

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	Civil Action No.
Plaintiff,)	
v.)	
)	
TRACTOR SUPPLY COMPANY)	
and TRACTOR SUPPLY COMPANY OF)	
TEXAS, L.P.)	

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), files this complaint and alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Sections 204, 205, 208, and 213 of the Clean Air Act (“the Act”), 42 U.S.C. §§ 7523, 7524, 7542, and 7547, for injunctive relief and the assessment of civil penalties for violations of the Act and regulations promulgated thereunder at 40 C.F.R. Part 90 (“Nonroad SI Regulations”), Part 1051 (“Control of Emissions from Recreational Engines and Vehicles”) and Part 1068 (“General Compliance Provisions for Engine Programs”), arising from the importation, and sale, offering for sale, and/or introduction into commerce in the United States, of approximately 28,000 recreational off-road vehicles and small nonroad spark-ignition (i.e., gasoline-fueled) engines (“Nonroad SI Engines”) produced in the Peoples Republic of China and sold in the United States through Tractor Supply Company’s retail stores during model years 2006 through 2009. The Defendants are the importers of record for these vehicles and engines (“the Subject Vehicles

and Engines”) and did not meet their attendant responsibility to comply with these statutory and regulatory provisions.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of and the parties to this action pursuant to Sections 203, 204, 205, 208, and 213 of the Act, 42 U.S.C. §§ 7522, 7523, 7524, 7542, and 7547, and 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this jurisdiction pursuant to Section 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524, because the Administrator has her principal place of business here.

DEFENDANTS

4. Tractor Supply Company (“TSC”) is incorporated under the laws of Delaware and is doing business throughout the United States. TSC is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C § 7602(e), a “manufacturer” within the meaning of Section 216(1) of the Act, 42 U.S.C. § 7550(1), and 40 C.F.R. § 1051.801, and an “engine manufacturer” within the meaning of 40 C.F.R. § 90.3.

5. Tractor Supply Company, L.P. (“TSCLP”) is a limited partnership created pursuant to the laws of Texas. TSCLP is a “person” within the meaning of Section 302(e) of the Act, 42 U.S.C § 7602(e), a “manufacturer” within the meaning of Section 216(1) of the Act, 42 U.S.C. § 7550(1), and 40 C.F.R. § 1051.801, and an “engine manufacturer” within the meaning of 40 C.F.R. § 90.3. TSC is the sole general partner of TSCLP.

6. Pursuant to Tex. Bus. Org. Code §§ 153.152(b) and 152.304(a), TSC is jointly and severally liable for the debts and obligations of TSCLP.

STATUTORY AND REGULATORY BACKGROUND

7. This action arises under Title II of the Act, as amended, 42 U.S.C. § 7521 et seq., and the regulations promulgated thereunder that are aimed at reducing emissions from mobile sources of air pollution, including, inter alia, recreational vehicles (such as all-terrain vehicles (“ATVs”) and off-highway motorcycles, and nonroad engines (such as those that power the generators and small pumps at issue here).

A. The Types of Vehicles and Engines at Issue

8. Section 216(2) of the Act, 42 U.S.C. § 7550(2), defines the term “motor vehicle” as any self-propelled vehicle designed for transporting persons or property on streets or highways.

9. Sections 216(10) and (11) of the Act, 42 U.S.C. §§ 7550(10) and (11), define the term “nonroad engine” as an internal combustion engine that is not used in a motor vehicle, and the term “nonroad vehicle” as a vehicle that is powered by a nonroad engine and that is not a motor vehicle.

10. The term “recreational” vehicle is defined at 40 C.F.R. § 1051.801 to include, inter alia, ATVs and off-highway motorcycles.

11. 40 C.F.R. § 1051.801 defines the term “all-terrain vehicle” as a nonroad vehicle that is either: (a) designed to travel on four low-pressure tires, has a seat designed to be straddled by the operator and handlebars for steering control, and is intended for use by a single operator and no other passengers; or (b) has three or more wheels and one or more seats, is designed for operation over rough terrain, is intended primarily for transportation, and has a maximum vehicle speed higher than 25 miles per hour.

12. Each vehicle identified herein as an all-terrain vehicle is subject to the emission standards and other requirements for recreational vehicles under 40 C.F.R. Parts 1051 and 1068.

13. 40 C.F.R. § 1051.801 defines the term “off-highway motorcycle” as a two-wheeled vehicle with a nonroad engine and a seat.

14. Each vehicle identified herein as an off-highway motorcycle is subject to the emission standards and other requirements for recreational vehicles under 40 C.F.R. Parts 1051 and 1068.

15. The emission standards and other requirements under 40 C.F.R. Part 90 apply to Nonroad SI Engines with gross power output at or below 19 kilowatts (i.e., about 25.5 horsepower). See 40 C.F.R. § 90.1(a).

16. Each of the engines identified herein as a small spark-ignition engine is a nonroad engine at or below 19 kilowatts, and is subject to the emissions standards and other requirements under 40 C.F.R. Part 90.

B. Certificates of Conformity

17. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), prohibits manufacturers of new motor vehicles from selling, offering for sale, or otherwise introducing into commerce (or causing any of the foregoing) any new motor vehicle or new motor vehicle engine unless the vehicle or engine is covered by a “Certificate of Conformity” issued by EPA under regulations prescribed by the Act governing engine and vehicle emission standards.

18. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), also prohibits any person from importing into the United States any new motor vehicle or new motor vehicle engine after

the effective date of regulations applicable to such vehicles or engines, unless the vehicle or engine is covered by a Certificate of Conformity issued by EPA.

19. Section 213(d) of the Act, 42 U.S.C. § 7547(d), together with the small spark-ignition engine regulations at 40 C.F.R. Part 90 and the recreational vehicle regulations at 40 C.F.R. Parts 1051 and 1068, extend the prohibition set forth in § 203(a)(1) to the sale or importation of any nonroad vehicle or engine, such as the small Nonroad SI Engines contained in the generators and small pumps at issue here, and the ATVs and off-highway motorcycles at issue here, unless such engine or vehicle is covered by an EPA Certificate of Conformity. See 40 C.F.R. §§ 90.1003(a)(1)(i)-(ii) (small spark-ignition engines), and 1068.101(a)(1) and (b)(5) (recreational vehicles).

20. The requirement for a Certificate of Conformity became applicable to the two types of vehicles and engines at issue in this matter as follows: new recreational vehicles, beginning with the 2006 model year (40 C.F.R. §§ 1051.105 and 1051.107), and the spark-ignition engines that power the generators and small pumps at issue here (i.e., spark-ignition engines at or below 19 kW), beginning with the 1997 model year (40 C.F.R. § 90.2(a)). For these vehicles and engines, EPA's issuance of a Certificate of Conformity permits the production, importation, and sale, offering for sale, or introduction into commerce, of engines built in accordance with the manufacturer's application after the effective date of the certificate and before December 31st of the covered model year. See, e.g., 40 C.F.R. §§ 1051.201(a) (recreational vehicles); 40 C.F.R. 90.1003(a)(1)(i)-(ii) (Nonroad SI Engines).

21. To obtain a Certificate of Conformity, a manufacturer must submit an application to EPA for each vehicle family and for each model year that it intends to manufacture and sell

in the United States. 40 C.F.R. §§ 90.107 (Nonroad SI Engines), and 1051.201 (recreational vehicles).

22. The application must include, among other things, an identification of the engine family, a description of the vehicles or engines including their power and basic parameters, a list of the model names included in the engine family, and test results demonstrating that the vehicle or engine will meet federal emissions standards. 40 C.F.R. §§ 90.107 (small spark-ignition engines) and 1051.205 (recreational vehicles).

23. Each recreational vehicle certificate issued by EPA states the model names of the vehicles that are covered by the certificate, and states that the certificate only applies to the vehicle models named on the certificate.

24. 40 C.F.R. § 1051.205(q) specifically requires the manufacturer of a recreational vehicle to disclose in its application the presence of any adjustable parameters, defined as 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.

25. Once issued, Certificates of Conformity apply to the engine family named in the certificate application and specified on the certificate. 40 C.F.R. §§ 90.106(d) (small spark-ignition engines) and 1051.255(a) (recreational vehicles). The certificate applies only to engines and vehicle models produced in the stated model year at the stated production facility and imported subsequent to the effective date of the certificate, and which conform in all material respects to the specifications in the certificate application. 40 C.F.R. §§ 90.106 and 90.1003(a)(1)(i)-(ii) (small spark-ignition engines), and 1051.201(a), 1068.101(b)(5), and 1068.103 (recreational vehicles).

C. Labeling Requirements

26. Under Sections 203(a)(4)(A) and 207(c)(3)(C), made applicable to recreational vehicles through Section 213(d), and applicable regulations, a manufacturer may not sell, offer for sale, introduce into commerce, or import any new recreational vehicle unless it has affixed, at the time of manufacture of a certified engine, a permanent and legible emissions control information label setting forth required information about the product's emissions control system. 42 U.S.C. §§ 7522(a)(4)(A), 7541(c)(3)(C), 7547(d); 40 C.F.R. §§ 1051.135, 1068.101(a)(1).

D. Recordkeeping and Information Requirements

27. Section 208(a) of the Act, 42 U.S.C. § 7542(a), requires manufacturers, *inter alia*, to maintain records and to make reports and provide information that EPA may reasonably require to determine whether the manufacturer has acted or is acting in compliance with the mobile source provisions of the act. Section 203(a)(2)(A) of the Act, 42 U.S.C. § 7522(a)(2)(A), makes it a prohibited act for any person to fail to make reports or provide information required under Section 208.

E. Penalty Provisions

28. Section 205(a) of the Act, 42 U.S.C. § 7524(a), and 40 C.F.R. § 90.1006 provide that any violation of Section 203(a)(1), (a)(2), (a)(4), or (a)(5) of the Act, 42 U.S.C. § 7522(a)(1), (a)(2), (a)(4), or (a)(5), and 40 C.F.R. §§ 90.1003(a)(1), (a)(2), (a)(4), or (a)(5) shall be subject to a civil penalty of up to \$25,000 per day of violation or per violation per engine, as applicable. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40 C.F.R. § 19.4, the Administrator of EPA may seek civil penalties of up to \$32,500 per day or per violation

occurring on or after March 16, 2004 and up to and including January 12, 2009; and up to \$37,500 per day or per violation occurring after January 12, 2009.

29. Section 204 of the Act, 42 U.S.C. § 7523, provides that the “district courts of the United States shall have jurisdiction to restrain violations” of Section 203(a).

GENERAL ALLEGATIONS

30. From July 2006 through September 2009, the defendants imported ATVs, off-highway motorcycles, and generators and pumps powered by Nonroad SI Engines for sale at TSC’s more than 900 retail stores across the United States (herein referred to as the “Subject Vehicles and Engines”). Defendants imported at least 10 different models of vehicles and engines, comprising at least 28,265 individual vehicles and engines, of model years 2006 through 2009, during this time.

31. Each of the Subject Vehicles and Engines was manufactured in the People’s Republic of China by companies other than Defendants. Defendants imported all of the Subject Vehicles and Engines, in order to sell them in the United States. The Defendants sold, offered for sale, and/or otherwise introduced into commerce, most or all of the Subject Vehicles and Engines. Defendants may resume importation (or causing the importation) of recreational vehicles and Nonroad SI Engines, and selling, offering them for sale, and/or introducing them into commerce, in the United States.

32. Each of the Subject Vehicles and Engines was manufactured after the date that the emissions standards promulgated by EPA became applicable to the subject vehicle or engine. As a result, each of the vehicles and engines cited herein is subject to Title II of the Act, as amended, 42 U.S.C. § 7521 et seq., and the implementing regulations at 40 C.F.R. Parts 86, 90, 1051 or 1068.

33. TSC is identified as the “Importer of Record” on the United States Department of Homeland Security’s Bureau of Customs and Border Protection (“CBP”) Entry Summary Form (Customs Form 7501) or as the “Importer of Record” on the United States Customs Service Entry/Immediate Delivery Form (Customs Form 3461) pertaining to the importation of the Subject Vehicles and Engines.

34. TSCLP is identified as the “Importer of Record” on the United States Department of Homeland Security’s Bureau of Customs and Border Protection (“CBP”) Entry Summary Form (Customs Form 7501) or as the “Importer of Record” on the United States Customs Service Entry/Immediate Delivery Form (Customs Form 3461) pertaining to the importation of the Subject Vehicles and Engines.

35. Pursuant to 19 C.F.R. § 101.1, “importer” means the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be the consignee or the importer of record.

36. As the importer of the Subject Vehicles and Engines, Defendants are “engaged in importing such vehicles or engines for resale” and therefore, pursuant to Section 216(1) of the Act, 42 U.S.C. § 7550(1), are “manufacturers” subject to the prohibitions set forth in Section 203 of the Act, 42 U.S.C. § 7522, and the requirements imposed on manufacturers as set forth in the Act and its implementing regulations.

37. Each Defendant is also a “person” under the Act, 42 U.S.C. § 7602(e), subject to the prohibition on importing set forth in Section 203(a) of the Act, 42 U.S.C. § 7522(a) and applicable regulations.

A. Violations Pertaining to Nonroad SI Engines

1. Certificates of Conformity Violations

38. Defendants imported, and sold, offered for sale, and/or otherwise introduced into commerce, 14,455 Subject Engines between July 2006 and August 2008 under the following engine families and model names:

Engine Family	Model Name
6CHGS.1961CH	HT65 Heat
8CHGS.1961HG	BE196GP

39. The Subject Engines in engine family 6CHGS.1961CH were installed in recreational vehicles and were therefore incorrectly certified as nonroad engines.

40. The listed power or the power identified in the owner's manual of the 8CHGS.1961HG/BE196GP Subject Engines is significantly greater than the listed power of the test engine used to obtain a Certificate of Conformity for the engine family.

41. None of the Subject Engines identified in Paragraph 38 is covered by a Certificate of Conformity for the reasons identified in Paragraphs 39 and 40.

42. Because the Subject Engines were not covered by a Certificate of Conformity at the time of importation, and sale, offering for sale, and/or introduction into commerce, Defendants imported, and sold, offered for sale, and/or otherwise introduced into commerce, these vehicles in violation of Sections 203(a)(1) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1), 7547(d) and 40 C.F.R. §§ 90.1003(a)(1)(i) and 90.1003(a)(1)(ii).

B. Violations Pertaining to Recreational Vehicles**1. Certificates of Conformity Violations**

43. Defendants imported, and sold, offered for sale, and/or otherwise introduced into commerce, 13,810 Subject Vehicles between July 2007 and September 2009 under the following engine families and model names:

Engine Family	Model Name
7AVIX.086FYA	CN90U
8CGQX.100BAA	DB30Y
7CGQX.100BAA	DB30Y
7CGQX.049DB1	DR70
8CGQX.049DB1	DR70
9CGQX.049DB1	DR70
9CGQX.200CAA	WR65
9PDEX.098MB1	DB30Y

44. The model name of the 7AVIX.086FYA/CN90U is not listed in the application for the allegedly applicable Certificate of Conformity.

45. The vehicle manufacturer of the 7CGQX.100BAA/DB30Y does not match the vehicle manufacturer on the application for the allegedly applicable Certificate of Conformity.

46. The 8CGQX.100BAA/DB30Y was manufactured prior to the effective date of the allegedly applicable Certificate of Conformity.

47. The engine power for the 7CGQX.049DB1/DR70 listed in the owner's manual for the vehicle model is significantly greater than that of the test engine used to obtain the allegedly applicable Certificate of Conformity.

48. The vehicle engines for the 8CGQX.049DB1/DR70, 8CGQX.100BAA/DB30Y, 9CGQX.049DB1/DR70, 9CGQX.200CAA/WR65, and 9PDEX.098MB1/DB30Y have adjustable parameters not identified in the allegedly applicable Certificate of Conformity.

49. None of the Subject Vehicles identified in Paragraph 43 is covered by a Certificate of Conformity for the reasons identified in Paragraphs 44 through 48.

50. Because the Subject Vehicles were not covered by a Certificate of Conformity at the time of importation and sale, offering for sale, and/or introduction into commerce, Defendants imported, and sold, offered for sale, and/or otherwise introduced into commerce, these vehicles in violation of Sections 203(a)(1) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1) and 7547(d), and 40 C.F.R. §§ 1068.101(a)(1) and (b)(5).

2. Labeling Violations

51. Between September 2008 and October 2009, EPA and CBP conducted vehicle and engine inspections on incoming shipments at the Ports of Dallas and Chicago, including off-highway motorcycles for which TSC was listed as the importer of record. These included 86 model year 2008 DR70 off-highway motorcycles with Engine Family 8CGQX.049DB1 (“the Subject Motorcycles”).

52. EPA inspectors were able to remove the emissions labels on the inspected Subject Motorcycles without destroying or defacing them. Subject to a reasonable opportunity for further investigation and discovery, the labels on all of the Subject Motorcycles were similarly capable of being removed without destroying or defacing them.

53. Because the Subject Motorcycles do not have affixed emissions labels that cannot be removed without destroying or defacing them, Defendants imported, and sold, offered for sale, and/or otherwise introduced into commerce, these vehicles in violation of Sections 203(a)(4)(A) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1) and 7547(d), and 40 C.F.R. §§ 1051.135(b)(1) and 1068.101(a)(1).

3. Recordkeeping and Information Violations

54. Between March 2005 and July 2008, Defendants imported 9,165 Nonroad SI Engines under the following engine families and model names:

Engine Family	Model Name
4MVXS.0203TB	FW-10MT
6MVXS.0203TF	FW-10MT
7MVXS.0203TF	FW-10MT
8MVXS.0203TF	FW-10MT

55. Pursuant to its authority under Section 208(b) of the Act, 42 U.S.C. § 7542(b), on or about August 1, 2008, EPA requested records, papers, files, and other information from TSC reasonably required by EPA to determine whether TSC has acted or is acting in compliance with Part A of Subchapter II of the Act, 42 U.S.C. §§ 7521-7554.

56. TSC provided a response to EPA's request on or about September 17 and 26, 2008.

57. TSC's response included owner's manuals and other information for the engine families and model names listed in Paragraph 54.

58. The owner's manuals and other information provided by TSC referenced in Paragraph 57 appeared to indicate that the engines at issue were not covered by a Certificate of Conformity at the time of importation and sale, offering for sale, and/or introduction into commerce, and that Defendants therefore imported these vehicles in violation of Sections 203(a)(1) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1), 7547(d) and 40 C.F.R. §§ 90.1003(a)(1)(i) and 90.1003(a)(1)(ii). Additional owner's manuals and other information provided by TSC appeared to indicate that additional engines or vehicles were not covered by a Certificate of Conformity at the time of importation, and sale, offering for sale, and/or introduction into commerce, and that Defendants therefore imported, and sold, offered for sale, and/or introduced into commerce, these engines in violation of Sections 203(a)(1) and 213(d)

of the Act, 42 U.S.C. §§ 7522(a)(1), 7547(d) and 40 C.F.R. §§ 90.1003(a)(1)(i) and 90.1003(a)(1)(ii).

59. The materials and information provided by TSC referenced in Paragraph 57 were inaccurate and incomplete. The owner's manuals provided for these engines covered only the version not sold domestically. The engine power information was related to an erroneous internal tracking number applicable to a different product.

60. EPA expended significant resources investigating the apparent violations referenced in Paragraph 58 as a result of the erroneous information initially provided by TSC, including that referenced in Paragraph 59.

61. On or about March 16, 2012, the engine manufacturer of the engines referenced in Paragraph 54, on behalf of TSC, provided the correct owner's manuals to EPA to correct the erroneous documents regarding adjustable parameters initially contained in the response to EPA's request for information.

62. On or about June 15, 2012, TSC provided production line test data to correct the erroneous engine power information for the engines referenced in Paragraph 54 initially contained in the response to EPA's request for information.

63. Because TSC provided inaccurate and incomplete information in response to EPA's request for information under Section 208(b) of the Act, 42 U.S.C. § 7542(b), TSC failed to provide information required under Section 208 of the Act, 42 U.S.C. § 7542, in violation of Section 203(a)(2) of the Act, 42 U.S.C. § 7522(a)(2).

FIRST CLAIM FOR RELIEF

**(Importing, and Selling, Offering for Sale, and/or Otherwise Introducing into Commerce,
Equipment Containing Nonroad SI Engines Not Covered by a Certificate of Conformity)**

64. The United States realleges paragraphs 1 through 63 above, as if fully set forth herein.

65. None of the Subject Engines imported, and sold, offered for sale, and/or otherwise introduced into commerce, by Defendants were covered by Certificates of Conformity.

66. Each Nonroad SI Engine imported, and sold, offered for sale, and/or otherwise introduced into commerce, by Defendants that is not covered by a Certificate of Conformity is a separate violation of Section 203(a)(1) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1), 7547(d).

67. Additional violations of the type alleged herein are or may be occurring and continuing and/or may recur in the future.

68. Pursuant to Sections 204(a) and 205(a) of the Act, 42 U.S.C. §§ 7523(a) and 7524(a), Defendants are liable for injunctive relief and civil penalties of up to \$32,500 for each small spark-ignition engine not covered by a Certificate of Conformity that Defendants imported, and sold, offered for sale, and/or otherwise introduced into commerce, between March 16, 2004 and January 12, 2009, and for civil penalties of up to \$37,500 per vehicle on or after January 13, 2009.

SECOND CLAIM FOR RELIEF

**(Importing, and Selling, Offering for Sale, and/or Otherwise Introducing into Commerce,
Recreational Vehicles Not Covered by a Certificate of Conformity)**

69. The United States realleges Paragraphs 1 through 63 above as if fully set forth herein.

70. None of the Subject Vehicles imported, and sold, offered for sale, and/or otherwise introduced into commerce, by Defendants were covered by Certificates of Conformity.

71. Each recreational vehicle imported, and sold, offered for sale, and/or otherwise introduced into commerce, by Defendants that is not covered by a Certificate of Conformity is a separate violation of Sections 203(a)(1) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1), 7547(d).

72. Additional violations of the type alleged herein are or may be occurring and continuing and/or may recur in the future.

73. Pursuant to Sections 204(a) and 205(a) of the Act, 42 U.S.C. §§ 7523(a) and 7524(a), each Defendant is liable for injunctive relief and civil penalties of up to \$32,500 for each recreational vehicle that Defendants imported, and sold, offered for sale, and/or otherwise introduced into commerce, that is not covered by a Certificate of Conformity between March 16, 2004 and January 12, 2009, and for civil penalties of up to \$37,500 per vehicle on or after January 13, 2009.

THIRD CLAIM FOR RELIEF

(Importing, and Selling, Offering for Sale, and/or Otherwise Introducing into Commerce, Recreational Vehicles for which the Emission Control Label Requirements are Not Met)

74. The United States realleges Paragraphs 1 through 63 above as if fully set forth herein.

75. Defendants imported, and sold, offered for sale, and/or otherwise introduced into commerce, model year 2008 DR70 off-highway motorcycles.

76. At least 86 of the DR 70 off-highway motorcycles failed to meet the emission control labeling requirements of Sections 203(a)(4)(A), 207(c)(3)(C) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(4)(A), 7541(c)(3)(C) and 7547(d), and 40 C.F.R. §§ 1051.135(b)(1) and 1068.101(a)(1).

77. Each off-highway motorcycles imported, and sold, offered for sale, and/or otherwise introduced into commerce, by Defendants on which a valid emissions label is not affixed as required by Section 207(c)(3)(C) of the Act, 42 U.S.C. § 7541(c)(3)(C), is a separate violation of Sections 203(a)(4)(A) and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(4)(A) and 7547(d).

78. Additional violations of the type alleged herein are or may be occurring and continuing and/or may recur in the future.

79. Pursuant to Sections 204(a) and 205(a) of the Act, 42 U.S.C. § 7523(a) and 7524(a), each Defendant is liable for injunctive relief and civil penalties of up to \$32,500 for each off-highway motorcycle it imported, and sold, offered for sale, and/or otherwise introduced into commerce, in violation of the labeling requirements set forth in Section 207(c)(3)(C) of the Act, 42 U.S.C. § 7541(c)(3)(C) between March 16, 2004 and January 12, 2009, and for civil penalties of up to \$37,500 per vehicle on or after January 13, 2009.

FOURTH CLAIM FOR RELIEF

(Providing Inaccurate and Incomplete Information in Response to an EPA Request for Information)

80. The United States realleges Paragraphs 1 through 63 above as if fully set forth herein.

81. Defendants failed to provide information required under Section 208 of the Act, 42 U.S.C. § 7542, with regard to at least 9,165 Model Year 2004, 2006, 2007, and 2008 FW-10MTs and additional engines and vehicles in their response to EPA's August 1, 2008 information request pursuant to section 208 of the Act, 42 U.S.C. § 7542. Each such failure to provide information is a violation of Section 203(a)(2)(A) of the Act, 42 U.S.C. § 7522(a)(2)(A).

82. Pursuant to Section 204(a) of the Act, 42 U.S.C. § 7523(a), each Defendant is liable for injunctive relief and civil penalties of up to \$32,500 for each day of its failure to provide information required under Section 208 of the Act, 42 U.S.C. § 7542, between March 16, 2004 and January 12, 2009, and for civil penalties of up to \$37,500 per day on or after January 13, 2009.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States respectfully prays that this Court provide the following relief:

- a. A permanent injunction:
 - i. Enjoining defendants from importing, and selling, offering for sale, or introducing into commerce, in the United States, any recreational vehicle or equipment containing a small nonroad spark ignition engine, or any other vehicle or engine:
 1. That exceeds emissions limits or, for any reason, is not covered by a Certificate of Conformity issued by EPA in accordance with the Act and regulations promulgated thereunder; or

2. That lacks an affixed label that conforms in all respects to the requirements of the Act and regulations promulgated thereunder;
 - ii. Directing Defendants to take steps necessary to come into permanent and consistent compliance with Sections 203(a)(1), 203(a)(4)(A), 207(c)(3), and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1), 7541(c)(3)(C) and 7547(d), and 40 C.F.R. Parts 90, 1051, and 1068; and
 - iii. Ordering Defendants to take appropriate action to remedy the violations of Sections 203(a)(1), 203(a)(4)(A), 207(c)(3), and 213(d) of the Act, 42 U.S.C. §§ 7522(a)(1), 7541(c)(3)(C) and 7547(d), and 40 C.F.R. Parts 90, 1051, and 1068 alleged above, including taking steps to mitigate any excess emissions that may have occurred from the unlawful importation and sale of the Subject Vehicles and Engines.;
- b. A judgment assessing civil penalties against Defendants and in favor of the United States, of up to \$32,500 per vehicle or engine per violation for violations occurring between March 16, 2004 and January 12, 2009, and up to \$37,500 per vehicle or engine per violation for violations occurring after January 13, 2009, with respect to each recreational vehicle and Nonroad SI Engine imported, and sold, offered for sale, and/or otherwise introduced into commerce, without being covered by a valid Certificate of Conformity or without a valid emissions control label affixed as required by law;
- c. A judgment assessing civil penalties against Defendants and in favor of the United States, of up to \$32,500 per day per violation for violations occurring between March 16, 2004 and January 12, 2009, and up to \$37,500 per day per

violation for violations occurring after January 13, 2009, with respect to each failure to provide information in response to EPA's request under Section 208 of the Act as required by law;

- d. The award of the United States' costs and disbursements in this action; and
- e. The granting of such other relief as this Court deems appropriate.

Respectfully Submitted,



John C. Cruden
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