7524(c)(1).
3. Respondents in this matter are Pacific Rim International West Inc. (Pacific Rim), Haili Icebear Inc. (Haili Icebear), and Huzhou Daixi Zhenhua Technology Trade Co., Ltd. (Huzhou Daixi) (collectively Respondents). Pacific Rim and Haili Icebear are located at

2181 E. Francis Street, Ontario, California 91761. Huzhou Daixi is located at 104 Highway, Daixi Town, Zhejiang Province 313023, People's Republic of China.

4. The EPA and Respondents, 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 Act, 42 U.S.C. § 7524(c)(1), and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (Consolidated Rules).
6. The EPA and the United States Department of Justice jointly determined that this matter, although it involves a penalty assessment above \$295,000, is appropriate for an administrative penalty assessment. 42 U.S.C. § 7524(c)(1); 40 C.F.R. § 19.4.
7. The Environmental Appeals Board is authorized to issue consent orders memorializing settlements between the EPA and Respondents resulting from administrative enforcement actions under the Act, and to issue final orders assessing penalties under the Act. 40 C.F.R. § 22.4(a)(1); EPA Delegation 7-41-C.
8. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order. 40 C.F.R. §§ 22.13(b), 22.18(b).

Governing Law

9. This proceeding arises under Part A of Title II of the Act, 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 regard motor vehicles, specifically highway motorcycles, for which 40 C.F.R. Part 86 sets emission standards and 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). 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* 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 Act itself);
10. Definitions:
 - (a) An “adjustable parameter” is 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) “Crankcase emissions” are airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or lubrication systems. 40 C.F.R. § 86.402-78.
 - (c) An “engine family” is a group of engines expected to have similar emission characteristics throughout their useful life. 40 C.F.R. § 86.420-78; 40 C.F.R.

§ 1051.230.

- (d) **“Importer”** means the person who brings merchandise into the United States, and this is often the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on that person’s behalf. An importer may be the consignee or the importer of record. 19 C.F.R. § 101.1.
- (e) **“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. 42 U.S.C. § 7550(1); 40 C.F.R.

§ 1051.801.

- (f) **“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; 40 C.F.R. § 1051.801.
- (g) **“Motor vehicle”** has the meaning provided in 42 U.S.C. § 7550(2) and 40 C.F.R. § 85.1703.
- (h) **“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.

- (i) Highway motorcycles and recreational vehicles are considered “new” at the time of import. 42 U.S.C. § 7550(3); 40 C.F.R. § 1051.801.
- (j) “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).
- (k) “Person” includes individuals, corporations, partnerships, associations, states, municipalities, and political subdivisions of a state. 42 U.S.C. § 7602(e).
- (l) “Recreational Vehicle” has the meaning provided in 40 C.F.R. § 1051.801.

11. 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. 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.

- (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 physically adjustable range. 40 C.F.R. § 1051.115(c), (d).
- (f) A highway motorcycle does not meet emission standards if it discharges crankcase emissions directly into the ambient atmosphere. 40 C.F.R. § 86.410-2006(d).
- (g) The EPA issues COCs on whatever terms the EPA deems necessary to ensure that

any new motorcycle covered by the COC will meet the requirements of the Act and its regulations. 40 C.F.R. § 86.437-78(a)(2)(ii), (b)(3). 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).

- (h) 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.
- (i) The Act 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—any new motor vehicle or new motor vehicle engine unless the vehicle or engine is covered by a COC issued by the EPA under regulations prescribed by the Act. 42 U.S.C. § 7522(a)(1).
- (j) The Act prohibits any person from importing or causing another to import a new motor vehicle or new motor vehicle engine into the United States unless that new motor vehicle or new motor vehicle engine is covered by an EPA-issued COC. 42 U.S.C. § 7522(a)(1).
- (k) 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)

12. Label Requirements:

- (a) The Act prohibits a manufacturer from selling, offering for sale, introducing into commerce, or delivering for introduction into commerce a new motor vehicle or

new motor vehicle engine unless that vehicle or engine bears a compliant emission control information (ECI) label. 42 U.S.C. § 7522(a)(4)(A).

- (b) An ECI label is compliant only if it states that the vehicle or engine 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. 42 U.S.C. § 7541(c)(3)(C); 40 C.F.R. § 86.413-78.

13. Recordkeeping Requirements:

- (a) The manufacturer of any motorcycle subject to the emission standards set forth in 40 C.F.R. Part 86 must provide information to the EPA that the EPA reasonably requires to determine whether the manufacturer or other person has acted or is acting in compliance with the Act and its regulations. 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 certificate 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).
14. 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 or was improperly labeled—or anyone who caused any of the foregoing—is subject to a civil penalty of up to \$32,500 for each such vehicle. 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 which occur after January 12, 2009. 40 C.F.R. § 19.4.
15. 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 Act are subject to a civil penalty up to \$32,500 for each day they are in violation. 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 since January 12, 2009. 40 C.F.R. § 19.4.

16. Rather than referring a matter to the United States Department of Justice (DOJ) to commence a civil action, the EPA may assess a civil penalty through its own administrative process if the penalty sought is less than \$295,000 or if the EPA and the DOJ jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. 42 U.S.C. § 7524(c); 40 C.F.R. § 19.4.

Stipulated Facts

17. The Subject Highway Motorcycles identified in Table A (below on pages 24–26 of this Consent Agreement) are motor vehicles and highway motorcycles, as defined above, and are subject to the emission standards and compliance provisions of the Act and its regulations. 42 U.S.C. § 7522; 40 C.F.R. Part 86.
18. The Subject Recreational Vehicles identified in Table B (below on page 26 of this Consent Agreement) are recreational vehicles, as defined above, and are subject to the emission standards and compliance provisions of the Act and its regulations. 40 C.F.R. Parts 1051, 1068.
19. Respondents are each “persons” as defined above.
20. Respondents are each “manufacturers” as defined above.
21. Haili Icebear submitted COC applications, and the EPA granted COCs, for every engine family at issue in this matter.
22. Pacific Rim imported into the United States every one of the Subject Highway Motorcycles identified in Table A and every one of the Subject Recreational Vehicles identified in Table B on or about the date, and within the entry number, specified in Tables A and B.
23. Huzhou Daixi produced every one of the Subject Highway Motorcycles identified in

Table A and arranged for Pacific Rim to import them into the United States.

24. Respondents claimed that every one of the Subject Highway Motorcycles identified in Table A was covered by the COC specified for that Subject Vehicle in Table A.
25. Pacific Rim and Haili Icebear claimed that every one of the Subject Recreational Vehicles identified in Table B was covered by the COC specified for that Subject Vehicle in Table B.
26. In March, April, and May 2009, authorized inspectors from the EPA and the United States Department of Homeland Security's Bureau of Customs and Border Protection (CBP) inspected representative highway motorcycles from entries ES3-2029803-8, ES3-2030310-1, and ES3-2030354-9 at the Port of Long Beach, California. These vehicles were purportedly covered by the COCs for engine family 9HALC.150Z3L.
27. In August 2009, the EPA notified Wendy Yu, President and CEO of Pacific Rim, that the EPA had determined that 78 highway motorcycles in entries ES3-2029803-8, ES3-2030310-1, and ES3-2030354-9 were not certified because they had crankcases that vented directly into ambient air as well as catalysts and carburetors that did not conform to the specifications provided in the COC application for the COC for engine family 9HALC.150Z3L. Accordingly, the EPA alleged that Pacific Rim imported these uncertified highway motorcycles in violation of section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1). Further, in August 2009, the EPA offered to settle these alleged violations by presenting Pacific Rim with an Expedited Settlement Agreement (ESA) which included a civil penalty of \$9,000. Pacific Rim neither signed the ESA nor paid any penalty.
28. In a letter dated June 22, 2010, the EPA issued Pacific Rim and Haili Icebear a Request

for Information under section 208(a) of the Act, 42 U.S.C. § 7542(a) (§ 208 Request). This § 208 Request required Pacific Rim and Haili Icebear to provide, among other things, documentation of vehicle importations by the companies, a statement of whether those vehicles were exported, the identity of business affiliates, documentation of all vehicles produced under all COCs issued to the companies, records of emission testing performed for certification purposes, a copy of all records required under 40 C.F.R. §§ 86.440-78, 1051.250, and 1051.825, and information about the companies' business structures and business relationships.

29. In August 2010, Pacific Rim and Haili Icebear provided the EPA with some of the information required by the § 208 Request.
30. In April, May, and June 2011, authorized inspectors from the EPA and CBP inspected representative highway motorcycles from entry ES3-2052274-2 at the Port of Jacksonville, Florida. These vehicles were purportedly covered by the COCs for engine family AHALC.150Z3L.
31. In June, July, and August 2011, authorized inspectors from the EPA and CBP inspected representative highway motorcycles from entries ES3-2053998-5, ES3-2054353-2, ES3-2054354-0, ES3-2054355-7, ES3-2054358-1, ES3-2054358-1, ES3-2054612-1, ES3-2054619-6, ES3-2054620-4, ES3-2054704-6, ES3-2054-705-3, and ES3-2054706-1 at the Port of Savannah, Georgia. These vehicles were purportedly covered by the COCs for engine families BHALC.150Z3L, BHALC0.28N1T, BHALC.249CHP, and BHALC.049HDZ.
32. In September and October 2011, authorized inspectors from the EPA inspected representative recreational vehicles from entries ES3-2048045-3 and ES3-2055581-7 at

Pacific Rim's and Haili Icebear's place of business at 2181 E. Francis Street, Ontario, California 91761. These vehicles were purportedly covered by the COCs for engine families AHALX.150A4V and BHALX.123A4V.

33. In November 2011, Respondents performed emission testing on a sample highway motorcycle purportedly covered by the COC for engine family 9HALC.150Z3L. This testing showed that the vehicle did not exceed the EPA's emission standards when the vehicle's air-fuel mixture screw was adjusted.
34. In November 2011, Respondents performed emission testing on a sample highway motorcycle purportedly covered by the COC for engine family AHALC.150Z3L, and this testing showed that the vehicle exceeded the EPA's emission standards for carbon monoxide when the vehicle's jet needle was adjusted to one or more of its multiple grooves for adjustment, and that the vehicle experienced no substantial degradation of performance at this setting. This vehicle emitted 27 grams per kilometer whereas the emission standard for this vehicle is 12 grams per kilometer.
35. Haili Icebear will voluntarily become part of, and change its name to, Pacific Rim. Pacific Rim will become the new EPA COC holder.

Alleged Violations of Law

36. Highway Motorcycle Certification Violations: The EPA alleges that Respondents sold, offered for sale, introduced into commerce, delivered for introduction into commerce, imported, or caused the sale, introduction into commerce, delivery for introduction into commerce, or importation of the 3,575 uncertified highway motorcycles identified in Table A in violation of section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1). Specifically, this includes:

- (a) 1,392 highway motorcycles purportedly covered by the COC for engine family 9HALC.150Z3L. The EPA alleges that these vehicles do not materially conform to their certified configuration, and therefore are not covered by a COC, for three independently sufficient reasons, namely because the vehicles (i) emit crankcase emissions directly into the atmosphere, (ii) have catalytic converters that have a smaller volume or lesser cell density than was described in the COC application for engine family 9HALC.150Z3L, and (iii) have carburetors with an idle mixture screw that could be adjusted in a reasonable amount of time using common hand tools whereas the COC application for engine family 9HALC.150Z3L describes a carburetor with a nonadjustable idle mixture screw.
- (b) 1,837 highway motorcycles purportedly covered by the COC for engine family AHALC.150Z3L. The EPA alleges that these vehicles do not materially conform to their certified configuration, and therefore are not covered by a COC, for two independently sufficient reasons, namely because the vehicles (i) have carburetors with an idle mixture screw that could be adjusted in a reasonable amount of time using common hand tools whereas the COC application for engine family AHALC.150Z3L describes a carburetor with a nonadjustable idle mixture screw, and (ii) have carburetors equipped with a jet needle that has multiple grooves for adjustment whereas the COC application for engine family AHALC.150Z3L describes no such adjustable parameter. Furthermore, EPA alleges 1,759 of these highway motorcycles have catalytic converters that have a smaller volume than is described in the COC application for engine family AHALC.150Z3L.
- (c) 276 highway motorcycles purportedly covered by the COC for engine family

BHALC.150Z3L. The EPA alleges that these vehicles do not materially conform to their certified configuration, and therefore are not covered by a COC, for two independently sufficient reasons, namely because the vehicles (i) have carburetors with an idle mixture screw that could be adjusted in a reasonable amount of time using common hand tools whereas the COC application for engine family BHALC.150Z3L describes a carburetor with a nonadjustable idle mixture screw, and (ii) have carburetors equipped with a jet needle that has multiple grooves for adjustment whereas the COC application for engine family BHALC.150Z3L describes no such adjustable parameter. Furthermore, the EPA alleges that 52 of these highway motorcycles emit crankcase emissions directly into the atmosphere.

- (d) 16 highway motorcycles purportedly covered by the COC for engine family BHALC0.28N1T. The EPA alleges that these vehicles do not materially conform to their certified configuration, and therefore are not covered by a COC, because they have carburetors with an idle mixture screw that could be adjusted in a reasonable amount of time using common hand tools whereas the COC application for engine family BHALC0.28N1T describes a carburetor with a nonadjustable idle mixture screw.
- (e) 2 highway motorcycles purportedly covered by the COC for engine family BHALC.249CHP. The EPA alleges that these vehicles do not materially conform to their certified configuration, and therefore are not covered by a COC, because they have carburetors equipped with a jet needle that has multiple grooves for adjustment whereas the COC application for engine family BHALC.249CHP describes no such adjustable parameter.

(f) 52 highway motorcycles purportedly covered by the COC for engine family BHALC.049HDZ. The EPA alleges that these vehicles do not materially conform to their certified configuration, and therefore are not covered by a COC, for two independently sufficient reasons, namely because the vehicles (i) have carburetors with an idle mixture screw that could be adjusted in a reasonable amount of time using common hand tools whereas the COC application for engine family BHALC.049HDZ describes a carburetor with a nonadjustable idle mixture screw, and (ii) have carburetors equipped with a jet needle that has multiple grooves for adjustment whereas the COC application for engine family BHALC.049HDZ describes no such adjustable parameter.

37. Recreational Vehicle Certification Violations: The EPA alleges that Pacific Rim and Haili Icebear sold, offered for sale, introduced into commerce, delivered for introduction into commerce, imported, or caused the sale, introduction into commerce, delivery for introduction into commerce, or importation of the 168 uncertified recreational vehicles identified in Table B in violation of section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), and 40 C.F.R. § 1068.101(a)(1). Specifically, this includes:

(a) 108 recreational vehicles purportedly covered by the COC for engine AHALX.150A4V. The EPA alleges that these vehicles do not materially conform to their certified configuration, and therefore are not covered by a COC, because they have catalytic converters that have a different volume and cell density than is described in the COC application for engine family AHALX.150A4V.

(b) 60 recreational vehicles purportedly covered by the COC for engine BHALX.123A4V. The EPA alleges that these vehicles do not materially conform

to their certified configuration, and therefore not covered by a COC, because they have “other adjustments” as that term is defined in 40 C.F.R. § 1051.115(d), whereas the COC application for engine family BHALX.123A4V describes a carburetor with no such adjustments. Specifically, the carburetors were immediately accessible and the main jets were replaceable with jets that would change the vehicles’ air-fuel ratio.

38. Labeling Violations: The EPA alleges that Respondents sold, offered for sale, introduced into commerce, delivered for introduction into commerce, imported, or caused the sale, introduction into commerce, delivery for introduction into commerce, or importation of 90 highway motorcycles with noncompliant ECI labels. Respondents imported these vehicles into the Port of Jacksonville in April 2010 in entry number ES3-2052274-2. The EPA alleges that the ECI labels were noncompliant because they could be removed without being destroyed or defaced. The EPA alleges that the importation of these improperly labeled highway motorcycles constitutes violations of section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1).
39. Recordkeeping Violations: The EPA alleges that Respondents failed to adequately keep and maintain enumerated records and failed to timely provide the EPA with information reasonably required to assess their compliance in violation of section 203(a)(2) of the Act, 42 U.S.C. § 7522(a), and 40 C.F.R. § 1068.101. Specifically, this information includes:
 - (a) certification and testing records specified in 40 C.F.R. § 86.440-78 and 40 C.F.R. § 1051.250 for five engine families (8HALX.086A4V, 8HALX.229L4V, 9HALX.086A4V, 9HALX.229L4V, and AHALC0.28N1T);

- (b) certification and testing records specified in 40 C.F.R. § 86.440-78 and 40 C.F.R. § 1051.250 for 11 engine families (8HALX.086A4V, 8HALX.197A4V, 8HALX.229L4V, 9HALC.150Z3L, 9HALX.086A4V, 9HALX.197A4V, 9HALX.229L4V, AHALC0.28N1T, AHALC.150Z3L, AHALC.249CHP, and AHALX.150A4V);
- (c) vehicle identification lists, as required by 40 C.F.R § 86.414-78 and 40 C.F.R. § 1051.250, for eleven engine families (8HALX.086A4V, 8HALX.197A4V, 8HALX.229L4V, 9HALC.150Z3L, 9HALX.086A4V, 9HALX.197A4V, 9HALX.229L4V, AHALC0.28N1T, AHALC.150Z3L, AHALC.249CHP, and AHALX.150A4V); and
- (d) importation documentation regarding the quantity and kind of vehicles included in at least 47 importations by Pacific Rim.

Terms of Agreement

40. For the purpose of this proceeding, Respondents:
- (a) admit that the EPA has jurisdiction over this matter as stated above;
 - (b) admit to the stipulated facts stated above;
 - (c) neither admit nor deny the alleged violations of law stated above;
 - (d) consent to the assessment of a civil penalty as stated below;
 - (e) consent to the issuance of any specified compliance or corrective action order;
 - (f) consent to the conditions specified in this Consent Agreement;
 - (g) waive any right to contest the alleged violations of law; and
 - (h) waive their rights to appeal the Final Order accompanying this Consent Agreement.

41. Respondents must pay to the United States a civil penalty of \$300,000 (First Penalty).
42. Respondents agree to pay the First Penalty to the United States pursuant to the following schedule: \$80,000 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); (2) \$125,000 within 135 calendar days following the issuance of the attached Final Order; and (3) \$95,000 within 270 calendar days following the issuance of the attached Final Order.
43. Pacific Rim and Haili IceBear must pay to the United States an additional civil penalty of \$25,000 (Second Penalty).
44. Pacific Rim and Haili Icebear agree to pay the Second Penalty to the United States within 270 calendar days following the issuance of the attached Final Order.
45. Respondents agree to pay the First Penalty and Pacific Rim and Haili Icebear agree to pay the Second Penalty in the manner specified in subparagraph (a) or (b) below:
 - (a) Mail by United States Postal Service a certified check, cashier's check, or company check payable to the United States of America, to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
ATTN: CAA-HQ-2011-7953

This check must be identified with case number CAA-HQ-2011-7953 and state that it is remitted by Respondents. Simultaneously, scan and email a copy of the check to Evan M. Belser at belser.evan@epa.gov.
 - (b) Pay online through the Department of the Treasury using www.pay.gov. In the Search Public Form field, enter SFO 1.1, click EPA Miscellaneous Payments -

Cincinnati Finance Center, and complete the SFO Form Number 1.1. The payment must be identified with case number CAA-HQ-2011-7953. Within 24 hours of payment, scan and email a copy of the receipt to belser.evan@epa.gov.

46. Beside the Penalty, Respondents acknowledge that CBP may assess separate penalties related to the importation of the Subject Vehicles.
47. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject Respondents 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, Respondents must timely pay the civil penalty.
48. The EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Respondents agree to pay these amounts under this Consent Agreement and attached Final Order. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty agreed to herein on the date a copy of this Consent Agreement and attached Final Order is mailed to Respondents. However, the EPA will not seek to recover interest on any portion of the civil penalty that is timely paid. Pursuant to 31 U.S.C. § 3717, Respondents must pay the following amounts on any amount overdue:
 - (a) Interest: Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will be assessed at the rate of the United States Treasury tax and loan account rate in accordance with 40 C.F.R. 13.11(a).

(b) Late Payment Penalty: On any portion of a civil penalty more than 90 calendar days delinquent, Respondents must pay a late payment penalty of six percent per annum, which will accrue from the date the penalty payment became delinquent. This late payment penalty is in addition to charges which accrue or may accrue under subparagraph (a).

49. Under 28 U.S.C. § 162(f), penalties paid pursuant to this Consent Agreement are not deductible for federal tax purposes.

Effect of Consent Agreement and Attached Final Order

50. Completion of the terms of this Consent Agreement and attached Final Order, the United States will resolve Respondents' liability for federal civil penalties for the alleged violations and facts above.
51. This Consent Agreement and attached Final Order apply to and are binding upon the Complainant and the Respondents. Successors and assigns of Respondents are also bound if they are owned, in whole or part, directly or indirectly, or otherwise controlled by Respondents. Nothing in the previous sentence adversely affects any right of the EPA under applicable law to assert successor or assignee liability against Respondents' successor or assignee.
52. 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.
53. Complainant and the Respondents certify that at least one of its undersigned representatives is fully authorized by the party whom he or she represents to enter into the terms and conditions of the Consent Agreement, to execute it on behalf of that party,

- and to legally bind the party on whose behalf he or she signs this Consent Agreement.
54. By signing this Consent Agreement, Respondents acknowledge 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.
 55. Nothing in this Consent Agreement shall relieve Respondents of the duty to comply with all applicable provisions of the Act 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.
 56. By signing this Consent Agreement, Respondents certify that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondents realize that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
 57. The EPA reserves the right to revoke this Consent Agreement and accompanying settlement penalty if and to the extent that the EPA finds, after signing this Consent Agreement, that any information provided by Respondents was materially false or inaccurate at the time such information was provided to the EPA, and the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondents oral notice of its intent to revoke, which shall not be effective until received by Pacific Rim in writing.
 58. By signing this Consent Agreement, Complainant and Respondents agree to bear their

own costs and attorneys' fees in the action resolved by this Consent Agreement and attached Final Order.

59. If Respondents fail to comply with any provision contained in this Consent Agreement and Final Order, Respondents waive any rights they may possess at law or in equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with the Consent Agreement and attached Final Order or to seek an additional penalty for such noncompliance.
60. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.
61. Respondents 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 Respondents. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.

Table A: Subject Highway Motorcycles

Entry Number	Entry Date	Purported Engine Family	Quantity
ES3-2029036-5	2/7/2009	9HALC.150Z3L	50
ES3-2029392-2	2/27/2009	9HALC.150Z3L	25
ES3-2030108-9	3/30/2009	9HALC.150Z3L	109
ES3-2030068-5	3/31/2009	9HALC.150Z3L	52
ES3-2029803-8	3/20/2009	9HALC.150Z3L	26
ES3-2030354-9	4/8/2009	9HALC.150Z3L	26
ES3-2030310-1	4/7/2009	9HALC.150Z3L	52
ES3-2031523-8	5/18/2009	9HALC.150Z3L	52
BPC-0201501-4	6/4/2009	9HALC.150Z3L	26
BPC-0201502-2	6/4/2009	9HALC.150Z3L	26
ES3-2033274-6	7/8/2009	9HALC.150Z3L	26
ES3-2033275-3	7/8/2009	9HALC.150Z3L	26
ES3-2033276-1	7/8/2009	9HALC.150Z3L	28
ES3-2034572-2	8/13/2009	9HALC.150Z3L	26
ES3-2034574-8	8/13/2009	9HALC.150Z3L	31
ES3-2034573-0	8/14/2009	9HALC.150Z3L	26
ES3-2035007-8	8/31/2009	9HALC.150Z3L	26
ES3-2035871-7	9/18/2009	9HALC.150Z3L	26
ES3-2035872-5	9/18/2009	9HALC.150Z3L	26
ES3-2035873-3	9/18/2009	9HALC.150Z3L	39
ES3-2035874-1	9/18/2009	9HALC.150Z3L	33
ES3-2035909-5	9/23/2009	9HALC.150Z3L	26
ES3-2036081-2	9/25/2009	9HALC.150Z3L	26
ES3-2036082-0	9/25/2009	9HALC.150Z3L	26
ES3-2036083-8	9/25/2009	9HALC.150Z3L	26
ES3-2036086-1	9/25/2009	9HALC.150Z3L	26
ES3-2036085-3	9/28/2009	9HALC.150Z3L	26
ES3-2036424-4	10/9/2009	9HALC.150Z3L	26
ES3-2036425-1	10/9/2009	9HALC.150Z3L	26
ES3-2036426-9	10/9/2009	9HALC.150Z3L	26
ES3-2036427-7	10/9/2009	9HALC.150Z3L	26
ES3-2037000-1	10/28/2009	9HALC.150Z3L	56
ES3-2037001-9	10/28/2009	9HALC.150Z3L	26
ES3-2037003-5	10/28/2009	9HALC.150Z3L	26
ES3-2037004-3	10/28/2009	9HALC.150Z3L	33
ES3-2037005-0	10/28/2009	9HALC.150Z3L	26
ES3-2037006-8	10/28/2009	9HALC.150Z3L	26
ES3-2037324-5	11/7/2009	9HALC.150Z3L	26
ES3-2037321-1	11/7/2009	9HALC.150Z3L	26
ES3-2037322-9	11/7/2009	9HALC.150Z3L	26

ES3-2037323-7	11/7/2009	9HALC.150Z3L	26
ES3-2037320-3	11/9/2009	9HALC.150Z3L	26
ES3-2037939-0	11/24/2009	9HALC.150Z3L	26
ES3-2037940-8	11/24/2009	9HALC.150Z3L	26
ES3-2041720-8	4/20/2010	AHALC.150Z3L	32
BPC-0202029-5	4/29/2010	AHALC.150Z3L	26
BPC-0202030-3	4/29/2010	AHALC.150Z3L	26
ES3-2042128-3	5/10/2010	AHALC.150Z3L	26
ES3-2042371-9	5/10/2010	AHALC.150Z3L	26
ES3-2042450-1	5/11/2010	AHALC.150Z3L	26
ES3-2042751-2	5/20/2010	AHALC.150Z3L	26
ES3-2042755-3	5/20/2010	AHALC.150Z3L	26
ES3-2042757-9	5/20/2010	AHALC.150Z3L	26
ES3-2042760-3	5/20/2010	AHALC.150Z3L	26
ES3-2042762-9	5/20/2010	AHALC.150Z3L	26
ES3-2042787-6	5/21/2010	AHALC.150Z3L	26
ES3-2042789-2	5/21/2010	AHALC.150Z3L	26
ES3-2042791-8	5/21/2010	AHALC.150Z3L	26
ES3-2042793-4	5/21/2010	AHALC.150Z3L	26
ES3-2042795-9	5/21/2010	AHALC.150Z3L	26
ES3-2042889-0	5/24/2010	AHALC.150Z3L	26
ES3-2042891-6	5/24/2010	AHALC.150Z3L	26
ES3-2043429-4	6/7/2010	AHALC.150Z3L	26
ES3-2043423-7	6/7/2010	AHALC.150Z3L	26
ES3-2043426-0	6/7/2010	AHALC.150Z3L	26
ES3-2043428-6	6/7/2010	AHALC.150Z3L	26
ES3-2043430-2	6/7/2010	AHALC.150Z3L	26
ES3-2043431-0	6/7/2010	AHALC.150Z3L	26
ES3-2043432-8	6/7/2010	AHALC.150Z3L	26
ES3-2043633-1	6/13/2010	AHALC.150Z3L	26
ES3-2043634-9	6/13/2010	AHALC.150Z3L	26
ES3-2043635-6	6/13/2010	AHALC.150Z3L	26
ES3-2043636-4	6/13/2010	AHALC.150Z3L	26
ES3-2043637-2	6/13/2010	AHALC.150Z3L	26
ES3-2043717-2	6/15/2010	AHALC.150Z3L	26
ES3-2043792-5	6/16/2010	AHALC.150Z3L	90
ES3-2043801-4	6/16/2010	AHALC.150Z3L	26
ES3-2043768-5	6/17/2010	AHALC.150Z3L	26
ES3-2043769-3	6/17/2010	AHALC.150Z3L	26
ES3-2043770-1	6/17/2010	AHALC.150Z3L	26
ES3-2043771-9	6/17/2010	AHALC.150Z3L	26
ES3-2043871-7	6/17/2010	AHALC.150Z3L	39
ES3-2043874-1	6/17/2010	AHALC.150Z3L	39
ES3-2044315-4	7/1/2010	AHALC.150Z3L	26


ES3-2044319-6	7/1/2010	AHALC.150Z3L	26
ES3-2044320-4	7/1/2010	AHALC.150Z3L	26
ES3-2044321-2	7/1/2010	AHALC.150Z3L	26
ES3-2044322-0	7/1/2010	AHALC.150Z3L	26
ES3-2044324-6	7/1/2010	AHALC.150Z3L	26
ES3-2044499-6	7/6/2010	AHALC.150Z3L	26
ES3-2044500-1	7/6/2010	AHALC.150Z3L	26
ES3-2044501-9	7/6/2010	AHALC.150Z3L	39
ES3-2044504-3	7/6/2010	AHALC.150Z3L	26
ES3-2044987-0	7/20/2010	AHALC.150Z3L	26
ES3-2045007-6	7/21/2010	AHALC.150Z3L	26
ES3-2045008-4	7/21/2010	AHALC.150Z3L	26
ES3-2045009-2	7/21/2010	AHALC.150Z3L	26
ES3-2045017-5	7/21/2010	AHALC.150Z3L	26
ES3-2045132-2	7/22/2010	AHALC.150Z3L	26
ES3-2045133-0	7/22/2010	AHALC.150Z3L	26
ES3-2045134-8	7/22/2010	AHALC.150Z3L	26
ES3-2045136-3	7/22/2010	AHALC.150Z3L	26
ES3-2045114-0	7/24/2010	AHALC.150Z3L	26
ES3-2045115-7	7/24/2010	AHALC.150Z3L	26
ES3-2052274-2	4/26/2011	AHALC.150Z3L	90
ES3-2053998-5	6/25/2011	AHALC.150Z3L	26
ES3-2054353-2	7/3/2011	AHALC.150Z3L	26
ES3-2054354-0	7/3/2011	AHALC.150Z3L	26
ES3-2054355-7	7/3/2011	BHALC.150Z3L	26
ES3-2054358-1	7/10/2011	BHALC0.28N1T	16
ES3-2054358-1	7/10/2011	BHALC.249CHP	2
ES3-2054612-1	7/16/2011	BHALC.049HDZ	26
ES3-2054619-6	7/16/2011	BHALC.049HDZ	26
ES3-2054620-4	7/16/2011	BHALC.150Z3L	26
ES3-2054704-6	7/21/2011	BHALC.150Z3L	48
ES3-2054-705-3	7/21/2011	BHALC.150Z3L	75
ES3-2054706-1	7/21/2011	BHALC.150Z3L	75
ES3-2054770-7	7/24/2011	BHALC.150Z3L	26

Table B: Subject Recreational Vehicles

Entry Number	Entry Date	Purported Engine Family	Quantity
ES3-2048045-3	10/27/2010	AHALX.150A4V	108
ES3-2055581-7	8/23/2011	BHALX.123A4V	60

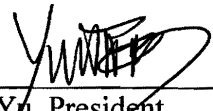
The foregoing Consent Agreement In the Matter of Pacific Rim International West Inc. and Haili Icebear Inc., Docket No. CAA-HQ-2011-7953, is Hereby Stipulated, Agreed, and Approved for Entry.

For Respondents:



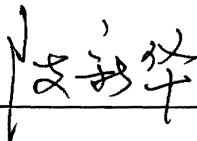
Wendy Yu, President
Pacific Rim International West Inc.
2181 E. Francis Street
Ontario, California 91761

3/21/2012
Date



Wendy Yu, President
Haili Icebear Inc.
2181 E. Francis Street
Ontario, California 91761

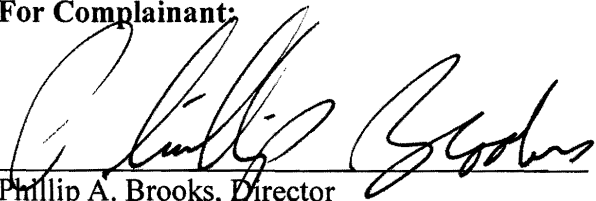
3/21/2012
Date



Chen Xinhua
Huzhou Daixi Zhenhua Technology Trade Co., Ltd.
104 Highway, Daixi Town,
Zhejiang Province 313023,
People's Republic of China

2012.3.7
Date

For Complainant:



Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

5/29/2012
Date



U.S. Department of Justice

Environment and Natural Resources Division

*Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611*

*Telephone (202) 514-2750
Facsimile (202) 353-0296
Facsimile (202) 514-0097*

October 5, 2011

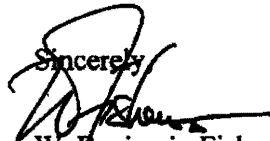
Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Request Pursuant to Section 205(c) of the Clean Air Act for a Waiver of the Penalty Limitation on EPA's Authority to Initiate Administrative Action Against Pacific Rim International West Inc. and Haili Icebear Inc.

Dear Phill:

This is in response to your letter dated September 14, 2011, concerning Pacific Rim International West Inc. and Haili Icebear Inc. I concur with your request for a waiver pursuant to Section 205(c) of the Clean Air Act (CAA), 42 U.S.C. § 7524(c), of the limitation on EPA's authority to assess administrative penalties, in order to pursue administrative action against Pacific Rim and Haili Icebear, for violations of Title II of the CAA relating to approximately 3,200 highway motorcycles imported into the United States.

If you have any questions, please call me or Karen Dworkin.

Sincerely,


W. Benjamin Fisherow
Acting Section Chief
Environmental Enforcement Section



U.S. Department of Justice

Environment and Natural Resources Division

90-5-2-1-10407/1

*Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611*

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Facsimile (202) 514-0097*

March 30, 2012

Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Addendum to Request Pursuant to Section 205(c) of the Clean Air Act for a Waiver of the Penalty Limitation on EPA's Authority to Initiate Administrative Action Against Pacific Rim International West Inc. and Haili Icebear Inc.

Dear Phill:

This is in response to your letter dated March 9, 2012, concerning an additional party, Huzhou Daixi Zhenua Technology Trade Co., Ltd., and an additional 424 highway motorcycles and 168 recreational vehicles, which you wish to include in this administrative matter for which an initial waiver was granted on October 5, 2011. I concur with your request for a waiver pursuant to Section 205(c) of the Clean Air Act (CAA), 42 U.S.C. § 7524(c), of the limitation on EPA's authority to assess administrative penalties, in order to pursue administrative action against this additional party and these additional vehicles.

If you have any questions, please call me or Karen Dworkin.

Sincerely,

W. Benjamin Fisherow
Acting Section Chief
Environmental Enforcement Section

90-5-2-1-10407