

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
)
 SAVOIA, INC.,)
 BMX IMPORTS, L.P.,)
 BMX TRADING, L.L.C.,)
 and TERRY ZIMMER,)
)
 Defendants.)
 _____)

Civil Action No. 3:12-2344-B

CONSENT DECREE

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Plaintiff United States of America, on behalf of the United States Environmental Protection Agency, filed a complaint alleging that Defendants Savoia, Inc., BMX Imports, L.P., BMX Trading, L.L.C., and Terry Zimmer violated Sections 203, 204, 205, and 213 of the Clean Air Act (“Act”), 42 U.S.C. §§ 7523, 7524, and 7547, *et seq.*

The Complaint alleges that Defendants imported and otherwise introduced into United States’ commerce from the People’s Republic of China approximately 24,167 recreational vehicles, off-highway motorcycles, and highway motorcycles for model years 2006 through 2010 that did not meet the requirements of Title II of the Act and regulations promulgated thereunder, in violation of Sections 204, 205, and 213 of the Act and 40 C.F.R. Parts 86, 1051, and 1068. These violations pertain to the vehicles’ Certificates of Conformity, warranty, and/or emissions control information labeling.

Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

The United States reviewed Financial Information and determined that Defendants have a limited ability to pay a civil penalty proportionate to the alleged violations at issue in this matter.

The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to Sections 203, 204, 205, and 213 of the Act (42 U.S.C. §§ 7522, 7523, 7524, and 7547), and 28 U.S.C. §§ 1331, 1345, and 1355. Venue lies in this District pursuant to Section 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524 because Defendants have their principal place of business in Dallas, Texas. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over each of them, and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Sections 204, 205, and 213 of the Act, 42 U.S.C. §§ 7524, 7525, and 7547.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendants, and any successors, assigns, or other entities or persons otherwise bound by law.

4. Defendants are jointly and severally liable for the obligations imposed by this Consent Decree.

5. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendants shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

6. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

7. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Certificate of Conformity" shall mean the document that EPA issues to an applicant under the Clean Air Act that, based upon the applicant's representations, certifies that an Engine Family meets all requirements of the Clean Air Act and implementing regulations for a specific model year.
- b. "Complaint" shall mean the complaint filed by the United States in this action;
- c. "Consent Decree" or "Decree" shall mean this Decree and any appendices attached hereto;
- d. "Date of lodging" shall mean the date on which the Consent Decree is lodged with the Court in accordance with Section XIX of this Decree for a period of not less than 30 Days for public notice and comment, pursuant to 28 C.F.R. § 50.7.
- e. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day;

- f. “Defendants” shall mean Savoia, Inc., BMX Imports, L.P., BMX Trading, L.L.C., and Terry Zimmer;
- g. “Effective Date” shall have the definition provided in Section XV (Effective Date);
- h. “Emission-Related Parts” refers to the components listed in 40 C.F.R. Part 1068, Appendix I.
- i. “Engine Family” means a group of engines, as specified in 40 C.F.R. §§ 86.402-78, 90.116, and 1051.230.
- j. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;
- k. “Export” means to send or transport for sale or trade to a country other than the United States, Canada, or Mexico.
- l. “Financial Information” means tax returns, balance sheets, financial statements, and bank records submitted by Defendants to EPA and the United States Department of Justice prior to the Effective Date of this Consent Decree.
- m. “Paragraph” shall mean a portion of this Decree identified by an arabic numeral;
- n. “Parties” shall mean United States and Defendants
- o. “Permanently Destroy” (or “Permanent Destruction”) means to destroy a vehicle or engine using one of the following methods:
 - (1) (a) Remove (and dispose or recycle appropriately) the engine oil from the crankcase, replace the oil with a 40 percent solution of sodium silicate ($\text{SiO}_2/\text{Na}_2\text{O}$ with a weight ratio of 3.0 or greater); (b) Run the engine at a low speed (approximately 2000 rpm) until the engine stops; (c) After allowing the

engine to cool for an hour, try to start the engine. If the vehicle or engine contains a battery and that battery is charged and the engine will not operate at idle, the procedure is complete; (d) If the engine starts, run the engine at a low speed (approximately 2000 rpm) until the engine stops and then try to start the engine again after allowing the engine to cool for an hour. Repeat step (d) in this process until the engine will not operate; (e) Remove and dispose of any remaining fuel in accordance with applicable law; and (f) Compact or crush the vehicle's carburetor to render it useless.

(2) Remove (and dispose of appropriately) all oil and gasoline. Using a drill bit of no less than 3/8 inch, (a) drill a hole through the lower crankcase of the engine so that it no longer retains oil; (b) drill a hole through the cylinder head into the combustion chamber; (c) drill a hole through the cylinder or cylinder block through the cylinder liner; and (d) drill a hole through the bore of the carburetor, rendering all parts useless.

(3) Compact or crush the vehicle, engine or equipment and all of its parts or components to render them useless.

p. "Section" shall mean a portion of this Decree identified by a roman numeral;

q. "Subject Vehicle and Engine" shall mean any EPA-regulated motor vehicle, on-highway motorcycle, recreational vehicle (including an all-terrain vehicle, off-highway motorcycle, and snowmobile), marine spark-ignition engine, and small or large spark-ignition engine, whether contained in a generator or other equipment, that is imported into the United States by, or on behalf of, Defendants, or purchased by, or

on behalf of Defendants, or is covered, or purported to be covered, by a Certificate of Conformity held by Defendants.

r. “Test Lot” shall mean all vehicles or engines from the same Vehicle or Engine Model imported during a six-month period. The first such period begins on the date of the first delivery or importation to the United States of a Vehicle or Engine Model by any party.

s. “United States” shall mean the United States of America, acting on behalf of EPA.

t. “Vehicle or Engine Model” means a set of Subject Vehicles and Engines that is certified or intended to be certified in the same Engine Family, but by the same manufacturer in the same model year (as designated by the manufacturer), bearing identical Emission-Related Parts, with the same vehicle mass, transmission type, displacement and power (*i.e.*, HP or kW), and marketed by Defendants or Defendants’ dealers or distributors with the same model designation.

IV. CIVIL PENALTY

8. Defendants shall pay the sum of One Hundred Twenty Thousand and No/100 Dollars (\$120,000.00) as a civil penalty, together with interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging, until the penalty has been paid in full no later than 365 days following the Effective Date of this Consent Decree, pursuant to the following schedule of five payments: (i) within 30 days after the Effective Date of this Consent Decree, Defendants shall make their first payment of \$20,000, plus accrued interest; (ii) within 90 days after the Effective Date of this Consent Decree, Defendants shall make their second payment in the amount of \$25,000, plus accrued interest; (iii)

within 180 days after the Effective Date of this Consent Decree, Defendants shall make their third payment in the amount of \$25,000, plus accrued interest; (iv) within 270 days after the Effective Date of this Consent Decree, Defendants shall make their fourth payment in the amount of \$25,000, plus accrued interest; and (v) within 365 days after the Effective Date of this Consent Decree, Defendants shall make their fifth and final payment in the amount \$25,000, plus accrued interest. Defendants may make additional payments toward the outstanding obligation or may prepay the remaining outstanding obligation at any time. For each payment, Defendants shall contact the Financial Litigation Unit of the United States Attorney’s Office for the Northern District of Texas (“FLU”) in advance for a determination regarding the amount of interest to be included with the payment.

9. Defendants shall pay the civil penalty due at <https://www.pay.gov> to the U.S. Department of Justice account, in accordance with instructions to be provided Defendants after the Effective Date by the FLU. At the time of payment, Defendants shall send notice that the payment has been made, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Savoia, Inc., et al.*, and shall reference the civil action number, CDCS number, and DOJ case number 90-5-2-1-10243. Such notice shall be sent by email to: EESCaseManagement.ENRD@usdoj.gov, acctsreceivable.CINWD@epa.gov, and Belser.Evan@epamail.epa.gov, and by mail to:

- (i) EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-10243

- (ii) EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268
- (iii) Director, Air Enforcement Division.
U.S. Environmental Protection Agency
Air Enforcement Division (2242A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

10. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VII (Stipulated Penalties) in calculating their federal income taxes.

V. COMPLIANCE REQUIREMENTS

11. Destruction or Export of Noncompliant Vehicles and Engines. By no later than ninety (90) days after the Effective Date of this Consent Decree, Defendants shall Permanently Destroy or export each of the vehicles specified in Appendix A to a country outside the United States, Canada, and Mexico, in accordance with the requirements of this Paragraph.

- a. Defendants shall maintain custody and control of any of vehicle identified in Appendix A in the condition it was in upon receipt by Defendants until it is Permanently Destroyed or shipped for export.
- b. Defendants shall retain all customary transactional documents relating to their export or Permanent Destruction of any vehicles specified in Appendix A. Such documents shall be made available to EPA on request.
- c. Defendants shall inform each entity that purchases or receives any vehicles identified in Appendix A from Defendants (or from any entity acting as an agent of, or on behalf of, the Defendants), in writing, that the vehicles do not meet U.S. EPA regulatory requirements and may not be sold in the United States, Canada, or Mexico.

d. Defendants shall prominently label all shipping pallets and individual boxes that hold any vehicles identified in Appendix A as “FOR EXPORT OUTSIDE THE UNITED STATES, CANADA, AND MEXICO. NOT LAWFUL FOR SALE IN THE UNITED STATES, CANADA, OR MEXICO.”

e. Within one hundred fifty (150) days of after the Effective Date of this Consent Decree, Defendants shall submit to EPA a Completion Report, certifying completion of the requirements of this Paragraph. In this Completion Report, Defendants shall include, and certify the truth and accuracy of, each of the following:

- i. A list of all vehicles exported or Permanently Destroyed, including the model names and numbers, the Engine Family numbers, and, for vehicles only, the entry numbers and vehicle identification numbers.
- ii. The name and contact information for any freight forwarding company or exporter used to facilitate the exportation of any vehicles or engines, and the name and contact information for the entity used to facilitate the Permanent Destruction of any vehicles or engines; and
- iii. The name and contact information for the customer or recipient of the vehicles and engines.

12. Defendants shall not import, distribute, sell, offer for sale (or cause such acts as to) any products covered by Title II of the Clean Air Act in violation of the certification, warranty, and emission control labeling requirements of Sections 203, 204, 205, and 213 of the Act, 42 U.S.C. §§ 7523, 7524, and 7547, and 40 C.F.R. Parts 86, 1051, and 1068. By no later than 30 days after

the Effective Date, Defendants shall implement and thereafter comply with the Compliance Plan set forth in Appendix B.

13. Prospective Business Entities. In accordance with Section XIV (Notices) of this Decree, Defendants shall provide EPA at least ten days notice before forming any U.S. business entity for the purposes of facilitating the importing, distributing, selling, offering for sale (or causing such acts as to) any products covered by Title II of the Clean Air Act, or before individually engaging in such activities. This notice shall be in writing and shall include the name and full contact information of the prospective business entity.

14. Submission of Deliverables. Defendants shall submit any plan, report, or other item that Defendants are required to submit pursuant to this Consent Decree to EPA. Where the Consent Decree or any Appendix specifies that Defendants shall obtain EPA pre-approval of, or submit for EPA approval, a plan, report, or other item, EPA shall either approve the submission or identify any deficiencies that must be cured. EPA may provide written comments on any other submission identifying deficiencies that must be cured. Within 30 Days of receiving EPA's written comments, Defendants shall either: (i) alter the submission consistent with EPA's written comments and provide the submission to EPA for approval, or (ii) submit the matter for dispute resolution under Section IX (Dispute Resolution) of this Consent Decree.

15. Stipulated penalties, as provided in Section VII (Stipulated Penalties) of this Decree, shall accrue during the 30-day period referenced above in Paragraph 14, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; however, if the original submission was so deficient as to constitute a material breach of the Defendants'

obligations under this Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

16. Permits. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

Defendants may seek relief under the provisions of Section VIII (Force Majeure) of this Consent Decree for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

VI. REPORTING REQUIREMENTS

17. In addition to any other express reporting requirement in this Consent Decree, no later than 30 Days after the end of the second full calendar quarter following the date of lodging of the Consent Decree and continuing on a semi-annual basis, until termination of this Decree pursuant to Section XVIII (Termination), Defendants shall submit a semi-annual Progress Report. After Defendants submit their first Progress Report (that is, the Progress Report that is due no later than 30 Days after the end of the second full calendar quarter following the date of lodging of the Consent Decree), each Progress Report thereafter that is submitted on a semi-annual basis shall be due 30 Days following June 30th, and 30 Days following December 31st, respectively. Except as otherwise provided in Paragraph 18 below, each Progress Report shall contain all information necessary to determine compliance and noncompliance with this Consent Decree, including but not limited to:

- a. The information required by Appendix B, Paragraph D;
- b. A description of any noncompliance with the requirements of this Consent Decree (including all Appendices), including an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to resolve and/or mitigate the violation and to prevent future similar violations. If the cause of a violation cannot be fully explained at the time the report is due, Defendants shall so state in the report. Defendants shall investigate the cause of the violation and shall then submit an amendment to the report, including a full explanation of the cause of the violation, within 30 Days of the Day Defendants become aware of the cause of the violation.

Nothing in this Paragraph or the following Paragraphs in this Section relieves Defendants of their obligation to provide the notice required by Section VIII of this Consent Decree (Force Majeure).

18. No imports/sales option. If Defendants do not import, distribute, sell, offer for sale (or otherwise cause such acts as to) any vehicles, engines, or products covered by Title II of the Clean Air Act during any reporting periods specified in the preceding Paragraph, an authorized official or representative of Defendants must sign and submit the following certification in each Progress Report required by this Section of the Decree:

I certify under penalty of law that Defendants are neither importing, distributing, selling, offering for sale (or causing such acts as to) any products covered by Title II of the Clean Air Act. I further certify, based on my personal knowledge, that this statement is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

19. Whenever any violation of this Consent Decree or any other event affecting Defendants' performance under this Decree may pose an immediate threat to the public health or

welfare or the environment, Defendants shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but no later than 24 hours after Defendants first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraphs in this Section.

20. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices).

21. Except for emergency or similar notifications where compliance would be impractical, all reports submitted by Defendants under this Consent Decree shall be signed by an official of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

22. The reporting requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

23. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VII. STIPULATED PENALTIES

24. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

25. Late Payment of Civil Penalty. If any Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendants shall pay a stipulated penalty of \$500.00 per Day for each Day that such payment is late.

26. Failure to Comply with Paragraph 11 (Destruction or Export of Noncompliant Vehicles and Engines). For failing to timely Permanently Destroy or to export the vehicles identified in Appendix A s in accordance with Paragraph 11 and Appendix A of this Decree: \$500 per vehicle per Day.

27. Compliance Violations. The following stipulated penalties shall accrue:

- a. For failure to comply with Paragraph 12 of this Decree by importing, distributing, selling, offering for sale (or cause such acts as to) any products covered by Title II of the Clean Air Act in violation of the certification, warranty, or emission control labeling requirements of Sections 203, 204, 205, and 213 of the Act, 42 U.S.C. §§ 7523, 7524, and 7547, and 40 C.F.R. Parts 86, 1051, and 1068: \$5,000 per vehicle or engine.

- b. For failure to comply with the requirements set forth in Section B.1.a. of Appendix B: \$3,000 per contract.
- c. For failure to obtain a copy of testing results required by Section B.1.b.i.a). of Appendix B: \$500 for each vehicle/engine in the same Engine Family.
- d. For failure to obtain a copy of owner's manuals as required by Section B.1.b.i.b). of Appendix B: \$500 for each vehicle/engine in the same Engine Family.
- e. For failure to obtain Certificates of Conformity and corresponding applications as required by Section B.1.b.i.c). of Appendix B: \$500 for each vehicle/engine in the same Engine Family.
- f. For failure to provide a copy of EPA's compliance determination guidelines to appropriate employees/contractors as required by Section B.1.b.ii. of Appendix B: \$1,000 per violation.
- g. For failure to perform an emission test required in Section B.1.b.iii. of Appendix B: \$600 for each vehicle/engine in the affected Vehicle or Engine Model.
- h. For failure to perform a catalyst test required by Section B.1.b.iv. of Appendix B: \$600 for each vehicle/engine in the affected Vehicle or Engine Model.
- i. For failure to perform a checklist inspection as required in Section B.1.b.v. of Appendix B: \$600 for each vehicle/engine in the affected Vehicle or Engine Model.

- j. For failure to create and maintain records of activities set forth in Section B.1.b.vi of Appendix B: \$600 for each vehicle/engine in the affected Vehicle or Engine Model.
- k. For failure to submit a report or notification as required by Section B.1.c.i or B.1.c.ii of Appendix B: \$1,000 per violation per Day.
- l. For failure to cancel or postpone and stop selling/importing as set forth in Section B.1.c.iii of Appendix B: \$1,000 for each vehicle/engine in the affected Vehicle or Engine Model.
- m. For failure to comply with the semi-annual checklist inspection requirement in Section B.2.a.i. of Appendix B: \$600 for each vehicle in the Test Lot.
- n. For failure to perform catalyst test as required by Section B.2.a.ii. of Appendix B: \$600 for each vehicle in the Test Lot.
- o. For failure to comply with applicable requirements set forth in Section B.2.b.i and 2.b.ii of Appendix B: 1,000 per violation per Day.
- p. For failing to comply with the requirement to stop selling/importing or cancel/postpone pending orders pursuant to Section B.2.b.iii of Appendix B: \$1,000 for each vehicle/engine in affected Vehicle Engine or Model.
- q. For failure to comply with record retention requirements in Section B.2.e. of Appendix B: \$600 for each vehicle/engine in the affected Vehicle or Engine Model.
- r. For failing to comply with staff training requirement required by Section C.1 of Appendix B: \$10,000 per violation.

s. For failing to comply with certification requirements regarding staff training as required by Section C.2 and C.3 of Appendix B: \$1,000 per violation.

t. For failing to comply with Progress Report requirements set forth in Section D of Appendix B: see stipulated penalty schedule set forth in the following Paragraph.

28. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for any failure to submit timely, complete, and accurate information pursuant to the reporting requirements of Paragraph 13, 14, 17, 18, 19, 20, and 21 or their associated Appendices:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 st through 14th Day
\$3,000	15 th through 30th Day
\$5,000	31st Day and beyond

29. Stipulated penalties under this Section shall begin to accrue on the Day after Performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

30. Defendants shall pay any stipulated penalty within 30 Days of receiving the United States' written demand. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

31. Stipulated penalties shall continue to accrue as provided in Paragraph 29, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to the Court, Defendants shall pay accrued penalties determined to be owing, together with interest, to the United States within 30 Days of the effective date of the agreement or the receipt of EPA's decision or order.
- b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owing, together with interest, within 30 Days of receiving the Court's decision or order, except as provided in subparagraph c, below.
- c. If any Party appeals the District Court's decision, Defendants shall pay all accrued penalties determined to be owing, together with interest, within 30 Days of receiving the final appellate court decision.

32. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraphs 8-9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

33. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

34. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Air Act or its implementing regulations, Defendants shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

VIII. FORCE MAJEURE

35. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants' contractors, which delays or prevents the performance of any obligation under this Consent Decree, despite Defendants' best efforts to fulfill the obligation. The requirement that Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. Force Majeure does not include Defendants' financial inability to perform any obligation under this Consent Decree.

36. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice orally or by electronic or facsimile transmission to the United States within 72 hours of when any Defendant first knew that the event might cause a delay. Within seven (7) business days thereafter, Defendants shall provide in writing to EPA an explanation and

description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health or welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Defendants shall be deemed to know of any circumstance of which any Defendant, any entity controlled by any Defendant, or either Defendants' contractors knew or should have known.

37. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.

38. If Defendants elect to invoke the dispute resolution procedures set forth in Section IX (Dispute Resolution), they shall do so no later than 30 Days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 35 and 36 above. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

IX. DISPUTE RESOLUTION

39. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

40. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 20 Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 10 Days after the

conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

41. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendants' position and any supporting documentation relied upon by Defendants.

42. The United States shall serve its Statement of Position within 60 Days of receipt of Defendants' Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

43. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

44. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

45. Standard of Review

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 43 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval by EPA under this Consent Decree; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendants shall have the burden of demonstrating, based on the administrative record, that the position of the United States is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 43, Defendants shall bear the burden of demonstrating that its position complies with this Consent Decree and better furthers the objectives of the Consent Decree.

46. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 31. If

Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

47. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry into any business facility owned, controlled, or used by Defendants or their contractors to implement the requirements of this Consent Decree, at all reasonable times, upon presentation of credentials (including photo identification), to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. inspect on-road or off-road vehicles (including, without limitation, motorcycles, recreational vehicles, all-terrain vehicles and off-highway motorcycles), and small spark-ignition engines (whether or not contained in equipment), imported or purchased by or on behalf of any of the Defendants;
- d. require catalyst testing, emissions testing and/or inspect emissions testing facilities;
- e. obtain documentary and analytical evidence, including photographs and similar documents and data; and
- f. assess Defendants' compliance with this Consent Decree.

48. Until five (5) years after the termination of this Consent Decree, Defendants shall retain, and shall instruct Defendants' contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in Defendants' or Defendants' contractors' or agents' possession or control, or

that come into Defendants' or Defendants' contractors' or agents' possession or control, and that relate in any manner to Defendants' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

49. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendants shall notify the United States at least 90 Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendants shall deliver any such documents, records, or other information to EPA.

50. Defendants may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. Defendants may make no claim of business confidentiality, privilege or protection regarding any documents, records, or other information (including documents, records, or other information in electronic form) that Defendants are required to create or generate pursuant to this Consent Decree.

51. Defendants may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, Defendants shall follow the procedures set forth in 40 C.F.R. Part 2.

52. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XI. **FINANCIAL CERTIFICATION**

53. Defendants hereby certify, to the best of their knowledge and belief, after thorough inquiry, (a) that they have submitted to the United States Financial Information that fairly, accurately, and materially sets forth their financial circumstances; (b) that those circumstances have not materially changed between the time the Financial Information was submitted to the United States and the time Defendants executed this Consent Decree; and (c) that they have fully disclosed the existence of any insurance policies that may cover any payment of a civil penalty relating to this matter.

XII. **EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

54. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging.

55. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights

of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 54.

56. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than provided in this Consent Decree, if the Financial Information provided, or the financial certification made in Section XI (Financial Certification), is false, or in a material respect, inaccurate.

57. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to Defendants' violations, the Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 54 of this Section.

58. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in

any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, or with any other provisions of federal, State, or local laws, regulations, or permits.

59. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

60. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XIII. COSTS

61. Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XIV. NOTICES

62. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-10153

With a copy to EPA at the address below.

To EPA:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
Air Enforcement Division (2242A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

With a copy to Evan Belser at Belser.Evan@epamail.epa.gov.

To Defendants:

Terry Zimmer, Savoia, Inc., BMX Imports, LP, BMX Trading, LLC
13401 Denton Drive
Dallas, TX 75234

With a copy by U.S. Mail and electronic mail to:

George A. (Tony) Mallers, Esq.
Cowles & Thompson, P.C.
901 Main St., Suite 3900
Dallas, TX 75202
via e-mail tmallers@cowlesthompson.com
Attorneys for Defendants

63. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

64. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

65. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. RETENTION OF JURISDICTION

66. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution”) and XVII (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

67. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

68. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 45, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVIII. TERMINATION

69. Defendants may, at any time after five (5) years from the Effective Date of this Consent Decree, serve upon the United States, together with all necessary supporting documentation, a Request for Termination, stating that they have:

- a. Made the payments required by Section IV and any accrued interest imposed by this Consent Decree;

- b. Paid in full any stipulated penalties imposed by this Consent Decree; and
- c. Completed all other applicable requirements of this Consent Decree.

70. Following receipt by the United States of the Defendants' Request for Termination, the United States and the Defendants shall confer informally concerning the Request and any disagreement that they may have as to whether the Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

71. If the United States does not agree that the Decree may be terminated, the Defendants may invoke Dispute Resolution under Section IX of this Decree.

XIX. PUBLIC PARTICIPATION

72. This Consent Decree shall be lodged with the Court for a period of not less than 30 Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Decree.

XX. SIGNATORIES/SERVICE

73. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he

or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

74. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with copies to their counsel as specified in Paragraph 62 with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

75. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

76. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

XXIII. APPENDIX

77. The following appendix is attached to and part of this Consent Decree:
- “Appendix A” is ”Recreational Vehicles and Highway Motorcycles Subject to Permanent Destruction or Export.”
 - “Appendix B” is “Compliance Plan.”
 - “Appendix C” is “Emissions Testing Guidelines.”

Dated and entered this ____ day of _____, _____.

JANE J. BOYLE
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS

FOR PLAINTIFF UNITED STATES OF AMERICA:

ROBERT G. DREHER
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7415
Washington, DC 20044-7415

Date

PATRICK B. BRYAN
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
Ben Franklin Station
P.O. Box 7611
Washington, DC 20044-7611
Telephone: 202-616-8299
Fax: 202-616-2427
E-mail: Patrick.Bryan@usdoj.gov

Date

SUSAN SHINKMAN

Date

Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

PHILLIP A. BROOKS

Date

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

EVAN M. BELSER

Date

Attorney Adviser
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

FOR DEFENDANT SAVOIA, INC.

Date

FOR DEFENDANT BMX IMPORTS, L.P.

Date

FOR DEFENDANT BMX TRADING, L.L.C.

Date

FOR DEFENDANT TERRY ZIMMER

Date

APPENDIX A:

Vehicles Subject to Permanent Destruction or Export

	VIN Number	Model
1	lcxrspz108x000483	300 utv
2	lcxrspz10ax001364	300 utv
3	lcxrspz10ax001378	300 utv
4	lcxrspz10ax001381	300 utv
5	lcxrspz118x000475	300 utv
6	lcxrspz118x000489	300 utv
7	lcxrspz11ax001373	300 utv
8	lcxrspz11ax001390	300 utv
9	lcxrspz128x000470	300 utv
10	lcxrspz128x000484	300 utv
11	lcxrspz12ax001365	300 utv
12	lcxrspz12ax001379	300 utv
13	lcxrspz12ax001382	300 utv
14	lcxrspz138x000476	300 utv
15	lcxrspz13ax001360	300 utv
16	lcxrspz13ax001374	300 utv
17	lcxrspz13ax001388	300 utv
18	lcxrspz13ax001391	300 utv
19	lcxrspz148x000468	300 utv
20	lcxrspz148x000485	300 utv
21	lcxrspz14ax001366	300 utv
22	lcxrspz14ax001383	300 utv
23	lcxrspz158x000477	300 utv
24	lcxrspz158x000480	300 utv
25	lcxrspz15ax001361	300 utv
26	lcxrspz15ax001389	300 utv
27	lcxrspz168x000486	300 utv
28	lcxrspz16ax001367	300 utv
29	lcxrspz16ax001370	300 utv
30	lcxrspz16ax001384	300 utv
31	lcxrspz178x000478	300 utv
32	lcxrspz178x000481	300 utv
33	lcxrspz17ax001362	300 utv
34	lcxrspz17ax001376	300 utv
35	lcxrspz188x000487	300 utv
36	lcxrspz188x000490	300 utv
37	lcxrspz18ax001368	300 utv

38	lcxrspz18ax001371	300 utv
39	lcxrspz198x000482	300 utv
40	lcxrspz19ax001363	300 utv
41	lcxrspz19ax001377	300 utv
42	lcxrspz19ax001380	300 utv
43	lcxrspz1x8x000474	300 utv
44	lcxrspz1x8x000488	300 utv
45	lcxrspz1x8x000491	300 utv
46	lcxrspz1xax001369	300 utv
47	lcxrspz1xax001372	300 utv
48	lcxrspz1xax001386	300 utv
49	lcxrst108x000142	500 utv - 2 seat
50	lcxrst108x000146	500 utv - 2 seat
51	lcxrst108x000180	500 utv - 2 seat
52	lcxrst108x000583	500 utv - 2 seat
53	lcxrst10ax002243	500 utv - 2 seat
54	lcxrst10ax002324	500 utv - 2 seat
55	lcxrst10ax002842	500 utv - 2 seat
56	lcxrst118x000141	500 utv - 2 seat
57	lcxrst118x000186	500 utv - 2 seat
58	lcxrst118x000253	500 utv - 2 seat
59	lcxrst11ax002848	500 utv - 2 seat
60	lcxrst11ax002851	500 utv - 2 seat
61	lcxrst128x000150	500 utv - 2 seat
62	lcxrst128x000181	500 utv - 2 seat
63	lcxrst12ax002860	500 utv - 2 seat
64	lcxrst138x000206	500 utv - 2 seat
65	lcxrst138x000237	500 utv - 2 seat
66	lcxrst13ax002852	500 utv - 2 seat
67	lcxrst14ax002441	500 utv - 2 seat
68	lcxrst14ax002729	500 utv - 2 seat
69	lcxrst14ax002844	500 utv - 2 seat
70	lcxrst14az002746	500 utv - 2 seat
71	lcxrst158x000143	500 utv - 2 seat
72	lcxrst158x000188	500 utv - 2 seat
73	lcxrst15ax002271	500 utv - 2 seat
74	lcxrst15ax002626	500 utv - 2 seat
75	lcxrst16ax000152	500 utv - 2 seat
76	lcxrst16ax002294	500 utv - 2 seat
77	lcxrst16ax002845	500 utv - 2 seat
78	lcxrst17ax002479	500 utv - 2 seat

79	lcxrsts17ax002482	500 utv - 2 seat
80	lcxrsts17ax002840	500 utv - 2 seat
81	lcxrsts17ax002854	500 utv - 2 seat
82	lcxrsts18ax002491	500 utv - 2 seat
83	lcxrsts18ax002846	500 utv - 2 seat
84	lcxrsts18ax002863	500 utv - 2 seat
85	lcxrsts198x000209	500 utv - 2 seat
86	lcxrsts19ax002483	500 utv - 2 seat
87	lcxrsts19ax002516	500 utv - 2 seat
88	lcxrsts19ax002578	500 utv - 2 seat
89	lcxrsts19ax002841	500 utv - 2 seat
90	lcxrsts19ax002869	500 utv - 2 seat
91	lcxrsts1x8x000154	500 utv - 2 seat
92	lcxrsts1x8x000252	500 utv - 2 seat
93	lcxrsts1x8x000838	500 utv - 2 seat
94	lcxrsts1xax002847	500 utv - 2 seat
95	lcxpsts16ax000066	500 utv -model 2
96	lcxpsts19ax000059	500 utv -model 2
97	lcxrpts10ax000063	500 utv -model 2
98	lcxrpts13ax000056	500 utv -model 2
99	lcxrpts15ax000057	500 utv -model 2
100	lcxests12ax000413	500 utv - dune buggy
101	lcxests16ax000415	500 utv - dune buggy
102	lcxests17ax000407	500 utv - dune buggy
103	lcxests19ax000411	500 utv - dune buggy
104	lclxsts10ax001180	500 utv - 4 seat
105	lclxsts20ax001005	500 utv - 4 seat
106	lclxsts22ax001071	500 utv - 4 seat
107	lclxsts25ax001033	500 utv - 4 seat
108	lclxsts27ax000952	500 utv - 4 seat
109	lclxsts27ax001003	500 utv - 4 seat
110	lclxsts28ax001026	500 utv - 4 seat
111	lclxsts2xax001027	500 utv - 4 seat
112	lcxrsts20ax001036	500 utv - 4 seat
113	l6cdspz5771001933	300 utv
114	l6cdspz5x71001911	300 utv
115	lcxrspz127x000421	300 utv

APPENDIX B: Compliance Plan

A. Definitions. All terms used in this Compliance Plan have their ordinary meaning unless they are defined in this Compliance Plan, the Consent Decree, or in the United States Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, and its implementing regulations at 40 C.F.R. Parts 85, 86, 90, 1045, 1048, 1051, 1054, 1065, and 1068.

1. “Catalyst Test” means an evaluation performed by an independent laboratory that has been pre-approved by EPA to determine a catalyst’s specifications per the attached Catalyst Measurement Worksheet.
2. “Checklist Inspection” means an evaluation of a vehicle or engine that is performed according to the procedure provided on either the enclosed Engine (and Equipment) Inspection Checklist (*see* pages 12 – 16 of this Appendix) or the Vehicle Inspection Checklist (*see* pages 7-11 of this Appendix), as appropriate, and the Catalyst Measurement Worksheet (*see* page 17 of this Appendix), if applicable.
3. “Emission Test” means an investigation performed by an independent laboratory that has been pre-approved by EPA to evaluate all of a vehicle or engine’s exhaust emissions. It must be performed according to all testing and recordkeeping procedures as would be required for the emission testing for the test vehicle’s or engine’s certification application (*i.e.*, in conformity with Appendix C of the Consent Decree and 40 C.F.R. Parts 86, 90, 1051, 1054, 1065, and 1068). If the air-fuel ratio of a subject test engine can be adjusted, the following three emission tests must be conducted: one test with the vehicle or engine in the configuration as received by the testing laboratory, and one test each at maximum lean and rich conditions (as determined by adjusting the carburetor air-fuel mixture screw and needles or replacing carburetor jets, as applicable). Using carry-over or carry-across data is not an Emission Test.
4. “Running Change” means any application for any amendment to a Certificate of Conformity submitted to and approved by EPA for an engine family after issuance of the original Certificate of Conformity for that engine family.
5. “Sample” means one representative and randomly selected engine or vehicle from a Vehicle or Engine Model. If the requirements of 40 C.F.R. § 1068.103(c) are satisfied, “Sample” may also mean one representative and randomly selected engine or vehicle from a Vehicle or Engine Model that is not yet certified, but for which an application for an EPA Certificate of Conformity has been submitted.

B. Compliance Protocol for Importing Vehicles and Engines

1. Pre-Importation Compliance

a. Contracts.

- i. Defendants' contracts with vehicle and engine manufacturers, sellers, and any other entity that provides vehicles to Defendants for introduction into United States commerce, must specify that the Subject Vehicles and Engines must be covered by a Certificate of Conformity, conform in all material respects to the application for the Certificate of Conformity, be properly labeled, and meet applicable emissions standards, including the identification, as required, of Emission-Related Parts in the Certificate of Conformity application and in any applicable EPA-approved Running Changes.
 - ii. Where Defendants are not the certificate holder, contracts must also require manufacturers to provide Defendants copies of all Certificates of Conformity for each engine family; all Certificate of Conformity applications; all Running Change applications; the results of any emission or catalyst testing performed on vehicles or engines belonging to the same engine family by, on behalf of, or at the request of the manufacturer or certificate holder; and owners manuals containing emission warranties that comply with all applicable legal requirements relating to the Subject Vehicles and Engines *prior* to importation of any vehicles and/or engines into the United States.
- b. Regardless of who performs the importation, prior to importation of any Subject Vehicles and Engines, Defendants must:
- i. Obtain a copy of:
 - a) the results of any emission or catalyst testing performed on a vehicle or engine belonging to the same engine family by, on behalf of, or at the request of the manufacturer or certificate holder;
 - b) owner's manuals containing emission warranties that comply with all applicable legal requirements; and
 - c) all EPA issued Certificates of Conformity and their corresponding applications including any applications for any Running Change.
 - ii. Provide a copy of EPA's Compliance Determination Guidelines (*see* pages 18-21 of this Appendix) to each employee or contractor that may make a

compliance determination based on a vehicle or engine inspected in accordance with this Compliance Plan;

- iii. Perform an Emission Test on one Sample from each Vehicle and/or Engine Model;
 - iv. Perform a Catalyst Test on one catalyst (if the Vehicle or Engine Model has a catalyst) from the Sample;
 - v. Conduct a Checklist Inspection on the Sample; and
 - vi. Create and maintain records of all of these activities, including Inspection Checklists and detailed reports of its Emission Tests and Catalyst Tests that are at least as equal in scope to those required by 40 C.F.R. §§ 86.440-78, 90.107(a)–(d), 1045.250(b)(2)–(5), 1048.250(b)(2)–(5), 1051.250(b)(2)–(5), or 1054.250(b)(2)–(5), for eight years.
- c. If any of the foregoing documents, Emission Tests, Catalyst Tests, or Checklist Inspections indicate any nonconformance with the specifications in the application for certification or any emissions that exceed the applicable regulatory standards, Defendants must:
- i. Submit an emission-defect report, if required under the applicable emission-defect regulations;
 - ii. Within 10 business days of finding the nonconformance, send written notification and supporting documentation to: (i) the manufacturer, (ii) the certificate holder, and (iii) EPA; and
 - iii. Cancel or postpone any outstanding purchase orders for the affected Vehicle or Engine Model and stop selling and stop importing the affected Vehicle or Engine Model until the noncompliance is remediated to EPA’s satisfaction.

2. Post-Importation Compliance

- a. Semi-annual Inspections: Within 90 days after the first delivery or importation to the United States of a Vehicle or Engine Model by any party, and continuing on a semi-annual basis thereafter, Defendants must:
 - i. Conduct a Checklist Inspection on three Samples from that period’s Test Lot; and

- ii. Perform a Catalyst Test on one catalyst (if the Vehicle or Engine Model has a catalyst) from one Sample.
- b. If an inspection indicates any nonconformance with the specifications in the application for certification, Defendants must:
 - i. Submit an emission-defect report, if required under the emission-defect regulations;
 - ii. Notify in writing and provide supporting documentation, within 10 business days finding the nonconformance, to: (1) the manufacturer, (2) the certificate holder, (3) EPA, and (4) any dealers and distributors who have purchased the affected Vehicle or Engine Model; and
 - iii. Require its dealers and distributors to stop selling and importing the affected Vehicle or Engine Model and cancel or postpone any pending orders with the manufacturer.
- c. Defendants may perform additional Emission Tests, Catalyst Tests, and Checklist Inspections to support any proposal to EPA for corrective action as referenced in paragraph B.2(d), below.
- d. Upon fulfillment of the obligations under paragraph B(2)(b)(i)-(iii), Defendants may export the nonconforming vehicles or engines. Alternatively, Defendants may submit a proposal to EPA for corrective action, which proposal may be approved or disapproved within EPA's sole discretion.
- e. Defendants must create and maintain records, organized by engine family, of all of its inspections, including all Inspection Checklists and reports of its Emission Tests and Catalyst Tests that are at least equal in scope to what is required by 40 C.F.R. §§ 86.440-78, 90.107(a) – (d), 1045.250(b)(2)–(5), 1048.250(b)(2)–(5), 1051.250(b)(2)–(5), or 1054.250(b)(2)–(5), as applicable for the type of vehicle or engine at issue, for eight years.

C. Staff Training Program

1. Defendants must provide, through a preapproved third party, appropriate initial and annual refresher training to all employees or independent contractors implementing this Compliance Plan. Comparable initial training must be provided to any person who subsequently assumes responsibility for implementing this Compliance Plan. The training must include a review of the procedures in this Compliance Plan. The individual(s) responsible for conducting inspections under the Pre- or Post-Importation Compliance protocol must have adequate technical training to evaluate compliance with vehicle and engine design specifications and emission controls.
2. Each employee or independent contractor of Defendants implementing this Compliance Plan must certify that he or she has participated in the training, received a copy of the Compliance Plan and understands that violations of the applicable regulations can result in the imposition of significant civil penalties.
3. Defendants must document their compliance with this Staff Training Program in writing and submit that documentation to EPA as part of the Progress reports required below.

D. Progress Reports

1. No later than 30 days after the end of the second full calendar quarter following entry of this Consent Decree and continuing on a semi-annual period thereafter, Defendants must submit Progress Reports to EPA regarding the implementation of the Compliance Plan in accordance with Section VI of the Consent Decree. Each Progress Report must include:
 - a. the total number of Subject Vehicles and Engines (organized by engine family, then Vehicle or Engine Model) that have been imported or sold during the reporting period;
 - b. all information identified in paragraph B of this Compliance Plan, including a description of any test procedures, that has not otherwise been provided in a previous Progress Report;
 - c. a summary of all notifications and reports to EPA since the last Progress Report; and
 - d. the total number of emission control system warranty claims submitted for Subject Vehicles and Engines (organized by engine family, then Vehicle or Engine Model), and how the claims were resolved.
2. Defendants must keep and maintain copies of each Progress Report for five years from the date Defendants submitted the report to EPA.
3. All reports or submissions required to be sent to EPA by this Compliance Plan must:
 - a. be stored in a common electronic format (including scanned, electronic copies of all reports or submissions whose originals exist in non-electronic form);
 - b. be transmitted to the EPA by mail or courier to one of the following addresses on one or more compact discs or hard drives;

(Postal Service Mail)
Director, Air Enforcement Division
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460

(Courier Service)
Director, Air Enforcement Division
U.S. EPA
William Jefferson Clinton Bldg, Rm 1117
1200 Pennsylvania Ave., NW
Washington, DC 20004

- c. not be transmitted to the EPA in hard-copy paper format and be accompanied by a hard-copy cover letter describing the contents of each report and submission, including an index that describes each file by its file name.

Vehicle Inspection Checklist

Exam Date and Time:

Facility Name and Location:

Inspector Name and Company:

Please insert "N/A" for items that are not applicable to the inspected vehicle.

Importer:

Entry#:

Entry Date:

Quantity:

Declaration on EPA Form 3520: EPA Declaration Forms 3520-21 or 3520-1 Box letter and number marked (e.g., Box F, Recreational vehicles and engines, and Box 1, U.S. certified engine or engine installed in certified vehicle):

Vehicle Type (types of vehicles include ATVs, off-road motorcycles, snowmobiles, UTV, as defined in 40 C.F.R. § 1051.801, and highway motorcycles, as defined in 40 C.F.R. § 86.402-98):

Note presence of: headlight, taillight/stoptlight, turn signal, mirror(s), horn (circle which are applicable)

Vehicle Maximum Speed (note source of information, including owner's manual):

Vehicle Identification Number (VIN) – note source of information (box, frame, COC of origin, DOT label, etc.) and any discrepancies:

Vehicle Model Year –

Based on 10th digit of the VIN (e.g. A=2010, B=2011, C=2012, etc.):

Based on EPA engine family listed on EPA label:

Based on EPA conformity statement on EPA label:

Vehicle Manufacturer – note all sources of information (box, EPA label, VIN, entry forms, owner’s manual, and other documentation) and any discrepancies:

Vehicle Model – based on decals and badges on vehicle or engine:

From owner’s manual, note the following for the vehicle model in question. If information is not available, respond with “N/A.”

Engine Power (HP):

Engine Displacement (cc):

Engine Stroke: 2 / 4 (circle one)

Transmission: Automatic / Manual (circle one)

Vehicle Date of Manufacture – note source of information (box, DOT label, EPA label, entry forms owner’s manual, and other documentation) and any discrepancies:

From EPA label, note:

- **Engine Family:**
- **Evaporative/Permeation Emissions Family:**
- **Fuel Type:**
- **Emission Control System Abbreviations:**

Emission Controls: note presence and part number (if applicable) for each of the following:

TWC (also fill out Catalyst Measurement Worksheet), OC (also fill out Catalyst Measurement Worksheet), O2S, HO2S, AIR, PAIR, EM, DFI, CFI, MFI, TBI

From carburetor on vehicle, note:

- **Manufacturer Marking(s)** (including any name, other words or characters, any label or other markings (e.g., barcode)):
- **Part Number:**

Air-Fuel Mixture Controls:

Identify any of the following if present on the vehicle/engine: idle air-fuel mixture screw, jet needle clip, needle jet, pilot jet, main jet (circle those that apply)

Does the COC application indicate that these components are adjustable parameters?

Idle air-fuel mixture screw: Yes or No (circle one)

Jet Needle Clip: Yes or No (circle one)

Does the COC application specify the range of air-fuel ratios that may occur in use with respect to the following parameters?

Needle Jet: Yes or No (circle one)

Pilot Jet: Yes or No (circle one)

Main Jet: Yes or No (circle one)

If yes to all items, move to the next question, “Fuel Tank.” If no to any item:

(1) note whether you can change the vehicle’s air-fuel ratio in less than one hour with a few parts whose total cost is under \$60 (check jets’ accessibility, jets’ replaceability, and carburetor bowl access).

Needle Jet: Yes or No (circle one)

Describe Markings (if any):

Pilot Jet: Yes or No (circle one)

Describe Markings (if any):

Main Jet: Yes or No (circle one)

Describe Markings (if any):

(2) note whether the following components are permanently sealed or not normally accessible using ordinary tools within one half hour (check, e.g., air-fuel mixture screw and jet needle clip accessibility and adjustability).

Idle Air-Fuel Mixture Screw: Yes or No (circle one)

Jet Needle Clip - Single Setting? Yes or No (circle one)

Tools used:

(3) describe any other design element that, if changed or adjusted, may affect the vehicle’s air-fuel ratio.

Fuel Tank: metal or plastic (circle one)

Fuel Line Markings:

Does the EPA Label Peel Off Without Being Destroyed or Defaced? Yes or No (circle one; if 'yes,' document the removal with photographs or video)

Length of Emissions Warranty – check owner's manual and other documentation (include source of information in response):

Does Crankcase Vent Directly to Open Air? Yes or No (circle one)

Was the vehicle/engine or any portion thereof kept for further inspection? If so, identify (e.g., carburetor, exhaust system, etc.) and maintain chain of custody:

As part of the inspection, take clear photos to document the following:

- Entire vehicle (from all sides), including headlight, taillight/stoplight, turn signal, mirror(s), and horn (as applicable)
- Any model name/number or decal on the vehicle
- VIN
- EPA label
- DOT label (if applicable)
- Any of the following emission controls that are present: TWC, OC, O2S, HO2S, AIR, PAIR, EM, DFI, CFI, MFI, TBI
- Fuel tank
- Crankcase
- Carburetor (from as many sides as possible)
- Carburetor components (if applicable)
- Box (if applicable)
- Hangtag (if post-importation)

Attach a copy of the:

- Customs Entry/Immediate Delivery form (CBP Form 3461)
- EPA Declaration Forms 3520-1 or 3520-21
- Any DOT declaration forms (e.g., Form HS-7)
- Owner's manual
- Invoices and bills of lading

Engine (and Equipment) Inspection Checklist

For loose engines or engines contained in equipment, but not vehicle engines.

Exam Date and Time:

Facility Name and Location:

Inspector Name and Company:

Please insert "N/A" for items that are not applicable to the inspected engine/equipment.

Importer:

Entry#:

Entry Date:

Quantity:

Declaration on EPA Form 3520-21 –box letter and number marked (e.g., Box D, Other nonroad compression-ignition engines, and Box 1, U.S. certified engine or engine installed in certified vehicle):

Equipment Type (e.g., generators, pumps, tractors, etc.):

Equipment Model – note all sources of information:

Equipment Manufacturer – note all sources of information:

Equipment Date of Manufacture (or Model Year) – note all sources of information:

Equipment Dry Weight – note all sources of information:

Engine Serial No.:

Engine Model Year – based on EPA label, entry forms, and owner’s manual and all other sources (note any discrepancies):

Engine Power (HP):

Engine Displacement (cc):

Engine Stroke: 2 / 4 (circle one)

Fuel Type:

Length of Emissions Warranty – check owner’s manual and other documentation (include sources of information in response):

Engine Manufacturer – note all sources of information (box, EPA label, VIN, entry forms, owner’s manual and other documentation) and any discrepancies:

Engine Model – based on decals and badges on equipment/engine:

Engine Date of Manufacturer – note all source of information (box, DOT label, EPA label, entry forms, owner’s manual, and other documentation) and any discrepancies:

From EPA label, note:

- **Engine Family:**
- **Evaporative Family:**
- **Fuel Type:**
- **Emission Control System Abbreviations:**

Emission Controls – note presence and part number (if applicable) for each of the following: TWC (also fill out Catalyst Measurement Worksheet), OC (also fill out Catalyst Measurement Worksheet), O2S, HO2S, AIR, PAIR, EM, DFI, CFI, MFI, TBI, EGR

From carburetor on engine, note:

- **Manufacturer Marking(s):**
- **Part Number:**
- **Air-Fuel Mixture Controls:**

Identify any of the following if present on the engine/equipment: air-fuel mixture screw or jet needle clip (circle those that apply)

Does COC application indicate that the following components are adjustable?

Idle air-fuel mixture screw: Yes or No (circle one)

Jet Needle Clip: Yes or No (circle one)

If yes to all items, move to the next question, “Fuel Tank”. If no to any item, answer the following:

(1) note whether the following components are permanently sealed or not normally accessible using ordinary tools within one half hour (check, e.g., air-fuel mixture screw and jet needle clip accessibility and adjustability).

Idle Air-Fuel Mixture Screw: Yes or No (circle one)

Jet Needle Clip - Single Setting? Yes or No (circle one)

Tools used:

(2) describe any other design element that, if changed or adjusted, may affect the engine's air-fuel ratio.

Fuel Tank: metal or plastic (circle one)

Fuel Line Markings:

Does the EPA Label Peel Off Without Destroying or Defacing? Yes or No (circle one)

Does Crankcase Vent Directly to Open Air? Yes or No (circle one)

Was the vehicle/equipment/engine or any portion thereof kept for further inspection? If so, identify (e.g., carburetor, exhaust system, etc.) and maintain chain of custody:

As part of the inspection, take clear photos to document the following:

- Equipment
- Any model name/number or decal on the equipment
- Serial number
- EPA label
- Any of the following emission controls: TWC, OC, O2S, HO2S, AIR, PAIR, EM, DFI, CFI, MFI, TBI, EGR
- Fuel tank
- Crankcase

- Carburetor (from as many sides as possible)
- Carburetor components (if applicable)
- Box (if applicable)
- Hangtag (if post-importation)

Attach a copy of the:

- Customs Entry/Immediate Delivery form (CBP Form 3461)
- EPA Declaration Forms 3520-1 or 3520-21
- Any DOT declaration forms (e.g., Form HS-7)
- Owner's manual
- Invoices and bills of lading

Catalyst Measurement Worksheet

Please insert N/A for items that are not applicable to the vehicle undergoing inspection.

Engine Family:			
VIN / Serial Number:			
	Measured value (inches)	Calculated (mm)	Certificate Values
Outside diameter of casing:			
Inside diameter of casing:			
Overall length of casing:			
Length of catalyst material:			
	Inspected Catalyst	Certificate Values	
Counted cells (total):			
Calculated cells per inch ² (cpi):			
Manufacturer:			
Part number:			
	Inspected Catalyst	Certificate Values	
Active material loading (g/L):			
Ratio:			
Inspector:			
Date:			
Laboratory: (attach test procedures)			

Compliance Determination Guidelines

Does the vehicle/engine have an EPA label?

If not, the vehicle/engine may be uncertified.

If vehicle, is vehicle type appropriately certified?

Determine if vehicle is appropriately certified, according to definitions in 40 C.F.R. § 1051.801; 40 C.F.R. § 1054.801; and 40 C.F.R. § 86.402-98. As part of the determination, note that the regulations at 40 C.F.R. § 85.1703 exclude from the definition of “motor vehicles” certain vehicles.

If equipment (not vehicle) with spark-ignition engine, is an appropriately-certified engine installed?

If the engine type is spark-ignition, determine if it is appropriately certified for equipment application, according to definitions in 40 C.F.R. §§ 90.116, 1054.1, and 1054.801. If the engine is certified as Class 5 handheld and has a displacement greater than 80 cc, note that 40 C.F.R. § 1054.103(e) does not allow installation in nonhandheld equipment. If the engine is certified as Class 5 handheld and has a displacement greater than 80 cc, also note that 40 C.F.R. § 1054.801 allows handheld engines to be used in recreational applications only if the combined total vehicle dry weight is less than 20 kg (44 lbs). If the engine power is greater than 19 kW (25 HP), note that the engines should be certified under 40 C.F.R. Part 1048, except in accordance with 40 C.F.R. § 1048.615. Note that the new Phase III standards for spark-ignition engines generally take effect as follows: 2010 - handheld (combined total vehicle dry weight is less than 16 kg or a recreational vehicle combined total vehicle dry weight is less than 20 kg); 2011 – nonhandheld engines with displacement \geq 225 cc; and nonhandheld engines with displacement $<$ 225 cc. Note the exemptions and requirements in 40 C.F.R. Part 1054.

Using information from the box, EPA label, DOT label, entry forms, and owner’s manual, was the vehicle/engine manufactured after the applicable Certificate of Conformity (COC) effective date?

Note any discrepancies, based on source of information. If the vehicle/engine was manufactured before the applicable COC effective date, the vehicle/engine may be uncertified.

Is the engine’s cycle (2-stroke or 4-stroke) as stated in the product manual or other accompanying documentation consistent with the COC or COC application?

If not, the vehicle/engine may be uncertified.

Is the engine’s displacement as stated in the product manual or other accompanying documentation consistent with the COC or COC application?

If not, the vehicle/engine may be uncertified.

Is the engine's power as stated in the product manual or other accompanying documentation consistent with the COC or COC application?

If not, the vehicle/engine may be uncertified.

For vehicles, is the transmission consistent with the COC or COC application?

If not, the vehicle may be uncertified.

Is the vehicle/engine manufacturer identified on the box, EPA label, entry forms, or owner's manual listed in the COC application?

Note any discrepancies with the COC application. For vehicles, use the first three digits of any VIN and the WMI (VIN Decoder) Database at <http://www.nhtsa.dot.gov/cars/rules/manufacture/> to determine the manufacturer. Enter the first three digits of any VIN into the database in the "WMI" row to determine the manufacturer's name and address assigned to the VIN. If the vehicle/engine manufacturer is different from the one listed in the COC application, the vehicle/engine may be uncertified.

Is the vehicle/engine model listed on the COC or COC application?

Based on decals/badges on a vehicle/engine, note any discrepancies with models listed on the corresponding COC. If the vehicle/engine model is not listed on the COC or in the COC application, the vehicle/engine may be uncertified.

For vehicles, is the vehicle model year, based on 10th digit of the VIN, consistent with the model year of the COC?

If not, the vehicle may be uncertified.

If not a vehicle engine, is the engine model year identified on the EPA label, entry forms, or owner's manual or other accompanying documentation consistent with the model year of the COC?

Note any discrepancies, based on source of information. If the engine model year is not consistent with the model year of the COC, the engine may be uncertified.

Are the emission controls consistent with the description in the COC application?

Note any discrepancies with the presence, part number(s), and the specifications for the emission controls. For catalysts, use the Catalyst Measurement Worksheet. If the emission controls are not consistent with the description in the COC application, the vehicle/engine may be uncertified.

Is the carburetor manufacturer consistent with the description in the COC application?

If not, the vehicle/engine may be uncertified.

Is the carburetor part number consistent with the description in the COC application?

If not, the vehicle/engine may be uncertified.

Is the fuel tank composition consistent with the description in the COC application?

If not, the vehicle/engine may be uncertified.

Based on a review of the inspection checklist, are there adjustable parameters on the vehicle/engine, and, if so, is this consistent with the description in the COC application?

If the vehicle/engine does not conform to the description of adjustable parameters in the COC application, the vehicle/engine may be uncertified.

Based on a review of the inspection checklist, are there any internal carburetor components that, if replaced, may affect emissions (e.g., any carburetor jet), and, if so, is this consistent with the description in the COC application?

If the vehicle/engine contains replaceable internal carburetor components that are not listed in the COC application, the vehicle/engine may be uncertified.

Does crankcase vent to open air?

If so, the vehicle/engine may be uncertified.

Does the EPA label conform to the regulations cited below with regard to performance, accuracy, and content?

To conform to the regulations cited below, the labels should not be capable of being removed without being destroyed or defaced, and the required content of the labels must be present and accurate. For accuracy, compare the engine family designation, evaporative family designation, fuel type, emission control system abbreviations, and other information listed on EPA label with the corresponding COC and COC application and note any discrepancies.

Small Nonroad Spark Ignition Engines	40 C.F.R. §§ 90.114, 1054.135
Large Nonroad Spark Ignition Engines	40 C.F.R. § 1048.135
Nonroad Compression Ignition Engines.....	40 C.F.R. §§ 89.110, 1039.135
Recreational Vehicles and Engines.....	40 C.F.R. § 1051.135
On-highway Motorcycles.....	40 C.F.R. § 86.413-2006

Does the length of the emissions warranty conform to the regulations cited below?

Compare the information from the owner’s manual, warranty card, or other documentation with the regulatory requirements.

Small Nonroad Spark Ignition Engines	40 C.F.R. §§ 90. 1103(a), 90.1104, 1054.120
Large Nonroad Spark Ignition Engines	40 C.F.R. §§ 1048.101(g), 1048.120
Nonroad Compression Ignition Engines.....	40 C.F.R. §§ 89.104, 1039.120
Recreational Vehicles and Engines.....	40 C.F.R. § 1051.120
On-highway Motorcycles.....	42 U.S.C. § 7541 (a)(1), 40 C.F.R. § 86.402-98

Other Comments and Compliance Issues

(Note any discrepancies with the information from the inspection with the COC application):

APPENDIX C: Emission Testing Guidelines

Emissions Testing Guidelines

Any emission testing performed under this Consent Decree must be performed at a U.S.-based emissions testing laboratory approved in advance by EPA. The testing shall be conducted in accordance with a detailed written test plan that includes the following criteria:

1. Specifies that each test engine shall be subject to emissions testing in conformity with the applicable specifications set forth in 40 C.F.R. Parts 90 and 1054 to determine the levels of regulated exhaust emissions. For generator engines, this means that the engines must be removed from the generators during testing, unless the engine was certified with a special test procedure that allows testing of the engine while it is in the generator.
2. Includes, at a minimum, a detailed description of:
 - a. the equipment that will be used to conduct the emissions test and collect emissions test data;
 - b. the procedures that will be used to prepare engines for testing, including the procedure to determine when emissions are stabilized;
 - c. the procedures that will be used to record and report the conduct of the emissions testing and the emissions test results, and engine power and speed, in each test mode;
 - d. the procedures that will be used if the air-fuel ratio of a subject test engine can be adjusted. Specifically, emissions tests shall be conducted: one test with the mixture setting unadjusted, i.e., as received by the testing laboratory, in addition to tests at maximum lean and rich conditions (to include air screw and other adjustments, as applicable). Unless the testing laboratory determines that an engine's air-fuel ratio is not adjustable and obtains EPA's concurrence on this determination, the testing laboratory will test at the lean and rich limits as defined at 40 C.F.R. §§ 90.2 and 1054.115(b), as applicable.
3. Specifies the nature of any maintenance, modification or adjustment performed on the test engines after they were received by Defendants or the testing laboratory.
4. Specifies that the laboratory will create and maintain records regarding the identity of each vehicle or engine that is the subject of testing, and the generator in which the engine is installed. This information shall include, at a minimum, any identifying numbers on the generator and/or engine, photographs of the generator showing the model name and number, photographs of the engine, and photographs of any emission control label present on the engine.
5. Specifies that the useful life emissions for the test engine will be calculated based on the low-hour emission levels of the test engine. The deterioration factors for the engine family will be

calculated based on the certification test data adjusted according to the estimated vehicle/engine age or vehicle miles traveled.

6. Specifies that the test engines and generators shall be retained by Defendants or the independent laboratory for 120 days after testing.