



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

OCT 28 2013

**UPS
DELIVERY CONFIRMATION REQUESTED**

OFFICE OF
AIR AND RADIATION

Mr. Xiaotong Qi, General Manager
Jonway Motorcycles (USA) Co., Ltd.
1942 N. Stemmons Freeway
Carrollton, TX 75007

Dear Mr. Qi:

This letter is to inform you that the U.S. Environmental Protection Agency (“EPA”) is voiding the certificates of conformity issued to Jonway Motorcycles (USA) Co., Ltd. (hereinafter referred to as “Jonway”) for the engine families listed in Attachment A to this letter. These certificates include the highway motorcycle certificates issued to Jonway 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. In your certificate applications, you asserted full compliance with the applicable statutory and regulatory requirements. Specifically, Jonway stated in all of its applications for certificates that the test vehicle was tested in accordance with the applicable EPA test procedures, meets the requirements of such tests, and conforms to the requirements of the regulations. In addition, Jonway stated in all of its applications for certificates that all required data and records were on file and were 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, our presumption that the information and statements in the applications were true and complete. After completing our review of the applications, we concluded that the engine families met all requirements of 40 CFR Part 86 and the Clean Air Act (CAA). Consequently, we issued 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), including information suggesting that no testing had actually been done on your vehicles. Based on our investigation, which included repeated requests for information from Jonway, assertions from your test lab that they had not done any testing for Jonway, and your consistent lack of ability to produce any documents to verify that any testing actually occurred, it appeared to EPA that the testing referenced throughout Jonway’s certificate applications never occurred. Because the testing information included with Jonway’s applications appeared fabricated, it necessarily

appeared that Jonway 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 appeared to EPA that Jonway'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 appeared that Jonway failed to maintain appropriate records, as required by the applicable regulations, contrary to the assertions in Jonway'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 advanced notice of those concerns – which were set forth in greater detail throughout that letter and its attachments – 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 a forty eight-page letter from you on May 4, 2013. However, the May 4 response letter does not demonstrate that the statements in Jonway'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 the lack of records that Jonway was required to maintain. Your letter does not provide any evidence that the statements made in Jonway's certification applications were accurate by providing 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).

Additionally, Jonway's May 4 response letter did not provide any emission testing records or supporting documentation to support the assertion in your certificate applications regarding your compliance with recordkeeping requirements. Instead, you state that Jonway 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 Jonway 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 Jonway. 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 Jonway knowingly and/or intentionally submitted false, incomplete, or inaccurate information in your applications for certification, but is also a separate regulatory requirement.

For the reasons set forth above and as described in greater detail in Attachment 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 Attachment 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.

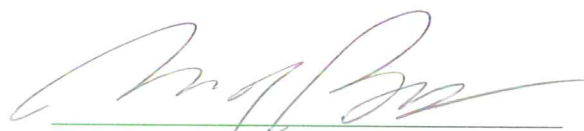
Sections 203 and 213(d) of the Clean Air Act prohibit the sale of vehicles and engines unless such vehicles and engines are covered by a valid certificate of conformity. *See also* 40 CFR §§ 86.407-78, 1068.101(a)(1). Each introduction of a vehicle or engine into U.S. commerce under these certificates 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: Mr. Michael Johnson
System Launch Associates, LLC
1811 Greenville Street, Apt. 3114
Dallas, Texas 75205
Email: systemlaunch@yahoo.com

Mr. Yang Suhua, Board of Directors
Zhejiang Jonway Motorcycle Manufacturing Co. Ltd.
Changpu Lunan district, Luqiao City, Taizhou, Zhejiang, China 318050
86-576-82406996

Paul Jacobs, Chief
Mobile Sources Enforcement Branch
California Air Resources Board
P.O. Box 2815
Sacramento, California 95812

Phillip Brooks, Director
Air Enforcement Division
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Avenue, NW
Room 1117C
Washington, DC 20460

ATTACHMENT A

Affected Certificates

As stated in our letter, the U.S. Environmental Protection Agency (“EPA”) is voiding the certificates of conformity issued to Jonway Motorcycle (USA) Co., Ltd. (“Jonway”) for the following engine families:

Certificate Number 6JNYC0.05NFG-001. On August 16, 2006, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 6JNYC0.05NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 6JNYC0.15NFG-002. On August 16, 2006, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 6JNYC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 6JNYC0.25NFG-003. On August 16, 2006, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 6JNYC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 7JNYC0.05NFG-001. On December 20, 2006, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 7JNYC0.05NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 7JNYC0.15NFG-002. On December 20, 2006, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 7JNYC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 7JNYC0.25NFG-003. On December 20, 2006, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 7JNYC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 8JNYC0.05NFG-001. On October 16, 2007, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 8JNYC0.05NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 8JNYC0.05NFG-001-R01. On February 14, 2008, EPA issued Jonway a revised certificate of conformity for the highway motorcycle engine family 8JNYC0.05NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 8JNYC0.15NFG-002. On October 16, 2007, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 8JNYC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 8JNYC0.15NFG-002-R01. On February 14, 2008, EPA issued Jonway a revised certificate of conformity for the highway motorcycle engine family 8JNYC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 8JNYC0.25NFG-003. On October 16, 2007, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 8JNYC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 8JNYC0.25NFG-003-R01. On February 14, 2008, EPA issued Jonway a revised certificate of conformity for the highway motorcycle engine family 8JNYC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 9JNYC0.05NFG-001. On October 22, 2008, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 9JNYC0.05NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 9JNYC0.05NFG-001-R01. On February 12, 2009, EPA issued Jonway a revised certificate of conformity for the highway motorcycle engine family 9JNYC0.05NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 9JNYC0.15NFG-002. On October 29, 2008, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 9JNYC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 9JNYC0.15NFG-002-R01. On February 12, 2009, EPA issued Jonway a revised certificate of conformity for the highway motorcycle engine family 9JNYC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 9JNYC0.25NFG-003. On October 29, 2008, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family 9JNYC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number 9JNYC0.25NFG-003-R01. On February 12, 2009, EPA issued Jonway a revised certificate of conformity for the highway motorcycle engine family 9JNYC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number AJNYC0.05NFG-001. On October 7, 2009, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family AJNYC0.05NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number AJNYC0.05NFG-001-R01. On May 11, 2010, EPA issued Jonway a revised certificate of conformity for the highway motorcycle engine family AJNYC0.05NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number AJNYC0.15NFG-002. On October 7, 2009, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family AJNYC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number AJNYC0.15NFG-002-R01. On May 11, 2010, EPA issued Jonway a revised certificate of conformity for the highway motorcycle engine family AJNYC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number AJNYC0.25NFG-003. On October 7, 2009, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family AJNYC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number AJNYC0.25NFG-003-R01. On May 11, 2010, EPA issued Jonway a revised certificate of conformity for the highway motorcycle engine family AJNYC0.25NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number BJNYC0.05NFG-001. On November 17, 2010, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family BJNYC0.05NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number BJNYC0.15NFG-003. On November 17, 2010, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family BJNYC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

Certificate Number BJNYC0.25NFG-002. On November 17, 2010, EPA issued Jonway a certificate of conformity for the highway motorcycle engine family BJNYC0.15NFG. This certificate was issued pursuant to section 206 of the Clean Air Act and 40 CFR part 86.

ATTACHMENT B

I. Summary of EPA's Concerns

As a result of EPA's investigation into Jonway's recordkeeping practices, as well as the practices of your certification consultant, System Launch Associates (hereinafter "SLA")¹, EPA finds that the specific facts and actions, as described below, warrant the voiding of the certificates of conformity that EPA issued to Jonway Motorcycles (USA) Co., Ltd. ("Jonway"). First, EPA finds that the information that was submitted to EPA in Jonway'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 Jonway. As described in more detail below, our investigation has revealed that the information we received from SLA, on Jonway's behalf, was not truthful, and should not have been relied upon. Second, our investigation has also revealed that Jonway 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) and 40 CFR § 86.407-78. To obtain such a certificate of conformity, a certifying party must submit an application to the EPA. Title 40 Part 86 of the U.S. Code of Federal Regulations (CFR) contains the applicable requirements for on-highway motorcycles. 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).

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

¹ According to EPA's records, as submitted by Jonway, Jonway hired System Launch Associates ("SLA") to act as its consultant. SLA was specifically authorized by Jonway to serve as its authorized representative on all matters related to the EPA application and certification process. For example, in Jonway'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. Jonway 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.

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

accumulated on the vehicle, “for a period of six (6) years after the issuance of all certificates of conformity to which they relate.”² 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.

III. Facts Which Warrant Voiding the Certificates

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

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

² 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).

prepared and/or submitted to EPA, including those certification applications submitted on behalf of Jonway. 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 Jonway) directly to obtain the requested records. In that same response, Mr. Johnson then asserted that SLA only "assembles" applications, and that "[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, Jonway).

EPA Information Request to Jonway

On October 14, 2010, EPA sent Jonway a letter requesting information under section 208 of the CAA, to determine Jonway's compliance with sections 203 and 213 of the CAA, and applicable motor vehicle and non-road engine regulations. Jonway provided an incomplete response to EPA's information request on January 27, 2011. Jonway's response did not include narrative responses to EPA's questions. Instead, Jonway responded to a subset of questions by providing a spreadsheet which referred to information contained in Jonway's certification applications. Jonway did not provide any of the underlying emissions test data for any of the emissions tests purportedly conducted at Texas Environmental Technologies, LLC (TET), as EPA requested. To date, Jonway has not provided copies of the complete emissions test reports and data, despite EPA's repeated requests.

It therefore appears that Jonway's recordkeeping practices have failed to comply with 40 CFR § 86.440-78. When EPA requested documentation to show compliance with these recordkeeping requirements, Jonway 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). However, based on the information we have collected (or been unable to collect), it appears that Jonway has failed to maintain records for any of these vehicle-types, in violation of 40 CFR § 86.440-78.

Information Provided by Texas Environmental Technologies

Because Jonway's certification applications indicated that TET was the test lab that conducted the supporting emissions tests, on May 11-12, 2010, as part of a lab audit of TET, EPA requested that TET provide emissions test records for vehicles it had tested for certification by Jonway. William Rucker, owner of TET, stated that he had not tested any Jonway vehicles and therefore did not have any related records.

On October 26, 2010, EPA sent an information request, pursuant to CAA section 208, to TET requesting TET provide any emissions tests and calibration records performed for engines/vehicles related to Jonway, SLA and Michael Johnson. 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 Jonway'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 Jonway'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 Jonway engine families. Mr. Rucker also stated that TET had not conducted any emissions tests for Jonway. Additionally, in his responses, Mr. Rucker indicated that the unique test identification numbers listed in the Jonway 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 Jonway's and SLA's inability to produce relevant records, it appears that the certification applications submitted by Jonway 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.

EPA's April 9, 2013 Letter to Jonway and Jonway's May 4, 2013 response

On April 9, 2013, EPA sent a letter to Jonway providing an opportunity for Jonway to demonstrate or achieve compliance. In response, EPA received a letter dated May 4, 2013 from Xiaotong Qi, General Manager for Jonway Motorcycles USA. This letter failed to demonstrate any level of compliance with regulatory requirements.

Mr. Qi offers two main arguments to support Jonway's assertion that Jonway did not knowingly and/or intentionally submit false data or fail to provide required records. First, Mr. Qi defends Jonway by stating that Jonway hired SLA to obtain certificates of conformity for its motorcycles. He informs the EPA that a Jonway Director, Mr. Zhe Sun, made an agreement with SLA in 2005

to conduct “EPA testing and applications for Jonway’s 50cc, 150cc, and 250cc Scooters.”³ Mr. Qi asserts that SLA “did all the testing and applying procedures for Jonway USA to get the EPA and CARB certificates and have the certificates continuously renewed from 2007 to 2011.”⁴ Mr. Qi provides copies of canceled checks as evidence of Jonway’s payments to SLA for its services to obtain the certificates for Jonway. Thus, Mr. Qi asserts: “This doesn’t make any sense to Jonway USA to pay so much for ‘intentionally and/or knowingly submitting false, incomplete or inaccurate information (fabricated emissions test data, including emissions test results).’”⁵

From these statements it appears that Mr. Qi is asserting that although SLA may have submitted false, incomplete or inaccurate information to EPA, Jonway did not knowingly and/or intentionally submit false, incomplete or inaccurate information to EPA. EPA, however, did not issue certificates to Mr. Johnson; EPA issued certificates to Jonway and Jonway was the entity on whose behalf the information in the certificates was provided. Jonway, as the certificate holder, was the entity who bore responsibility for EPA regulatory requirements, and it was Jonway that benefitted by being able to introduce its vehicles into commerce as a result of EPA certification. That Jonway’s consultant may not have fulfilled its business arrangement with Jonway does not in any way address EPA’s concerns that Jonway appears to have not complied with the regulatory requirements assigned to it as the certificate holder. The information Mr. Qi presents regarding the business relationship between Jonway 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 Jonway’s certification applications. In no instance does Mr. Qi rebut our concerns regarding that information. Furthermore, Mr. Qi does nothing to rebut the evidence that Jonway has not complied with any of the certification, testing, or recordkeeping requirements. Jonway 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 Jonway may have made an unfortunate choice of consultant and not properly overseen 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. Qi demonstrate that Jonway actually complied with EPA regulations.

Second, in response to EPA questions concerning recordkeeping practices, Mr. Qi concedes that Jonway “didn’t keep all testing data and reports right after all procedures had been done,” but states Jonway did not receive the information from SLA.⁶ Essentially, Mr. Qi asserts that Jonway was unable to keep appropriate records because SLA failed to provide Jonway with those records. Mr. Qi states: “Jonway USA tried its best to get all reports from its sole source - System Launch [Associates], specifically Michael Johnson...this effort relied solely on the

³ Jonway May 4, 2013 Response Letter, pg.1.

⁴ *Id.*; also see pg 2 (“Jonway USA only worked with System Launch for the testing and applications of the three engine families....”).

⁵ *Id.* at pg 2.

⁶ *Id.*

[cooperation] of System Launch and Mr. Michael Johnson.”⁷ However, Mr. Qi asserts that SLA “never gave us what we asked for hundreds of times, even several warnings of going through legal ways. Mr. Michael Johnson’s reaction to our requests and warnings was always keeping silence and disappearing.”⁸

This rationale does nothing to rebut our findings that Jonway 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. Qi’s response demonstrates that Jonway has complied with these recordkeeping requirements. Jonway’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.

B. Basis for Voiding Certificates

EPA finds the specific facts and actions described above warrant the voiding of the certificates of conformity listed in Attachment A. We find that the information we have gathered demonstrates that Jonway intentionally and/or knowingly submitted false, incomplete, or inaccurate information in its certification applications. EPA also finds that Jonway has failed to maintain required records, further evidence that the information submitted by Jonway was not based on accurate and verifiable test data. As previously stated, the intentional and/or knowing submittal of false, incomplete or inaccurate information and the failure to maintain required records may be a basis for voiding certificates. 40 CFR § 86-442-78(c).

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

As described above, the certificates listed in Attachment 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 Jonway. He also indicated that the test numbers and the test dates listed on the Jonway 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 Jonway 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 Jonway 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 Attachment A.

⁷ *Id.* at pg. 3.

⁸ *Id.* at pg. 2.

In response to EPA's April 9, 2013 letter providing Jonway an opportunity to demonstrate or achieve compliance, Mr. Qi does not in any way demonstrate that any testing actually occurred. Instead, Mr. Qi simply states in the response letter that "[a]ll EPA...applications for Jonway USA were made solely by System Launch and Michael Johnson [and] Jonway USA was never informed and acknowledged before submitting any kind of applications."⁹ Additionally, he states: "All EPA data of Jonway USA were provided by Michael Johnson."¹⁰ Such an explanation does not address EPA's concerns about the certification applications it received from Jonway, and it in no way demonstrates that any testing was ever conducted on any of Jonway's vehicles.

Failure to Maintain Records

Jonway's recordkeeping practices have failed to comply with 40 CFR §§ 86.440-78. When EPA requested documentation to show compliance with these recordkeeping requirements, Jonway was either unwilling or unable to produce all of the requested information. As part of its CAA section 208 information request, EPA requested that Jonway 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, Jonway has still not supplied EPA with complete emission test reports. Most notably, in response to EPA's April 9, 2013 letter providing Jonway an opportunity to demonstrate or achieve compliance with the recordkeeping provisions, Mr. Qi admits in his May 4, 2013 letter that Jonway did not keep any of the test data and test reports. However, Mr. Qi asserts that Jonway's failure to keep records is because Jonway's consultant SLA would not deliver the requested test data and reports to Jonway. Such an assertion in no way demonstrates compliance with recordkeeping requirements; it is an admission of non-compliance. Additionally, Jonway's failure to maintain records – the same records that Jonway represented it would maintain in its certification applications – also contributes to EPA's belief that Jonway intentionally and/or knowingly submitted false, incomplete or inaccurate information to EPA in its certification applications, the submittal of which is a basis for voiding Jonway's certificates (see 40 CFR § 86.442-78(c)). Because Jonway was unable to demonstrate compliance with these recordkeeping requirements, the statements in Jonway's certification applications that "all data and records required by subpart 86 [sic] are on file and are available for inspection by the Administrator" are also viewed as a knowing submission of a false statement by Jonway.

⁹ Response letter, pg 3.

¹⁰ *Id.*

IV. Jonway's Certificates are Void Effective Immediately

As explained above, based on Jonway's intentional and/or knowing submission of false, inaccurate, or incomplete information, EPA is voiding the certificates listed in Attachment 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 Jonway may face civil penalties up to \$37,500 per vehicle, as well as criminal penalties. In addition, Jonway may not introduce into commerce any additional vehicles covered by the voided certificates.

Jonway 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 Jonway'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, should you have any questions.

