



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
NATIONAL VEHICLE AND FUEL EMISSIONS LABORATORY  
2565 PLYMOUTH ROAD  
ANN ARBOR, MICHIGAN 48105-2498

OFFICE OF  
AIR AND RADIATION

AUG 1 2014

**UPS  
DELIVERY CONFIRMATION REQUESTED**

Guogui Lai, President  
CFMOTO America, Inc.  
CFMOTO Powersports, Inc.  
3555 Holly Lane N. #30  
Plymouth, Minnesota 55447

Dear Mr. Lai:

This letter is to inform you that the U.S. Environmental Protection Agency ("EPA") is voiding the certificates of conformity issued to CFMOTO America, Inc. for the engine families listed in Enclosure A to this letter. CFMOTO Powersports, Inc. is the successor to CFMOTO America, Inc. CFMOTO Powersports, Inc. and CFMOTO America, Inc. are hereinafter collectively referred to as "CFMOTO". These certificates include CFMOTO's highway motorcycle and all-terrain vehicles that were issued by EPA in 2006, 2007, 2008, 2009, 2010, and 2011.

These certificates were issued based upon information and statements you made in your applications for certification as required by 40 CFR Part 86 and 40 CFR Part 1051, as applicable. In your certificate applications, you asserted full compliance with the applicable statutory and regulatory requirements. Specifically, CFMOTO stated in all of its certificate applications for highway motorcycles that "[t]he test vehicle with respect to which data are submitted has been tested in accordance with the applicable US EPA test procedures, meets the requirements of such tests, and conforms to the requirements of the regulations in 40 CFR, subpart 86 [sic]. The vehicle described herein has been tested in accordance with the provisions of applicable subparts, and on the basis of these tests is in conformance with the specified regulations. All data and records required by subpart 86 [sic] are on file and are available for inspection by the Administrator."

EPA's decision to issue the certificates of conformity was based on our review of the information and statements in your certificate applications and, most importantly, your obligation to provide information and statements in the applications that are both accurate and complete. After completing our review of the applications, we concluded that the engine families met all requirements of 40 CFR Part 86 or 1051, as applicable, and the Clean Air Act

(CAA). Consequently, based upon CFMOTO submittals, we issued to you the certificates of conformity.

After issuing these certificates of conformity, EPA received information concerning the certification practices used by your certification consultant, System Launch Associates (SLA). Specifically, EPA received information suggesting that no testing had actually been done on your vehicles. Based on our investigation, which included repeated requests for information from CFMOTO, we received assertions from your test lab that for CFMOTO. Further, you consistently failed to produce a complete set of documents to verify that testing actually occurred. Therefore, it appears to EPA that the testing referenced throughout CFMOTO's certificate applications never occurred. Because the testing information included with CFMOTO's applications appears fabricated, it appears that CFMOTO knowingly and/or intentionally submitted false, incomplete, or inaccurate information in your applications for certification. Furthermore, because the accuracy and authenticity of testing information and supporting data was integral to our determination that your vehicles met emission standards and otherwise conformed to applicable statutory and regulatory requirements, which resulted in our decision to issue you certificates of conformity, it appears to EPA that CFMOTO's certificates of conformity were issued based on the knowing and/or intentional submission of false, incomplete, or inaccurate information in your applications for certification. Additionally, it appears that CFMOTO failed to maintain appropriate records, as required by the applicable regulations, contrary to the assertions in CFMOTO's certificate applications.

On April 9, 2013, EPA sent you a letter to inform you of these concerns pertaining to your certificates of conformity. At that time, we gave you advance notice of those concerns – which were set forth in greater detail throughout that letter and its enclosures – and provided you with an opportunity to demonstrate or achieve compliance with all of the applicable requirements governing these certificates of conformity. We specifically requested that you provide us with evidence that would support the statements of compliance made in your original certification applications.

In response, EPA received an eight-page letter with enclosures from you on June 17, 2013. However, the June 17<sup>th</sup> response letter does not demonstrate that the statements in CFMOTO's certification applications were accurate or that its vehicles comply with the applicable regulations. The response letter also does not address or contradict EPA's underlying concerns regarding the apparently fabricated test information or CFMOTO's apparent failure to maintain required records. Your letter does not provide any evidence that the statements made in CFMOTO's certification applications were accurate because it fails to present any further explanation or information regarding the testing of your vehicles. As we explained in our April 9, 2013 letter, it appears that none of your vehicles were ever tested. Your letter does not refute this finding. This demonstrates that you knowingly and/or intentionally submitted false, incomplete, or inaccurate information in your applications for certification, which is our basis for voiding these certificates under 40 CFR § 86.442-78(c) and 1051. 255(e).

Additionally, CFMOTO's June 17<sup>th</sup> response letter did not provide emission testing records or supporting documentation to support the assertion in your certificate applications regarding your compliance with recordkeeping requirements. Instead, you state that CFMOTO has not

maintained any records beyond what SLA may have maintained on its behalf and that Michael Johnson and SLA did not provide data that CFMOTO had requested on multiple occasions. As we explained in our April 9, 2013 letter, we found no evidence that SLA maintained any of the required records for CFMOTO. Your assurance in your certificate applications that these records would be maintained not only informed our decision to issue the certificates of conformity, which contributes to EPA's belief that CFMOTO knowingly and/or intentionally submitted false, incomplete, or inaccurate information in your applications for certification, but is also a separate regulatory requirement. Failure to maintain these records is further basis for voiding certificates under 40 CFR § 1051.255(d).

For the reasons set forth above and as described in greater detail in Enclosure B to this letter, EPA concludes that you knowingly and/or intentionally submitted false, incomplete, or inaccurate information in your applications for certification, and that you failed to maintain the records as required by our regulations.

Therefore, EPA is voiding your certificates of conformity for the engine families listed in Enclosure A, effective immediately. By voiding your certificates of conformity, the certificates are deemed void from the beginning of the applicable model year. 40 CFR § 1068.30. Accordingly, all vehicles introduced into U.S. commerce under those certificates are considered noncompliant with the applicable statutes and regulations.

Sections 203 and 213(d) of the Clean Air Act prohibit the sale of vehicles and engines unless such vehicles and engines are covered by a valid certificate of conformity. *See also* 40 CFR §§ 86.407-78, 1068.101(a)(1). Each introduction of a vehicle or engine into U.S. commerce under these certificates is a separate violation of sections 203 and 213 of the Clean Air Act, and you may face civil penalties up to \$37,500 per vehicle or engine, as well as criminal penalties. CAA §§ 203(a)(1), 205(a), and 213(d); 40 USC §§ 7522, 7524, and 7547; 40 CFR §§ 86.407-78 and 1068.101(a)(1).

You may request a hearing on EPA's decision to void your certificates in accordance with the procedures set forth in 40 CFR §§ 86.442, 86.443, 86.444, 86.1853-01. A request for a hearing must be in writing, signed by the certificate holder or authorized representative of the certificate holder, and include a statement, with supporting data, specifying objections to the action taken by EPA. The request must be received by EPA within 30 calendar days of your receipt of this letter and should be addressed to:

Mr. Cleophas Jackson, Director  
Gasoline Engine Compliance Center  
U.S. EPA, Office of Transportation and Air Quality  
2000 Traverwood Drive  
Ann Arbor, Michigan 48105

Please contact Mr. Cleophas Jackson of my staff at (734) 214-4824 or jackson.cleophas@epa.gov, should you have any questions.

Sincerely,



Byron Bunker, Director  
Compliance Division  
Office of Transportation and Air Quality

ENCLOSURES

cc: System Launch Associates, LLC  
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## ENCLOSURE A

### *Affected Engine Families*

As stated in our letter, the U.S. Environmental Protection Agency (“EPA”) has serious concerns pertaining to the certificates of conformity issued to CFMOTO America, Inc. (“CFMOTO”) for the following engine families:

**Certificate Number 7CMAX0.50NFG-001.** On October 26, 2006, EPA issued CFMOTO a certificate of conformity for the all terrain vehicle engine family 7CMAX0.50NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR parts 1051, 1065, and 1068.

**Certificate Number 8CMAX0.50NFG-001.** On February 1, 2008, EPA issued CFMOTO a certificate of conformity for the all terrain vehicle engine family 8CMAX0.50NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR parts 1051, 1065 and 1068.

**Certificate Number 9CMAX0.50NFG-001.** On July 8, 2008, EPA issued CFMOTO a certificate of conformity for the all terrain vehicle engine family 9CMAX0.50NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR parts 1051, 1065 and 1068.

**Certificate Number 9CMAX0.50NFG-001-R01.** On April 8, 2009, EPA issued CFMOTO a revised certificate of conformity for the all terrain vehicle engine family 9CMAX0.50NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR parts 1051, 1065 and 1068.

**Certificate Number ACMAX0.50NFG-001-R01.** On April 16, 2009, EPA issued CFMOTO a revised certificate of conformity for the all terrain vehicle engine family ACMAX0.50NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR parts 1051, 1065 and 1068.

**Certificate Number BCMAX0.50NFG-002.** On October 20, 2010, EPA issued CFMOTO a certificate of conformity for the all terrain vehicle engine family BCMAX0.50NFG. This certificate was issued pursuant to section 213 of the Clean Air Act and 40 CFR parts 1051, 1065 and 1068.

**Certificate Number 7CMAC0.15NFG-001.** On October 26, 2006, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family 7CMAC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number 7CMAC0.15NFG-001-R01.** On February 21, 2007, EPA issued CFMOTO a revised certificate of conformity for the highway motorcycle engine family 7CMAC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number 8CMAC0.15NFG-001.** On February 1, 2008, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family 8CMAC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number 8CMAC0.15NFG-001-R01.** On March 18, 2008, EPA issued CFMOTO a revised certificate of conformity for the highway motorcycle engine family 8CMAC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number 9CMAC0.15NFG-001.** On July 8, 2008, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family 9CMAC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number 9CMAC0.15NFG-001-R01.** On March 26, 2009, EPA issued CFMOTO a revised certificate of conformity for the highway motorcycle engine family 9CMAC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number ACMAC0.15NFG-001.** On April 16, 2009, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family ACMAC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number 7CMAC0.25NFG-002.** On October 26, 2006, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family 7CMAC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number 8CMAC0.25NFG-002.** On February 1, 2008, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family 8CMAC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number 8CMAC0.25NFG-002-R01.** On March 18, 2008, EPA issued CFMOTO a revised certificate of conformity for the highway motorcycle engine family 8CMAC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number 9CMAC0.25NFG-002.** On July 8, 2008, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family 9CMAC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number 9CMAC0.25NFG-002-R01.** On March 26, 2009, EPA issued CFMOTO a revised certificate of conformity for the highway motorcycle engine family 9CMAC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number ACMAC0.25NFG-002.** On April 16, 2009, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family ACMAC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number ACMAC0.25NFG-002-R01.** On April 16, 2009, EPA issued CFMOTO a revised certificate of conformity for the highway motorcycle engine family ACMAC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number BCMAC0.25NFG-003.** On February 3, 2011, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family BCMAC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number 9CMAC0.15ELF-003.** On May 20, 2009, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family 9CMAC0.15ELF. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number ACMAC0.15EFI-003.** On July 22, 2009, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family ACMAC0.15EFI. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number BCMAC0.15EFI-002.** On February 3, 2011, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family BCMAC0.15EFI. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

**Certificate Number BCMAX0.60ELF-001.** On March 25, 2010, EPA issued CFMOTO a certificate of conformity for the all terrain vehicle engine family BCMAX0.60ELF. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR parts 1051, 1065 and 1068.

**Certificate Number BCMAC0.25ELF-001.** On March 25, 2010, EPA issued CFMOTO a certificate of conformity for the highway motorcycle engine family BCMAC0.25ELF. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

## ENCLOSURE B

### *I. Summary of EPA's Concerns*

As a result of EPA's investigation into CFMOTO America, Inc.'s (hereinafter referred to as "CFMOTO") recordkeeping practices, as well as the practices of your certification consultant, System Launch Associates (hereinafter "SLA")<sup>1</sup>, EPA finds that the specific facts and actions, as described below, warrant the voiding of the certificates of conformity that EPA issued to CFMOTO. First, EPA finds that the information that was submitted to EPA in CFMOTO's applications was false or incomplete. EPA's reliance on the veracity of that information led to EPA's decision to issue certificates of conformity to CFMOTO. As described in more detail below, our investigation has revealed that the information we received from SLA, on CFMOTO's behalf, was not truthful, and should not have been relied upon. Second, our investigation has also revealed that CFMOTO has not maintained the appropriate records, as required by our regulations.

### *II. Statutory and Regulatory Background*

Section 203 of the Clean Air Act ("CAA" or "the Act") prohibits a manufacturer from selling, offering for sale, introducing, or delivering for introduction into commerce, or any person from importing, a new motor vehicle or new motor vehicle engine "unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under" the prescribed regulations. 42 U.S.C. § 7522(a)(1); 40 CFR § 86.407-78 and 1051.201. To obtain such a certificate of conformity, a certifying party must submit an application to the EPA. Title 40 Part 86 and 1051 of the U.S. Code of Federal Regulations (CFR) contains the applicable requirements for on-highway motorcycles and for recreational vehicles (such as all-terrain vehicles (ATVs) and off-highway motorcycles), respectively. For example, Part 86, subparts E and F, prescribe the requirements for on-highway motorcycles, including what specific information must be included in an application for a certificate of conformity (40 CFR § 86.416-80), what emissions testing must be performed for demonstrating compliance with applicable emission standards (40 CFR § 86.501-78 et seq.), and what records must be kept and made available to EPA (40 CFR § 86.440-78). Likewise, Part 1051 prescribes the requirements for ATVs and off-highway motorcycles, including what specific information must be included in the application (40 CFR § 1051.205),

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<sup>1</sup> According to EPA's records, as submitted by CFMOTO, CFMOTO hired System Launch Associates ("SLA") to act as its consultant. SLA was specifically authorized by CFMOTO to serve as its authorized representative on all matters related to the EPA application and certification process. For example, in CFMOTO's certification applications, it included the following statement:

System Launch Associates LLC has compiled the following Application utilizing the best data and specifications made available to it and in no way shall be held responsible for any errors, omissions or inaccuracies in this Application. CFMOTO is aware of the contents of this report and concurs with their presentation therein. For questions please call Mr. Mike Johnson of SLA at 248-212-7919, or email [systemlaunch@yahoo.com](mailto:systemlaunch@yahoo.com).

Therefore, all acts committed by SLA on CFMOTO's behalf are imputed to CFMOTO as the certificate holder. See 40 CFR §§ 86.416-80(a)(2).

what emissions testing must be performed for demonstrating compliance with the applicable emissions standards (40 CFR § 1051.235), and what records must be kept and made available to EPA (40 CFR § 1051.250).

Under 40 CFR § 86.440-78, an on-highway motorcycle manufacturer must establish, maintain, and retain certain adequately organized and indexed records, including a complete record of all emission tests performed, test results, the date and purpose of each test, and the distance accumulated on the vehicle, “for a period of six (6) years after the issuance of all certificates of conformity to which they relate.”<sup>2</sup> Section 86.442-78 specifies what actions EPA may take regarding your certificates of conformity for on-highway motorcycles. Under 40 CFR § 86.442-78(a)(1), the “Administrator may... suspend or revoke any... certificate which has been issued...with respect to any such vehicle(s) if...[t]he manufacturer submits false or incomplete information in his application for certification thereof.” Section 86.442-78(c) provides the following option:

In any case in which a manufacturer knowingly submits false or inaccurate information, or knowingly renders inaccurate or invalid any test data, or commits any fraudulent acts and such acts contribute substantially to the Administrator's decision to issue a certificate of conformity, the Administrator may deem such certificate void *ab initio*.

A voided certificate is one that is considered never to have been granted and all engines or vehicles introduced into commerce under that certificate are considered noncompliant. See e.g., 40 CFR § 1068.30. No additional engines or vehicles may be introduced into commerce using a voided certificate, and the holder of the voided certificate is liable for all engines or vehicles introduced into U.S. commerce under the voided certificate and may face civil and criminal penalties. 42 U.S.C. §§ 7413, 7522, and 7524; *see also, e.g.* 40 CFR §§ 86.407-78, 1068.30, 1068.101, and 1068.125.

For off-highway motorcycles and ATVs, under 40 CFR § 1051.250(b), a recreational vehicle manufacturer must establish, maintain, and retain certain adequately organized and indexed records, including a detailed history of each emission-data vehicle, and all emission tests, for at least eight years following the issuance of the associated certificate of conformity.<sup>3</sup> Section 1051.201(b) states that “the application must...not include false or incomplete statements or information.” Section 1051.255 describes what decisions EPA may make regarding your certificates of conformity for recreational vehicles. Under 40 CFR § 1051.255(d), “we may void

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<sup>2</sup> Routine emission test records must be maintained for a period of one year after issuance of all certificates of conformity to which they relate. All other emission tests and records must be maintained and retained by the manufacturer for six years from the issuance of the applicable certificate of conformity to which they relate. *See* 40 CFR § 86.440-78(a)(3).

<sup>3</sup> As specified in 40 C.F.R. § 1051.250(c), data from routine emission tests (such as test cell temperatures and relative humidity readings) must be kept for one year after issuance of the associated certificate of conformity. All other emission tests and other specified records must be kept for eight years from the issuance of the applicable certificate of conformity.

your certificate if you do not keep the records we require or [you] do not give us information as required under this part or the Act.” Furthermore, under 40 CFR § 1051.255(e), “we may void your certificate if we find that you intentionally submitted false or incomplete information.” A voided certificate is one that is considered never to have been granted, and all engines introduced into commerce under a voided certificate are considered noncompliant. 40 CFR § 1068.30. No additional vehicles may be introduced into commerce using a voided certificate, and the holder of the voided certificate is liable for all engines/equipment introduced into U.S. commerce under the voided certificate and may face civil and criminal penalties. 40 CFR §§ 1068.30, 1068.101, and 1068.125.

### ***III. Facts Which Warrant Voiding the Certificates***

As a result of EPA’s investigation into CFMOTO’s certification and recordkeeping practices, including practices by your consultant, SLA, EPA finds that the specific facts and actions, as described below, show that CFMOTO’s certificates of conformity were issued based on the knowing and/or intentional submission of false, incomplete, or inaccurate information. EPA’s investigation into CFMOTO’s record keeping practices also shows that CFMOTO failed to maintain appropriate records under applicable EPA regulations. As explained above, both of these reasons warrant EPA’s decision to void these certificates.

#### **A. Summary of EPA’s Investigation**

##### EPA Information Request to SLA

On September 12, 2008, EPA’s Office of Enforcement and Compliance Assurance (OECA) issued an information request to SLA under section 208 of the CAA. 42 U.S.C. § 7542. The information request was initiated after EPA received a tip that SLA was violating CAA requirements. In the information request, EPA asked SLA to provide information, including a variety of emissions test records and data for each certification application that SLA had prepared and/or submitted to EPA, including those certification applications submitted on behalf of CFMOTO. In his April 12, 2009 response, SLA’s president and sole member, Michael Johnson, asserted that he had no records other than paper or electronic copies of certification applications in the exact same form as he had submitted them to EPA, adding that EPA should contact his client-manufacturers (including CFMOTO) directly to obtain the requested records. In that same response, Mr. Johnson then asserted that SLA only “assembles” applications, “[e]very single piece of information incorporated into an application is provided solely by the Applicant” and that if the applicant provides information that is false, erroneous, or incomplete, it is the responsibility of the applicant.

##### EPA Onsite Inspection of Records at SLA

On May 26, 2009, EPA directed its contractor, The Bionetics Corporation, to conduct an onsite inspection of SLA’s office. During the course of the inspection, Bionetics discovered that SLA’s

office was also Mr. Johnson's apartment residence and that Mr. Johnson only had in his possession a single box of records which contained certification applications. Mr. Johnson stated at that time that he was in the process of relocating to Michigan as explanation of why he only had one box of records. Mr. Johnson did not provide any electronic records or electronic copies of certification applications. He also stated that the best source for the requested records would be with the vehicle manufacturer or certifying party (here, CFMOTO).

It therefore appears that CFMOTO's recordkeeping practices have failed to comply with 40 CFR §§ 86.440-78 and 1051.250. When EPA requested documentation to show compliance with these recordkeeping requirements, CFMOTO was either unwilling or unable to produce the requested information. As explained above, 40 CFR § 86.440-78 specifies that manufacturers of highway motorcycles must maintain records for at least six years following issuance of the associated certificate (i.e., carryover, carry-across, and original certificates). Similarly, 40 CFR § 1051.250 requires manufacturers to maintain, for at least eight years following issuance of the associated certificate, a detailed history of each emission-data vehicle, here off-highway motorcycles and ATVs. However, based on the information we have collected (or been unable to collect), it appears that CFMOTO has failed to maintain complete records for these vehicle-types, in violation of 40 CFR §§ 86.440-78 and 1051.250.

#### EPA Information Request to CFMOTO

On December 6, 2010, EPA sent CFMOTO a letter requesting information under section 208 of the CAA, to determine CFMOTO's compliance with sections 203 and 213 of the CAA, and applicable motor vehicle and non-road engine regulations. CFMOTO provided an initial response on January 6, 2011 and a supplemental response to EPA's information request on February 10, 2011. CFMOTO stated that it retained SLA to run certification testing, compile, and submit certificate applications, and submitted test summary pages for the engine families 7CMAC0.15NFG, 9CMAC0.15ELF, 7CMAC0.25NFG, BCMAC0.25ELF, 7CMAX0.50NFG, BCMAX0.60ELF. According to CFMOTO's response, Texas Environmental Technologies ("TET") conducted all of the emission tests for which CFMOTO provided information. However, CFMOTO did not provide the raw emissions test data, which would normally be part of a complete emission test report from Texas Environmental Technologies, LLC (TET), for any of the emissions tests purportedly conducted at TET. CFMOTO also provided vehicle service logs with a TET header for six test vehicles. However, William Rucker, the owner and president of TET, has stated that CFMOTO was never a client of TET and that TET did not conduct any of the tests described by CFMOTO. In addition, the test reports provided by CFMOTO are in a format that is inconsistent with test data sheets that would have been generated from TET's lab and computer equipment.

It therefore appears that CFMOTO's recordkeeping practices have failed to comply with 40 CFR §§ 86.440-78 and 1051.250. When EPA requested documentation to show compliance with these recordkeeping requirements, CFMOTO was either unwilling or unable to produce the

requested information. As explained above, 40 CFR § 86.440-78 specifies that manufacturers of highway motorcycles must maintain records for at least six years following issuance of the associated certificate (i.e., carryover, carry-across, and original certificates). Similarly, 40 CFR § 1051.250 requires manufacturers to maintain a detailed history of each emission-data vehicle, here ATVs, for at least eight years following issuance of the associated certificate. However, based on the information we have collected (or been unable to collect), it appears that CFMOTO has failed to maintain records for any of these vehicle-types, in violation of 40 CFR §§ 86.440-78 and 1051.250.

#### Information Provided by Texas Environmental Technologies

Because many of CFMOTO's certification applications indicated that TET was the test lab that conducted the supporting emissions tests, on October 26, 2010, EPA sent an information request, pursuant to CAA section 208, to TET requesting emissions tests and calibration records related to any emissions tests conducted at TET. In April and May of 2011, Mr. Rucker provided EPA with some test data in response to this request but none of that test data was for any of CFMOTO's vehicles. Furthermore, on November 16, 2011 and February 16, 2012, EPA sent TET two additional follow-up letters seeking additional test data and other information. In these letters, EPA explicitly identified the unique test numbers and specific test dates of emissions tests purportedly conducted at TET and referenced in several of CFMOTO's certification applications, in which TET was identified as the test lab. Mr. Rucker responded to these requests in January and March of 2012, respectively. In his responses, Mr. Rucker again stated that TET did not have any records or information that indicated TET had ever tested the relevant CFMOTO engine families. Mr. Rucker also stated that TET had not conducted any emissions tests for CFMOTO. Additionally, in his responses, Mr. Rucker indicated that the unique test identification numbers listed in the CFMOTO certification applications were not test numbers used by TET, and that furthermore, the dates of the emissions tests listed in the certification applications did not match TET records of dates that emissions testing was actually conducted at the TET lab.

Given these statements by TET, in combination with both CFMOTO's and SLA's inability to produce relevant records, it appears that the certification applications submitted by CFMOTO to EPA in which TET was listed as the testing laboratory are likely false, and that all the test information, including test data and test results cited in the certification applications are likely fabricated in their entirety.

#### Additional Information Provided by TET and SLA

Between approximately 2006 and 2011, SLA submitted 19 highway motorcycle and recreational vehicle certification applications to EPA on behalf of CFMOTO which indicated that certification emission tests were conducted at TET. As stated above, Mr. Rucker stated that TET did not conduct any of these certification tests, and that CFMOTO was never a client of

TET. Furthermore, CFMOTO's certification consultant, Mr. Michael Johnson of SLA, stated during a May 21, 2012 telephone conference call with EPA's Office of Transportation and Air Quality, that he did not run tests at TET after May 2005. Given both TET's denial of any testing for CFMOTO at any time, and Mr. Johnson's statement that he did not run any testing at TET after May 2005, the EPA believes that false information was likely submitted by CFMOTO in several of its applications.

EPA's April 9, 2013 Letter to CFMOTO and CFMOTO's June 17, 2013 Response Letter

On April 9, 2013, EPA sent a letter to CFMOTO providing an opportunity for CFMOTO to demonstrate or achieve compliance with the applicable regulations. In response, EPA received a 17 page letter with additional enclosures dated June 17, 2013 from Boris Parker, Attorney for Parker & Wenner Attorneys at Law representing CFMOTO. Although Mr. Parker offers several points explaining CFMOTO's difficulties with its consultant, SLA, none of these statements demonstrate any level of compliance with regulatory requirements.

In response to EPA's April 9, 2013 letter, Mr. Parker offers two main arguments to support CFMOTO's assertion that CFMOTO did not knowingly and/or intentionally submit false data or fail to provide regulatorily required records. Mr. Parker first states that EPA should not be conducting this void action against CFMOTO because CFMOTO's set of circumstances is similar to the pending (at the time) legal matter in *U.S. v. Motorscience Enterprises, Inc., Motorscience, Inc., and Chi Zheng (Motorscience)*. In the *Motorscience* case, the pending legal action involves only the consultant and not the manufacturer(s) of the products. However, we point out that the certificates of conformity obtained by the consultant in the *Motorscience* case were also voided by the EPA as a separate matter to the civil case. Further, resolution of the *Motorscience* case is not relevant to the current action or pertinent to the questions presented to CFMOTO in EPA's April 9, 2013 letter.

Mr. Parker then claims that, as new entrants to the marketplace, CFMOTO had to rely on SLA and Michael Johnson "to assist (CFMOTO) with the procurement of certificates of conformity for CFMOTO brand vehicles..." and "relied completely on the advice and guidance of Michael Johnson in regard to any and all vehicle testing, data submissions and direct communications with US EPA, as well as for purposes of applications and test data retention."<sup>4</sup> As a result, Mr. Parker asserts that it was, therefore, SLA and Michael Johnson that submitted "incomplete or inaccurate information" and failed to retain required documentation in violation of EPA regulations. In support of this response to EPA's April 9, 2013 letter, CFMOTO submitted email conversations that CFMOTO believed were relevant to demonstrate the level of control Michael Johnson exhibited over the testing of CFMOTO certification applications.

From these statements it appears that Mr. Parker is asserting that although SLA may have submitted false, incomplete or inaccurate information to EPA, CFMOTO did not knowingly

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<sup>4</sup> CFMOTO June 17, 2013 Response Letter, pg. 1-2.

and/or intentionally submit false, incomplete or inaccurate information to EPA. EPA, however, did not issue certificates to Mr. Johnson and SLA; EPA issued certificates to CFMOTO and CFMOTO was the entity on whose behalf the information in the certificates was provided. CFMOTO, as the certificate holder, is the entity who bears responsibility for complying with EPA regulatory requirements, and it was CFMOTO that benefitted by being able to introduce its vehicles into commerce as a result of EPA certification. That CFMOTO's consultant may not have fulfilled its fiduciary or contractual arrangement with CFMOTO does not in any way address EPA's concerns that CFMOTO appears to have not complied with the regulatory requirements assigned to it as the certificate holder. The information Mr. Parker presents regarding the business relationship between CFMOTO and SLA does not in any way resolve the issues we have with the false, incomplete or inaccurate information that was submitted to EPA in support of CFMOTO's certification applications. In no instance does Mr. Parker rebut our concerns regarding that information. Furthermore, Mr. Parker does nothing to rebut the evidence that CFMOTO has not complied with any of the certification, testing, or recordkeeping requirements. CFMOTO relied on SLA to obtain certificates of conformity on its behalf, further relied on those certificates to introduce its vehicles into U.S. commerce, and continues to this day to rely on those certification applications as its demonstration of compliance. That CFMOTO may have made an unfortunate choice of consultant and did not properly oversee the consultant's actions in ensuring that its legal responsibilities were fulfilled is not an excuse for failing to meet its responsibilities. In no instance does Mr. Parker demonstrate that CFMOTO actually complied with EPA regulations.

Second, in response to EPA questions concerning recordkeeping practices, while Mr. Parker argues that though CFMOTO "attempted to procure raw emissions data... but when it requested said data from SLA and subsequently from TET itself, it learned that TET had ceased operations and that SLA likely had misled (CFMOTO) as well."<sup>5</sup> Essentially, Mr. Parker confirms that CFMOTO was unable to keep appropriate records because SLA failed to provide CFMOTO with those records.

This rationale does nothing to rebut our findings that CFMOTO failed to keep records. Section 86.440-78 makes it clear that "the manufacturer of any motorcycle subject to any of the standards or procedures prescribed in [Part 86, subpart E] shall establish, maintain and retain the following adequately organized and indexed records... [a] complete record of all emission tests performed (except tests performed by EPA directly) including test results, the date and purpose of each test, and the distance accumulated on the vehicle." Nothing in Mr. Parker's response demonstrates that CFMOTO has complied with these recordkeeping requirements. CFMOTO's failure to maintain these records further informs our decision that these certificates of conformity were issued based on the knowing and/or intentional submission of false, incomplete or inaccurate information.

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<sup>5</sup> *Id.* at pg. 7.

## **B. Basis for Voiding Certificates**

EPA finds the specific facts and actions described above warrant the voiding of the certificates of conformity listed in Enclosure A. First, EPA believes that the information we have gathered demonstrates that CFMOTO, through their agent SLA, knowingly submitted false, incomplete, or inaccurate information in their certification applications. Second, EPA believes that CFMOTO has failed to maintain required records. As previously stated, both the knowing submittal of false or incomplete information, and the failure to maintain required records, may be a basis for voiding certificates. 40 CFR §§ 86-442-78(c), 1051.255(d) and (e). Second, CFMOTO's recordkeeping practices have failed to comply with 40 CFR §§ 86.440-78 and 1051.250.

### Intentional and/or Knowing Submission of False, Incomplete, or Inaccurate Information

As described above, the certificates listed in Enclosure A were issued based on emissions tests purportedly conducted at TET. However, Mr. Rucker of TET has stated that TET never conducted any emissions testing for CFMOTO. He also indicated that the test numbers and the test dates listed on the CFMOTO certification applications do not match test numbers or formats used by TET or dates on which any testing actually took place at TET. Furthermore, Michael Johnson of SLA also stated that he did not run any tests at TET after May of 2005. Thus, the CFMOTO certification applications that refer to purported emissions tests conducted at TET, including for tests conducted after May of 2005, appear to contain false data and information. It therefore appears that CFMOTO intentionally and/or knowingly submitted false, incomplete, or inaccurate information in their certification applications, on which EPA relied in issuing the certificates of conformity listed in Enclosure A.

In response to EPA's April 9, 2013 letter providing CFMOTO an opportunity to demonstrate or achieve compliance, Mr. Parker does not in any way demonstrate that any testing actually occurred. Instead, Mr. Parker simply states in the response letter that "(CFMOTO) legitimately and completely relied on EPA recognized and ARB certified laboratories and consultants for all of its certification submissions and records maintenance needs."<sup>6</sup> However, CFMOTO was unable to provide any test data in response to an EPA's CAA section 208 request for information in our April 9, 2013 letter. Such a statement does not address any of EPA's concerns about the certification applications it received from CFMOTO, and it in no way demonstrates that any testing was ever conducted on any of CFMOTO's vehicles.

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<sup>6</sup> Id. at, pg 8.

### Failure to Maintain Records

CFMOTO's recordkeeping practices have failed to comply with 40 CFR §§ 86.440-78 and 1051.250. When EPA requested documentation to show compliance with these recordkeeping requirements, CFMOTO was either unwilling or unable to produce all of the requested information. As part of its CAA section 208 information request, EPA requested that CFMOTO submit, among other things, a report of the emissions test results and detailed information on the emissions tests and test vehicles that were used in their certification applications. Over two years later, CFMOTO has still not supplied EPA with this information or made such information available to EPA. Most notably, in response to EPA's April 9, 2013 letter providing CFMOTO an opportunity to demonstrate or achieve compliance with the recordkeeping provisions, EPA received a letter from Mr. Parker in which he states that CFMOTO did not maintain any records. Mr. Parker asserts that CFMOTO hired SLA to maintain their records. Such an assertion in no way demonstrates compliance with recordkeeping requirements; it is an admission of non-compliance. Failure to maintain required records is a basis for voiding CFMOTO's certificates (see 40 CFR § 1051.255(d)). Additionally, your failure to maintain records – as asserted in your certificate applications – also contributes to EPA's belief that CFMOTO knowingly submitted false or incomplete statements or information to EPA in its certification applications, the submittal of which is also a basis for voiding CFMOTO's certificates (see 40 CFR §§ 86.442-78(c), 1051.255(e)). Because CFMOTO is unable to demonstrate compliance with these recordkeeping requirements, the statements in CFMOTO's several certification applications that "all data and records required by subpart 86 [sic] are on file and are available for inspection by the Administrator" is also viewed as a knowing submission of a false statement by CFMOTO.

### CFMOTO's Consent Agreement with US EPA

Subsequent to our letter on April 9, 2013, CFMOTO entered into a Consent Agreement with the US EPA. Under the Consent Agreement, CFMOTO has paid the civil administrative penalties associated with the importation of vehicles under engine families listed in this letter.

### ***IV. CFMOTO's Certificates are Void Effective Immediately***

As explained above, based on CFMOTO's intentional and/or knowing submission of false, inaccurate, or incomplete information, EPA is voiding the certificates listed in Enclosure A. Each certificate is now void pursuant to 40 CFR § 86.442-78(c). Each introduction of any vehicle into U.S. commerce under these certificates, at any time, is a violation of sections 203 and 213 of the Clean Air Act, and CFMOTO may face civil penalties up to \$37,500 per vehicle, as well as criminal penalties. In addition, CFMOTO may not introduce into commerce any additional vehicles covered by the voided certificates.

CFMOTO may request a hearing on EPA's decision to void your certificates in accordance with the procedures set forth in 40 CFR §§ 86.442, 86.443, 86.444, 86.1853-01. A request for a hearing must be in writing, signed by the certificate holder or authorized representative of the

certificate holder, and include a statement, with supporting data, specifying objections to the action taken by EPA. The request must be received by EPA within 30 calendar days of your receipt of this letter. It should be sent to Mr. Cleophas Jackson at the following address:

Mr. Cleophas Jackson, Director  
Gasoline Engine Compliance Center  
Compliance Division  
Office of Transportation and Air Quality  
U.S. Environmental Protection Agency  
2000 Traverwood Drive  
Ann Arbor, Michigan 48105

We may decide to approve CFMOTO's request if we find that it raises a substantial factual issue. If we agree to hold a hearing, we will use the procedures specified in 40 CFR §§ 86.444 and 86.1853-01. Please contact Mr. Jackson at (734) 214-4824 or [jackson.cleophas@epa.gov](mailto:jackson.cleophas@epa.gov), should you have any questions.