

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:

YAMAHA MOTOR CORP., U.S.A.

Respondent.

Docket No.
CAA-HQ-2015-8146

CONSENT AGREEMENT

Preliminary Statement

1. This is a civil administrative penalty assessment proceeding instituted under section 205(c)(1) of the Clean Air Act (CAA), 42 U.S.C. § 7524(c)(1). The issuance of this Consent Agreement and attached Final Order simultaneously commences and concludes this proceeding. 40 C.F.R. § 22.13(b).
2. Complainant in this matter is the United States Environmental Protection Agency (EPA). On the EPA's behalf, Phillip A. Brooks, Director, Air Enforcement Division, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, is authorized by lawful delegation to institute and settle civil administrative penalty assessment proceedings under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1). EPA Delegation 7-6-A (Aug. 4, 1994); Office of Enforcement and Compliance Assurance Redefinition 7-6-A (March 5, 2013); Office of Civil Enforcement Redefinition 7-6-A (March 5, 2013).
3. Respondent in this matter is Yamaha Motor Corp., U.S.A. Respondent is a corporation organized under the laws of the State of California with an office at 6555

Katella Avenue, Cypress, California 90630. Yamaha Motor Corp., U.S.A., is a wholly-owned subsidiary of the Yamaha Motor Corporation, Ltd., a public corporation based in Shizuoka, Japan.

4. Respondent holds EPA certificates of conformity and imports highway motorcycles, recreational vehicles, and small nonroad spark-ignition (SI) gasoline engines manufactured by Yamaha Motor Corporation, Ltd.
5. The EPA and Respondent, having agreed to settle this action, consent to the entry of this Consent Agreement and the attached Final Order without taking testimony and without adjudication of any issues of law or fact herein, and agree to comply with the terms of this Consent Agreement and the attached Final Order.

Jurisdiction

6. This Consent Agreement is entered into under section 205(c)(1) of the CAA, 42 U.S.C. § 7524(c)(1), and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. Part 22 (Consolidated Rules).
7. The EPA may administratively assess a civil penalty if the penalty sought is less than \$320,000. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1), 40 C.F.R. §§ 19.4, 90.1006(c)(1), 1068.125(b); Civil Monetary Penalty Inflation Adjustment Rule, 78 Fed. Reg. 66,643 (November 6, 2013) (codified at 40 C.F.R. § 19.4); *see* 40 C.F.R. § 90.1006(a)(6) (defining a violation of 40 C.F.R. § 90.1003(a) as being a violation of CAA §§ 203 and 213(d), 42 U.S.C. §§ 7522 and 7547(d)).

8. The Administrator and the Attorney General jointly determined that this matter, although it involves a penalty amount greater than \$320,000, is appropriate for administrative penalty assessment. CAA § 205(c)(1), 42 U.S.C. § 7524(c)(1); 40 C.F.R. §§ 90.1006(c), 1068.125(b).
9. The Environmental Appeals Board is authorized to issue consent orders memorializing settlements between the EPA and Respondent resulting from administrative enforcement actions under the CAA, and to issue final orders assessing penalties under the CAA. 40 C.F.R. § 22.4(a)(1); EPA Delegation 7-41-C.
10. The Consolidated Rules provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order. 40 C.F.R. §§ 22.13(b), 22.18(b).

Governing Law

11. This proceeding arises under Part A of Title II of the CAA, CAA §§ 202–219, 42 U.S.C. §§ 7521–7554, and the regulations promulgated thereunder. These laws aim to reduce emissions from mobile sources of air pollution, including hydrocarbons, oxides of nitrogen, and carbon monoxide. The Alleged Violations of Law, stated below, regard on-highway motorcycles, recreational vehicles, and small SI nonroad engines (collectively, the “Subject Vehicles and Engines”). What follows is the governing law for each type of vehicle and engine.

12. General definitions:

- (a) "Person" includes individuals, corporations, partnerships, associations, states, municipalities, and political subdivisions of a state. CAA § 302(e), 42 U.S.C. § 7602(e).
- (b) "Manufacturer" means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce. CAA § 216(1), 42 U.S.C. § 7550(1).

13. Highway motorcycles:

- (a) The term "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway. CAA § 216(2), 42 U.S.C. § 7550(2).
- (b) The term "motorcycle" refers to highway motorcycles and means a motor vehicle that weighs less than or equal to 793 kilograms (1,749 pounds) with a headlight, tail-light, stop-light, and two or three wheels. 40 C.F.R. § 86.402-98.
- (c) The vehicles identified herein as "highway motorcycles" meet the definition of "motorcycle" at 40 C.F.R. § 86.402-98, are a type of "motor vehicle," and

are subject to the emission standards and other requirements under 40 C.F.R. Part 86.

- (d) Model year 2006 and later highway motorcycles must satisfy air pollutant emission standards in 40 C.F.R. §§ 86.401-2006 and 86.410-2006. These emission standards impose limits on emissions of oxides of nitrogen, carbon monoxide, hydrocarbons, evaporative emissions, and impose other requirements.
- (e) To demonstrate that a highway motorcycle satisfies emission and other standards, it must be covered by an EPA-issued certificate of conformity (COC). 40 C.F.R. § 86.407-78.
- (f) To obtain a COC, a manufacturer must submit a COC application to the EPA for each engine family and each model year that it intends to manufacture and sell in the United States. 40 C.F.R. § 86.416-80.
- (g) An application for a COC must provide an identification and description of the vehicles covered by the application, including, among other things, a description of any emissions control system and any adjustable parameters, a list of the model names included in the engine family, and test results from a prototype emissions data vehicle. 40 C.F.R. § 86.416-80(a)(2)(i). Each COC states that it covers only the models it names.
- (h) Each COC 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 [COC].” Each COC also states that it covers only

those vehicles produced during the model year production period stated on the COC. 40 C.F.R. § 86.437-78(a)(2)(ii).

- (i) The EPA issues COCs on whatever terms the EPA deems necessary to ensure that any new motorcycle covered by the COC will meet the requirements of the CAA and its regulations. 40 C.F.R. § 86.437-78(a)(2)(ii), (b)(3). By the terms on the face of each COC, a COC covers “only those vehicles which conform, in all material respects, to the design specifications that applied to those vehicles described in the documentation required by 40 C.F.R. Part 86.”
- (j) The manufacturer of any motorcycle subject to the emission standards set forth in 40 C.F.R. Part 86 must provide information to the EPA that the EPA reasonably requires to determine whether the manufacturer or other person has acted or is acting in compliance with the CAA and its regulations. CAA § 208(a), 42 U.S.C. § 7542(a).
- (k) Manufacturers are prohibited from selling, offering for sale, or introducing or delivering for introduction into commerce—or causing any of the foregoing—any new motor vehicle or new motor vehicle engine unless the vehicle or engine is covered by a COC issued by the EPA under regulations prescribed by the CAA. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1).
- (l) All persons are prohibited from importing or causing another to import a new motor vehicle or new motor vehicle engine into the United States unless that new motor vehicle or new motor vehicle engine is covered by an EPA-issued COC. CAA § 203(a)(1), 42 U.S.C. § 7522(a)(1).

(m) Anyone who, between March 15, 2004, and January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a highway motorcycle that was not covered by a COC or was improperly labeled—or anyone who caused any of the foregoing—is subject to a civil penalty of up to \$32,500 for each such vehicle. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. § 19.4. This penalty amount increased from \$32,500 to \$37,500 for violations which occur after January 12, 2009. 40 C.F.R. § 19.4.

14. Recreational vehicles:

- (a) The term “recreational vehicle” includes all-terrain vehicles and off-highway motorcycles. 40 C.F.R. § 1051.801.
- (b) The term “all-terrain vehicle” is defined as a nonroad vehicle that either:
 - (a) is 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 of 25 miles per hour or higher. 40 C.F.R. § 1051.801.
- (c) The term “off-highway motorcycle” is defined as a two-wheeled vehicle with a nonroad engine and a seat. 40 C.F.R. § 1051.801.
- (d) Each vehicle identified herein as a “recreational vehicle” or “all-terrain vehicle” or “off-highway motorcycle” meets the definition of such vehicle and is subject to the emission standards and other requirements set forth in

40 C.F.R. Parts 1051 and 1068. The requirements of 40 C.F.R. Parts 1051 and 1068 also apply to new engines used in recreational vehicles. 40 C.F.R. §§ 1051.1(a), 1068.1(8).

- (e) Model year 2006 and later new recreational vehicles and engines with displacement less than or equal to 1000 cubic centimeters (cc), maximum engine power less than or equal to 30 kilowatts (kW), and maximum vehicle speed higher than 25 miles per hour must satisfy air pollutant emission standards in 40 C.F.R. §§ 1051.101–1051.115. 40 C.F.R. § 1051.1. These emission standards impose limits on emissions of oxides of nitrogen, carbon monoxide, hydrocarbon, and exhaust opacity.
- (f) To demonstrate that an imported recreational vehicle satisfies emission standards, it must be covered by an EPA-issued COC. 40 C.F.R. § 1068.301(b); *see* 40 C.F.R. Part 1051 Subpart C (outlining COCs and the application requirements).
- (g) An application for a COC must provide an identification and description of the vehicles covered by the application including, among other things, a description of any emissions control system and any adjustable parameters, a list of the model names included in the engine family, and test results from a prototype emissions data vehicle. 40 C.F.R. § 1051.205. Each COC states that it covers only the models it names.
- (h) An application for a COC must describe all adjustable parameters and other adjustments. 40 C.F.R. §§ 1051.115(c), 1051.205(q). 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. “Other adjustments” include changes to a recreational vehicle’s air-fuel ratio that can be made by an experienced mechanic in less than one hour and with a few parts whose total cost is under \$50 (in 2001 dollars). 40 C.F.R. § 1051.115(d).

- (i) Each COC 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 [COC].” *See also* 40 C.F.R. § 1068.103(c).
- (j) Each COC states that it 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 C.F.R. Part 1051.” *See also* 40 C.F.R. § 1068.103(a).
- (k) Manufacturers are prohibited from selling, offering for sale, introducing into commerce, or delivering for introduction into commerce in the United States a model year 2006 or later recreational vehicle—or causing any of the foregoing—unless that recreational vehicle is covered by a COC. CAA §§ 203(a)(1), 213(d), 42 U.S.C. §§ 7522(a)(1), 7547(d); 40 C.F.R. § 1068.101(a)(1); *see* CAA § 216(1), 42 U.S.C. § 7550(1), 40 C.F.R. § 1068.30 (defining “manufacturer” to include importers).
- (l) All persons are prohibited from importing or causing another to import a new recreational vehicle into the United States unless that vehicle is covered by an EPA-issued COC. 40 C.F.R. § 1068.101(a)(5).

(m) Anyone who, between March 15, 2004, and January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a recreational vehicle that was not covered by a COC or was improperly labeled—or anyone who caused any of the foregoing—is subject to a civil penalty of up to \$32,500 for each such vehicle. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 1068.101(a)(1), (b)(6), (c). This penalty amount increased from \$32,500 to \$37,500 for violations which occur after January 12, 2009. 40 C.F.R. § 19.4.

15. Small SI nonroad engines:

- (a) Model year 1997 and later new nonroad SI engines with gross power output at or below 19 kW, certain new engines with a gross power above 19 kW, and new engines below 50 cc used in motorcycles must satisfy air pollutant emission standards in 40 C.F.R. §§ 90.103, 90.104, and 1054.101. 40 C.F.R. §§ 90.1(a)–(c), 90.2, 1054.1; *see* 40 C.F.R. §§ 90.3 and 1054.801 (defining “nonroad engine”). These emission standards impose limits on emissions of oxides of nitrogen, carbon monoxide, hydrocarbon, and exhaust capacity.
- (b) To demonstrate that a small SI nonroad engine satisfies emission standards, the engine must be covered by an EPA-issued COC. 40 C.F.R. §§ 90.106(a), 1054.201; *see* 40 C.F.R. §§ 90.106, 90.107, 1054.201, 1054.205 (outlining COCs and the application requirements).
- (c) An application for a COC must include an identification and description of the engines covered by the application. 40 C.F.R. §§ 90.107(d)(1) and 1054.205. Each COC states that it covers only the models it names.

- (d) Each COC states that it 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 C.F.R. Part 90” or “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 C.F.R. Part 1054.”
- (e) An engine manufacturer must affix at the time of manufacture a permanent and legible label that contains specified information. The EPA label must contain, among other things, the month and year of manufacture of the engine. 40 C.F.R. §§ 90.114 and 1054.135.
- (f) Pursuant to 40 C.F.R. § 1054.625(j), an engine manufacturer who produces engines for an equipment manufacturer under the Transition Program for Equipment Manufacturers (TPEM) must meet the labeling requirements of 40 C.F.R. § 90.114, but add the following statement instead of the compliance statement in 40 C.F.R. § 90.114(b)(7): THIS ENGINE MEETS U.S. EPA EMISSION STANDARDS UNDER 40 C.F.R. § 1054.525 AND MUST BE USED ONLY UNDER THOSE FLEXIBILITY PROVISIONS.
- (g) Manufacturers are prohibited from selling, offering for sale, introducing or delivering for introduction into commerce, or importing (or causing the foregoing acts with respect to) a model year 1997 or later nonroad small SI nonroad engine unless it is covered by a COC. CAA §§ 203(a)(1), 213(d), 42 U.S.C. §§ 7522(a)(1), 7547(d); 40 C.F.R. §§ 90.1003(a)(1), 1068.101(a)(1); *see* CAA § 216(1), 42 U.S.C. § 7550(1) (defining

“manufacturer” to include importers); 40 C.F.R. § 90.3 (defining “engine manufacturer” to include importers); 40 C.F.R. § 1068.30 (defining “manufacturer” to include importers).

- (h) Sections 203(a)(4)(A) and/or 213(d) of the CAA, 42 U.S.C. §§ 7522(a)(4)(A) and/or 7545(d), prohibits a manufacturer from selling or leasing a new certified vehicle/engine, unless the manufacturer has affixed the required EPA label to the engine in accordance with section 207(c)(3)(C) of the CAA, 42 U.S.C. § 7541(c)(3)(C). Pursuant to § 7541(c)(3)(C), the manufacturer is required to indicate by means of the EPA label permanently affixed to the vehicle/engine that such vehicle/engine is covered by a COC. The EPA label must also contain any other information that the EPA has prescribed by regulations. 40 C.F.R. §§ 90.1003(a)(4)(ii), 1068.101(a)(1).
- (i) Anyone who, between March 15, 2004, and January 12, 2009, sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States a small SI nonroad engine that was not covered by a COC or was improperly labeled—or anyone who caused any of the foregoing—is subject to a civil penalty of up to \$32,500 for each such engine. CAA § 205(a), 42 U.S.C. § 7524(a); 40 C.F.R. §§ 19.4, 90.1006, 1068.101(a)(1), (b)(6), (c). This penalty amount increased from \$32,500 to \$37,500 for violations which occur after January 12, 2009. 40 C.F.R. § 19.4.

16. Production Line Testing and Reports Requirement:

- (a) Sections 203(a)(2) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a)(2) and 7547(d), and the applicable regulations prohibit, among other things, any person from failing to perform tests and make reports. For failing to perform tests, *see* 40 C.F.R. §§ 90.1003(a)(2)(iii), 91.1103(a)(iii), 91.1104(a), and 1068.101(a)(3). For failing to make reports, *see* 40 C.F.R. §§ 90.1003(a)(2)(i), 91.1103(a)(2)(i), 91.1104(a), and 1068.101(a)(2).
- (b) The applicable regulations specify the test period and when the reports must be submitted to the EPA. Where the projected U.S.-directed production volume is 1,600 or greater, and the annual production period is 12 months, the test periods are consecutive quarters (3 months), and the production line test (PLT) reports must be submitted to the EPA within 30 days of the end of the test period or within 45 days of the end of the test period if SI propulsion marine engines. *See* 40 C.F.R. §§ 1045.310, 1051.310, and 1054.310.
- (c) For engine families with projected U.S.-directed production volume below 1,600, the whole model year constitutes a single test period, and the PLT report is due within 30 days and must be submitted to the EPA.
- (d) For model year 2009 and earlier small SI nonroad engines, the manufacturer must, beginning each model year, from the end of the assembly line, randomly select engines from each engine family for PLTs at a rate of 1%. *See* 40 C.F.R. §§ 90.706 and 91.506. For small nonroad SI engines, the PLT report must be submitted to the EPA within 45 days of the end of the each quarter. *See* 40 C.F.R. §§ 90.709(e), 1054.345.

(e) Anyone who, between March 15, 2004, and January 12, 2009, failed to keep or maintain mandatory records or failed to provide the EPA with information reasonably required to assess their compliance with the CAA, are subject to a civil penalty up to \$32,500 for each day they are in violation. CAA §§ 203(a)(2)(A), 205(a), 208(a), 42 U.S.C. §§ 7522(a)(2)(A), 7524(a), 7542(a); 40 C.F.R. §§ 19.4, 1068.101(a)(2). This penalty amount increased from \$32,500 to \$37,500 for violations since January 12, 2009. 40 C.F.R. § 19.4.

Stipulated Facts

17. The Subject Vehicles and Engines identified in Appendix A to this Consent Agreement are highway motorcycles, recreational vehicles, and small SI nonroad engines, as defined above, and are subject to the emission standards and compliance provisions of the CAA and its regulations. CAA §§ 203, 213(d), 42 U.S.C. §§ 7522, 7547(d).
18. Respondent is a “person” as defined above.
19. Respondent is a “manufacturer” as defined above.
20. Respondent imported all of the Subject Vehicles and Engines into the United States.
21. Respondent claimed that every one of the Subject Vehicles and Engines identified in Appendix A was covered by the COC specified for that vehicle or engine in Appendix A.
22. In July 2010, authorized inspectors from the EPA inspected a highway motorcycle labeled as belonging to engine family 9YMXC.049GCA. EPA alleges that the

catalytic converter on the vehicle did not conform to the specifications included in the COC application for the engine family.

23. In September 2010, authorized inspectors from the EPA inspected four models of Yamaha recreational vehicles and highway motorcycles labeled as belonging to engine families BYMXC1.85GEB, BYMXC.942GEA, BYMXX.686BDB, and BYMXX.558BDA at the port of Long Beach. For each vehicle inspected, the model names on the vehicles were not identified completely on the applicable COC.
24. Additionally, inspectors found that one recreational vehicle labeled as belonging to engine family BYMXX.124AAD had a carburetor with a replaceable main jet that did not conform to the specifications in the corresponding COC application because the jetting chart was not included in the COC application. Subsequent to the importation, Yamaha submitted a running change to EPA which added a jetting chart to the application for certification.
25. In a letter dated December 28, 2010, the EPA issued to Respondent a Request for Information under section 208(a) of the CAA, 42 U.S.C. § 7524(a) (§ 208 Request). This § 208 Request required Respondent to provide, among other things, information related to the manufacturing, testing, importation and warranty pertaining to all vehicles for which Respondent sought or was issued a COC for all vehicles from model years 2007 and later produced under a COC issued to Respondent and imported into the United States.
26. In March 2011, Respondent provided the EPA with some of the information requested by the § 208 Request.

27. Based on Respondent's responses to the § 208 Request, the EPA identified highway motorcycles and recreational vehicles that were labeled as belonging to engine families 9YMXC.0492EA, 9YMXC.125GCA, AYMXC.049GCA, AYMXC.0492EA, and 9YMXX.421BAA that were manufactured and imported with catalysts that did not conform to certain catalyst specifications included in the COC application for the engine family that allegedly covered the vehicles. Respondent subsequently provided documentation and test data from the catalyst manufacturers which demonstrated compliance for model years 2011 and 2012.
28. In December 2010, at a Home Depot Store in Atlanta, Georgia, authorized inspectors from the EPA inspected a 6800W gasoline generator with a Yamaha engine labeled as belonging to engine family 9YMXS.3572EE that did not list the date of manufacture on the emission control information label, but instead listed "DOM: *****".
29. In June 2011, in response to an EPA inquiry, Respondent reported a failure to conduct required PLT testing for engine family 9YMXS.3572EE.
30. In May 2012, Techtronics International submitted a disclosure to the EPA regarding Yamaha engines that were imported bearing certification labels under engine family CYMXS.3012EC instead of the required TPEM exemption labels.
31. In June 2012, the EPA requested information from Respondents regarding PLT reports for certain engine families.
32. Based on the information received from Respondent, the EPA identified a total of 10 small spark-ignited engine families for which PLT reports were either not submitted or not timely submitted to the EPA as required (9YMXS.1711EA, AYMXS.1711EA,

9YMXS.3572EB, AYMXS.3572EB, 9YMXS.3572EE, AYMXS.3572EE,
9YMXS.080BEA, 9YMXS.3572EA, AYMXS.3572EF, AYMXS.0805EA).

Alleged Violations of Law

33. Highway Motorcycle Certification Violations: The EPA alleges that Respondent sold, offered for sale, introduced or delivered for introduction into commerce, or imported (or caused the foregoing acts with respect to) 15,281 uncertified highway motorcycles (the "Subject Highway Motorcycles"), identified in Appendix A, in violation of section 203(a)(1) of the CAA, 42 U.S.C. § 7522(a)(1). Specifically, this includes:
- (a) 1,027 highway motorcycles that the EPA alleges have model names that are not identified on the COCs that purportedly cover them (515 of those motorcycles are allegedly from engine family BYMXC1.85GEB, and 512 motorcycles are allegedly from engine family BYMXC.942GEA).
 - (b) 14,254 highway motorcycles that the EPA alleges are equipped with catalysts that are materially different from the catalysts described in the application for the COC that purportedly covers them. Specifically, this includes:
 - (1) 2,320 highway motorcycles allegedly from engine family 9YMXC.049GCA, that have catalysts that materially differ in length and active material loading.
 - (2) 4,462 highway motorcycles allegedly from engine family 9YMXC.125GCA, that have catalysts that materially differ in length and part number.

- (3) 7,056 highway motorcycles allegedly from engine family 9YMXC.0492EA, that have catalyts that materially differ in active material loading and manufacturer.
- (4) 80 highway motorcycles allegedly from engine family AYMXC.049GCA, that have catalyts that materially differ in length and cell density.
- (5) 336 highway motorcycles allegedly from engine family AYMXC.0492EA, that have catalyts that materially differ in cell density and volume.

34. Recreational Vehicle Certification Violations: The EPA alleges that Respondent sold, offered for sale, introduced or delivered for introduction into commerce, or imported (or caused the foregoing acts with respect to) 19,020 uncertified recreational vehicles (the "Subject Recreational Vehicles"), identified in Appendix A, in violation of sections 203(a)(1) and 213(d) of the CAA, 42 U.S.C. §§ 7522(a)(1) and 7547(d), and of 40 C.F.R. § 1068.101(a)(1). Specifically, this includes:

- (a) 10,895 recreational vehicles that the EPA alleges have model names that are not identified on the COCs that purportedly cover them (5,588 of those recreational vehicles are allegedly from engine family BYMXX.686BDB and 5,307 recreational vehicles are allegedly from engine family BYMXX.558BDB).
- (b) 1,959 recreational vehicles allegedly from the engine family BYMXX.124AAD, which the EPA alleges have carburetors with replaceable

carburetor jets that do not conform to the design specifications submitted in the application for certification.

- (c) 6,166 recreational vehicles allegedly from the engine family 9YMX.421BAA, which the EPA alleges have catalysts that do not conform to the design specifications submitted in the application for certification.

35. Small SI Nonroad Spark-Ignition Engine Labeling Violations: The EPA alleges that Respondent sold or leased (or caused the foregoing acts with respect to) 20,915 small SI nonroad engines with nonconforming labels identified in Appendix A. The EPA alleges that the importation and sale, or causing the importation and sale, of these improperly labeled small ignition-spark engines constitutes violations of section 203(a)(4)(a) of the CAA, 42 U.S.C. § 7522(a)(4)(a) and the small nonroad spark-ignition engine regulations, 40 C.F.R. §§ 90.1003(a)(4)(ii) and 1068.101(a)(1).

Specifically, these violations include:

- (a) 20,045 small SI nonroad engines that the EPA alleges have emission control information labels that do not contain the required date of manufacture.
- (b) 870 small SI nonroad engines that the EPA alleges are lacking the requisite TPPEM exemption labels.

36. Production Line Testing and Reports Violations for Small SI Nonroad Engines: The EPA alleges that Respondent failed to submit and/or failed to timely submit PLT reports for ten small SI nonroad engine families including: 9YMXS.1711EA, AYMXS.1711EA, 9YMXS.3572EB, AYMXS.3572EB, 9YMXS.3572EE, AYMXS.3572EE, 9YMXS.080BEA, 9YMXS.3572EA, AYMXS.3572EF, and AYMXS.0805EA.

Terms of Agreement

37. For the purpose of this proceeding, Respondent:
- (a) admits that the EPA has jurisdiction over this matter as stated in Paragraphs 6 through 10 above;
 - (b) admits to the stipulated facts stated in Paragraphs 17 through 32 above;
 - (c) neither admits nor denies the alleged violations of law stated in Paragraphs 33 through 36 above;
 - (d) consents to the assessment of a civil penalty as stated in Paragraph 38 below;
 - (e) consents to the issuance of any specified compliance or corrective action order;
 - (f) waives any right to contest the alleged violations of law stated in Paragraphs 33 through 36 above; and
 - (g) waives its rights to appeal the Final Order accompanying this Consent Agreement.
38. Respondent must pay to the United States a civil penalty of \$950,000 (the Civil Penalty).
39. Respondent agrees to pay the Civil Penalty to the United States within 30 calendar days following the issuance of the attached Final Order (i.e., the effective date of this Consent Agreement and attached Final Order).
40. Respondent agrees to pay the Civil Penalty in the manner specified below:

- (a) Pay the EPA Penalty using any method, or combination of methods, provided on the following website:
http://www.epa.gov/cfo/finservices/payment_instructions.htm;
- (b) Identify each and every payment with “Docket No. CAA-HQ-2015-8146”;
and
- (c) Within 24 hours of payment, email proof of payment to Jacqueline R. Werner at werner.jacqueline@epa.gov (“proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with “Docket No. CAA-HQ-2015-8146”).

41. Respondent and Complainant acknowledge that, notwithstanding the Civil Penalty, the U.S. Department of Homeland Security’s Bureau of Customs and Border Protection (CBP) may attempt to assess separate penalties related to the alleged importation violations of law involving the Subject Vehicles and Engines and that Respondent, by executing this Consent Agreement, does not waive any defenses or legal remedies available to it, or toll any claims, should CBP attempt to assess any penalties.
42. Failure to pay the full amount of the penalty assessed under this Consent Agreement may subject Respondent to a civil action to collect any unpaid portion of the proposed civil penalty and interest. In order to avoid the assessment of interest, administrative costs, and late payment penalty in connection with such civil penalty, as described in

the following Paragraph of this Consent Agreement, Respondent must timely pay the penalty.

43. If Respondent fails to timely pay any portion of the penalty assessed by the attached Final Order, the EPA may:

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- (c) collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds (see 40 C.F.R. Part 13, Subparts C and H); and
- (d) suspend or revoke Respondent's licenses or other privileges, or (ii) suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, 40 C.F.R. § 13.17.

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

45. Respondent agrees that the time period from the effective date of this Consent Agreement until September 15, 2015 (the "Tolling Period") shall not be included in computing the running of any statute of limitations potentially applicable to any

action brought by Complainant on any claims (the “Tolled Claims”) set forth in Alleged Violations of Law section of this Consent Agreement. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

Effect of Consent Agreement and Attached Final Order

46. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this Consent Agreement and Final Order resolves only Respondent’s liability for federal civil penalties for the violations and facts specifically alleged above.
47. This Consent Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof.
48. Complainant and the Respondent each certify that its undersigned representative is fully authorized by the party whom he or she represents to enter into the terms and conditions of the Consent Agreement, to execute it on behalf of that party, and to legally bind that party on whose behalf he or she signs this Consent Agreement. Both parties agree that each party’s obligations under this Consent Agreement and Final Order constitute sufficient consideration for the other party’s obligations under this Consent Agreement and Final Order.

49. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and attached Final Order will be available to the public, and agrees that they do not contain any confidential business information.
50. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with all applicable provisions of the CAA or other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
51. By signing this Consent Agreement, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response, and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.
52. The EPA reserves the right to revoke this Consent Agreement and accompanying settlement penalty if and to the extent the EPA finds, after signing this Consent Agreement, that any information provided by Respondent was or is materially false or inaccurate, and the EPA reserves the right to pursue, assess, and enforce legal and equitable remedies for the Alleged Violations of Law. The EPA shall give Respondent written notice of such termination, which will be effective upon mailing.
53. By signing this Consent Agreement, Complainant and Respondent agree to bear their own costs and attorney's fees in the action resolved by this Consent Agreement and attached Final Order.

54. If Respondent fails to comply with any provision contained in this Consent Agreement and Final Order, Respondent waives any rights it may possess at law or in equity to challenge the authority of the EPA to bring a civil action in the appropriate United States District Court to compel compliance with the Consent Agreement and attached Final Order or to seek an additional penalty for such noncompliance.
55. The Parties agree to submit this Consent Agreement to the Environmental Appeals Board with a request that it be incorporated into a Final Order.
56. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, the EPA will transmit a copy of the filed Consent Agreement to the Respondent. This Consent Agreement and attached Final Order shall become effective after execution of the Final Order by the Environmental Appeals Board and filing with the Hearing Clerk.

APPENDIX A: Subject Vehicles and Engines

Alleged Engine Family	Alleged Violation	Alleged Violation Type
BYMXX1.85GEB	Uncertified: The model and brand names were not identified on the COC.	Model Name
BYMXX.942GEA	Uncertified: The model and brand names were not identified on the COC.	
BYMXX.686BDB	Uncertified: The model and brand names were not identified on the COC.	
BYMXX.558BDB	Uncertified: The model and brand names were not identified on the COC.	
BYMXX.124AAD	Uncertified: The YFM125RAW model ATV had a carburetor with a replaceable main jet and pilot jet.	
9YMXC.421BAA	Uncertified: Hot tube catalyst did not conform to loading in the application for certification.	Nonconforming carburetor
9YMXC.049GCA	Uncertified: Honeycomb catalyst was shorter and contained only a fraction of the precious metal loading described in the application for certification.	
9YMXC.125GCA	Uncertified: Hot tube catalyst did not conform to length, part number, and loading in the application for certification.	
9YMXC.0492EA	Uncertified: Honeycomb catalyst did not conform to specifications (grams/liter, manufacturer) in the application for certification.	
AYMXC.049GCA	Uncertified: Honeycomb catalyst did not conform to specifications (cell density, length) in the application for certification.	
AYMXC.0492EA	Uncertified: Honeycomb catalyst did not conform to specifications (cell density, volume) in the application for certification.	Nonconforming catalyst
CYMXS.9012EC	Label violation: These Yamaha Class 2 small SI engines installed in pressure washers were labeled as certified under CYMXS.9012EC but are missing supplemental TPDM labels (44 engines still in inventory will be relabeled).	
9YMXS.3572EE	Label violation: No date of manufacture (****; instead).	

The foregoing Consent Agreement In the Matter of Yamaha Motor Corporation, U.S.A. Docket No. CAA-HQ-2015-8146, is Hereby Stipulated, Agreed, and Approved for Entry.

For Yamaha Motor Corporation, U.S.A.:



Yamaha Motor Corporation, U.S.A.
6555 Katella Avenue
Cypress, California 90630

July 22, 2015
Date

For Complainant:

[Redacted]

Phillip A. Brooks, Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (2242A)
Washington, DC 20460-0001

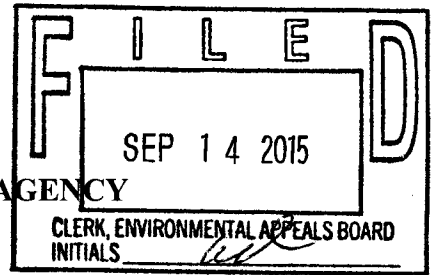
8/4/2015
Date

[Redacted]

Jacqueline R. Werner, Associate Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (2242A)
Washington, DC 20460-0001

July 30, 2015
Date

ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re:)
)
Yamaha Motor Corporation, U.S.A.)
)
)
_____)
)
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)
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Docket No. CAA-HQ-2015-8146

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. With respect to ratifying the penalty assessment for the recordkeeping violations set forth in this Consent Agreement, the Board does not rely on any interim, nonpublic penalty policy. Rather, the Board relies on the statutory factors set forth in the Clean Air Act § 205(c)(2), 42 U.S.C. § 7524(c)(2),

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.

ENVIRONMENTAL APPEALS BOARD¹

Dated: 9/14/15

Mary Beth Ward
for Mary Kay Lynch
Environmental Appeals Judge

¹ The three-member panel ratifying this matter is composed of Environmental Appeals Judges Mary Kay Lynch, Kathie A. Stein, and Mary Beth Ward.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of Yamaha Motor Corporation, U.S.A., Docket No. CAA-HQ-2015-8146, were filed and copies of the same were sent to the following persons in the manner indicated:

**By First Class Certified Mail/
Return Receipt Requested:**

Granta Y. Nakayama
King & Spaulding LLP
1700 Pennsylvania Ave., N.W.
Suite 200
Washington, DC 20006

By Interoffice Mail:

Jacqueline R. Werner
Air Enforcement Division, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Mail Code 2242A
Washington, DC 20460

Dated: SEP 14 2015



Annette Duncan
Secretary