U.S. District Court Judge Benjamin H. Settle

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. SIXTY-SIX (66) WILDFIRE MODEL WFB150-Q2 OFF-ROAD ALL-TERRAIN-VEHICLES, *et. al.*, Defendants.	No. C11-5913 BHS CONSENT JUDGMENT

Plaintiff United States of America and Claimant Snyder Computer Systems, Inc., d/b/a Wildfire Motors ("Wildfire"), by and through their respective counsel, hereby respectfully move the Court for a Consent Judgment of Forfeiture pursuant to the terms and conditions set forth below.

This is a civil action to forfeit the above-captioned defendant merchandise. Plaintiff, United States of America, filed its first amended complaint for forfeiture on August 1, 2013, seeking forfeiture pursuant to 19 U.S.C. § 1595a(c)(2) (Merchandise Introduced Contrary to Law). The complaint alleges that Wildfire introduced the defendant merchandise into the

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(253) 428-3800

United States in violation of the Clean Air Act and the Environmental Protection Agency's ("EPA") regulations. The defendant merchandise is comprised of the following:

a. Sixty-six (66) Wildfire Model WFB 150-Q2 off-road all-terrain vehicles;

b. Eighty-seven (87) WildfireWF3800D portable electric generators;

c. Fifty (50) Wildfire WF3800DE portable electric generators;

d. Fifty (50) Wildfire WF3800DEW portable electric generators;

e. Forty (40) Wildfire WF7000DEW portable electric generators; and

f. Sixty (60) Wildfire WF8500DEW portable electric generators;

(hereinafter "defendant ATVs" and "defendant generators" respectively, and "defendant merchandise" collectively).

Wildfire filed a timely claim asserting an interest in the defendant merchandise. All persons and entities believed to have an interest in the defendant merchandise were given proper notice of the intended forfeiture. No other party asserted a claim to the defendant merchandise and the time for doing so has passed.

Douglas D. Snyder, individually and on behalf of Wildfire, Snyder Computer Systems, Snyder Technology, Inc., and any company or entity under his direction and/or control, agrees to be bound by the terms of this Consent Judgment. Collectively, Mr. Snyder and these companies shall be referred to in this Consent Judgment as the "Wildfire Parties."

*****

WHEREAS, the Wildfire parties and the United States Environmental Protection Agency will execute the attached Administrative Settlement Agreement concurrently with entry of this Consent Judgment; and

WHEREAS, the Wildfire Parties and the United States hereby consent to the entry of the following Consent Judgment with the understanding that this Consent Judgment is designed to settle this dispute and does not constitute an admission by any party except as explicitly provided for below;

IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

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1. The Court has jurisdiction over this matter, the parties, the defendant merchandise, and all proceeds therefrom pursuant to 28 U.S.C. § 1345 and § 1355, and 19 U.S.C. § 1595a.

2. The Court has venue pursuant to 28 U.S.C. § 1395(b).

3. The Wildfire Parties shall withdraw with prejudice any claim in this action and in *United States v. Thirty-six (36) 300CC on Road Scooters, et al.*, No. 11-130 (S.D. OH).

4. The Wildfire Parties shall abandon with prejudice any interest in and claims related to the defendant merchandise and any other merchandise detained or seized by the United States, or otherwise in the possession of the United States as of the date of this order. The Wildfire Parties shall not contest or challenge in any way the administrative forfeiture of such merchandise.

5. The United States shall release with prejudice any claim for reimbursement of any storage fees associated with the merchandise referred to in Paragraphs 3 and 4. The United States shall release any bonds kept for reimbursement for storage fees or held pending resolution of any seizures or forfeitures.

6. The Wildfire Parties shall withdraw, and forever waive and relinquish with prejudice, any claims against the United States for storage fees for the storage of merchandise, including, but not limited to, generators, in the Wildfire Parties' facilities, as well as any claim for reimbursement of the costs of labor or equipment which the Wildfire Parties supplied during the removal of such goods.

7. The Wildfire Parties shall release, forever discharge, and hold harmless (i) the United States of America, (ii) its agencies and departments, and (iii) its current and former representatives, officers, agents, attorneys, contractors, and employees, from any and all actions, causes of action, suits, proceedings, debts, judgments, damages, claims or demands whatsoever in law or equity which the Wildfire Parties, their heirs, successors or assignees ever had, now have or may have, whether known or unknown, relating to or arising from (1) the importation, attempted importation, manufacture, or sale of merchandise covered by the Clean Air Act or CBP's regulations, and (2) any regulatory or governmental action taken

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with respect to such merchandise, including, but not limited to the inspection, detention, seizure, and/or forfeiture of the merchandise.

8. This Consent Judgment does not release the Wildfire Parties or any officers, agents, or assigns of the Wildfire Parties, from any potential criminal liability. Nor does this Consent Decree release or resolve any claim relating to any agency, including, but not limited to, claims by the United States Department of Transportation and the Highway Traffic Safety Administration.

9. This Consent Judgment represents a full settlement and satisfaction of all ownership and possessory claims to merchandise covered by this Consent Judgment. By entering into this Consent Judgment, the Wildfire Parties shall waive any right to litigate further any interest in the merchandise, or any right to petition for remission or mitigation of their forfeiture.

10. This Consent Judgment is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Wildfire Parties are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and the Wildfire Parties' compliance with this Consent Judgment shall be no defense to any action commenced pursuant to any such laws, regulations, or permits.

11. The Wildfire Parties and the United States shall execute further documents to the extent necessary to implement the terms of this Consent Judgment, including, but not limited to, abandonment forms, and motions for final order of forfeiture with respect to the actions identified in Paragraph 3.

12. Each party shall bear its own costs and attorney's fees with respect to the actions identified in Paragraph 3.

13. This Consent Judgment shall not be construed to create rights in, or grant any cause of action to, any third party not covered by this Consent Judgment.

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14. The Clerk of the Court is directed to serve a copy of this Consent Judgment on each party of record and deliver three (3) certified copies to the United States Attorney's Office in Seattle, Washington.

15. The Court retains jurisdiction to issue such further orders as may be necessary to the proper disposition of this Consent Judgment.

SO ORDERED.

DATED this 24th day of December, 2013.

BENJAMIN H. SETTLE
United States District Judge

UNITED STATES ATTORNEY
1201 PACIFIC AVENUE, SUITE 700
TACOMA, WASHINGTON 98402
(253) 428-3800

The United States of America hereby consents to the entry of the foregoing Consent Judgment. Having agreed to its terms and consented to the entry of this Consent Judgment in full satisfaction of this case and further, we waive any right of appeal.

DATED this 20th day of December, 2013.

JENNY A. DURKAN
United States Attorney

/s/ Francis Franze-Nakamura

FRANCIS FRANZE-NAKAMURA,
DC Bar #497985
PATRICIA D. GUGIN, WSBA #43458
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700 Stewart Street, Suite 5220
Seattle, WA 98101
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Email: Francis.Franze-Nakamura@usdoj.gov

12/20/13

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

12/20/2013

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, N.W.
Washington, DC 20460

The Wildfire Parties hereby consents to the entry of the foregoing Consent Judgment. Having agreed to its terms and consented to the entry of this Consent Judgment in full satisfaction of this case and further, we waive any right of appeal.

DATED this 20th day of December, 2013.

DAVID W.T. CARROLL, *pro hac vice*
Carroll, Ucker & Hemmer LLC
7100 North High Street, Suite 301
Worthington, OH 43085
Telephone: 614 547 0350
dcarroll@cuhlaw.com

/s/Steven W. Fogg (by David Carroll per telephone authority)
STEVEN W. FOGG, WSBA #23528
TODD T. WILLIAMS, WSBA #45032
1001 4th Avenue, Suite 3900
Seattle, WA 98154-1051
(206) 625-8600
(206) 625-0900 (fax)
Email: sfogg@corrcronin.com
twilliams@corrcronin.com

DOUGLAS D. SNYDER
In his individual capacity and on behalf of:
Wildfire Motors
Snyder Computer Systems, Inc.
Snyder Technology, Inc.
And any company under his direction and/or control

EXHIBIT 1:
ADMINISTRATIVE SETTLEMENT AGREEMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC

In the Matter of: Snyder Computer Systems, Inc., D.B.A. Wildfire Motors. Respondent	Administrative Settlement Agreement AED/MSEB # 7845

This Administrative Settlement Agreement (ASA or Agreement) is made and entered into by and between the United States Environmental Protection Agency (EPA) and Snyder Computer Systems, Inc., D.B.A. Wildfire Motors (Wildfire or Respondent), regarding Respondent's compliance with Part A of Title II of the Clean Air Act (CAA), 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including hydrocarbons, oxides of nitrogen, and carbon monoxide.

Purpose

WHEREAS the United States of America initiated forfeiture proceedings against certain of Respondent's merchandise in the District Court for the Southern District of Ohio on February 7, 2011 (*United States v. Thirty-six (36) 300CC on Road Scooters, et al.*, No. 11-130), and the District Court for the Western District of Washington on November 7, 2011 (*United States v. Sixty-Six (66) Wildfire Model WFB150-Q2 Off-Road All-Terrain Vehicles, et al.*, No. C11-5913 BHS) (together "Forfeiture Complaints").

WHEREAS the Forfeiture Complaints allege that Wildfire's merchandise (Defendant Merchandise) was introduced into the United States in violation of law, including but not limited to, violations of the CAA and the EPA's regulations promulgated thereunder.

WHEREAS the Forfeiture Complaints are the subject of a proposed Consent Judgment that would resolve those actions.

WHEREAS the Forfeiture Complaints seek forfeiture of the Defendant Merchandise but do not seek any civil penalties under the CAA, nor do the Forfeiture Complaints resolve Respondent's CAA alleged civil penalty liability with respect to the Defendant Merchandise.

THEREFORE the purpose of this Agreement is to resolve Wildfire's CAA civil liability related to violations of Part A of Title II of the Clean Air Act, 42 U.S.C. §§ 7521-7554, and the regulations promulgated thereunder with respect to the Defendant Merchandise.

Governing Law and Alleged Violations

1. See the complaints filed in *United States v. Thirty-six (36) 300CC on Road Scooters, et al.*, No. 11-130 (S.D. OH), and *United States v. Sixty-Six (66) Wildfire Model WFB150-Q2 Off-Road All-Terrain Vehicles, et al.*, No. C11-5913 BHS (W.D. WA), incorporated here by reference, and attached hereto as Attachments 1 and 2 respectively.

Terms of Agreement

2. The United States and Respondents agree to sign and seek entry of the proposed Consent Judgment. In consideration of Respondent's agreement to enter into the Consent Judgment in *U.S. v. Sixty-Six (66) Wildfire Model WFB150-Q2 ATVs, et al.*, upon entry of the Consent Judgment, the EPA will deem resolved any and all civil claims under its jurisdiction arising under the CAA and the EPA covenants not to bring any civil action

concerning the Defendant Merchandise in both Forfeiture Complaints or related to the manufacture, sale, offer for sale, importation, introduction into commerce or delivery for introduction into commerce, of any motor vehicle or motor vehicle engine, or nonroad vehicle or nonroad engine, or part thereof, which occurred between December 20, 2006 and December 20, 2013. For the purposes of this paragraph, Respondents include Snyder Technology, Inc., and the current and former corporate officers and employees of Snyder Technology, Inc. and Snyder Computer Systems, Inc., including Douglas Don Snyder and Lora Faye Snyder.

Effect of Agreement

3. Nothing herein limits the EPA's authority to proceed against Respondent in the event of default or noncompliance with this Agreement or with the Consent Judgement in *U.S. v. Sixty-Six (66) Wildfire Model WFB150-Q2 ATVs, et al.,* for violations of the CAA that are not the subject matter of this Agreement, for other violations of law, or with respect to other matters not within the scope of this Agreement. This Agreement in no way affects or relieves Respondent of responsibility to comply with other state, federal, or local laws or regulations.

General Provisions

4. All correspondence or notifications required by this Agreement must be in writing and emailed to Meetu Kaul at kaul.meetu@epg.gov or mailed to:

(Postal Service Mail)
Meetu Kaul
U.S. EPA
Mail Code 2242A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Attn: AED/MSEB # 7843

(Courier Service)
Meetu Kaul
U.S. EPA
Ariel Rios South, Room 3151A
1200 Pennsylvania Ave., NW
Washington, DC 20004
Attn: AED/MSEB # 7843

5. This Agreement becomes effective upon the date executed by the EPA (effective date of the Agreement) by the undersigned parties that have authority to enter into this agreement on behalf of the EPA, at which time a fully executed electronic copy will be returned to Respondent.

6. Respondent represents that the individual or individuals executing this Agreement on behalf of Respondent are authorized to do so and that such execution is intended and is sufficient to bind Respondent, its agents, assigns, or successors.

7. This Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement. The counterparts are binding on each of the parties individually as fully and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts. Any signature page may be detached from any counterpart and attached to any other counterpart of this Agreement.

8. Notwithstanding any other provision of this Agreement, the parties agree that upon default or failure of Respondent to comply with the terms of this Agreement, or with the terms of the Consent Judgment in *U.S. v. Sixty-Six (66) Wildfire Model WFB150-Q2 ATVs, et al.,* the EPA may refer this matter to the United States Attorney General, commence an action to enforce this Agreement, or to recover a civil penalty, or pursue any other remedies available to it. Respondent expressly waives its right to assert that such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.

9. Respondent waives its rights, if any, to a hearing, trial, or any other proceeding on any issue of fact or law relating to the matters agreed to herein. Notwithstanding this paragraph, this document is admissible as an element of a defense or to enforce this agreement in any matter relating to the goods covered by this Agreement in any appropriate forum

10. The validity, enforceability, and construction of all matters pertaining to this Agreement shall be determined in accordance with applicable federal law.

11. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral.

12. Nothing in this Agreement, whether express or implied, is intended or will be construed to confer on or give to any party, other than the EPA and Respondent, any rights, remedies, or other benefits.

13. This Agreement in no way affects or relieves Respondent or the United States of responsibility to comply with other federal, state, or local laws or regulations.

SIGNATURES ON FOLLOWING PAGES

United States Environmental Protection Agency

Administrative Settlement Agreement In the Matter of Snyder Computer Systems Inc., D.B.A. Wildfire Motors, Respondent

AEC/MSEB # 7845

The following agrees to the terms of this Agreement:

Douglas D. Snyder, personally and behalf of Snyder Technology, Inc., Snyder Computer Systems, Inc., D.B.A. Wildfire Motors

By: _____ Date: 12/20/13

Typed or Printed Name: Douglas D Snyder

Typed or Printed Title: CEO

Federal Tax Identification Number: _____

United States Environmental Protection Agency

Administrative Settlement Agreement In the Matter of Snyder Computer Systems Inc.,

D.B.A. Wildfire Motors, Respondent

AEC/MSEB # 7845

The following agrees to the terms of this Agreement:

United States Environmental Protection Agency

By: _____ Date: _____

Phillip A. Brooks, Director
Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency

ATTACHMENT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Thirty-six (36) 300CC on road Scooters, Model WF300-SP, (Defendant One),

Sixteen (16) 650CC motorcycles, Model WF650-T, (Defendant Two),

Fifty (50) 163CC, 5.5 HP gas powered 2800 watt electric generators, Model WF2800D, (Defendant Three),

Two Hundred Eighty-five (285) 196CC, 6.5 HP gas powered 3800 watt electric generators, Model WF3800D, (Defendant Four),

One Hundred Ten (110) 196CC, gas powered 3800 watt electric generators, Model WF3800DE, (Defendant Five),

One Hundred Ninety (190) 196CC, gas powered 3800 watt electric generators, Model WF3800DEW, (Defendant Six),

Forty-five (45) 270CCc, 9 HP gas powered 4800 watt electric generators, Model WF4800D, (Defendant Seven),

Eighty-seven (87) 270CC, 9 HP gas powered 4800 watt electric generators, Model WF4800DEW, (Defendant Eight),

No. 2:11 CV 0130

JUDGE SARGUS

MAGISTRATE JUDGE KEMP

Sixty-five (65) 389CC,
13 HP gas powered 7000 watt
electric generators,
Model WF7000D,
(Defendant Nine),

One Hundred Sixty-five (165)
389CC, 13 HP gas powered
7000 watt electric generators,
Model WF7000DEW,
(Defendant Ten),

One Hundred Seventy (170) 407CC,
5 HP gas powered 8000 watt
electric generators,
Model WF8000DEW,
(Defendant Eleven),

Sixty (60) 80CC, 2.9 HP gas
engines, Model WF2.9D,
(Defendant Twelve),

Forty (40) 163CC, 5.5 HP gas
engines, Model WF5.5D,
(Defendant Thirteen),

Fifty (50) 196CC, 6.5 HP gas
engines, Model WF6.5D,
(Defendant Fourteen),

Fifty (50) 407CC, 15 HP gas
engines, Model WF15DE,
(Defendant Fifteen),

Two (2) 80CC, 2.9 HP gas
powered pressure washers,
Model LT8.7-12D,
(Defendant Sixteen),

Two (2) 163CC, 5.5 HP gas
powered pressure washers,
Model LT8.7-12A,
(Defendant Seventeen),

Two (2) 270CC, 13 HP gas
powered pressure washers,
Model LT8.7-22A,
(Defendant Eighteen),

Fourteen (14) 800CC 3-wheel motorcycles, Model WF800-T, (Defendant Nineteen),	:
Sixty-six (66) 110CC, go-karts Model WFG110-1RB, (Defendant Twenty),	:
One Hundred sixty-eight (168) 49CC scooters, Model WFH50-S2E, (Defendant Twenty-one),	:
Ninety-eight (98) 49CC scooters, Model WFH50-S2, (Defendant Twenty-two),	:
And,	:
Ten (10) Windshields, Scooter Model WF300-SP, (Defendant Twenty-three).	:

VERIFIED COMPLAINT FOR FORFEITURE

Now comes the Plaintiff, United States of America, by and through its undersigned attorney, Michael J. Burns, Assistant United States Attorney, and respectfully states as follows:

1. The United States brings this civil forfeiture action *in rem*, pursuant to 19 U.S.C. §1595a(c)(2), and the provisions of 19 U.S.C. §§1603 and 1604.

2. Title 19, United States Code, Section 1595a(c)(2) provides, in pertinent part:

> (c) Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:...
>
> (2) The merchandise may be seized and forfeited if--
>
> (A) its importation or entry is subject to any restriction or prohibition which is imposed by

> law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable, rule, regulation, or statute;
> (B) its importation requires a license, permit, or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization...

3. Defendants One through Twenty-two are required to comply fully with 42 U.S.C. §7401, et seq., the Clean Air Act, and the regulations promulgated thereunder at 40 Code of Federal Regulations (CFR), Chapter I, Parts 85, 86, 90, 1051, 1054, 1060, 1065, and 1068. The Environmental Protection Agency (EPA) is an agency of the Federal Government responsible for implementing and enforcing compliance with the Clean Air Act and the regulations promulgated thereunder, hereafter, the Clean Air Act. The EPA is required, pursuant to the regulations promulgated under the Clean Air Act, to issue Certificates of Compliance (COC) for certain types of gasoline powered vehicles/engines prior to their manufacture or importation into the United States.

3a. The United States alleges that Defendants Two through Twenty-two are forfeitable for failure to comply with the Clean Air Act, 42 U.S.C. §7401, et seq. and the regulations promulgated thereunder at 40 CFR Chapter I, Parts 85, 86, 90, 1051, 1060, 1065, and 1068.

4. Defendants One, Two, Nineteen, Twenty-one, Twenty-two, and Twenty-three are required to comply fully with 49 U.S.C. Chapter 301, the National Traffic and Motor Vehicle Safety Act of

1966, as amended, and the regulations promulgated thereunder at 49 CFR Part 571. The National Highway Traffic Safety Administration (NHTSA) is an operating administration within the U.S. Department of Transportation (DOT), an agency of the Federal Government. NHTSA is responsible for implementing and enforcing the National Traffic and Motor Vehicle Safety Act and the regulations promulgated thereunder, hereafter the Safety Act.

4a. The United States alleges that Defendants One, Two, Nineteen, and Twenty-three are forfeitable for failure to comply fully with 49 U.S.C. Chapter 301, the National Traffic and Motor Vehicle Safety Act of 1966, as amended, and the regulations promulgated thereunder at 49 CFR Part 571.

5. The United States alleges that Defendants One through Twenty-three were introduced or were attempted to be introduced into the United States contrary to law, and are therefore, subject to forfeiture pursuant to 19 U.S.C. §1595a(c)(2).

6. This court has jurisdiction in this matter under 28 U.S.C. §§1345 and 1355.

7. Venue lies in this Court pursuant to 28 U.S.C. §1395.

PARTIES AND INTERESTED PARTIES

8. The plaintiff in this action is the United States of America.

9. The defendants are the 1,771 gasoline powered vehicles/equipment and 10 windshields named above that were

seized by the United States Bureau of Customs and Border Protection (CBP) after arriving at the Port of Cleveland, Ohio on or about May 8, 2009 (Defendants One, Two, and Twenty-three); May 16, 2009 and July 13, 2009 (Defendants Three through Eighteen); May 22, 2009 (Defendant Nineteen); June 28, 2009 (Defendant Twenty); and July 13, 2009 (Defendants Twenty-one and Twenty-two). The approximate value of the Defendants is $444,251.78.

10. The defendants are in the constructive custody of the CBP in this district, by agreement with the importer, where they will remain subject to this Court's jurisdiction during the pendency of this action.

11. The interests of Agility Logistics, Corp., 6925 Engle Road, Middleburg Heights, Ohio 44130 and Snyder Computer Systems, Inc., dba Wildfire Motors, 11 Technology Way, Steubenville, Ohio 43952 may be adversely affected by these proceedings.

12. On or about May 8, 2009, Defendants One and Twenty-three arrived at the Port of Cleveland from China in container number INKU6102470 and were assigned CBP entry number 201-96040033. Defendant One was inspected on or about May 13, 2009, and the defendants were seized on or about July 20, 2009, for failure to comply with the Safety Act including the regulations promulgated thereunder.

13. On or about May 12, 2009, Defendant Two arrived at the Port of Cleveland from China in container numbers ECMU9417918 and

EMCU9944185 and was assigned CBP entry number 201-96040041. Defendant Two was inspected on or about May 14, 2009, and seized on or about July 21, 2009, for failure to comply with the Safety Act and the Clean Air Act.

14. On or about May 16, 2009, a portion of Defendants[1] Three through Eighteen arrived at the Port of Cleveland from China in container numbers GSTU9864508 and MSCU8622429 and were assigned CBP entry number 201-96040058. A portion of Defendants Three through Eighteen were inspected on or about May 19, 2009, and seized on or about June 18, 2009, for failure to comply with the Clean Air Act.

15. On or about May 22, 2009, Defendant Nineteen arrived at the Port of Cleveland from China in container numbers MSCU8021602 and MSCU8382758 and were assigned CBP entry number 201-96040074. Defendant Nineteen was inspected on or about May 27, 2009, and seized on or about June 24, 2009, for failure to comply with the Safety Act and the Clean Air Act.

16. On or about July 13, 2009, Defendant Twenty arrived at the Port of Cleveland from China in container number KLFU1844076 and was assigned CBP entry number 201-96040132. Defendant Twenty

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[1] Not all the named defendants arrived on this date; the remaining defendants arrived on July 1, 2009. The defendants and quantity arrived on May 18 are: Defendant Three, 20 units; Defendant Four, 175 Units; Defendant Five, 50 units; Defendant Six, 90 units; Defendant Seven, 30 units; Defendant Eight, 42 units; Defendant Nine, 35 units; Defendant Ten, 70 units; and, Defendant Eleven, 60 units.

was inspected on or about July 15, 2009, and seized on or about July 16, 2009, for failure to comply with the Clean Air Act.

17. On or about June 28, 2009, Defendants Twenty-one and Twenty-two arrived at the Port of Cleveland from China in container numbers HLXU6368497, HLXU6498696, and CLHU8978945 and were assigned CBP entry number 201-96040116. Defendants Twenty-one and Twenty-two were inspected on or about July 1, 2009, and seized on this same date for failure to comply with the Clean Air Act.

18. On or about July 3, 2009 the remainder of Defendants Three through Eleven arrived at the Port of Cleveland from China in container numbers TGHU7233439 and TTNU9895728 and were assigned CBP entry number 201-96040124. The remainder of Defendants Three through Eleven were inspected on or about July 7, 2009, and seized on or about September 2, 2009, for failure to comply with the Clean Air Act.

19. The United States alleges that Defendants Two through Twenty-two are forfeitable for failure to comply with the Clean Air Act, 42 U.S.C. §7401, et seq. and the regulations promulgated thereunder at 40 CFR Chapter I, Parts 85, 86, 90, 1051, 1060, 1065, and 1068, and are therefore subject to forfeiture pursuant to 19 U.S.C. §1595a(c)(2).

20. The United States alleges that Defendants One, Two, Nineteen, and Twenty-three are forfeitable for failure to comply

fully with 49 U.S.C. Chapter 301, the National Traffic and Motor Vehicle Safety Act of 1966, as amended, and the regulations promulgated thereunder at 49 CFR Part 571, and are therefore subject to forfeiture pursuant to 19 U.S.C. §1595a(c)(2).

21. Probable cause to believe that the Defendants are forfeitable to the United States pursuant to 19 U.S.C. §1595a(c)(2), is set forth in the declarations of Stuart J. Seigel with the U.S. Department of Transportation, National Highway Traffic Safety Administration; Anne Wick with the Environmental Protection Agency; and Tessie Douglass with U.S. Customs and Border Protection which are incorporated herein.

WHEREFORE, Plaintiff, United States of America, respectfully asserts that there is probable cause to believe that all of the Defendants are forfeitable to the United States under 19 U.S.C. §1595a(c)(2); and requests:

(a) That under 18 U.S.C. §981(b), and Supplemental Rule G of the Supplemental Rules for Certain Admiralty and Maritime Claims, the Court issue a Warrant of Arrest in Rem for the arrest and seizure of the Defendants based on this complaint, to bring the Defendants within the jurisdiction of the Court for purposes of this statutory forfeiture action;

(b) That notice of this action be given to all persons and entities known or thought to have an interest in or right against the Defendants, to appear and show cause why the forfeiture

should not be decreed;

(c) That notice of this action be given by advertising in a newspaper of general circulation in this district;

(d) The Court decree that forfeiture of the Defendant Properties to the United States of America is confirmed, enforced and ordered;

(e) The Court order the government to dispose of the Defendant Properties as provided by law;

(f) That Plaintiff be awarded its costs and disbursements in this action; and such other relief as this Court deems proper and just.

Respectfully submitted,

CARTER M. STEWART
United States Attorney

MICHAEL J. BURNS (0023446)
Assistant United States Attorney
Attorney for Plaintiff
303 Marconi Boulevard
Suite 200
Columbus, Ohio 43215
(614) 469-5715
Fax: (614) 469-5240
Michael.Burns @usdoj.gov

VERIFICATION

I, Tessie Douglass, am a Fines, Penalties and Forfeitures Officer with U.S. Customs and Border Protection and the case agent assigned to this case. I have read the contents of the foregoing complaint for forfeiture and the statements contained therein are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 7th day of February, 2011.

TESSIE DOUGLASS
Fines, Penalties and Forfeitures Officer
U.S. Customs and Border Protection

DECLARATION OF STUART J. SEIGEL

I, STUART J. SEIGEL, do hereby declare under the penalty of perjury that the following is true to the best of my knowledge:

Background

1. I am a Safety Compliance Engineer in the Vehicle Crash Avoidance Division, which is part of the National Highway Traffic Safety Administration's ("NHTSA") Office of Vehicle Safety Compliance ("OVSC"). NHTSA is an operating administration of the United States Department of Transportation ("DOT"), located in Washington, D.C. My business address is Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE, West Building, W43-498, Washington, D.C. 20590.

2. I have a Bachelor of Science in Mechanical Engineering from the University of Maryland. I received this degree in 1981.

3. I was hired by NHTSA in 1989. From 1989 to 1996, I worked in the New Car Assessment Program ("NCAP").

4. I have been a Safety Compliance Engineer effective March 31, 1996 until the present.

5. As a Safety Compliance Engineer in the Vehicle Crash Avoidance Division, part of my responsibilities include planning and completing Federal Motor Vehicle Safety Standards ("FMVSS") compliance tests and reviewing manufacturers' certification information and data and other related material.

6. I have responsibility within OVSC for compliance with several FMVSS, including FMVSS 122 (Motorcycle brake systems) and FMVSS 123 (Motorcycle controls and

displays). I also have responsibility within OVSC for compliance with FMVSS 500 (Low-speed vehicles), which incorporates FMVSS 205 (Glazing materials). I have acted as a team member in connection with noncompliance investigations.

7. The statements made in this declaration are based on personal knowledge that I acquired in the performance of my official duties including consultation with other NHTSA employees.

8. This declaration was prepared in support of a judicial forfeiture action.

9. NHTSA is responsible for implementing and enforcing the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 49 U.S.C. Chapter 301 (the "Safety Act").

10. Under that authority, NHTSA issues and enforces FMVSS, which apply to motor vehicles and certain items of motor vehicle equipment. FMVSS are codified in 49 CFR Part 571.

11. The primary mission of OVSC is to assure that motor vehicles and equipment meet the requirements of each of the applicable FMVSS, regulations, and fuel economy standards. One aspect of this work is to conduct technical investigations to determine compliance.

12. The Vehicle Crash Avoidance Division provides the inspection, testing and investigation necessary to assure compliance by motor vehicle manufacturers with promulgated FMVSS, regulations, and noncompliance notification requirements of the Safety Act.

September 29, 2010 Inspection of Certain Motor Vehicles and Certain Items of Motor Vehicle Equipment

13. As part of my job responsibilities as a Safety Compliance Engineer, I visited a Wildfire Motors facility in Steubenville, Ohio on September 29, 2010, for the purpose of inspecting motor vehicles and items of motor vehicle equipment in certain entries that had been seized by U.S. Customs and Border Protection ("CBP"). Other people, including Andre Jones, a

Safety Compliance Analyst with NHTSA's Vehicle Crash Avoidance Division, were also present for the inspection. Andre Jones had previously inspected certain items of CBP Entry Numbers 201-96040033, 201-96040041 and 201-96040074 on June 2, 2009, and a purpose of the September 29, 2010 inspection was to supplement Mr. Jones' prior inspection.

14. My inspection primarily focused on items in four entries that had been seized by CBP: CBP Entry Number 201-96040116, CBP Entry Number 201-96040041, CBP Entry Number 201-96040074 and CBP Entry Number 201-96040033.

CBP Entry Numbers 201-96040041 and 201-96040074

15. According to information provided to us by CBP, CBP Entry Number 201-96040041 includes 16 model WF650-T vehicles and CBP Entry Number 201-96040074 includes 14 model WF800-T vehicles. The WF650-T and WF800-T are both basically 3-wheeled enclosed motorcycles equipped with a truck bed. Both have 1 wheel in the front and 2 wheels in the back.

16. Under NHTSA regulations, a 3-wheeled vehicle is a motorcycle. 49 CFR § 571.3(b) (definition of a motorcycle).

17. On September 29, 2010, I inspected a WF650-T in CBP Entry Number 201-96040041 bearing the VIN LTDHDVZ219TWF0251 and a WF800-T in Entry 201-96040074 bearing the VIN LTDHDVZ389TWF0959.

18. Based on my inspection of the vehicles and review of certain requirements of FMVSS 122, *Motorcycle brake systems*, the WF650-T and the WF800-T fail to meet all pertinent requirements of FMVSS 122, 49 CFR § 571.122, as discussed below.

19. FMVSS 122 S5.1.2.1 *Master cylinder reservoirs* states "Each master cylinder shall have a separate reservoir for each brake circuit, with each reservoir filler opening having its own cover, seal, and cover retention device."

20. In my September 29, 2010 inspection of the vehicles, I observed that these vehicles are equipped with split service brake systems, consisting of two separate subsystems (hydraulic brake circuits) activated by a single control. "Split service brake system" is defined at 49 CFR § 571.122 S4 as "a brake system consisting of two or more subsystems actuated by a single control designed so that a leakage-type failure of a pressure component in a single subsystem (except structural failure of a housing that is common to all subsystems) shall not impair the operation of the other susbsystem(s)."

21. Each brake circuit reservoir must have its own filler opening. In my September 29, 2010 inspection of a WF650-T, I observed only one filler opening for two brake circuits. In my September 29, 2010 inspection of a WF800-T, I observed only one filler opening for two brake circuits.

22. The vehicles do not comply with the requirement of FMVSS 122 S5.1.2.1 because they do not have a separate cover, seal, and retention device for each brake circuit reservoir.

23. FMVSS 122 S5.1.2.2 *Reservoir labeling* states "Each motorcycle shall have a brake fluid warning statement that reads as follows…: Warning: Clean filler cap before removing. Use only _____ fluid from a sealed container. (Inserting the recommended type of brake fluid as specified in 49 CFR 571.116, e.g., DOT 3.)."

24. Per FMVSS 122 S5.1.2.2 (a), (b) and (c), the lettering must be permanently affixed, engraved, or embossed and located so as to be visible by direct view, either on or within

4 inches of the brake-fluid reservoir filler plug or cap, and of a color that contrasts with its background, if it is not engraved or embossed.

25. In my September 29, 2010 inspection of the vehicles, I observed that there were no affixed, engraved or embossed statements present on or near the reservoir filler caps.

26. Because there are no affixed, engraved or embossed statements present on or near the reservoir filler caps, the vehicles fail to meet all pertinent requirements of FMVSS 122 S5.1.2.2.

27. FMVSS 122 S5.1.3 requires that each motorcycle equipped with a split service brake system shall have a failure indicator lamp as specified in S5.1.3.1. FMVSS 122 S5.1.3.1 *Failure indicator lamp*, which applies to vehicles with split service brake systems, states "(a) One or more electrically operated service brake system failure indicator lamps that is mounted in front of and in clear view of the driver, and that is activated –

(1) In the event of pressure failure in any part of the service brake system …

(2) Without the application of pedal force, when the level of brake fluid in a master cylinder reservoir drops to less than the recommended safe level specified by the manufacturer or to less than one-half the fluid reservoir capacity, whichever is the greater."

28. In my September 29, 2010 inspection of the vehicles, I observed that the vehicles had no malfunction indicator lamps for brake failures.

29. Because FMVSS 122 S5.1.3 requires that motorcycles equipped with split service brake systems, such as these are, must have a warning indicator for pressure failure and low fluid level, there is a noncompliance with FMVSS 122 S5.1.3.

CBP Entry Number 201-96040033

30. According to information provided to us by CBP, CBP Entry Number 201-96040033 includes 36 model WF300-SP vehicles.

31. On September 29, 2010, I inspected a WF300-SP in Entry 201-96040033 bearing the VIN L8XTBN10490WF0001.

32. Based on the results of the inspection and review of certain requirements of FMVSS 123, *Motorcycle controls and displays*, the WF300-SP fails to meet all the applicable requirements of FMVSS 123, 49 CFR § 571.123, as discussed below.

33. Pertinent requirements of FMVSS 123 are as follows:

S5.1 "Each motorcycle shall be equipped with a supplemental engine stop control, located and operable as specified in Table 1." Table 1 requires the supplemental engine stop control to be on the right handlebar. The method of operation is not specified.

S5.2.3. *Control and display identification.* "If an item of equipment in Table 3, Column 1, is provided, the item and its operational function shall be identified by:

(a) A symbol substantially in the form shown in Column 3; or

(b) Wording shown in both Column 2 and Column 4; or

(c) A symbol substantially in the form shown in Column 3 and wording shown in both Column 2 and Column 4."

34. In my September 29, 2010 inspection of the vehicle, I observed that the right handlebar was equipped with an orange rocker switch labeled with a single white dot on the lower half of the switch and a triangle on the top section.

35. On January 10, 2011, I reviewed a Wildfire Motors Owner's Manual for the WF300-SP. According to a picture in the Owner's Manual on page 5, the orange rocker switch is an "Engine Kill Switch."

36. As a supplemental engine stop control (kill switch), the orange rocker switch is not properly marked as described in FMVSS 123, S5.2.3 Table 3, No. 2, and therefore the vehicle is noncompliant with the pertinent requirements of FMVSS 123.

37. According to information provided to us by CBP, CBP Entry Number 201-96040033 included spare parts. These spare parts included separate motorcycle windscreens.

38. I inspected at least one windscreen that was part of CBP Entry Number 201-96040033. Based on my inspection of the windscreen and review of certain requirements of FMVSS 205, *Glazing Materials*, the windscreen does not comply with all of the pertinent requirements of FMVSS 205, 49 CFR § 571.205.

39. FMVSS 205 S6.2 states: "A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI/SAE Z26.1-1996, in letters and numerals of the same size, the symbol 'DOT' and a manufacturer's code mark that NHTSA assigns to the manufacturer." NHTSA will assign a code mark to the manufacturer after the manufacturer submits a written request to OVSC.

40. Section 7 of the ANSI/SAE Z26.1-1996 pertains to the marking of safety glazing materials. Some of the markings required are the words American National Standard or the characters AS and with a model number that will identify the type of construction of the glazing material (e.g. laminated, tempered). Additionally, immediately adjacent to the words American National Standard or the characters AS, each piece of safety glazing material is required to be marked with a numeral that indicates the item in Section 4 (Application of Tests) the material

complies with. The safety glazing materials shall also be marked with the manufacturer's distinctive designation or trademark.

41. In my September 29, 2010 inspection, I saw that the motorcycle windscreens were labeled with only "DOT".

42. The windscreen did not have the manufacturer's code mark and did not have such markings as the words American National Standard or the characters AS with a model number that identifies the type of construction of the glazing material. The windscreen did not have adjacent to the words American National Standard or the characters AS, a numeral that indicates which item in Section 4 (Application of Tests) the material complies with. Furthermore, the windscreen was not marked with the manufacturer's distinctive designation or trademark.

43. Therefore, since the windscreen did not have the required markings, the labeling requirements specified in FMVSS 205 were not met.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 3, 2011

Stuart J. Seigel

DECLARATION OF ANNE WICK

I, Anne Wick, do hereby declare under penalty of perjury that the following is true to the best of my knowledge and belief:

1. I am a mechanical engineer with the United States Environmental Protection Agency (EPA) and have been so employed for 18 years. I have a master's degree in mechanical engineering from The Pennsylvania State University. Since 1998, I have been employed in the Air Enforcement Division of the Office of Civil Enforcement in EPA's Office of Enforcement and Compliance Assurance, including, for the last six years, as the team leader of the Vehicles and Engines Team in the Mobile Source Enforcement Branch. Prior to that, from 1996 to 1998, I worked in EPA's Office of Air and Radiation as the team leader for Engine Certification in the Engine Programs and Compliance Group, and from 1992-1996 I worked in EPA's Recall Testing Section. In all these capacities, I have focused on vehicle and engine compliance matters. My duties have included first-line responsibility for evaluating and reviewing manufacturer's compliance with the vehicle and engine certification and in-use requirements of Title II of the Clean Air Act and the implementing regulations. My business address is 1200 Pennsylvania Ave. NW, Washington D.C., 20460.

2. The statements contained in this Declaration are based on my personal knowledge and my review of EPA and other documents, including reports prepared by contractors working under EPA's supervision and direction. For approximately the last two years, I have been involved in an ongoing investigation of various vehicles and engines that were imported into the United States by Wildfire and were determined by EPA to be imported in violation of the requirements of the Clean Air Act and EPA's implementing regulations. I reviewed inspection reports, test reports, importation entry documentation, and submissions made to EPA in support of certification for Snyder Computer Systems', d.b.a, Wildfire Motors (Wildfire's) vehicles and engines.

3. I am making this declaration based upon my first-hand knowledge of these importations, discussions with personnel of the United States Department of Homeland Security's Bureau of Customs and Border Protection (CBP), review of directed inspections and resulting reports, review of EPA policy documents, review of the documents submitted by Wildfire or its consultants to EPA when it sought certificates of conformity for its imported vehicles and engines, and review of the certificates of conformity that EPA issued to Wildfire. Further, I have used my 6 years of experience as the Vehicle and Engine Team Leader, my background as one of EPA's national certification experts, my knowledge of vehicle and engine emissions and emission controls, and my training as a mechanical engineer, to reach certain conclusions based on the documents and information gathered.

4. On or about May 13, 2009, May 16, 2009, May 27, 2009, June 13, 2009, June 29, 2009, and July 10, 2009, Wildfire imported various vehicles, engines and equipment into the port of Cleveland.

5. Section 203(a)(1) of the Clean Air Act (Act), 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of new motor vehicles or new motor vehicle engines from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing any new motor vehicle or motor vehicle engine manufactured after the effective date of the applicable regulations unless such vehicle or engine is covered by a certificate of conformity issued by EPA and in effect under the applicable implementing regulations.

6. Persons that import vehicles or engines for resale (i.e., importers) are included within the definition of "manufacturer" under the Act. 42 U.S.C. § 7550(1).

7. Under section 213(d) of the Act, the standards for nonroad vehicle and engines are enforced in the same manner as the standards prescribed for new motor vehicles and new motor vehicle engines. 42 U.S.C. § 7547(d). Thus, the prohibitions of section 203(a)(1) of the Act also apply to manufacturers of nonroad engines and vehicles.

Customs Entry No. 201-96040041

8. On or about May 13, 2009, Wildfire imported sixteen (16) model WF650-T highway motorcycles into the port of Cleveland.

9. EPA regulates highway motorcycles under Title II of the Clean Air Act and 40 C.F.R. Parts 85 and 86. Under the authority in Title II of the Clean Air Act and the implementing regulations, EPA issues certificates of conformity for vehicles that have been tested and fully described in the application for the certificate.

10. EPA issues these certificates of conformity on the basis of testing conducted by the manufacturer, and the description of the product submitted by the manufacturer in the certification application.

11. EPA regulations require the manufacturer to include with each application for certification a signed statement of compliance that the test engine(s), as described in the manufacturer's application for certification, has been tested in accordance with the applicable test procedures, and that on the basis of such tests the engine conforms to the requirements in the regulations. 40 C.F.R. § 86.437-78(a)(1).

12. On March 31, 2008, Wildfire's certification consultant, Systems Launch Associates, LLC (Systems Launch), submitted an application for certification for highway

motorcycle engine family 9WLDC0.65NFG to EPA on behalf of Wildfire. This application for certification was delivered to EPA via EPA's web-based data system known as VERIFY. Systems Launch entered and submitted data for this application using an EPA-supplied template (the Verify Certification Summary Information, or CSI) and also attached various electronic files, including a file named 9WLDC065NFG-completeV2.pdf. These various submissions constitute the application for certification for engine family 9WLDC0.65NFG.

13. The models listed in the application for certification for engine family 9WLDC0.65NFG are WF650-C and WF650-T. The loaded vehicle mass for both models is listed as 426 kilograms (kg) in the model summary section of the CSI, and as 426 kg in the data summary section of the CSI for the emission data vehicle (i.e., the test vehicle), which in this case was the model WF650-C. Additionally, a copy of a sales brochure for the model WF650-T was included in the file 9WLDC065NFG-completeV2.pdf. This sales brochure lists the net weight (as opposed to the loaded vehicle mass) of the WF650-T as 763 pounds (equivalent to 346 kg).

14. "Loaded Vehicle Mass" means curb mass plus 80 kg. 40 C.F.R. § 86.402.78.

15. "Curb Mass" means the actual or manufacturer's estimated mass of the vehicle with fluids at nominal capacity and with all equipment specified by the Administrator. 40 C.F.R. § 86.402.78.

16. I conclude that the net weight listed in the WF650-T brochure is equivalent to the Curb Mass. Thus, the Loaded Vehicle Mass of the WF650-T, based on the net weight listed in the brochure, is 426 kg, which is consistent with the Loaded Vehicle Mass listed in the CSI.

17. EPA issued a certificate of conformity to Wildfire on April 16, 2008 for engine family 9WLDC0.65NFG. This certificate of conformity states: "This certificate covers only those vehicles which conform, in all material respects, to the design specifications that applied to those vehicles described in the documentation required by 40 CFR Part 86 and are produced during the model year production period stated on the certificate as defined in 40 CFR Part 86." The documentation required by 40 C.F.R. Part 86 includes the application for certification.

18. On June 3, 2009, EPA contractors delivered a model WF650-T motorcycle, with Vehicle Identification Number (VIN) LTDHDV2219TWF0251, from this entry to be weighed on a certified scale owned by Ewusiak Company located at 1900 Commercial Avenue, Mingo Junction, Ohio. The vehicle was weighed on a Weigh Tronix scale, calibrated on April 27, 2009, and the vehicle was found to weigh 1440 lbs (655 kg).

19. Based on the documentation attached to the EPA contractor report dated July 29, 2009, I conclude that the actual Loaded Vehicle Mass of the weighed vehicle is 735 kg (655 kg plus 80 kg).

20. Section 203(a)(1) of the Clean Air Act prohibits the importation of new highway motorcycles that are not covered by a certificate of conformity. 42 U.S.C. § 7522(a)(1).

21. Furthermore, EPA requires that every new motorcycle manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States be covered by a certificate of conformity. 40 C.F.R. § 86.407-78.

22. By its terms, a certificate of conformity does not cover vehicles that are materially different from those described in the application for certification.

23. EPA regulations specify different dynamometer test settings in 10 kg increments of Loaded Vehicle Mass. 40 C.F.R. § 86.529-98.

24. Based on my knowledge and my review of the relevant documents and information, I conclude that the motorcycles in this entry are not covered by the certificate of conformity for engine family 9WLDC0.65NFG because the motorcycles in this entry have significantly greater Loaded Vehicle Mass than the vehicles described in the application for certification for engine family 9WLDC0.65NFG. This difference in actual Loaded Vehicle Mass is a material difference because the dynamometer test settings are different for a vehicle whose Loaded Vehicle Mass is 735 kg as compared to one whose Loaded Vehicle Mass is 426 kg. The certificate of conformity does not cover vehicles that are materially different from those described in the application for certification.

Customs Entry No. 201-96040058

25. On or about May 16, 2009, Wildfire imported the following goods into the port of Cleveland:

- 20 model WF2800D generators powered by Nonroad Small Spark Ignition (SI) engines from engine family 9WLDS.1961WM;
- 175 model WF3800D generators powered by Nonroad Small SI engines from engine family 9WLDS.1961WM;
- 50 model WF3800DE generators powered by Nonroad Small SI engines from engine family 9WLDS.1961WM;
- 90 model WF3800DEW generators powered by Nonroad Small SI engines from engine family 9WLDS.1961WM;
- 30 model WF4800D generators powered by Nonroad Small SI engines from engine family 9WLDS.3892WM but labeled as engine family 9WLDS.1961WM;

- 42 model WF4800DEW generators powered by Nonroad Small SI engines from engine family 9WLDS.3892WM;
- 35 model WF7000D generators powered by Nonroad Small SI engines from engine family 9WLDS.3892WM;
- 70 model WF7000DEW generators powered by Nonroad Small SI engines from engine family 9WLDS.3892WM;
- 60 model WF8500DEW generators powered by Nonroad Small SI engines from engine family 9WLDS.4072WM;
- 60 model WF2.9D gasoline engines, labeled as Nonroad Small SI engine family 9WLDS.0801WM;
- 40 model WF5.5D gasoline engines from Nonroad Small SI engine family 9WLDS.1961WM;
- 50 model WF6.5D gasoline engines from Nonroad Small SI engine family 9WLDS.1961WM;
- 50 model WF15DE gasoline engines from Nonroad Small SI engine family 9WLDS.4072WM;
- 2 model LT-8.7/12A high pressure washers powered by Nonroad Small SI engines from engine family 9WLDS.1961WM;
- 2 model LT-8.7/12D high pressure washers powered by Nonroad Small SI engines from engine family 9WLDS.0801WM; and
- 2 model LT-8.7/22A high pressure washers powered by Nonroad Small SI engines from engine family 9WLDS.3892WM.

26. EPA regulates nonroad engines that are spark-ignited and have horsepower ratings less than 25 horsepower under Title II of the Clean Air Act and 40 C.F.R. Parts 90, 1054, 1060, 1065, and 1068. Under the authority in Title II of the Clean Air Act and the implementing regulations, EPA issues certificates of conformity for Nonroad Small SI engines that have been tested and fully described in the manufacturer's application for the certificate.

27. In the case of exhaust emissions, EPA requires that the Nonroad Small SI engine itself be tested and certified, rather than the equipment in which the engine is installed, thereby allowing engines produced under one certificate of conformity to be installed in different types of equipment. *See* 40 C.F.R. Part 90, Subpart B.

28. EPA issues Nonroad Small SI certificates of conformity on the basis of testing conducted by the manufacturer, and the description of the product submitted by the manufacturer in the certification application.

29. EPA specifies the format and content for the Nonroad Small SI certificate applications, and requires the applications to be delivered to EPA electronically, utilizing the

Filemaker Pro database software. Additionally, EPA regulations require the manufacturer to include with each application for certification (1) a signed statement that the test engine(s), as described in the manufacturer's application for certification, has been tested in accordance with the applicable test procedures, utilizing the required fuels and testing equipment, and that on the basis of such tests the engine conforms to the requirements in the regulations; and (2) an unconditional statement certifying that all engines in the engine family comply with all requirements of 40 C.F.R. Part 90 and the Clean Air Act. 40 C.F.R. § 90.107. *See also* ENVTL. PROT. AGENCY, INSTRUCTIONS FOR CERTIFYING NONROAD SPARK-IGNITION ENGINES (LESS THAN OR EQUAL TO 19 KILOWATTS) (APRIL 2007).

30. In EPA's Nonroad Small SI application format, item number 24 is labeled Adjustable Parameters, and includes columns titled Parameter, Adjustable Range (or N/A), Tamper Resistance Method (or N/A), and ARB Approval Reference.

31. EPA defines "adjustable parameters" for Nonroad Small SI engines as "any device, system, or element of design which is physically capable of being adjusted (including those which are difficult to access) and which, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation." 40 C.F.R. § 90.3.

32. EPA regulations require applicants for Nonroad Small SI certificates of conformity to include the following information for all adjustable operating parameters present on the engine:

(i) The nominal or recommended setting and the associated production tolerances;
(ii) The intended physically adjustable range;
(iii) The limits or stops used to establish adjustable ranges;
(iv) The production tolerances of the limits or stops used to establish each physically adjustable range;
(v) Information relating to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are effective in preventing adjustment of parameters to settings outside the manufacturer's intended physically adjustable ranges on in-use engines; and
(vi) Information relating to altitude kits to be certified, including: a description of the altitude kit; appropriate part numbers; the altitude ranges at which the kits must be installed on or removed from the engine for proper emissions and engine performance; statements to be included in the owner's manual for the engine/equipment combination (and other maintenance related literature) that: declare the altitude ranges at which the kit must be installed or removed; and state that the operation of the engine/equipment at an altitude that differs from that at which it was certified, for extended periods of time, may increase emissions; and a statement that an engine with the altitude kit installed will meet each emission standard throughout its useful life (the rationale for this assessment must

be documented and retained by the manufacturer, and provided to the Administrator upon request). 40 C.F.R. §90.107(d)(6).

33. In EPA's Nonroad Small SI application format, item number 36a is labeled Test Cycle and contains check boxes for test cycles A, B, C, Special Test Procedure, Alternate Test Procedure, and Other.

34. EPA emission tests for Nonroad Small SI engines consist of the measurement of emissions at various modes of engine operation (defined by engine speed in revolutions per minute) and engine load (defined as a percent of engine maximum power). The engine is brought to the speed and load point defined for the mode through the use of an engine dynamometer. Once the emissions have stabilized at a mode point, the emissions are measured. Once all of the modes of the test have been completed, the emission test results from each mode are weighted, in accordance with weightings designated in the regulations, to determine the emission test result that is used to demonstrate that the engine complies with the standards.

35. Test cycle B consists of six modes: idle (which is defined as zero load at the normal engine speed at which the engine idles), plus five modes at rated speed, which include 10% load, 25% load, 50% load, 75% load, and 100% load. Rated speed means the speed at which the manufacturer specifies the maximum rated power of an engine. Engines that operate only at rated speed must be tested using test cycle B. 40 C.F.R. §§ 90.3 and 90.119 and Table 2 of Appendix A to Subpart E of 40 C.F.R. Part 90.

36. A manufacturer must attach a label to all the certified Nonroad Small SI engines it produces. The label must contain the content described in EPA regulations and must be of a design that it is permanently attached and readable for the life of the engine, and incapable of being removed without being destroyed or defaced. 40 C.F.R. § 90.114.

37. EPA regulations prohibit anyone from importing a Nonroad Small SI engine unless it is covered by a certificate of conformity, and prohibit a manufacturer from selling or distributing into U.S. commerce a Nonroad Small SI engine unless it bears the required label. 40 C.F.R. §§ 90.1003(a)(1)(ii) and (4)(ii).

38. On April 15, 2008, Wildfire's certification consultant, Ms. Xizhen, A-406 Nanbei Business Center Hangzhou 310015 China, submitted applications for certification for Nonroad Small SI engine families 9WLDS.1961WM and 9WLDS.3892WM to EPA on behalf of Wildfire.

39. In its applications for certification for engine families 9WLDS.1961WM and 9WLDS.3892WM, Wildfire responded "N/A" to item 24 under the "Parameter" column heading. All other columns in item 24 were left blank.

40. Based on this response, I conclude that Wildfire sought certificates of conformity for Nonroad Small SI engine families 9WLDS.1961WM and 9WLDS.3892WM that have no adjustable parameters. If the engines had adjustable parameters, Wildfire was required to describe them in accordance with 40 C.F.R. § 90.107(d)(6).

41. In its applications for certification for engine families 9WLDS.1961WM and 9WLDS.3892WM, Wildfire responded to question 36a by checking the box "B" for Test Cycle B. This test cycle contains an idle mode.

42. On April 21, 2008, EPA issued certificates of conformity for engine families 9WLDS.1961WM and 9WLDS.3892WM to Wildfire on the basis of the information contained in Wildfire's applications for certification.

43. On May 25, 2009, Wildfire's certification consultant, Ms. Xizhen, A-406 Nanbei Business Center Hangzhou 310015 China, submitted applications for certification for Nonroad Small SI engine families 9WLDS.0801WM and 9WLDS.4072WM to EPA on behalf of Wildfire.

44. In its applications for certification for engine families 9WLDS.0801WM and 9WLDS.4072WM, Wildfire responded "N/A" to each column heading in item 24.

45. Based on this response, I conclude that Wildfire sought certificates of conformity for engine families 9WLDS.0801WM and 9WLDS.4072WM that have no adjustable parameters. If the engines had adjustable parameters, Wildfire was required to describe them in accordance with 40 C.F.R. § 90.107(d)(6).

46. In its applications for certification for engine families 9WLDS.0801WM and 9WLDS.4072WM, Wildfire responded to question 36a by checking the box "B" for Test Cycle B. This test cycle contains an idle mode.

47. On June 1, 2009, EPA issued certificates of conformity for engine families 9WLDS.0801WM and 9WLDS.4072WM to Wildfire on the basis of the information contained in Wildfire's applications for certification.

48. The Nonroad Small SI certificates of conformity issued by EPA for engine families 9WLDS.1961WM, 9WLDS.3892WM, 9WLDS.0801WM and 9WLDS.4072WM each

contain the following language: "This certificate of conformity covers only those new small nonroad engines which conform in all material respects to the design specifications that applied to those engines described in the documentation required by 40 CFR Part 90 and which are produced during the model year stated on this certificate. This certificate of conformity does not cover small nonroad engines imported prior to the effective date of the certificate."

49. On June 22, 2009, EPA directed Bionetics to inspect all models of the generators, pressure washers and other engines in this entry that had not been previously inspected. Bionetics inspected samples of the engines on June 24-25, 2009 and prepared a report of the inspection findings. Additionally, Bionetics had previously inspected several models from this entry during a June 2, 2009 inspection, and EPA inspected a sample model WF7000DEW generator from this entry on September 16, 2010.

50. Based upon my review of the inspection reports and photographs, it appears the model LT-8.7/12D pressure washer was not directly inspected. However, based on information contained in the entry invoice and information on this model available on the internet, it appears the LT-8.7/12D pressure washer contains an NRSI engine from engine family 9WLDS.0801WM. Other engines from engine family 9WLDS.0801WM in this entry were directly inspected.

51. Based upon my review of the inspection reports and photographs, it appears the WF3800DE model generator from this entry was not directly inspected, although the same model from a later entry (Cleveland entry no. 201-96040124) was inspected, as was a model WF3800DEW generator from this entry that, based on information received from Wildfire, has the same engine design as the WF3800DE but has certain additional features. Specifically, Wildfire informed EPA's inspector that the generator models ending in D have pull starts, the generator models ending in DE have electric starts, and the generators ending in DEW have electric starts and wheels.

52. Thus, based upon (1) the information contained in the relevant inspection reports for this entry, (2) the inspection of identical engines from this or a subsequent entry, and (3) the similarities in the engines between models that have different names but have the same engines installed, I conclude that all of the engines in this entry, whether loose or installed in equipment, contained carburetors that had adjustable idle mixture screws. An idle mixture screw is a tapered screw that is used to increase or decrease the mixture ratio of air to fuel to the carburetor while the engine is without a load and the throttle plate is closed (also known as idle).

53. Adjustment of the ratio of the air to fuel mixture affects emissions.

54. Since the idle mode is included in the test modes for Test Cycle B, the adjustment of the ratio of air to fuel mixture, by adjustment of the idle mixture screw, may affect the emission test result.

55. Thus, I conclude that the idle air fuel mixture screw is an adjustable parameter on each of the engines contained in this entry because (1) the idle mixture screw is physically capable of being adjusted and (2) since the Test Cycle B includes an idle mode, an adjustment of the idle mixture screw may affect emissions during emission testing.

56. Therefore, based on my knowledge and my review of the relevant documents and information, I conclude the engines in this entry are materially different from the engines described in the applicable certification applications because the engines in this entry have adjustable idle mixture screws (an adjustable parameter), while the engines described in the applications for certification do not. Thus, I conclude that none of the engines in this entry are covered by a certificate of conformity.

57. Additionally, the engines contained in this entry that are part of engine families 9WLDS.0801WM and 9WLDS.4072WM were imported on or about May 16, 2009, which is before the June 1, 2009 effective date of the certificates of conformity for these engine families. Thus, for this second reason, I conclude that these particular engines are uncertified. This conclusion affects the model 8500DEW generators, the model WF2.9D engines, the model LT-8.7/12D pressure washers, and the model WF15DE engines.

58. Upon various and multiple inspections, the engines contained in the following model generators were found to have labels that could be removed intact, without destroying or defacing the label: WF2800D, WF3800D, WF4800D, WF4800DEW, WF7000D, WF7000DEW, and WF8500DEW. In addition, the emission labels on the WF4800D and WF7000DEW generator engines list an incorrect engine family name (the label lists 9WLDS.1961WM whereas these engine models are included in the application for certification for engine family 9WLDS.3892WM).

Customs Entry No. 201-96040074

59. On or about May 27, 2009, Wildfire imported fourteen (14) model WF800-T highway motorcycles into the port of Cleveland.

60. EPA regulates highway motorcycles under Title II of the Clean Air Act and 40 C.F.R. Parts 85 and 86. Under the authority in Title II of the Clean Air Act and the implementing regulations, EPA issues certificates of conformity for vehicles that have been tested and fully described in the application for the certificate.

61. EPA issues these certificates of conformity on the basis of testing conducted by the manufacturer, and the description of the product submitted by the manufacturer in the certification application.

62. EPA regulations require the manufacturer to include with each application for certification a signed statement of compliance that the test engine(s), as described in the manufacturer's application for certification, has been tested in accordance with the applicable test procedures, and that on the basis of such tests the engine conforms to the requirements in the regulations. 40 C.F.R. § 86.437-78(a)(1).

63. On March 31, 2008, Wildfire's certification consultant, Systems Launch, submitted an application for certification for highway motorcycle engine family 9WLDC0.80NFG to EPA on behalf of Wildfire. Systems Launch submitted the application for certification via VERIFY. Systems Launch entered and submitted the CSI and also attached various electronic files, including a file named 9WLDC080NFG-complete.pdf. These various submissions constitute the application for certification for engine family 9WLDC0.80NFG.

64. The sole model listed in the application for certification for engine family 9WLDC0.80NFG is the WF800-T. The Loaded Vehicle Mass for model WF800-T is listed as 346 kg in the model summary section of the CSI, and as 346 kg in the data summary section of the CSI for the emission data vehicle (i.e., the test vehicle) which in this case was also a model WF800-T. Additionally, a copy of a sales brochure for the model WF800-T was included in the file 9WLDC080NFG-complete.pdf. This sales brochure lists the net weight (as opposed to the Loaded Vehicle Mass) of the WF800-T as 763 pounds (equivalent to 346 kg).

65. "Loaded Vehicle Mass" means curb mass plus 80 kg. 40 C.F.R. § 86.402.78.

66. "Curb Mass" means the actual or manufacturer's estimated mass of the vehicle with fluids at nominal capacity and with all equipment specified by the Administrator. 40 C.F.R. § 86.402.78.

67. I conclude that the net weight listed in the WF800-T brochure is equivalent to the Curb Mass. Thus, the Loaded Vehicle Mass of the WF800-T, based on the net weight listed in the brochure, is 426 kg, which is not consistent with the Loaded Vehicle Mass listed in the CSI.

68. EPA issued a certificate of conformity to Wildfire on May 27, 2008 for engine family 9WLDC0.80NFG. This certificate of conformity states: "This certificate covers only those vehicles which conform, in all material respects, to the design specifications that applied to those vehicles described in the documentation required by 40 CFR Part 86 and are produced

during the model year production period stated on the certificate as defined in 40 CFR Part 86." The documentation required by 40 C.F.R. Part 86 includes the application for certification.

69. On June 3, 2009, EPA contractors delivered a model WF800-T motorcycle, with VIN LTDHDV2389TWF0059, from this entry to be weighed on a certified scale owned by Ewusiak Company located at located at 1900 Commercial Avenue, Mingo Junction, Ohio. The vehicle was weighed on a Weigh Tronix scale, calibrated on April 27, 2009, and the vehicle was found to weigh 1500 lbs (680 kg).

70. Based on the documentation attached to the EPA contractor's report dated July 29, 2009, I conclude that the actual Loaded Vehicle Mass of the weighed vehicle is 760 kg (680 kg plus 80 kg).

71. Section 203(a)(1) of the Clean Air Act prohibits the importation of new highway motorcycles that are not covered by a certificate of conformity. 42 U.S.C. § 7522(a)(1).

72. Furthermore, EPA requires that every new motorcycle manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States be covered by a certificate of conformity. 40 C.F.R. § 86.407-78.

73. By its terms, a certificate of conformity does not cover vehicles that are materially different from those described in the application for certification.

74. EPA regulations specify different dynamometer test settings in 10 kg increments of Loaded Vehicle Mass. 40 C.F.R. § 86.529-98.

75. Based on my knowledge and my review of the relevant documents and information, I conclude that the motorcycles in this entry are not covered by the certificate of conformity for engine family 9WLDC0.80NFG because the motorcycles in this entry have significantly greater Loaded Vehicle Mass than vehicles described in the application for certification for engine family 9WLDC0.80NFG. This difference in actual Loaded Vehicle Mass is a material difference because the dynamometer test settings are different for a vehicle whose Loaded Vehicle Mass is 760 kg as compared to one whose Loaded Vehicle Mass is 346 kg. The certificate of conformity does not cover vehicles that are materially different from those described in the application for certification.

Customs Entry No. 201-96040124

76. On or about June 13, 2009, Wildfire imported the following goods into the port of Cleveland:

- 30 model WF2800D generators powered by Nonroad Small SI engines from engine family 9WLDS.1961WM;
- 110 model WF3800D generators powered by Nonroad Small SI engines from engine family 9WLDS.1961WM;
- 60 model WF3800DE generators powered by Nonroad Small SI engines from engine family 9WLDS.1961WM;
- 100 model WF3800DEW generators powered by Nonroad Small SI engines from engine family 9WLDS.1961WM;
- 15 model WF4800D generators powered by Nonroad Small SI engines from engine family 9WLDS.3892WM;
- 45 model WF4800DEW generators powered by Nonroad Small SI engines from engine family 9WLDS.3892WM;
- 30 model WF7000D generators powered by Nonroad Small SI engines from engine family 9WLDS.3892WM;
- 95 model WF7000DEW generators powered by Nonroad Small SI engines from engine family 9WLDS.3892WM; and
- 110 model WF8500DEW generators powered by Nonroad Small SI engines from engine family 9WLDS.4072WM.

77. EPA regulates nonroad engines that are spark-ignited and have horsepower ratings less than 25 horsepower under Title II of the Clean Air Act and 40 C.F.R. Parts 90, 1054, 1060, 1065, and 1068. Under the authority in Title II of the Clean Air Act and the implementing regulations, EPA issues certificates of conformity for Nonroad Small SI engines that have been tested and fully described in the manufacturer's application for the certificate.

78. In the case of exhaust emissions, EPA requires that the Nonroad Small SI engine itself be tested and certified, rather than the equipment in which the engine is installed, thereby allowing engines produced under one certificate of conformity to be installed in different types of equipment.

79. EPA issues Nonroad Small SI certificates of conformity on the basis of testing conducted by the manufacturer, and the description of the product submitted by the manufacturer in the certification application.

80. EPA specifies the format and content for the Nonroad Small SI certificate applications, and requires the applications to be delivered to EPA electronically, utilizing the Filemaker Pro database software. Additionally, EPA regulations require the manufacturer to include with each application for certification (1) a signed statement that the test engine(s), as described in the manufacturer's application for certification, has been tested in accordance with the applicable test procedures, utilizing the required fuels and testing equipment, and that on the

basis of such tests the engine conforms to the requirements in the regulations; and (2) an unconditional statement certifying that all engines in the engine family comply with all requirements of 40 C.F.R. Part 90 and the Clean Air Act. 40 C.F.R. § 90.107. *See also* ENVTL. PROT. AGENCY, INSTRUCTIONS FOR CERTIFYING NONROAD SPARK-IGNITION ENGINES (LESS THAN OR EQUAL TO 19 KILOWATTS) (APRIL 2007).

81. In EPA's Nonroad Small SI application format, item number 24 is labeled Adjustable Parameters, and includes columns titled Parameter, Adjustable Range (or N/A), Tamper Resistance Method (or N/A), and ARB Approval Reference.

82. EPA defines "adjustable parameters" for Nonroad Small SI engines as "any device, system, or element of design which is physically capable of being adjusted (including those which are difficult to access) and which, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation." 40 C.F.R. § 90.3.

83. EPA regulations require applicants for Nonroad Small SI certificates of conformity to include the following information for all adjustable operating parameters present on the engine:

(i) The nominal or recommended setting and the associated production tolerances;
(ii) The intended physically adjustable range;
(iii) The limits or stops used to establish adjustable ranges;
(iv) The production tolerances of the limits or stops used to establish each physically adjustable range;
(v) Information relating to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are effective in preventing adjustment of parameters to settings outside the manufacturer's intended physically adjustable ranges on in-use engines; and
(vi) Information relating to altitude kits to be certified, including: a description of the altitude kit; appropriate part numbers; the altitude ranges at which the kits must be installed on or removed from the engine for proper emissions and engine performance; statements to be included in the owner's manual for the engine/equipment combination (and other maintenance related literature) that: declare the altitude ranges at which the kit must be installed or removed; and state that the operation of the engine/equipment at an altitude that differs from that at which it was certified, for extended periods of time, may increase emissions; and a statement that an engine with the altitude kit installed will meet each emission standard throughout its useful life (the rationale for this assessment must be documented and retained by the manufacturer, and provided to the Administrator upon request). 40 C.F.R. §90.107(d)(6).

84. In EPA's Nonroad Small SI application format, item number 36a is labeled Test Cycle and contains check boxes for test cycles A, B, C, Special Test Procedure, Alternate Test Procedure, and Other.

85. EPA emission tests for Nonroad Small SI engines consist of the measurement of emissions at various modes of engine operation (defined by engine speed in revolutions per minute) and engine load (defined as a percent of engine maximum power). The engine is brought to the speed and load point defined for the mode through the use of an engine dynamometer. Once the emissions have stabilized at a mode point, the emissions are measured. Once all of the modes of the test have been completed, the emission test results from each mode are weighted, in accordance with weightings designated in the regulations, to determine the emission test result that is used to demonstrate that the engine complies with the standards.

86. Test Cycle B consists of six modes: idle (which is defined as zero load at the normal engine speed at which the engine idles), plus five modes at rated speed, which include 10% load, 25% load, 50% load, 75% load, and 100% load. Rated speed means the speed at which the manufacturer specifies the maximum rated power of an engine. Engines that operate only at rated speed must be tested using test cycle B. 40 C.F.R. §§ 90.3 and 90.119 and Table 2 of Appendix A to Subpart E of 40 C.F.R. Part 90.

87. A manufacturer must attach a label to all the certified Nonroad Small SI engines it produces. The label must contain the content described in EPA regulations and must be of a design that it is permanently attached and readable for the life of the engine, and incapable of being removed without being destroyed or defaced. 40 C.F.R. § 90.114.

88. EPA regulations prohibit anyone from importing a Nonroad Small SI engine unless it is covered by a certificate of conformity, and prohibit a manufacturer from selling or distributing into U.S. commerce a Nonroad Small SI engine unless it bears the required label. 40 C.F.R. § 90.1003(a)(1)(ii) and (4)(ii).

89. On April 15, 2008, Wildfire's certification consultant, Ms. Xizhen, A-406 Nanbei Business Center Hangzhou 310015 China, submitted applications for certification for Nonroad Small SI engine families 9WLDS.1961WM and 9WLDS.3892WM to EPA on behalf of Wildfire.

90. In its applications for certification for engine families 9WLDS.1961WM and 9WLDS.3892WM, Wildfire responded "N/A" to item 24 under the "Parameter" column heading. All other columns in item 24 were left blank.

91. Based on this response, I conclude that Wildfire sought certificates of conformity for Nonroad Small SI engine families 9WLDS.1961WM and 9WLDS.3892WM that have no adjustable parameters. If the engines had adjustable parameters, Wildfire was required to describe them in accordance with 40 C.F.R. § 90.107(d)(6).

92. In its applications for certification for engine families 9WLDS.1961WM and 9WLDS.3892WM, Wildfire responded to question 36a by checking the box "B" for Test Cycle B. This test cycle contains an idle mode.

93. On April 21, 2008, EPA issued certificates of conformity for engine families 9WLDS.1961WM and 9WLDS.3892WM to Wildfire on the basis of the information contained in Wildfire's applications for certification.

94. On May 13, 2009, in response to an inspection finding that the engines in the generators from entry 201-96040058 (imported on or about May 16, 2009) contained adjustable idle mixture screws, Wildfire provided a document to EPA's inspector contractors entitled "Plan of Action" that described how Wildfire planned to install slip buttons and hard plastic glue over the idle mixture screw on each unit in its possession, and each unit still at the manufacturer, and would supply the buttons to all dealers in the coming week. Wildfire indicated in the Plan of Action that the slip buttons and glue would make the idle air adjustment screw inaccessible on Wildfire's small non-road engines.

95. On May 25, 2009, Wildfire's certification consultant, Ms. Xizhen, A-406 Nanbei Business Center Hangzhou 310015 China, submitted an application for certification for Nonroad Small SI engine family 9WLDS.4072WM to EPA on behalf of Wildfire. These engines are assembled in China and Wildfire is the importer.

96. In its application for certification for engine family 9WLDS.4072WM, Wildfire responded "N/A" to each column heading in item 24.

97. Based on this response, I conclude that Wildfire sought a certificate of conformity for these Nonroad Small SI engines that have no adjustable parameters. If the engines had adjustable parameters, Wildfire was required to describe them in accordance with 40 C.F.R. § 90.107(d)(6).

98. EPA regulations state that an operating parameter is considered to be not adjustable if it is permanently sealed by the manufacturer or otherwise not normally accessible using ordinary tools. 40 C.F.R. § 90.112(b).

99. EPA regulations define a parameter as adjustable even if it is difficult to access, and require the manufacturer to explain, in its application for certification, why the physical limits, stops, or any other means used to inhibit adjustment are effective in preventing adjustment of parameters to settings outside the intended physically adjustable ranges on in-use engines. 40 C.F.R. §§ 90.3 and 90.107(d)(6)(v).

100. In its application for certification for engine family 9WLDS.4072WM, Wildfire responded to question 36a by checking the box "B" for Test Cycle B. This test cycle contains an idle mode.

101. On June 1, 2009, EPA issued the certificate of conformity for engine family 9WLDS.4072WM to Wildfire on the basis of the information contained in Wildfire's application for certification.

102. The Nonroad Small SI certificates of conformity issued by EPA for engine families 9WLDS.1961WM, 9WLDS.3892WM, and 9WLDS.4072WM each contain the following language: "This certificate of conformity covers only those new small nonroad engines which conform in all material respects to the design specifications that applied to those engines described in the documentation required by 40 CFR Part 90 and which are produced during the model year stated on this certificate. This certificate of conformity does not cover small nonroad engines imported prior to the effective date of the certificate."

103. On September 29, 2009, EPA directed Bionetics to inspect all nine models of the generators in this entry. Bionetics inspected samples of the engines on October 19-21, 2009 and prepared a report of the inspection findings. Based on information contained in Bionetics' report, all of the sampled engines in this entry, whether loose or installed in equipment, contained carburetors that had easily removable plastic glue plugs covering the head of the idle mixture screw. In less than 15 minutes using simple tools, EPA's inspectors were able to remove the carburetor and remove the plastic glue plug from a sampled engine from each of the equipment models in this entry. When the plastic glue plugs were removed, the idle mixture screws were found to be entirely adjustable.

104. An idle mixture screw is a tapered screw that is used to increase or decrease the mixture ratio of air to fuel to the carburetor while the engine is without a load and the throttle plate is closed (also known as idle).

105. Adjustment of the ratio of the air to fuel mixture affects emissions.

106. Since the idle mode is included in the test modes for Test Cycle B, the adjustment of the ratio of air to fuel mixture, by adjustment of the idle mixture screw, may affect the emission test result.

107. Thus, I conclude that the idle air fuel mixture screw is an adjustable parameter on each of the engines contained in this entry because (1) the idle mixture screw is physically capable of being adjusted and (2) since the Test Cycle B includes an idle mode, an adjustment of the idle mixture screw may affect emissions during emission testing.

108. Therefore, based on my knowledge and my review of the relevant documents and information, I conclude that the engines in this entry are materially different from the engines described in the applicable applications for certification because the engines in this entry have easily accessible adjustable idle mixture screws (an adjustable parameter), while the engines described in the applications for certification have no adjustable parameters. Thus, I conclude that none of the engines in this entry are covered by a certificate of conformity.

109. Upon inspection, the engines contained in all of the generators in this entry bore labels that could be removed intact, without destroying the label or making it illegible.

Customs Entry No. 201-96040116

110. On or about June 29, 2009, Wildfire imported 168 model WFH50-S2E highway scooters and 98 model WFH50-S2 highway scooters into the port of Cleveland.

111. EPA regulates highway motorcycles under Title II of the Clean Air Act and 40 C.F.R. Parts 85 and 86. Under the authority in Title II of the Clean Air Act and the implementing regulations, EPA issues certificates of conformity for vehicles that have been tested and fully described in the application for the certificate.

112. EPA issues these certificates of conformity on the basis of testing conducted by the manufacturer, and the description of the product submitted by the manufacturer in the certification application.

113. EPA regulations require the manufacturer to include with each application for certification a signed statement of compliance that the test engine(s), as described in the manufacturer's application for certification, has been tested in accordance with the applicable test procedures, and that on the basis of such tests the engine conforms to the requirements in the regulations. 40 C.F.R. § 86.437-78(a)(1).

114. On April 6, 2009, Wildfire's certification consultant, Systems Launch, submitted an application for certification for highway motorcycle engine family AWLDC0.05MME to EPA on behalf of Wildfire. This application for certification was submitted via VERIFY. Systems Launch entered the CSI information and also attached various electronic files, including a file named AWLDC005MME-complete.pdf. These various submissions constitute the application for certification for engine family AWLDC0.05MME.

115. The models listed in the application for certification for engine family AWLDC0.05MME are WFH50-S2E, WFH50-S2P, and WFH50-S2. The motorcycle displacement class listed for each of these models in the CSI is Class I-A and is listed as 50 cubic centimeters (cc) on the product information included in Wildfire's application materials for model WFH50-S2 and is listed as 49 cc on Wildfire's sample emission control label for this engine family, also submitted as part of the certification application.

116. EPA regulations require manufacturers to group motorcycles into engine families that are expected to have similar emission characteristics. In order to be classed in the same engine family, every motorcycle model in the engine family must have the same engine displacement class (e.g. Class I-A, Class I-B, etc.). 40 C.F.R. § 86.420-78.

117. EPA regulations specify different requirements for different engine displacement classes. For example, EPA regulations utilize the term "Useful Life" to define that portion of a motorcycle's life for which manufacturers are liable for repairing motorcycles that do not meet the emission standards. For Class I-A motorcycles (those motorcycles that have engine displacements less than 50 cc), the Useful Life is 5 years or 6,000 kilometers (km), whichever comes first. For Class I-B motorcycles (those engines with displacements from 50cc, and up to but not including 170cc) the Useful Life is 5 years or 12,000 km, whichever occurs first. 40 C.F.R. §§ 86.402-98 and 419-2006, and 42 U.S.C. § 7541.

118. EPA issued a certificate of conformity to Wildfire with an effective date of August 13, 2009 for engine family AWLDCO.05MME. The certificate covers Class I-A highway motorcycles and states "This certificate covers only those vehicles which conform, in all material respects, to the design specifications that applied to those vehicles described in the documentation required by 40 CFR Part 86 and are produced during the model year production period stated on the certificate as defined in 40 CFR Part 86."

119. On September 14-15, 2010, an EPA inspector examined a sample motorcycle from each model in this entry. As part of the inspection, the inspector measured the displacement of the engines contained within each model using the EPA and Customs inspection protocol "Determination of Displacement of Reciprocating Internal Combustion Engines" dated March 10, 2005.

120. EPA's inspector measured the bore and stroke of these engines using a Craftsman caliper, graduated in 0.001 inch increments, that was calibrated on September 12, 2010.

121. The bore of an engine is the inside diameter of the cylinder, and the stroke is the distance the piston travels within the cylinder between its highest point and its lowest point.

122. EPA's measurements showed the bore of the WFH50-S2E motorcycle engine bearing the VIN L8XTBB806A0WF0025 is 1.731 inches, and the stroke is 1.637 inches. EPA's measurements showed the bore of the WFH50-S2 motorcycle engine bearing the VIN L8XTBB501A0WF0311 is 1.731 inches, and the stroke is 1.637 inches.

123. After calculating the cylinder volume from the bore and stroke measurements and rounding to the nearest integer, EPA's inspector concluded that the displacement of the WFH50-S2E motorcycle engine is 63cc, and the displacement of the model WFH50-S2 motorcycle engine is also 63cc.

124. Section 203(a)(1) of the Clean Air Act prohibits the importation of new highway motorcycles that are not covered by a certificate of conformity. 42 U.S.C. § 7522(a)(1).

125. Furthermore, EPA requires that every new motorcycle manufactured for sale, sold, offered for sale, introduced or delivered for introduction into commerce, or imported into the United States be covered by a certificate of conformity. 40 C.F.R. § 86.407-78.

126. By its terms, a certificate of conformity does not cover vehicles that are materially different from those described in the application for certification.

127. Based on my knowledge and my review of the relevant documents and information, I conclude that the motorcycles in this entry are not covered by the certificate of conformity for engine family AWLDCO.05MME because the difference in the displacement between the imported motorcycles in this entry (63cc) and the displacement of the certified motorcycles covered by the certificate for engine family AWLDC0.05MME (49cc) is a material difference. The difference in displacement is a material difference because the size of the engine in the motorcycle will affect the motorcycle's emissions in grams/km. In addition, the difference in displacement is a material difference because the motorcycles that are covered by the certificate for engine family AWLDC0.05MME are certified as Class I-A, whereas the imported motorcycles in this entry would be correctly classified as Class I-B. EPA would not allow Class I-B motorcycles to be included in a Class I-A engine family because, by definition, the emissions are expected to be different.

Customs Entry No. 201-96040132

128. On or about July 10, 2009, Wildfire imported 66 model WFG110-1RB go-karts into the port of Cleveland.

129. The WFG110-1RB go-karts meet the definition of an "all-terrain vehicle" (ATV) under 40 C.F.R. § 1051.801.

130. EPA regulates ATVs and other recreational vehicles under Title II of the Clean Air Act and 40 C.F.R. Parts 1051and 1068. Under the authority in Title II of the Clean Air Act and the implementing regulations, EPA issues certificates of conformity for recreational vehicles that have been tested and fully described in the manufacturer's application for the certificate.

131. EPA issues certificates of conformity on the basis of testing conducted by the manufacturer, and the description of the product submitted by the manufacturer in the certification application.

132. The application for certification must contain a description of all adjustable operating parameters. 40 C.F.R. § 1051.205(q). The definition of 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 normal in-use operation. 40 C.F.R § 1051.801.

133. EPA regulations also require the certification application include an unconditional certification that all vehicles and/or engines in the applicable engine family comply with the all applicable regulations. 40 C.F.R. § 1051.205(s).

134. On May 17, 2009, Systems Launch submitted an application for certification for engine family AWLDXO.15NFG to EPA on behalf of Wildfire. Systems Launch submitted the application for certification via VERIFY. Systems Launch entered and submitted the CSI and also attached various electronic files, including a file named AWLDX015NFG-complete.pdf. These various submissions constitute the application for certification for engine family AWLDX0.165NFG.

135. The application for engine family AWLDX0.15NFG included a model variously described as WFG110-1RB (contained in the file of supporting information named AWLDX015NFG-appV2.doc) and WF110-1RB (as listed in the CSI), which is described as an all-terrain vehicle powered by a 110cc engine with a loaded vehicle mass of 152 kg.

136. Within the file named AWLDX015NFG-complete.pdf included in the application for certification of engine family AWLDX0.15NFG, is a copy of a contractual agreement

between Zhejiang Yongkang Huabao Electric Appliance Company Limited (Huabao) and Wildfire. The contractual agreement states that the Importer (defined as Wildfire in the contractual agreement) shall solely rely upon the Manufacturer (defined as Huabao in the contractual agreement) to provide products that shall be covered by the Certificate of Conformity, and the Manufacturer shall provide products only produced at the location described in the application. The certification application lists the location of the Huabao factory as Guoshan, Zhiying Street, Yongkang, Zhejiang, China.

137. Furthermore, as part of the information contained in the file named AWLDX015NFG-complete.pdf, Wildfire stated that the adjustable operating parameters for this engine family were idle speed and idle air mixture. The application did not list the carburetor jet needle as an adjustable parameter.

138. EPA issued a certificate of conformity to Wildfire for engine family AWLDX0.15NFG on May 26, 2009. The certificate of conformity states "This certificate covers only those vehicles which conform, in all material respects, to the design specifications that applied to those vehicles described in the documentation required by 40 CFR Parts 1051, 1065 and 1068 and are produced during the 2010 model year production periods as defined in 40 CFR Parts 1051, 1065 and 1068."

139. Subsequent to the importation of the vehicles in this entry, Wildfire obtained a certificate of conformity for engine family AWLDX0.15JNK, effective on November 5, 2009. This certificate covers a model WFB110-1RB go-kart manufactured by Buyang Group Company Limited, located at 88 Tangdianshan, Yongkang, Zhejiang, China. The model WFB110-1RB shares the same model description (in the CSI) as the model WFG110-1RB in engine family AWLDX0.15NFG. Wildfire indicated in its application for certification for engine family AWLDX0.15JNK, that it was adding a new factory. The only factory listed in this application for certification is Buyang's factory located at 88 Tangdianshan, Yongkang, Zhejiang, China.

140. An EPA inspector examined a sample go-kart bearing the VIN BY110RB54ALWF0052 from this entry on September 14-15, 2010.

141. EPA's inspector was unable to find an emission control information label installed on the sampled go-kart or any information indicating the applicable engine family associated with the go-karts.

142. The inspected go-kart bore a stamped data plate that indicated the VIN was BY110RB54ALWF0052, the date of manufacture was 01/2010, the model name was WFG110-RB, the weight was 134 kilograms, and the maximum load was 100 kilograms. The inspected go-kart also bore a decal on its side stating it was a Wildfire Off Road WFG110-RB. The

invoice for this entry stated the go-karts were model WFG110-1RB, and were sold by Buyang Group Company Limited (Buyang), located at 88 Tangdianshan Industrial Zone, Yongkang, Zhejiang, China.

143. Buyang is a Chinese manufacturer of all terrain vehicles and other recreational vehicles. http://www.buyangvehicle.com/about-us.html.

144. Wildfire has posted on its website a page which contains links to copies of certificates of conformity for each of its products. The link from this page for Wildfire's product described as "Rail Buggies/Go-Karts WFG110-RB" links to a copy of the certificate of conformity issued for engine family AWLDX0.15NFG.
http://www.wildfiremotors.com/index.php?option=com_content&task=view&id=23&Itemid=66

145. The EPA inspector found that the sampled go-kart has a readily accessible and adjustable carburetor jet needle, which is a tapered needle fastened in the slider portion of the upper carburetor that slides down into the needle jet located in the center of the carburetor. The taper on the needle determines how much fuel can be drawn into the intake stream. The needle moves up and down in the needle jet in response to throttle movement, all the way into the needle jet for ¼ throttle opening, and most of the way out of the tube for 3/4 throttle opening. Some carburetor needles, such as this one, have a number of slots to enable adjustments to air fuel mixture. Raising the needle in the slider will make the air fuel mixture across all throttle settings richer (more fuel) and lowering the needle will make it leaner (less fuel). The adjustable needle jet is an adjustable parameter because altering the air fuel ratio affects emissions.

146. EPA regulations prohibit the importation of recreational vehicles, including go-karts such as those in this entry, unless they are covered by a certificate of conformity, and bear the required label. 40 C.F.R. § 1068.101(a)(1).

147. By its terms, a certificate of conformity does not cover vehicles that are materially different from those described in the application for certification.

148. As described in further detail below, I conclude from my review of the inspection reports and the certification information that the go-karts in this entry are not covered by a certificate of conformity because: (1) the imported go-karts were not manufactured at the facility listed in the certification application; (2) the imported go-karts weighed more than the go-karts listed on the certification application; and (3) the imported go-karts had adjustable carburetor jet needles whereas the go-karts covered by the certification did not.

149. First, the go-karts are not covered by the certificate of conformity for engine family AWLDX0.15NFG because they were not manufactured by the company, or at the facility,

listed in the application for engine family AWLDX0.15NFG. The application explicitly states that the vehicles covered by the certificate will be only those produced at the location described in the application and that the importer will solely rely on the manufacturer named in the application (Huabao) to provide the certified products. I further conclude that the go-karts in this entry are not covered by the certificate of conformity for engine family AWLDX0.15JNK because the certificate of conformity for engine family AWLDX0.15JNK became effective on November 5, 2009, which was after the importation of the go-karts in this entry that were imported on or about July 10, 2009. The certificate of conformity for engine family AWLDX0.15JNK states that it does not cover vehicles sold, offered for sale, introduced, or delivered for introduction into commerce in the U.S. prior to the effective date of the certificate.

150. Based upon my review of other Wildfire certificates of conformity, I conclude there are no other certificates of conformity that could cover the go-karts in this entry because no other certificates list models WFG110-1RB, WF110-1RB or WFB110-1RB.

151. The second reason why I conclude that the go-karts in this entry are not covered by the certificate of conformity for engine family AWLDX0.15NFG is because the go-karts in this entry are heavier than the go-karts described in the application for certification.

152. EPA regulations specify that all-terrain vehicles and off-road motorcycles should be tested using the equipment, procedures, and duty cycle in 40 C.F.R. Part 86, subpart F. 40 C.F.R. § 1051.501(b). These EPA regulations specify different dynamometer test settings in 10 kg increments of Loaded Vehicle Mass. 40 C.F.R. § 86.529-98.

153. Loaded Vehicle Mass means curb mass plus 80 kg. 40 C.F.R. § 86.402.78.

154. Curb Mass means the actual or manufacturer's estimated mass of the vehicle with fluids at nominal capacity and with all equipment specified by the Administrator. 40 C.F.R. § 86.402.78.

155. I conclude that the weight listed on the label attached to the sampled go-kart is equivalent to the Curb Mass. Thus, the Loaded Vehicle Mass of the sampled WFG110-RB in the entry, based on the net weight listed on the label, is equal to 134 kilograms plus 80 kg, or 214 kg.

156. The certification application for engine family AWLDX0.15NFG lists the loaded vehicle mass of the WF110-1RB as 152 kg.

157. Thus, the go-karts in this entry have significantly greater Loaded Vehicle Mass (214 kg) than vehicles described in the application for certification for engine family AWLDX0.15JNK (152 kg). This difference in actual Loaded Vehicle Mass is a material difference because the dynamometer test settings are different for a vehicle whose Loaded

Vehicle Mass is 214 kg as compared to one whose Loaded Vehicle Mass is 152 kg. The certificate of conformity does not cover vehicles that are materially different from those described in the application for certification.

158. The third reason I conclude that the go-karts in this entry are not covered by the certificate of conformity for engine family AWLDX0.15NFG is because the carburetors on the go-karts in this entry contain an adjustable parameter that the certified go-karts do not.

159. Manufacturers may certify vehicles with adjustable parameters, but must meet the emission standards throughout the adjustable range. 40 C.F.R. § 1051.235(c)

160. In the application for certification for engine family AWLDX0.15NFG, as part of the information contained in the file named AWLDX015NFG-complete.pdf, Wildfire stated that the adjustable operating parameters for this engine family were idle speed and idle air mixture. The application did not list the carburetor jet needle as an adjustable parameter.

161. The design of the go-karts in this entry is different from the vehicles covered by the certificate of conformity for engine family AWLDX0.15NFG because the go-karts in this entry have adjustable jet needles, while the certified vehicles do not. This is a material difference because adjusting the jet needle position alters the air to fuel ratio, and thus alters emissions. Since, by the terms of the certificate of conformity, the certificate covers only those vehicles that conform in all material respects to the description in the application for certification, I conclude that the go-karts in this entry are uncertified for this third reason.

162. EPA regulations require manufacturers to install, at the time of manufacture, a permanent and legible emission control information label identifying each certified vehicle. 40 C.F.R. § 1051.135(b).

163. EPA regulations prohibit the importation of recreational vehicles, including go-karts such as those in this entry, unless they are covered by a certificate of conformity, and bear the required label. 40 C.F.R. § 1068.101(a)(1).

164. An EPA inspector examined a sample go-kart bearing the VIN BY110RB54ALWF0052 from this entry on September 14-15, 2010 and was unable to find an emission control information label installed on the sampled go-kart.

Signed this 28th day of January, 2011, under penalty of perjury.

Anne K. Wick

Anne Wick

DECLARATION OF TESSIE DOUGLASS UNDER PENALTY OF PERJURY

I, Tessie Douglass, having discussed the following with U.S. Customs and Border Protection (CBP) Counsel and other CBP employees, upon belief respectfully declare and state as follows:

1. I am the Fines, Penalties, and Forfeitures Officer of the Fines, Penalties and Forfeitures Office of the United States Customs and Border Protection in Cleveland, Ohio. I have been with the Agency for approximately 22 years.

2. The primary responsibility for administering the nation's laws relating to import, export and the collection of duties is given to CBP.

3. In addition to CBP requirements, prohibitions and restrictions on importations are subject to the laws and regulations administered by other U.S. government agencies with which CBP cooperates in enforcement. In order to fulfill their respective responsibilities, CBP and other government agencies work in close cooperation.

4. Presently, I make administrative decisions on cases (seizures, penalties and liquidated damages) issued by CBP or other agency's, as delegated to me by Customs Regulations (19 C.F.R. 171): ensure seized property is maintained properly and dispositions are accomplished as required by law; carry out decisions on penalties and seized property made by the District Court on Customs initiated criminal and civil cases.

5. The information contained in this statement under penalty of perjury is based on personal knowledge, information and assistance provided to me by other CBP employees and federal agencies, as well as information obtained in the course of my official duties.

6. This statement under penalty of perjury is made in support of a civil action to be filed by the United States Attorney's Office in the United States District Court, Southern District of Ohio, against Cleveland seizure/entry case numbers 2009-4101-000060/201-96040074; 2009-4101-000062/201-96040116; 2009-4101-000064/201-96040132; 2009-4101-000065/201-96040033; 2009-4101-000067/201-96040041; 2009-4101-000072/ 201-96040058; and 2009-4101-000073/201-96040124, involving merchandise imported by Snyder Computer Systems Inc. DBA Wildfire Motors. The information regarding the seizures and leading to the request for civil forfeiture by the U.S. District Court is presented below.

7. As the documents in our case files indicate, the vehicles, engines, generators and windshields were manufactured in China and shipped via vessel and rail to Cleveland, Ohio arriving between 05/08/2009 and 07/13/2009. Formal entries were made with CBP between 05/11/2009 and 07/15/2009. Inspections were

conducted by CBP upon entry of the merchandise between 05/13/2009 and 07/15/2009.

8. The vehicles, engines, generators and windshields were found to be inadmissible for failure to comply with Environmental Protection Agency ("EPA") certificates of compliance and/or regulations and Department of Transportation (" DOT") safety standards.

9. Between 6/18/2009 and 9/2/2009 the vehicles, engines, generators and windshields were seized after CBP received letters from EPA and/or DOT requesting seizure for noncompliance with those agency's regulations. Between 08/05/2009 and 09/09/2009, notices of seizure were issued in the above cases.

10. Between 07/06/2009 and 09/08/2009, Constructive Seizure Agreements were executed on the above cases so that the importer took custody of the merchandise to avoid the accumulation of storage and maintenance costs.

11. Between 09/21/2009 and 09/28/2009, the forfeiture proceedings were initiated and notices were sent to importers.

12. On 10/19/2009, plaintiff submitted a cost bond to stay administrative forfeiture proceedings and to seek a judicial determination of forfeiture.

13. On September 9, 2009, Wildfire Motors filed an action with the District Court for the Northern District of Ohio against CBP seeking declaratory and injunctive relief, as well as the return of its property (Case No. 1:09 CV 2074). That action was dismissed (without prejudice) on September 11, 2009.

14. On February 22, 2010 Wildfire brought an action in this court against the Environmental Protection Agency (EPA), the Department of Transportation (DOT) and CBP alleging violations of due process and the application of various regulations to its merchandise (Case No. 2:10 CV 161). By motion, that action was dismissed on August 9, 2010, with the exception of the request that the Court order the United States to initiate a forfeiture action.

15. On April 13, 2010, the forfeiture cases at issue were referred to the U.S. Attorney's Office for the Southern District of Ohio pursuant to the provisions of 19 U.S.C. §§ 1603 and 1604 to institute judicial forfeiture proceedings.

I, Tessie Douglass, declare under penalty of perjury that the foregoing is true and correct.

In Cleveland, Ohio, this 7th day of February 2011.

Tessie Douglass
Fines, Penalties and Forfeitures Officer

ATTACHMENT 2

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, v. SIXTY-SIX (66) WILDFIRE MODEL WFB150-Q2 OFF-ROAD ALL-TERRAIN-VEHICLES, *et. al.*, Defendants.	NO. C11-5913 BHS **FIRST AMENDED COMPLAINT FOR FORFEITURE IN *REM***

COMES NOW, the United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Francis Franze-Nakamura, Assistant United States Attorney for said District, and alleges:

I. NATURE OF THE ACTION

1. This is an amended complaint for the forfeiture *in rem* of the following property:

a. Sixty-six (66) Wildfire Model WFB 150-Q2 off-road all-terrain vehicles;

b. Eighty-seven (87) WildfireWF3800D portable electric generators;

c. Fifty (50) Wildfire WF3800DE portable electric generators;

d. Fifty (50) Wildfire WF3800DEW portable electric generators;

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e. Forty (40) Wildfire WF7000DEW portable electric generators; and

f. Sixty (60) Wildfire WF8500DEW portable electric generators;

(hereinafter "defendant ATVs" and "defendant generators" respectively, and "defendant merchandise" collectively), brought pursuant to the provisions of Title 19, United States Code, Section 1595a(c)(2), Merchandise Introduced Contrary to Law.

2. The defendant generators were seized on January 7, 2010, at the Port of Tacoma, Washington.

3. The defendant ATVs were seized on January 4, 2010, at the Port of Tacoma, Washington.

4. As alleged below, the defendant merchandise constitutes merchandise introduced into the United States contrary to law because the defendant merchandise was not in conformity with the Clean Air Act and the applicable regulations of the U.S. Environmental Protection Agency's ("EPA").

II. JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to Title 28, United States Code, Sections 1345 and 1355 and Title 19, United States Code, Section 1595a.

6. This Court has venue pursuant to Title 28, United States Code, Section 1395.

7. The defendant generators and ATVs as described above are now and during the pendency of this action will be in the jurisdiction of this Court.

III. LEGAL BASIS FOR FORFEITURE

8. This case is brought within the five-year statute of limitations set forth in Title 19, United States Code, Section 1621.

9. The Clean Air Act and the EPA's implementing regulations, prohibit, *inter alia*, a "manufacturer" from importing or introducing into commerce certain new motor vehicles or engines -- such as the defendant merchandise -- unless the vehicle or engine is

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covered by a current "certificate of conformity" issued by the EPA. *See* 42 U.S.C. § 7522(a)(1); 42 U.S.C. § 7547(d).

10. The EPA issues certificates of conformity based on testing conducted by the manufacturer, and the description of the product submitted by the manufacturer in the application for certification. The certificates of conformity certify, prior to importation and introduction of the merchandise into the stream of commerce, that the merchandise complies with federal emission standards. *See* 42 U.S.C. § 7522.

11. EPA regulations require manufacturers to establish, maintain, and retain certain records. *See, e.g.*, 40 C.F.R. § 1051.250. When a manufacturer violates its record keeping obligations with respect to its certificates of conformity, the EPA may void those certificates of conformity. *See* 40 C.F.R. § 1051.255(d). When the EPA voids a certificate of conformity, that certificate is voided *ab initio* and is considered never to have been granted. 40 C.F.R. § 1068.30. Consequently, all merchandise introduced under a voided certificate is noncompliant. *Id.*

12. EPA regulations also require manufacturers to conduct production line testing of certain engines and report the results of that testing to the EPA. *See* 40 C.F.R. Part 90 Subpart H. Failure to conduct such testing, or to submit such required reports, is a violation of sections 203(a)(2)(A) and (B), respectively, of the Clean Air Act (42 U.S.C. § 7522(a)(2)(A)&(B) and the implementing regulation 40 C.F.R. § 90.1003(a)(2)(i) and (iii).

13. United States Customs and Border Protection ("CBP") plays a central role in enforcing the EPA's requirements for merchandise that is introduced for importation into the United States. *See* 19 C.F.R. §§ 12.73 and 12.74.

14. Merchandise that is introduced or attempted to be introduced into the United States contrary to law is subject to seizure and forfeiture. 19 U.S.C. § 1595(c).

FIRST GROUND FOR RELIEF -- 19 U.S.C. § 1595(c)(2)(A)

15. Title 19, United States Code, Section 1595a(c)(2)(A), provides that merchandise that is subject to any restriction or prohibition which is imposed by laws

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relating to health, safety, or conservation, and is not in compliance with the applicable rule, regulation or statute, is subject to seizure and forfeiture. Such laws include the Clean Air Act and the supporting EPA and CBP regulations.

16. As alleged below, the defendant merchandise was introduced or attempted to be introduced into the United States contrary to law because the defendant merchandise was not covered by the applicable certificates of conformity.

17. As further alleged below, the defendant generators are non-compliant and therefore were introduced or attempted to be introduced into the United States contrary to law because Wildfire failed to conduct and report production line testing with respect to the engines used in the defendant generators.

18. As further alleged below, the defendant ATVs were introduced or attempted to be introduced into the United States contrary to law because the certificate of conformity for the defendant ATVs was voided by the EPA.

19. As further alleged below, the defendant ATVs are non-compliant and therefore were introduced or attempted to be introduced into the United States contrary to law because Wildfire failed to maintain certain required records in connection with the certificate of conformity and emission testing for the defendant ATVs.

SECOND GROUND FOR RELIEF -- 19 U.S.C. § 1595(c)(2)(B)

20. Title 19, United States Code, Section 1595a(c)(2)(B) provides that merchandise whose "importation or entry requires a license, permit, or other authorization of an agency of the United States Government" may be subject to seizure and forfeiture if the merchandise "is not accompanied by such license, permit or authorization."

21. As alleged below, the defendant merchandise was introduced or attempted to be introduced into the United States contrary to law because the merchandise was not accompanied with authorization from the EPA as required by the Clean Air Act's certificate of conformity requirements.

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IV. FACTUAL BASIS FOR FORFEITURE

22. Facts and circumstances relevant to the inspection and seizure of the defendant merchandise are set forth in the attached Declaration of Kathleen Mar, Ph.D., which is incorporated as if fully set forth herein.

23. Snyder Computer Systems, Inc., d/b/a Wildfire Motors ("Wildfire") is an Ohio corporation with its principal place of business in Steubenville, Ohio, and is the owner of the defendant merchandise.

24. Wildfire is the "manufacturer" of the defendant merchandise, as defined in Title 42, United States Code, Section 7550(1).

A. The Defendant Generators

Non-Conforming Adjustable Parameters

25. Pursuant to the Clean Air Act, the EPA's Spark-Ignition ("SI") Nonroad Regulations, Title 40, Code of Federal Regulations, Part 90, set emissions standards for non-road gasoline engines, and establish testing, certification, and labeling requirements. Specifically, Title 40, Code of Federal Regulations, Section 90.1003(a)(1) prohibits any person from importing into the United States any spark-ignited non-road engine unless such engine is covered by an EPA-issued certificate of conformity, and bears a permanently affixed EPA emissions label or is properly exempted or excluded from the certification requirements.

26. Certified engines equipped with adjustable parameters must meet emission standards at all points throughout their adjustable range. 40 C.F.R. § 90.112(a). An "adjustable parameter" is "any device, system, or element of design which is physically capable of being adjusted (including those which are difficult to access) and which, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation." 40 C.F.R. § 90.3. An operating parameter is not considered adjustable if it is permanently sealed by the manufacturer or otherwise not normally accessible using ordinary tools. 40 C.F.R. § 90.112(b).

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27. Engine manufacturers must disclose in the application for certification a description of "all adjustable operating parameters," including limits or stops used to establish the adjustable range. 40 C.F.R. § 90.107(d)(6).

28. In its applications for the certificates of conformity, Wildfire, through its certification consultant, did not list any adjustable parameters as being present in the merchandise to be covered by the certificates.

29. The certificates of conformity issued by the EPA pursuant to Wildfire's applications stated that the certificates only covered those engines that conform in all material respects to the design specifications that applied to the engines described in Wildfire's application materials.

30. On or about October 13, 2009, Wildfire imported the defendant generators into the United States through the Port of Tacoma.

31. All of the defendant generators are equipped with an idle mixture screw on the carburetor which regulates the ratio of air to fuel to the engine while the engine is operating with the throttle plate closed or slightly opened.

32. The idle mixture screws on all of the above-defendant generators are covered in an epoxy-like substance.

33. The idle mixture screws are not permanently sealed.

34. The epoxy-like substance covering on the idle mixture screws can be removed and the screws can be adjusted using normally available tools.

35. The idle mixture screws are an "adjustable parameter" on each of the defendant generators pursuant to Title 40, Code of Federal Regulations, Sections 90.3 and 90.112(b).

36. The defendant generators were uncertified when they entered the United States because their engines have an adjustable parameter and the engines described in the relevant applications for certification do not.

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37. On February 2, 2010, after receiving timely notice of seizure, Wildfire elected to petition CBP for administrative relief with respect to the seizure of the defendant generators.

38. By way of a decision letter dated February 17, 2010, CBP found the defendant generators "in violation of 19USC1959a(c), for underlying violations of 40CFR90.1003(a)(1)(ii), because the engines have adjustable parameters, due to their idle mixture screws, that were not properly disclosed in [Wildfire's] application for certification."

39. In its decision letter, CBP granted remission of the forfeiture upon payment of 80% of the value of the goods and all costs of storage provided that Wildfire immediately export the defendant generators to a non-contiguous country.

40. Wildfire did not file a supplemental petition, file a protest, or otherwise take any steps to contest or appeal CBP's decision administratively.

41. By way of a letter dated March 16, 2010, Wildfire indicated that it was unilaterally withdrawing its petition for administrative relief and requested referral to the U.S. Attorney's Office.

Other Deviations from the Certificates of Conformity

42. The defendant generators failed to conform to applicable certificates of conformities in other respects.

43. For example, the certificate of conformity applications submitted by Wildfire indicate that the engines of the defendant generators were produced at a production plant in Steubenville, Ohio.

44. To the contrary, the engines were produced in China.

Failure to Conduct and Report Production Line Testing

45. Under the EPA's Production Line Testing Program (40 C.F.R. Part 90 Subpart H) certain manufacturers are required to conduct production line testing of their small SI engines for each engine family that they manufacture, using the test procedures specified in the regulations. Additionally, manufacturers must submit the results of their

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production line testing to EPA. 40 C.F.R. § 90.704(f). Failure to conduct such testing, or to submit such required reports, is a violation of sections 203(a)(2)(A) and (B), respectively, of the Clean Air Act (42 U.S.C. § 7522(a)(2)(A)& (B)), and the implementing regulation 40 C.F.R. § 90.1003(a)(2)(i) and (iii).

46. The defendant generators are non-compliant because Wildfire has failed to submit the required production line testing information to the EPA.

B. The Defendant All-Terrain Vehicles

Non-Conforming Adjustable Parameters and "Other" Adjustments

47. The EPA regulates ATVs such as the defendant ATVs under Title II of the Clean Air Act and Title 40, Code of Federal Regulations, Parts 1051, 1065, and 1068.

48. Title 40, Code of Federal Regulations, Part 1068, General Compliance Provisions for Nonroad Engines, prohibits any person from importing into the United States any new regulated nonroad engine or equipment unless it has a valid certificate of conformity for its model year. Engines or equipment will not be considered by the EPA to be "covered by a certificate of conformity unless they are in a configuration described in the application for certification." 40 C.F.R. § 1068.101(a)(1)(i).

49. Manufacturers must address "adjustable parameters" or "other adjustments" in their applications for certification. *See* 40 C.F.R. §§ 1051.115(c) & (d) and 1051.205(q).

50. 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. An operating parameter is not considered adjustable if it is permanently sealed by the manufacturer or otherwise not normally accessible using ordinary tools. 40 C.F.R. § 1051.115(c).

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51. An engine is subject to "other adjustments" if an experienced mechanic can change the engine's air-fuel ratio in less than one hour with a few parts whose total cost is less than $50. 40 C.F.R. § 1051.115(d).

52. Examples of elements of design subject to "other adjustments" include "carburetor jets and needles." *Id.*

53. Furthermore, the manufacturer must include in its certification application an unconditional certification that all vehicles and/or engines in the applicable engine family comply with the all applicable regulations. 40 C.F.R. § 1051.205(s).

54. In its applications for certification, Wildfire did not identify the carburetor jet needle as an "adjustable parameter," or the carburetor main jet or carburetor pilot jet as being subject to "other adjustments."

55. The certificates of conformity issued by the EPA pursuant to Wildfire's applications stated that the certificates only covered those engines that conform in all material respects to the design specifications that applied to the engines described in Wildfire's application materials.

56. On or about November 13, 2009, Wildfire imported the defendant ATVs into the Port of Tacoma.

57. The defendant ATVs contain a carburetor jet needle within the vehicles' carburetor diaphragm needle valve assembly.

a. The carburetor jet needle is a tapered needle fastened in the slider portion of the upper carburetor that slides down into the needle jet located in the center of the carburetor.

b. The taper on the needle determines how much fuel can be drawn into the intake stream.

c. The needle moves up and down in the needle jet in response to throttle movement.

d. The carburetor jet needle on the defendant ATVs has three position grooves that enable adjustments to the air fuel mixture.

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e. The carburetor jet needle is normally accessible using ordinary tools.

f. The carburetor jet needle is not permanently sealed.

g. Accordingly, the jet needle is an "adjustable parameter" because altering its position alters the air-fuel ratios, which can affect emissions.

58. The defendant ATVs also contain main and pilot jets in their carburetors.

a. An experienced mechanic could change the air-fuel ratio of the engines of the defendant ATVs in less than one hour with a few parts whose total cost is less than $50 by replacing the main and pilot jets in the carburetors of the defendant ATVs with commercially available jets of different sizes.

b. Accordingly, the carburetor jets of the defendant ATVs are subject to "other adjustments."

59. The defendant ATVs were uncertified when they entered the United States because the ATVs' carburetor jet needle was not identified as an "adjustable parameter," and the carburetor main jet or carburetor pilot jet were not identified as being subject to "other adjustments" in the relevant applications for certification.

60. On February 2, 2010, after receiving timely notice of seizure, Wildfire elected to petition CBP for administrative relief from the seizure of the defendant ATVs. By way of a decision letter dated February 17, 2010, CBP found that the defendant ATVs were "in violation of 19USC1959a(c), for underlying violations of 40CFR1051.115(d)(1), because the engines' air-fuel ratio could be changed in under an hour by a qualified mechanic, and 40CFR1051.205(q), because the adjustable parameters of the engines' jets and jet needles were not properly disclosed in [Wildfire's] application for certification."

61. In its decision letter, CBP granted remission of the forfeiture upon payment of 80% of the value of the goods and all costs of storage provided that Wildfire immediately export the defendant ATVs to a non-contiguous country.

62. Wildfire did not file a supplemental petition, file a protest, or otherwise take any steps to contest or appeal CBP's decision administratively.

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63. By way of a letter dated March 16, 2010, Wildfire indicated that it was unilaterally withdrawing its petition for administrative relief and requested referral to the U.S. Attorney's Office.

Voiding of the Certificate of Conformity for the Defendant ATVS

64. On April 2, 2013, the EPA issued a letter informing Wildfire that the EPA was voiding certain certificates of conformity issued to Wildfire related to, *inter-alia*, the defendant ATVs.

65. All merchandise introduced under the voided certificates of conformity are non-compliant with the EPA's regulations. *See* 40 C.F.R. § 1068.30.

66. The EPA's decision to void the certificates was based, in part, on Wildfire's failure to produce documents verifying that the relevant merchandise underwent emissions testing as indicated in Wildfire's certification applications, and Wildfire's failure to maintain appropriate records as required by the relevant regulations. 40 C.F.R. § 1051.250.

*****

By reason of the foregoing, the defendant generators and ATVs are subject to forfeiture pursuant to Title 19, United States Code, Section 1595a(c)(2), for violations of the Clean Air Act and the applicable EPA and CBP regulations.

WHEREFORE, Plaintiff United States of America prays:

1. That the Court issue a warrant for the arrest of the Defendant Property;

2. That the Court find that Wildfire lacks standing to challenge CBP's petition decisions in their entirety;

3. That the Court find that CBP's petition decisions are binding on Wildfire;

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4. That the Defendant Property, including all proceeds from any sale thereof, be forfeited to the United States of America to be disposed of according to law; and

5. For such other and further relief as this Court may deem just and proper.

DATED this 31st day of July, 2013.

Respectfully submitted

JENNY A. DURKAN
United States Attorney

/s/ Francis Franze-Nakamura
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OF COUNSEL:

Meetu Kaul
Attorney-Advisor
United States Environmental Protection Agency
Office of Civil Enforcement -- Air Enforcement Division

VERIFICATION OF COMPLAINT

I, Anne Wick, declare under penalty of perjury that the following is true and correct to the best of my knowledge:

I am a Mechanical Engineer, Vehicle and Engine Team Leader, with the United States Environmental Protection Agency, and am assigned to this case. I have read the attached Amended Complaint and know the contents thereof; I furnished the information contained in the Amended Complaint based upon my own investigation and that of other reliable official Government sources; and based upon information and belief, the allegations contained in the Amended Complaint are true.

Anne K. Wick

ANNE WICK
Environmental Protection Agency
Mechanical Engineer
Vehicle and Engine Team Leader

SUBSCRIBED and SWORN to before me this 3 day of July, 2013.

NOTARY PUBLIC
My Commission Expires: 4/30/2014

FRANCIS P. BONUS
NOTARY PUBLIC, DISTRICT OF COLUMBIA
My Commission Expires

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

DECLARATION OF KATHLEEN MAR

I, Kathleen Mar, do hereby declare under penalty of perjury that the following is true to the best of my knowledge and belief:

1. I am an environmental scientist with the United States Environmental Protection Agency (EPA) and have been so employed for three years. I have a Ph.D. in atmospheric chemistry from The University of California, Berkeley. Since June 2009, I have been a credentialed Clean Air Act (CAA or Act) inspector for EPA Region 10 in Seattle, Washington. My responsibilities are to identify, document, and correct noncompliance with the CAA. This includes inspection of vehicles and engines regulated under Title II of the Act, as well as investigation of stationary sources regulated under Title I of the Act. I evaluate regulatory compliance based on on-site inspections and a review of pertinent records. My business address is U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, OCE-127, Seattle, Washington 98101.

2. The statements contained in this Declaration are based on my personal inspections of goods imported by Snyder Computer Systems, Inc., d/b/a, Wildfire Motors (Wildfire) and on communications with members of the Mobile Source Enforcement Branch (MSEB) Vehicles and Engines Team at EPA Headquarters in Washington, D.C. In particular, I had frequent communications with Vehicles and Engines Team Leader Anne Wick and attorney-advisor David Alexander, among others. I inspected goods imported by Wildfire, wrote inspection reports detailing my findings that I provided to MSEB staff, and, after discussions with MSEB staff, wrote letters to CBP documenting the violations found in my inspections and recommending seizure.

3. I am making this declaration based upon my first-hand inspections of these importations, discussions with Anne Wick, Mario Jorquera, Ross Ruske, and David Alexander of MSEB, and review of documentation provided to me by MSEB (e.g., applications for engine certification), and by personnel of the United States Department of Homeland Security's Bureau of Customs and Border Protection (CBP) (e.g., entry documents and invoices). Based on my inspections, discussions with MSEB staff, and knowledge of the pertinent laws and regulations, I have reached certain conclusions based on the documents and information gathered.

4. On or about October 13, 2009, and November 11, 2009, Wildfire imported various vehicles, engines and equipment into the port of Tacoma.

5. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer of new motor vehicles or new motor vehicle engines from selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing any new motor vehicle or

motor vehicle engine manufactured after the effective date of the applicable regulations unless such vehicle or engine is covered by a certificate of conformity issued by EPA and in effect under the applicable implementing regulations.

6. Persons that import vehicles or engines for resale (i.e., importers) are included within the definition of "manufacturer" under the Act. 42 U.S.C. § 7550(1).

7. Under section 213(d) of the Act, the standards for nonroad vehicle and engines are enforced in the same manner as the standards prescribed for new motor vehicles and new motor vehicle engines. 42 U.S.C. § 7547(d). EPA's nonroad regulations incorporate prohibitions similar to those of section 203(a)(1) of the Act.

Customs Entry No. WEZ-1020118-8

8. On or about October 13, 2009, Wildfire imported the following goods into the port of Tacoma:

- 87 model WF3800D generators powered by Nonroad Small Spark Ignition (SI) engines from engine family 9WLDS.1961WM;
- 50 model WF3800DE generators powered by Nonroad Small SI engines from engine family 9WLDS.1961WM;
- 50 model WF3800DEW generators powered by Nonroad Small SI engines from engine family 9WLDS.1961WM;
- 40 model WF7000DEW generators powered by Nonroad Small SI engines from engine family 9WLDS.3892WM;
- 60 model WF8500DEW generators powered by Nonroad Small SI engines from engine family 9WLDS.4072WM;

9. EPA regulates nonroad engines that are spark-ignited and have horsepower ratings less than 25 horsepower under Title II of the Clean Air Act and 40 C.F.R. Parts 90, 1054, 1060, 1065, and 1068. Under the authority in Title II of the Clean Air Act and the implementing regulations, EPA issues certificates of conformity for Nonroad Small SI engines that have been tested and fully described in the manufacturer's application for the certificate.

10. In the case of exhaust emissions, EPA requires that the Nonroad Small SI engine itself be tested and certified, rather than the equipment in which the engine is installed, thereby allowing engines produced under one certificate of conformity to be installed in different types of equipment. *See* 40 C.F.R. Part 90, Subpart B.

11. EPA issues Nonroad Small SI certificates of conformity on the basis of testing conducted by the manufacturer, and the description of the product submitted by the manufacturer in the certification application.

12. EPA specifies the format and content for Part 90 Nonroad Small SI certificate applications, and requires the applications be delivered to EPA electronically, utilizing the Filemaker Pro database software. Additionally, EPA regulations require the manufacturer to include with each certification application (1) a signed statement that the test engine(s), as described in the manufacturer's certification application, has been tested in accordance with the applicable test procedures, utilizing the required fuels and testing equipment, and that on the basis of such tests the engine conforms to the requirements in the regulations; and (2) an unconditional statement certifying that all engines in the engine family comply with all requirements of 40 C.F.R. Part 90 and the Clean Air Act. 40 C.F.R. § 90.107. *See also* ENVTL. PROT. AGENCY, INSTRUCTIONS FOR CERTIFYING NONROAD SPARK-IGNITION ENGINES (LESS THAN OR EQUAL TO 19 KILOWATTS) (DRAFT APRIL 2007) *available at* http://www.epa.gov/nonroad/equip-ld/nr-ssi-cert-guidance-200704.pdf.

13. In EPA's Part 90 Nonroad Small SI application format, item number 24 is labeled Adjustable Parameters, and includes columns titled Parameter, Adjustable Range (or N/A), Tamper Resistance Method (or N/A), and ARB Approval Reference.

14. EPA defines "adjustable parameters" for Part 90 Nonroad Small SI engines as "any device, system, or element of design which is physically capable of being adjusted (including those which are difficult to access) and which, if adjusted, may affect emissions or engine performance during emission testing or normal in-use operation." 40 C.F.R. § 90.3.

15. EPA regulations require applicants for Part 90 Nonroad Small SI certificates of conformity to include the following information for all adjustable operating parameters present on the engine:

(i) The nominal or recommended setting and the associated production tolerances;

(ii) The intended physically adjustable range;

(iii) The limits or stops used to establish adjustable ranges;

(iv) The production tolerances of the limits or stops used to establish each physically adjustable range;

(v) Information relating to why the physical limits or stops used to establish the physically adjustable range of each parameter, or any other means used to inhibit adjustment, are effective in preventing adjustment of parameters to settings outside the manufacturer's intended physically adjustable ranges on in-use engines; and

(vi) Information relating to altitude kits to be certified, including: a description of the altitude kit; appropriate part numbers; the altitude ranges at which the kits must be installed on or removed from the engine for proper emissions and engine performance; statements to be included in the owner's manual for the engine/equipment combination (and other maintenance related literature) that: declare the altitude ranges at which the kit

must be installed or removed; and state that the operation of the engine/equipment at an altitude that differs from that at which it was certified, for extended periods of time, may increase emissions; and a statement that an engine with the altitude kit installed will meet each emission standard throughout its useful life (the rationale for this assessment must be documented and retained by the manufacturer, and provided to the Administrator upon request). 40 C.F.R. §90.107(d)(6).

16. Wildfire's certification consultant, Ms. Xizhen, A-406 Nanbei Business Center Hangzhou 310015 China, submitted applications for certification for Nonroad Small SI engine families 9WLDS.1961WM and 9WLDS.3892WM on April 15, 2008, and for Nonroad Small SI engine family 9WLDS.4072 on May 25, 2009 to EPA on behalf of Wildfire.

17. In its applications for certification for engine families 9WLDS.1961WM and 9WLDS.3892WM, Wildfire responded "N/A" to item 24 under the "Parameter" column heading. All other columns in item 24 were left blank.

18. In its certification application for engine family 9WLDS.4072WM, Wildfire responded "N/A" to each column heading in item 24.

19. Based on this response, I conclude that Wildfire sought certificates of conformity for Nonroad Small SI engine families 9WLDS.1961WM, 9WLDS.3892WM, and 9WLDS.4072 that have no adjustable parameters. If the engines had adjustable parameters, Wildfire was required to describe them in accordance with 40 C.F.R. § 90.107(d)(6).

20. EPA issued certificates of conformity to Wildfire for engine families 9WLDS.1961WM and 9WLDS.3892WM on April 21, 2008, and for engine family 9WLDS.4072 on June 1, 2009, all on the basis of the information contained in Wildfire's applications for certification.

21. The Part 90 Nonroad Small SI certificates of conformity issued by EPA for engine families 9WLDS.1961WM, 9WLDS.3892WM, and 9WLDS.4072WM each contain the following language: "This certificate of conformity covers only those new small nonroad engines which conform in all material respects to the design specifications that applied to those engines described in the documentation required by 40 CFR Part 90 and which are produced during the model year stated on this certificate."

22. On October 27, 2009, I inspected and took photographs of the generators in Customs Entry No. WEZ-1020118-8 at Mercer Centralized Exam Station (CES) in Fife, Washington. The carburetor idle mixture screws were covered with what appeared to be an epoxy-like substance. On this date, I did not attempt to remove the carburetor idle mixture

screws nor the epoxy-like substance covering the mixture screws from any of the generator models WF3800D, WF3800DE, WF3800DEW, WF7000DEW, and WF8500DEW.

23. An idle mixture screw is a tapered screw that is used to increase or decrease the mixture ratio of air to fuel to the engine while the engine is operating with the throttle plate closed or slightly open.

24. Adjustment of the ratio of the air to fuel mixture may affect emissions or engine performance during emission testing or normal in-use operation.

25. Between October 28, 2009, and November 2, 2009, I exchanged emails and had phone conversations with Mario Jorquera, David Alexander, Ross Ruske, and Anne Wick of MSEB. These MSEB staff informed me that EPA contractor Bionetics had recently inspected carburetors from the same model generators. The inspections by Bionetics found that the idle mixture screws on Models WF3800D, WF3800DE, WF3800DEW, WF7000DEW, and WF8500DEW were all covered with an epoxy-like substance that could be removed using normal tools. Once the epoxy-like substance was removed, the idle mixture screw could be adjusted and removed using a flathead screwdriver. MSEB staff concluded that the Wildfire generator models WF3800D, WF3800DE, WF3800DEW, WF7000DEW, and WF8500DEW inspected by Bionetics had adjustable carburetor idle mixture screws.

26. On November 2, 2009, I returned to Mercer CES and continued my inspection of the generators in Customs Entry No. WEZ-1020118-8. On model 8500DEW, there was an epoxy-like substance covering the idle mixture screw that protruded from the face of the carburetor. I used a handheld screwdriver to easily remove the epoxy-like substance covering the idle mixture screw on the model WF8500DEW generator engine, and then I removed the idle mixture screw itself. On models WF3800D, WF3800DE, WF3800DEW, and WF7000DEW, I found that the surface of the epoxy-like substance covering the idle mixture screws was flush with the face of the carburetor itself. As such it was not possible to get a hold of the epoxy-like substance and pry it out in the same way that I had on the model WF8500DEW. On models WF3800D, WF3800DE, WF3800DEW, and WF7000DEW, I used a flathead screwdriver, pliers, and a boxcutter to try to remove the epoxy-like substance covering the idle mixture screw using a scraping motion. With this technique, I was unable to remove the epoxy-like substance covering the screws. On this date, I estimate that I spent less than fifteen minutes trying to remove the epoxy-like substance from model WF3800D, and less than 5 minutes on models WF3800DE, WF3800DEW, and WF7000DEW.

27. Between November 3 and November 23, 2009, I had conversations with David Alexander and other MSEB staff regarding the differences between my inspection of November 2, 2009, and the inspections performed by Bionetics on the same generator models. MSEB

expressed a desire to understand why there were differences between the inspections and to determine whether or not there were material differences between the generator models that I inspected versus those that Bionetics inspected.

28. On November 24, 2009, I returned to Mercer CES and continued my inspection of generator models WF3800D, WF3800DE, WF3800DEW, and WF7000DEW. The first generator I inspected on this date was model WF3800D. When inspecting model WF3800D, I spent 15 minutes using a screwdriver, needle-nosed pliers, and a box cutter trying different ways to deform or remove the epoxy-like substance covering the carburetor idle mixture screw. After 15 minutes, I discovered that I could easily remove the epoxy-like substance with a handheld screwdriver if I applied pressure to the epoxy-like substance covering the carburetor screw and rotated the screwdriver as if I were unscrewing something. Once the epoxy-like substance was removed, I could easily remove the idle mixture screw. When this technique was applied, removing the epoxy-like substance and idle mixture screw took less than 5 minutes on model WF3800D. After inspecting model WF3800D, I removed the epoxy-like substance and idle mixture screw from models WF3800DE, WF3800DEW, and WF7000DEW using the same technique; on each of these engines the time to remove the epoxy-like substance and idle mixture screw was less than 5 minutes.

29. Thus, I conclude that the idle air fuel mixture screw is an adjustable parameter on each of the engines contained in this entry because (1) the idle mixture screw is accessible within five minutes using ordinary tools, (2) the idle mixture screw is physically capable of being adjusted and (3) such adjustment may affect emissions or engine performance during emission testing or normal operations.

30. The engines in this entry are materially different from the engines described in the applicable certification applications because the engines in this entry have adjustable idle mixture screws (an adjustable parameter), while the engines described in the applications for certification do not. Thus, I conclude that the engines contained in generator models WF3800D, WF3800DE, WF3800DEW, WF7000DEW, and WF8500DEW in this entry are not covered by a certificate of conformity.

Customs Entry No. WIG-7098381-0

31. On or about November 13, 2009, Wildfire imported sixty-six (66) model WFB150-Q2 vehicles into the port of Tacoma. The model WFB150-Q2 vehicles belong to engine family AWLDX0.15JNK.

32. The WFB150-Q2 vehicles meet the definition of an "all-terrain vehicle" (ATV) under 40 C.F.R. § 1051.801.

33. EPA regulates ATVs and other recreational vehicles under Title II of the Clean Air Act and 40 C.F.R. Parts 1051, 1065, and 1068. Under the authority in Title II of the Clean Air Act and the implementing regulations, EPA issues certificates of conformity for recreational vehicles that have been tested and fully described in the manufacturer's application for the certificate.

34. EPA issues certificates of conformity on the basis of testing conducted by the manufacturer, and the description of the product submitted by the manufacturer in the certification application.

35. The certification application must contain a description of all adjustable operating parameters. 40 C.F.R. § 1051.205(q). The definition of 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 normal in-use operation. 40 C.F.R § 1051.801.

36. Vehicles that have adjustable parameters must meet all emission requirements for any adjustment in the physically adjustable range. 40 C.F.R. § 1051.115(c).

37. Further, if an experienced mechanic can change an engine's air to fuel ratio in less than one hour with a few parts whose total cost is under $50 (in 2001 dollars), the provisions of 40 C.F.R. § 1051.115(d) addressing "other adjustments" apply. Among other things, the provisions of 40 C.F.R. § 1051.115(d) require that the manufacturer specify in the certification application the adjustable range of air to fuel ratios expected to occur during vehicle use. 40 C.F.R. § 1051.115(d)(1). The adjustable range must include all air-fuel ratios between the lean limit and the rich limit, unless a manufacturer can show that some air-fuel ratios will not occur in use. 40 C.F.R. § 1051.115(d)(2).

38. EPA regulations also require the certification application include an unconditional certification that all vehicles and/or engines in the applicable engine family comply with the all applicable regulations. 40 C.F.R. § 1051.205(s).

39. EPA regulations prohibit the importation of recreational vehicles, including ATVs such as those in this entry, unless they are covered by a certificate of conformity. 40 C.F.R. § 1068.101(a)(1).

40. On November 4, 2009, System Launch Associates LLC submitted an certification application for engine family AWLDX0.15JNK to EPA on behalf of Wildfire. EPA issued a certificate of conformity for engine family AWLDX0.15JNK on November 5, 2009 on the basis of the information contained in Wildfire's certification application. This certificate was effective beginning November 5, 2009.

41. The certification application for engine family AWLDX0.15JNK listed the adjustable operating parameters as the idle speed and the idle air mixture. The application did not list the carburetor jet needle as an adjustable parameter, or the carburetor main jet or carburetor pilot jet as other adjustments.

42. The certificate of conformity issued by EPA for engine family AWLDX0.15JNK contains the following language: "This certificate of conformity covers only those vehicles which conform, in all material respects, to the design specifications that applied to those vehicles described in the documentation required by 40 CFR Parts 1051, 1065, and 1068 and are produced during the 2010 model year period as defined in 40 CFR Parts 1051, 1065, and 1068."

43. On November 24, 2009, I inspected and took photographs of a sample all-terrain vehicle model WFB150-Q2 in Customs Entry WIG-7098381-0 at Mercer CES in Fife, Washington. On this date, I noted and took photographs of the markings and labels on the sample vehicle. I also photographed the carburetor but did not remove it. After the conclusion of the inspection on this date, I sent a report with photos to MSEB.

44. On December 4, 2009, I continued my inspection of the all-terrain vehicles model WFB150-Q2 in Customs Entry WIG-7098381-0. At the request of MSEB, I determined the amount of time it took for me to remove and then reinstall the carburetor, and then took the carburetor as a sample to send to EPA contractor Bionetics for further analysis. With assistance from my supervisor, it took 20 minutes to remove the carburetor from the vehicle, including first removing the plastic ATV body and the gas tank. It took another 20 minutes to reassemble the ATV, which involved reinstalling the carburetor, gas tank, and ATV body. Once this was complete, I partially disassembled the ATV once more and removed the carburetor. I then sent the carburetor sample to EPA contractor Bionetics for further analysis.

45. Once in possession of the sample carburetor, Bionetics inspectors were able to gain access to and remove the main and pilot jets from the carburetor in five minutes using a pair of pliers and two screw drivers, and re-install the carburetor main and pilot jets and reassemble

the carburetor to its original condition in two minutes. The carburetor's main jet had the number "104" engraved on the cap. Bionetics was able to replace the main jet with a jet of size "102" and one of size "106". The carburetor's pilot jet had the number "34" engraved on it. Bionetics was able to replace the pilot jet with a pilot jet of size "32" and one of size "38". The different sized jets installed in the sample carburetor have different sized openings, which would alter the air fuel ratio and thus are considered "other" adjustments under 40 C.F.R. § 1051.115(d).

46. Based on my inspections on November 24 and December 4, 2009, and Bionetics' report on their exam of the sample carburetor, I conclude that an experienced mechanic could change the engine's air fuel ratio in under an hour by replacing the carburetor main jet or pilot jet.

47. Based on information provided to me by MSEB staff and by Bionetics, the main jet and pilot jet are components whose total cost is less than $50. As such, the provisions of 40 C.F.R. § 1051.115(d) apply.

48. Additionally, Bionetics inspectors were able to disassemble the carburetor, gain access to, and adjust the jet needle clip setting in four minutes using a pair of pliers and two screw drivers. Bionetics reinstalled the jet needle and re-assembled the carburetor in four minutes using the same tools. The ATV's carburetor jet needle is a tapered needle fastened in the slider portion of the upper carburetor that slides down into the needle jet located in the center of the carburetor. The taper on the needle determines how much fuel can be drawn into the intake stream. The needle moves up and down in the needle jet in response to throttle movement. The examined ATV carburetor jet needle has three position grooves that enable adjustments to the air fuel mixture. Raising the needle in the slider will make the air fuel mixture across all throttle settings richer (more fuel) and lowering the needle will make it leaner (less fuel).

49. The adjustable jet needle is an adjustable parameter because altering its position alters the air fuel ratio, which can affect emissions.

50. Based on my inspections on November 24 and December 4, 2009, I conclude that the carburetor jet needle could be adjusted without removing the carburetor from the vehicle (i.e., without removing the plastic ATV body, the gas tank, or the carburetor itself). As such, I estimate the total time it would take to adjust the carburetor jet needle would be significantly less than one hour.

51. The vehicles in this entry are materially different from the vehicles described in the certification application for engine family AWLDX0.15JNK because the engines in this entry have adjustable carburetor jet needles, and replaceable main jets, and pilot jets, while the vehicles described in the applications for certification do not. Thus, I conclude that none of the engines in this entry are covered by a certificate of conformity.

Signed this 7 day of November, 2011, under penalty of perjury.

Kathleen Mar

SUBSCRIBED and SWORN to before me this 7 day of November, 2011, by kathleen mar.

MEGAN SEABORN
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
05-23-14

Print: megan Seaborn

Notary Public in and for the

State of Washington, residing

at Seattle

Expires: 5/23/14