

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)
) Civil Action No.
 Plaintiff,)
)
 v.)
)
THE PEP BOYS -)
MANNY, MOE & JACK)
and)
BAJA, INC.)
)
 Defendants.)

CONSENT DECREE

TABLE OF CONTENTS

I.	<u>JURISDICTION AND VENUE</u>	2
II.	<u>APPLICABILITY</u>	3
III.	<u>DEFINITIONS</u>	3
IV.	<u>CIVIL PENALTY</u>	6
V.	<u>EXPORT OF SPECIFIED EQUIPMENT</u>	8
VI.	<u>CORPORATE COMPLIANCE PLANS</u>	10
VII.	<u>EXTENDED EMISSION-RELATED WARRANTY AND REPAIR REIMBURSEMENT PROGRAM</u>	10
VIII.	<u>REQUIRED EMISSIONS OFFSET</u>	19
IX.	<u>ADMINISTRATIVE SETTLEMENT AGREEMENT</u>	24
X.	<u>REPORTING REQUIREMENTS</u>	24
XI.	<u>STIPULATED PENALTIES</u>	26
XII.	<u>FORCE MAJEURE</u>	35
XIII.	<u>DISPUTE RESOLUTION</u>	37
XIV.	<u>INFORMATION COLLECTION AND RETENTION</u>	39
XV.	<u>EFFECT OF SETTLEMENT</u>	41
XVI.	<u>COSTS</u>	44
XVII.	<u>NOTICES</u>	44
XVIII.	<u>EFFECTIVE DATE</u>	46
XIX.	<u>RETENTION OF JURISDICTION</u>	46
XX.	<u>MODIFICATION</u>	46

XXI. TERMINATION 47

XXII. PUBLIC PARTICIPATION 49

XXIII. SIGNATORIES/SERVICE 49

XXIV. INTEGRATION 50

XXV. FINANCIAL CERTIFICATION BY BAJA 50

XXVI. APPENDICES 50

XXVII. FINAL JUDGMENT 51

APPENDICES

- Appendix A: Recreational Vehicles, Motorcycles and Generators Subject to Export
- Appendix B: Pep Boys Corporate Compliance Plan
- Appendix C: Baja, Inc. Corporate Compliance Plan
- Appendix D: Extended Emission-Related Warranty and Repair Reimbursement Program:
Communications Plan Notices
 - D-1: Service Bulletin
 - D-2: Consumer Bulletin
 - D-3: Training Bulletin
- Appendix E: Emissions Offset Projects
- Appendix F: Emissions Related Parts List
- Appendix G: Emissions Testing Guidelines and “Qualified Emissions Testing” Program for
New and In-Use Off-Highway Motorcycles and Generators
- Appendix H:
 - H-1: Generator Engine Emissions Test Results
 - H-2: Table 5: Required Emission Tons Offset Calculation Methodology: Vehicles
 - H-3: Table 6: Required Emission Tons Offset Calculation Methodology:
Generators
- Appendix I: Compliance Evaluation Checklists
- Appendix J: Administrative Settlement Agreement
- Appendix K: Effect of Settlement: Subject Vehicles and Engines

Whereas, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint in this action concurrently with this Consent Decree, alleging that defendants The Pep Boys – Manny, Moe & Jack, a Pennsylvania corporation (“Pep Boys”), and Baja, Inc., a Delaware corporation, (“Baja”) (collectively referred to herein as “Defendants”) violated Sections 203 and 213 of the Clean Air Act, 42 U.S.C. §§ 7522 and 7547, and the regulations promulgated thereunder, at 40 C.F.R. Parts 86, 90, 1051 and 1068, pertaining to emissions certification, warranty, and labeling requirements for highway motorcycles, small spark-ignition engines, and recreational vehicles.

Whereas, the Complaint specifically alleges that the Defendants imported, or caused the importation of, and sold or otherwise introduced into commerce, vehicles and engines that were not validly covered by certificates of conformity. The Complaint also alleges that in some cases vehicles and engines lacked a legally sufficient emission control information label and/or emission-related warranty, in violation of Sections 203 and 213 of the Act, 42 U.S.C. §§ 7522 and 7547, and the regulations promulgated at 40 C.F.R. Parts 86, 90, 1051 and 1068. All of the vehicles and engines were manufactured by companies located in the People’s Republic of China.

Whereas, the United States reviewed Financial Information submitted by Baja and determined that Baja had a limited ability to pay a civil penalty in this matter.

Whereas, the United States and Pep Boys entered into an Administrative Settlement Agreement, executed on November 24, 2009 and attached hereto as Appendix J, in order to enable Pep Boys to sell certain vehicles in its retail stores prior to entry of the Consent Decree.



Whereas, the Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

Whereas, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law, except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and Sections 203, 204, 205 and 213 of the Act, 42 U.S.C. §§ 7522, 7523, 7524 and 7547, and the regulations promulgated under Section 213 of the Act, and over the Parties. Venue in this District is proper pursuant to Sections 204 and 205 of the Act, 42, U.S.C. §§ 7523 and 7524, 40 C.F.R. §§ 90.1005, 90.1006, and 1068.125, and 28 U.S.C. §§ 1391(b), (c) and 1395(a) because, pursuant to § 205(b), 42 U.S.C. § 7524(b), this District is the location of the “Administrator’s principal place of business.” For purposes of this Decree, or any action to enforce this Decree, Defendants consent to this Court’s jurisdiction and agree that venue is proper.

2. For purposes of this Consent Decree, the Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Sections 203, 204, 205 and 213 of the Act, 42 U.S.C. §§ 7522, 7523, 7524, and 7547, and the regulations promulgated thereunder.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendants and any successors, assigns, or other entities or persons otherwise bound by law.

4. Each Defendant shall provide a copy of this Consent Decree to each of its respective officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor(s) retained to perform work required under this Consent Decree. Each Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

6. Unless specifically defined in this Section or elsewhere in this Consent Decree, terms used in this Consent Decree shall have the meanings currently set forth in Sections 202, 216 and 302 of the Act, 42 U.S.C. §§ 7521, 7550, and 7602, and the regulations promulgated under Title II of the Act, 42 U.S.C. §§ 7521–7590.

- a. “Act” means the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.*
- b. “Authorized Service Center” means a facility that has been authorized by Baja (or any other entity implementing the Extended Emission-Related Warranty and Repair Reimbursement Program, pursuant to Paragraph 35) to provide service on its vehicles.

- c. "Certificate of Conformity" means a certificate issued by EPA pursuant to Section 206 of the Act, 42 U.S.C. § 7525 and 40 C.F.R. §§ 90.108, 86.437-78, and 1051.255.
- d. "Complaint" means the complaint filed by the United States in this action.
- e. "Consent Decree" or "Decree" means this Decree, including all appendices attached hereto.
- f. "Day" or "day" means a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
- g. "Defendants" means Pep Boys and Baja.
- h. "Effective Date" has the definition provided in Section XVIII.
- i. "Engine Family" means a group of engines, as specified in 40 C.F.R. §§ 86.402-78, 90.116, and 1051.230.
- j. "EPA" means the United States Environmental Protection Agency and any of its successor departments or agencies.
- k. "Facility" means any store, warehouse, distribution center, detention center, or other inventory storage location that is owned, leased or operated by either Defendant.
- l. "Financial Information" means tax returns, balance sheets, financial statements, and bank account records submitted by Baja to the United States prior to the Effective Date of this Consent Decree.

- m. "Interest" means interest at the rate allowed on money judgments pursuant to 28 U.S.C. § 1961. For the purposes of calculating interest under Paragraphs 7 and 8 of this Consent Decree, interest shall begin to accrue on the date on which the Consent Decree is lodged with the Court and such date shall be viewed as the "date of the entry of judgment" under 28 U.S.C. § 1961(a). For the purposes of calculating interest owed under Paragraphs 64 and 66 of this Consent Decree, interest shall begin to accrue on the date that is 30 days from the day that EPA sends a demand for payment of stipulated penalties under Paragraph 62 of the Consent Decree and such date shall be viewed as the "date of entry of judgment" under 28 U.S.C. § 1961(a).
- n. "Model Year" means model year as defined in 40 C.F.R. §§ 86.402-78, 90.3, and 1051.801, as appropriate.
- o. "Paragraph" means a portion of this Decree identified by an Arabic numeral.
- p. "Parties" means the United States and Defendants.
- q. "Permanently Destroy" (or "Permanent Destruction") means to destroy a vehicle or engine using one of the following methods:

(1) (a) Remove (and dispose appropriately) the engine oil from the crankcase, replace the oil with a 40 percent solution of sodium silicate ($\text{SiO}_2/\text{Na}_2\text{O}$ with a weight ratio of 3.0 or greater); (b) Run the engine at a low speed (approximately 2000 rpm) until the engine stops; (c) After allowing the engine to cool for an hour, try to start the engine. If the vehicle or engine contains a battery and that battery is charged and the engine will not operate at idle, the procedure is

complete; (d) If the engine starts, run the engine at a low speed (approximately 2000 rpm) until the engine stops and then try to start the engine again after allowing the engine to cool for an hour. Repeat step (d) in this process until the engine will not operate; (e) Remove and dispose of any remaining fuel in accordance with applicable law.

(2) For Appendix A Equipment: Vehicles and Generators and Gas Mowers (as referenced in Appendix E): remove (and dispose appropriately) all oil and gasoline. Using a drill bit of no less than 3/8 inch, (a) drill a hole through the lower crankcase of the engine so that it no longer retains oil; (b) drill a hole through the cylinder head into the combustion chamber; (c) drill a hole through the cylinder or cylinder block through the cylinder liner; and (d) drill a hole through the bore of the carburetor, rendering all parts useless.

(3) Compact or crush the vehicle, engine or equipment and all of its parts or components to render them useless.

- r. "Section" means a portion of this Decree identified by a Roman numeral.
- s. "United States" means the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

7. Within 30 days after the Effective Date of this Consent Decree, Pep Boys shall pay the sum of \$5 million as a civil penalty, together with Interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

h7

8. Within 30 days after the Effective Date of this Consent Decree, Baja shall pay the sum of \$25,000 as a civil penalty, together with Interest accruing from the date on which the Consent Decree is lodged with the Court, at the rate specified in 28 U.S.C. § 1961 as of the date of lodging.

9. Defendants shall pay their respective civil penalties by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Defendants, following lodging of the Consent Decree, by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of the District of Columbia. At the time of payment, each Defendant shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States v. The Pep Boys – Manny, Moe & Jack and Baja, Inc., and shall reference the civil action number and DOJ case number, 90-5-2-1-09240, to the United States in accordance with Section XVII of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

10. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section XI (Stipulated Penalties) in calculating its federal income tax.

11. The United States shall be deemed a judgment creditor for purposes of collection of the payments required by Paragraphs 7 and 8.

V. EXPORT OF SPECIFIED EQUIPMENT

12. By no later than 45 days after the date of entry of this Decree, Defendants shall Permanently Destroy or export each of the vehicles and generators specified in Appendix A (hereinafter referred to as "Appendix A Equipment") to a country outside the United States, Canada, and Mexico, in accordance with the requirements of this Section. Provided, however, as to any of the Appendix A Equipment that has been seized by U.S. Customs and Border Protection (CBP) or is subject to a constructive seizure agreement between CBP and Pep Boys, Defendant shall seek release of the equipment from CBP within 30 days of entry and shall export or Permanently Destroy such equipment to a country outside the United States, Mexico, and Canada within 30 days of its release by CBP (but not earlier than the date of entry). To facilitate the release of the Appendix A equipment, EPA will contact CBP on or before the date of entry of this Consent Decree to request the release of the Appendix A equipment for destruction or export in accordance with this Consent Decree.

13. Pep Boys shall maintain custody and control of the Appendix A Equipment in the condition it was in upon receipt by Pep Boys (provided, however, that certain of the Appendix A Equipment that is held at testing laboratories has undergone certain testing and will be maintained in its condition following that testing) until it is shipped for export or Permanently Destroyed.

14. Each Defendant shall retain all customary transactional documents relating to its export or Permanent Destruction of Appendix A Equipment. Such documents shall be made available to EPA upon request.

15. Each Defendant shall inform each entity that purchases or receives Appendix A Equipment from that Defendant (or from an entity acting as an agent of, or on behalf of, that Defendant), in writing, that the equipment does not meet U.S. EPA regulatory requirements and may not be sold in the United States, Mexico or Canada. Each Defendant shall prominently label all shipping pallets and individual boxes that hold the Appendix A Equipment: "For Export outside the United States, Mexico, or Canada. Not Lawful for Sale in the United States, Canada, or Mexico."

16. Nothing in this Consent Decree prohibits either Defendant from exporting the Appendix A Equipment to the original equipment manufacturer, where it will be rebuilt to conform to a Certificate of Conformity issued and valid for the year in which the rebuild occurs, and re-importing that equipment into the United States.

17. In the first Semi-Annual Progress Report submitted pursuant to Section X (Reporting Requirements) after completion of the requirements of this Section V and Appendix A, Pep Boys shall submit to EPA a Completion Report, certifying completion of the requirements of this Section V and Appendix A. In this Completion Report, Pep Boys shall include, and certify to the truth and accuracy of, each of the following:

- a. A list of all vehicles and generators exported or Permanently Destroyed, including the model names and numbers, the Engine Family numbers, and, for vehicles only, the entry numbers and vehicle identification numbers;
- b. The name and contact information for any freight forwarding company or exporter used to facilitate the exportation of any vehicles or generators, and for the entity used to facilitate the Permanent Destruction of any vehicles and generators; and

- c. The name and contact information for the customer or recipient of the exported vehicles and engines.

VI. CORPORATE COMPLIANCE PLANS

18. Within 30 days of the Effective Date of this Consent Decree, Pep Boys shall implement the Corporate Compliance Plan set forth in Appendix B.
19. Within 30 days of the Effective date of this Consent Decree, Baja shall implement the Corporate Compliance Plan set forth in Appendix C.

VII. EXTENDED EMISSION-RELATED WARRANTY AND REPAIR REIMBURSEMENT PROGRAM

20. Within 30 days after the Effective Date of this Consent Decree, Baja shall implement the Extended Emission-Related Warranty and Repair Reimbursement Program as described in this Section VII and in Appendix D.
21. Notwithstanding the effective date or the expiration date of the manufacturer's emissions-related warranty, the Extended Emission-Related Warranty Effective Date for all vehicles and generators identified in this Section VII is 30 days after the Effective Date of this Decree.

A. Extended Emission-Related Warranty and Repair Reimbursement Communications Plan

22. No later than 30 days after the Effective Date of this Consent Decree, in order to communicate the Extended Emission-Related Warranty and Repair Reimbursement Program to affected individuals and entities, Baja shall:

- a. For the Authorized Service Centers, issue the Service Bulletin (attached hereto as Appendix D-1) to each Authorized Service Center, via e-mail and as an addition to the

Service Information CD or via Baja's website, that will explain the Extended Emission-Related Warranty and Repair Reimbursement Program;

b. For consumers, advertise and provide information on the Extended Emission-Related Warranty and Repair Reimbursement Program by (i) posting a Consumer Bulletin on Baja's website and Pep Boys' website (attached hereto as Appendix D-2) that conforms to the specifications set forth in Appendix D to this Decree and retaining it there until the Expiration of the Extended Emission-Related Warranty and Repair Reimbursement program; (ii) posting and maintaining a sign in every Pep Boys store for two years from the Effective Date of this Decree that conforms to the specifications set forth in Appendix D; (iii) issuing the Consumer Bulletin in Appendix D-2 that conforms to the specifications set forth in Appendix D to all purchasers of the vehicles listed in Tables 1 and 2 in Baja's database via email; (iv) adding a dedicated Vehicle and Generator Compliance Hotline to field emissions-related warranty claims; and (v) designating employee contacts to manage all calls regarding the Extended Emission-Related Warranty and Repair Reimbursement Program; and

c. For employees of Baja, issue the Training Bulletin (attached hereto as Appendix D-3), explaining the Extended Emission-Related Warranty and Repair Reimbursement Program and the new protocol of directing all consumer inquiries related to the Extended Emission-Related Warranty and Repair Reimbursement Program to designated contacts to ensure consistency of delivery and dedicated support for these types of claims.

B. Recreational Vehicles Subject to Extended Emission-Related Warranty

23. Baja shall extend the Emission-Related Warranty required by 40 C.F.R. §§ 1051.120 and 1068.115 by an additional 30 months from the Extended Emission-Related



Warranty Effective Date, as defined in Paragraph 21, for all recreational vehicles whose model name or Engine Family is listed in Table 1, below.

24. All vehicles in Table 1 are eligible for coverage under this Extended Emission-Related Warranty and Repair Reimbursement Program regardless of whether the vehicle was sold by Pep Boys and without a requirement for the vehicle owner to tender a receipt or other proof of purchase, except with respect to the KCR70 and KCR110. For vehicles with the model name of KCR70 or KCR110 to be eligible for coverage under this Extended Emission-Related Warranty and Repair Reimbursement Program, the vehicles must have been purchased from Pep Boys and Baja may require the vehicle owner to tender a receipt or other proof of purchase from Pep Boys.

Table 1	
Recreational Vehicle Model Model Year 2006	Engine Family
BA90, WD50	6GDDX0.90NFG
BA150	6CQLX0.15ATV
BA49, BA50, WD50U, WD50U1, WD90, WD90U	Unknown
DB30	6CLGS.09852F
DN150, BR150, BR 150-1	6AVIX.150SB1
DR49, DR70, DR50, DR50-R	6CGQX.049DB1
DR90	6CGQX.107DB1
DR125, DR150	6CGQX.149DB1
MB165, MB165C, HT65, TR65, BB65	6CHGS.1961CH
STR125	6DDIX0.12NFG
WD250U, WD250UR, WD250U-2	6CQLX0.25ATV 6JNHX.229001
X150 X300	6NMRX0.15 6NMRX0.29NFG

Model Year 2007	
BA49, BA50, WD50, WD50U, WD50U1	7LGGX0.07LTF 7AVIX.049FYM
BA90	7FYM.090AM4
BA150	7LGGX.150AA1
BA250	7KYKX.250AM5
BR150, BR150-1, DN150	7DAZX.150EC1 7TJPX.150150
DB30	7CGQX.100BAA 7CLGS.09852F
DN250	7RUNX.300XM5
DR49, DR70	7CGQX.049DB1
DR90, WR90	7CGQX.107DB1
DR125, DR150	7CGQX.149DB1
DX70, KCR70	7CQYX.070A01
DX110, KCR110	7CQYX.125A02
MB165, MB165C, HT65	7CGQX.200CAA
STR125	7FYM.125AM4
TR65, BB65	7CGQX.200GAA
WD90, WD90U	7AVIX.086FYA
WD250U, WD250UR, WD250U-2	7LGGX0.250AM5
WD400U	7TMTX.400A01
X250	7XMTX.250DMA

C. Highway Motorcycles Subject to Extended Emission-Related Warranty

25. Baja shall extend the Emissions-Related Warranty required by Section 207(a)(1) of the Act, 42 U.S.C. 7541(a)(1) by an additional five years from the Extended Emission-Related Warranty Effective Date, as defined in Paragraph 21, for all on-highway motorcycles whose model name or Engine Family is listed in Table 2, regardless of whether the vehicle was sold by Pep Boys or another Baja customer. All motorcycles listed in Table 2 are eligible for coverage under this Extended Emission-Related Warranty and Repair Reimbursement Program without a requirement for the vehicle owner to tender a receipt or other proof of purchase from Pep Boys.

Table 2	
Highway Motorcycle Model	Engine Family
Model Year 2006	
PX250	6DDIC0.23NFG
SC50, SC50-P	6SGMC0.05GSV
SC125	6ZGNC0.12NFG
SSR200	6ZGNC.197GY1
Model Year 2007	
BV250	7TKSC0.25001
PX250	7FYMC.250MMA
SC50, RT50-2, RT50-R, SC50-P	7TMTC.049MC3
	7QMGC.049QJ4
SC125, SC150	7TMTC.150MC2

D. Generators Subject to Extended Emission-Related Warranty

26. Baja shall extend the Emission-Related Warranty required by 40 C.F.R. § 90.1103 by an additional two years from the Extended Emission-Related Warranty Effective Date, as defined in Paragraph 21, for all generator models or small spark-ignition engine families listed in Table 3, so long as the generator was sold by Pep Boys. Baja may, in order to determine eligibility for coverage under this Extended Emission-Related Warranty and Repair Reimbursement Program, require the generator owner to tender a receipt or other proof of purchase from Pep Boys.

Table 3	
Generator Model	Engine Family
Model Year 2004	
Jiangsu Jiangdong 3500 Watt	4JDGS.1961GA
Model Year 2005	
Jiangsu Sumec-Linhai 2500 Watt	5SLHS.1711GA
Lifan, Dajiang 3500 Watt	5CLGS.19668F 5CDPS.1961GA

Lifan, Powerful Machinery 2200 Watt	5CLGS.16368F 5PMES.1731GA
Loncin, Dajiang 5500 Watt	5CDPS.3892GA 5CGPS.3892GA
Model Year 2006	
Chongqing Weima 9000 Watt	6CWPS.4202WM
Wenling Jennfeng 3500 Watt	6WJFS.1961GA
Model Year 2007	
Chongqing Weima 9000 Watt	7CWPS.4202WM

E. Extended Emission-Related Warranty Coverage Requirements and Claim Procedures

27. Baja shall implement the Extended Emission-Related Warranty program in compliance with all applicable laws and regulations, including, but not limited to, 40 C.F.R. §§ 1051.120 and 1068.115 (for recreational vehicles), § 207(a)(1) of the Act, 42 U.S.C. § 7541(a)(1) (for highway motorcycles), and 40 C.F.R. § 90.1103 (for generators).

28. The Extended Emission-Related Warranty only covers components whose failure may affect an engine's emissions, including any Emission-Related Part (as listed in Appendix F). The repair or replacement of other components (including parts, labor, and other costs), not listed in Appendix F, is the responsibility of the owner.

29. Although vehicle or engine owners are responsible for the performance of the required maintenance, Baja shall not deny an Extended Warranty claim solely because of the owner's failure to ensure the performance of all scheduled maintenance or because of a lack of maintenance records or receipts. Extended Warranty claims may be denied if the conditions specified in 40 C.F.R. § 1068.115 are satisfied.

30. Where a warrantable condition exists, Baja shall perform the repair at no cost to the vehicle or engine owner, including diagnosis, parts, and labor. Baja shall complete the Extended Warranty repairs within 60 days. If Baja cannot complete the repairs within 60 days, repairs may be performed at any available service establishment, or by the owner, using any replacement part. In such case, Baja shall reimburse the owner for the expenses, including diagnostic charges, not to exceed Baja's suggested retail price for all warranted parts replaced and labor charges.

31. No later than 30 days after the date the vehicle or engine is presented for repair, Baja shall: (a) notify the owner that it will honor the claim and complete the repair; or (b) provide the owner, in writing, with an explanation of the basis upon which the claim is being denied and a notice that the owner may obtain further information concerning the Extended Emissions Warranty under this Consent Decree or report questions or concerns regarding compliance with the terms of the warranty by contacting:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (2242A)
Washington, DC 20460
(202) 564-2260

F. Reimbursement for Unpaid Repair Expenses Covered by Warranty

32. Baja shall reimburse all reasonable expenses, including the costs of parts and labor, for inspections and repairs of any vehicle or generator listed in Tables 1, 2 and 3, where such expenses would otherwise be covered by the Extended Emission-Related Warranty, but were incurred prior to the Extended Emission-Related Warranty Effective Date, as defined in Paragraph 21. Reimbursement claimants must have proof of such payment.

33. Within 60 days from the date the reimbursement claim is submitted, Baja shall either (1) pay the claim; (2) provide the owner, in writing, with a conditional approval, requesting additional information needed in order to validate the claim; or (3) deny the claim with an explanation of the basis for denial and a notice that the owner may obtain further information concerning the Extended Emission-Related Warranty and Repair Reimbursement Program under this Consent Decree or report questions or concerns regarding compliance with the terms of this Program by contacting:

Director, Air Enforcement Division
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (2242A)
Washington, DC 20460
(202) 564-2260

G. Reporting

34. In accordance with the requirements of Section X (Reporting Requirements), Baja shall submit to the United States, with a copy to Pep Boys, on a quarterly basis, beginning 30 days after the first full quarter following the Effective Date of this Consent Decree and continuing until the termination of this Consent Decree a written report on the status of the Extended Emission-Related Warranty and Repair Reimbursement Program, including but not limited to:

a. The number of vehicles or engines for which an extended emissions-related warranty claim was submitted and, for each claim: its resolution, including the basis for any denial, the vehicle or equipment type, the vehicle identification number or serial number, the nature and value of the repair, the dates of claim submission and of claim resolution, and the claimant's name and address; and

b. The number of vehicles or engines for which an emissions-related repair reimbursement claim was submitted and, for each claim: its resolution, including the basis for any denial, the vehicle or equipment type, the vehicle identification number or serial number, the payout amount, the dates of claim submission and of claim resolution, and the claimant's name and address; and

c. A statement affirming Baja's ability to continue performing the obligations of this Section VII and Appendix D.

H. General Provisions

35. If Baja can no longer implement the requirements of the Extended Emission Related Warranty and Repair Reimbursement Program set forth in this Section VII and Appendix D ("Program"), it shall notify Pep Boys immediately in writing, with a copy to EPA. If EPA determines that Baja has substantially and materially failed to implement the requirements of the Program, it may notify Pep Boys immediately. Within 90 days of the date that Pep Boys knows or has reason to know that Baja has substantially and materially failed to comply with the terms of the Program, or within 90 days of receiving notice from Baja or EPA, as described in this Paragraph, Pep Boys shall (a) implement the remaining obligations of Paragraphs 20, 21, and 23 through 33 as to vehicles and generators listed in Tables 1, 2 and 3 that were sold by Pep Boys; (b) shall implement a communications plan to communicate the Extended Emission Related Warranty and Repair Reimbursement Program to affected consumers, service centers, and Pep Boys' employees, consistent with the requirements of Paragraph 22; and (c) shall submit to EPA, in accordance with the requirements of Section X (Reporting Requirements), beginning with the next Semi-Annual Progress Report required to be submitted pursuant to Paragraph 53 and

continuing on a semi-annual basis thereafter, a written report on the status of the Extended Emission-Related Warranty and Repair Reimbursement Program, including but not limited to the information specified in Paragraphs 34(a) and (b). Pep Boys may not deny a claim based on the absence of a receipt, but it may require the claimant to provide information indicating that it purchased the vehicle from Pep Boys, including, for example, location of purchase, VIN, or approximate date of purchase.

36. Nothing in this Consent Decree shall be construed to affect any other warranty provided to owners or purchasers of the equipment described herein, whether such warranty is provided pursuant to federal, state, or local law, or otherwise.

VIII. REQUIRED EMISSIONS OFFSET

37. Defendants shall implement the Lawn and Garden Exchange Project and may implement either or both of the other Emissions Offset Projects, as set forth in Appendix E (collectively referred to as "Selected Emissions Offset Projects"). Defendants may, but are not required, to begin implementation of the Selected Emissions Offset Projects prior to entry of the Consent Decree, but no earlier than March 1, 2010.

38. Defendants shall, through the implementation of the Selected Emissions Offset Projects, offset the number of tons of NO_x and of CO set forth in Table 4, by the deadlines specified therein. The number of tons of NO_x and CO required to be offset by Defendants (Required Emission Offset) may be adjusted as described in Paragraphs 41 through 46.

Table 4: Required Emission Offset (Tons)		
<u>Deadline</u>	<u>Tons NO_x</u>	<u>Tons CO</u>
One year from the Effective Date of this Consent Decree	221	1,087
Two years from the Effective Date of this Consent Decree	200	2,716
Three years from the Effective Date of this Consent Decree	200	2,717

A. Adjustment Based on Qualified Emission Test Results

39. The Required Emissions Offsets shall be adjusted in the manner described in this Subsection if Qualified Emission Tests (“QET”) demonstrate that actual emissions from a particular Engine Family are more or less than the emissions reflected in Table 5 or Table 6 of Appendix H-1 and H-2 for that Engine Family. Wherever, in Paragraphs 39 through 46, the term “Engine Family” is used, the term “Model” may be used in place thereof where an engine is listed in Table 6 of Appendix H without a corresponding Engine Family (e.g., the ELIM3000).

40. Qualified Emission Tests are emission tests that are performed (a) after March 1, 2010, (b) in accordance with Appendix G, and (c) on the largest displacement engine model belonging to any one of the Engine Families listed in Tables 5 or 6 of Appendix H.

41. Based on the QET results, the Required Emissions Offset shall be adjusted in accordance with the calculation methodology set forth in Paragraphs 44 and 45, and Tables 5 and 6 of Appendix H.

42. As to any QET performed by, on behalf of, or at the request of, either Defendant (herein after referred to as “performing a QET”), on any of the Engine Families listed in

Appendix H, the Defendant performing a QET shall provide to EPA, within 60 days of the QET completion, the test results, together with the calculated proposed adjustment to the Required Emission Offset, and any supporting documentation and calculations.

43. If EPA disagrees with the Defendant's proposed adjustment, it shall provide a response to Defendants, including the basis for the disagreement, within 90 days.

44. In the case of Model Year 2005, 2006, and 2007 generator engines, the Defendant(s) performing a QET shall (1) average any QET results with the corresponding "Useful Life Results" listed in Appendix H-1 for the same Engine Family and obtained at the same engine setting (i.e., as received, high idle screw adjustment, low idle screw adjustment, minimum mixture adjustment, maximum mixture adjustment); (2) replace the Emission Factor listed in Table 6 of Appendix H-3 for the tested Engine Family with the highest of the average values calculated in step 1 for each of HC+NO_x and CO, expressed in g/kw-hr; (3) use the formula in the Offset Value column heading in Table 6 of Appendix H-3 to recalculate the Offset Value for the tested Engine Family; and (4) recalculate the Required Emission Offset, as specified in Table 4, by adding the Offset Value columns in Tables 5 and 6 of Appendix H.

45. a. In the case of vehicles and Model Year 2004 generator engines, if a single QET result is obtained, the Defendant(s) performing a QET shall: (1) replace the Emission Factor listed in Tables 5 and 6 of Appendix H for the tested Engine Family, with the results achieved at the setting with the highest emissions (i.e., as received, high idle screw adjustment, low idle screw adjustment, minimum mixture adjustment, maximum mixture adjustment) for each of HC+NO_x and CO, expressed in g/mi or g/kw-hr, as appropriate; (2) use the formula in the Offset Value column heading in Tables 5 or 6 of Appendix H to recalculate the Offset Value for the

tested Engine Family; and (3) recalculate the Required Emission Offset, as specified in Table 4, by adding the Offset Value columns in Tables 5 and 6 of Appendix H.

b. In the case of vehicles and Model Year 2004 generator engines, if multiple QET results are obtained from a single Engine Family, the Defendant shall: (1) average any QET results obtained at the same engine setting (i.e., as received, full rich, full lean, high idle screw adjustment, low idle screw adjustment); (2) replace the Emission Factor listed in Table 5 or 6 of Appendix H for the tested Engine Family with the highest of the average values calculated in step 1 for each of HC+NO_x and CO, expressed in g/mi or g/kw-hr, as appropriate; (3) use the formula in the Offset Value column heading in Table 5 or 6 of Appendix H to recalculate the Offset Value for the tested Engine Family; and (4) recalculate the Required Emission Offset, as specified in Table 4, by adding the Offset Value columns in Tables 5 and 6 of Appendix H.

46. Whenever the Required Emission Offset is recalculated based on QET results in accordance with this Subsection A, the resulting increase or decrease in the total Required Emission Offset may be applied by the Defendants to any deadline in Table 4.

B. Reporting Requirements

47. If either Defendant performs a QET under this Section VIII, that Defendant shall provide at least 15 days advance notification to EPA in writing. Such notice shall include a statement identifying the vehicle or engine to be tested, the model name, the Engine Family, the vehicle identification number (for vehicles), the laboratory to be used, and the date of testing. If exact date of testing is not available at least 15 days in advance of the testing, the Defendant that performs a QET shall provide this information to EPA as soon as it becomes available to that Defendant.

48. In the first Semi-Annual Progress Report due, pursuant to Section X (Reporting Requirements) after each of the deadlines set forth in Paragraph 38, Table 4, the Defendant(s) that performed a QET shall include:

a. A detailed description of the Selected Emissions Offset Projects, to the extent implemented;

b. A statement of the results of the Selected Emissions Offset Projects, including the number of tons of pollutants offset as a result of the Selected Emissions Offset Projects, including all supporting documentation and calculations; and

c. A description of any problems encountered in completing the Selected Emissions Offset Projects and the solutions thereto.

49. In the first Semi-Annual Progress Report submitted pursuant to Section X (Reporting Requirements), each Defendant will certify to the truth and accuracy of each of the following:

a. that Defendant is not required to perform any of the Selected Emissions Offset Projects by any federal, state, or local law or regulation or by any agreement, grant, or as injunctive relief awarded in any other action in any forum;

b. that the Selected Emissions Offset Projects are not projects that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

c. that Defendant has not received and will not receive credit for the Selected Emissions Offset Projects in any other enforcement action; and

d. that Defendant will not receive any reimbursement for any portion of the Selected Emissions Offset Projects from any person, other than another Defendant.

C. General Requirements

50. Any public statement, oral or written, in print, film, on a website, or in other media, made by either Defendant making reference to any of the Selected Emissions Offset Projects under this Decree, shall include the following language: “This project is being undertaken in connection with the settlement of an enforcement action, United States v. The Pep Boys - Manny, Moe & Jack and Baja, Inc., taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act.”

51. Notwithstanding the use of the term, “Defendants,” in this Section VIII and in Appendix E, the Parties understand that Pep Boys and Baja intend to perform jointly the requirements of this Section but that, if Baja defaults on any of the obligations set forth in this Section, Pep Boys shall be solely responsible for performing the obligations described herein.

IX. ADMINISTRATIVE SETTLEMENT AGREEMENT

52. Pep Boys shall implement the remaining requirements of the Administrative Settlement Agreement, executed on November 24, 2009, herein attached as Appendix J (Administrative Settlement Agreement), which include without limitation the obligations contained in Paragraph 10 and Sections II, III, and V of the Subject Vehicle Corrective Action Plan (Appendix A of the Administrative Settlement Agreement).

X. REPORTING REQUIREMENTS

53. Beginning 30 days after the end of the second full calendar quarter following the entry of this Consent Decree, and continuing on a semi-annual basis until termination of this



Decree, and in addition to any other express reporting requirement in this Consent Decree, each Defendant shall submit a Progress Report to EPA. The Progress Report shall contain all information necessary to determine compliance and noncompliance of such Defendant with this Consent Decree, including but not limited to:

- a. the information required to be reported in the Semi-Annual Progress Report in accordance with the Paragraphs 17, 34, 48 and 49 and Appendices A, B, C and E;
- b. all information relating to any NOx emission allowances or credits that the Defendant purchased and permanently retired in accordance with Appendix E of this Consent Decree; and
- c. a description of any non-compliance with the requirements of this Consent Decree set forth in Appendix B, Paragraphs 7, 12, 15, 17(a), 18, 19; Appendix C; Section V and Appendix A; and Section VIII and Appendix E, including an explanation of the violation's likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such violation.

Nothing in this paragraph relieves Defendant of its obligation to provide the notice required by Section XII of this Consent Decree (Force Majeure).

54. Each report submitted by each Defendant under this Section shall be signed by an official of the signing Defendant, and shall contain the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

BD

55. All reports shall be submitted to the persons designated in Section XVII of this Consent Decree (Notices).

56. The reporting requirements of this Consent Decree do not relieve either Defendant of any reporting obligations required by the Clean Air Act or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

57. Any information submitted pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

XI. STIPULATED PENALTIES

A. Stipulated Penalties as to Pep Boys

58. Pep Boys shall be liable for stipulated penalties to the United States for each failure by Pep Boys to comply with the terms of this Consent Decree applicable to Pep Boys. A violation includes failing to perform any obligation required by the terms of this Decree according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

59. The following stipulated penalties shall apply as provided below:

- a. For failure to make the payment required by Paragraph 7 of this Decree when due: \$1,000 per day for each day that the payment is late during the first 15 days, and \$3,500 per day thereafter.
- b. For failing to notify EPA of a deficiency under Appendix B, Paragraph 18(b)(i): \$750 per notification per day for the first 30 days; \$1,000 per notification per day for the next 30 days; and \$1,500 per notification per day for all days thereafter.

- c. For failure to notify EPA of Qualified Emissions Testing as required by Paragraph 47: \$750 per notification per day for the first 30 days; \$1,000 per notification per day for the next 30 days; and \$1,500 per notification per day for all days thereafter.
- d. For failing to submit the following written deliverables or notifications as required by this Consent Decree: \$750 per deliverable per day for the first 30 days; \$1,000 per deliverable per day for the next 30 days; and \$1,500 per deliverable per day for all days thereafter:
- (i) Emissions Test Results, as required by Appendix B, ¶ 16 (a), (b), and (c)
 - (ii) Notifications of nonconformance or deficiency, as required by Appendix B, ¶ 15
 - (iii) Notifications regarding emissions test results, as required by Appendix B, ¶ 17(a)
 - (iv) In-Use Testing Reports and Results, as required by ¶ 42 and Appendix G, ¶ 13.

Provided, however, that stipulated penalties for failing to submit written deliverables as specified in this Paragraph 59(d) shall not exceed \$30,000 per deliverable or notification, so long as such deliverable or notification is submitted prior to or as part of the Semi-Annual Progress Report that next becomes due following the date the deliverable or notification was required to be submitted.

Otherwise, the stipulated penalties will accrue as provided in the first sentence of this paragraph 59(d).

- e. For failing to timely Permanently Destroy or export the Recreational Vehicles, Motorcycles and Generators in accordance with the requirements in Section V and Appendix A of this Decree: \$500 per vehicle or generator.
- f. For failing to comply with the following requirements of the Pep Boys Corporate Compliance Plan set forth in Appendix B to this Decree: \$750 per day for the first 30 days; \$1,000 per day for the next 30 days; and \$1,500 per day for all days thereafter:
 - (i) Failure to form a Compliance Group (Appendix B, ¶ 7)
 - (ii) Failure to Establish a Compliance Hotline (Appendix B, ¶ 18))
 - (iii) Failure to Provide Staff Training (Appendix B, ¶ 19).
- g. For importing vehicles or engines without the documents specified in Paragraph 11(b) of Appendix B, in violation of Paragraph 12 of Appendix B: \$300/vehicle.
- h. For failure to secure the Required Emission Offset (Tons), in accordance with Section VIII and Appendix E, by any of the dates specified in Paragraph 38: \$1,500 per ton of NOx; \$1,000 per ton of CO.
- i. For failure to implement any remaining requirements of the Extended Emission-Related Warranty and Repair Reimbursement Program Communications Plan (Section VII (A)) other than Paragraph 22(b)(ii), on or after the date that Pep Boys is required to implement the Extended Emission-Related Warranty and Repair Reimbursement Program Communications Plan, as contemplated by Paragraph

35: \$750 per day for the first 30 days; \$1,000 per day for the next 30 days; and \$2,000 per day for every day thereafter.

- j. For failure to provide for the repair of a vehicle or engine or to provide the owner with a written notice, as required in Paragraphs 30 and 31; or for failure to timely reimburse a claim or to provide the owner with a written notice, as required in Paragraphs 32 and 33, on or after the date that Pep Boys is required to implement these requirements as contemplated by Paragraph 35: \$1,000 per vehicle or engine.
- k. For failure to comply with the remaining obligations of the Administrative Settlement Agreement set forth in Appendix J, as required by Paragraph 52: \$750 per vehicle.
- l. For failure to timely submit the Semi-Annual Progress Report as required by Paragraph 53: \$500/day.
- m. For failure to cure, to EPA's satisfaction, any deficiency identified in a Semi-Annual Progress Report, including but not limited to the absence of an inspection report required to be included by Appendix B, Paragraph 14, within 30 days of the notification by EPA of such deficiency: \$500 per day for the first 30 days, \$750 per day every day thereafter.
- n. For the sale of any vehicle or engine following the date Pep Boys ceased, or should have ceased, sale and distribution of any Vehicle or Engine Model as provided in Appendix B, ¶¶ 15, 17 or 18: \$1,000 per vehicle or engine.

- o. For any violation of this Consent Decree not specified above: \$1,000 per violation.

B. Stipulated Penalties as to Baja

60. Baja shall be liable for stipulated penalties to the United States for each failure by Baja to comply with the terms of this Consent Decree as specified below, unless excused under Section XII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

61. The following stipulated penalties shall apply as provided below:

- a. For failure to make the payment required by Paragraph 8 of this Decree when due: \$1,000 per day for each day that the payment is late during the first 15 days, and \$3,500 per day thereafter.
- b. For failure to notify EPA of a nonconformance under Appendix C, Paragraph 23: \$750 per notification per day for the first 30 days; \$1,000 per notification per day for the next 30 days; and \$1,500 per notification per day for all days thereafter.
- c. For failure to notify EPA of Qualified Emissions Testing as required by Paragraph 47: \$750 per notification per day for the first 30 days; \$1,000 per notification per day for the next 30 days; and \$1,500 per notification per day for all days thereafter.
- d. For failure to submit the following written deliverables or notifications as required by this Consent Decree: \$750 per deliverable per day for the first 30 days; \$1,000

per deliverable per day for the next 30 days; and \$1,500 per deliverable per day for all days thereafter:

- (i) Notifications of nonconformance or deficiency, as required by Appendix C, ¶¶ 17 and 20
- (ii) In-Use Testing Reports and Results, as required by ¶ 42 and Appendix G, ¶ 13.

Provided, however, that stipulated penalties for failing to submit written deliverables as specified in this Paragraph 59(d) shall not exceed \$30,000 per deliverable or notification, so long as such deliverable or notification is submitted prior to or as part of the Semi-Annual Progress Report that next becomes due following the date the deliverable or notification was required to be submitted. Otherwise, the stipulated penalties will accrue as provided in the first sentence of this paragraph 59(d).

- e. For failure to timely Permanently Destroy or export the Recreational Vehicles, Motorcycles and Generators in accordance with the requirements in Section V and Appendix A of this Decree: \$500 per vehicle or generator.
- f. For failure to comply with the following requirements of the Baja Corporate Compliance Plan set forth in Appendix C to this Decree: \$750 per day for the first 30 days; \$1,000 per day for the next 30 days; and \$1,500 per day for all days thereafter:
 - (i) Failure to form a Compliance Group (Appendix C, ¶ 9)
 - (ii) Failure to Establish a Compliance Hotline (Appendix C, ¶ 23)

- (iii) Failure to Provide Staff Training (Appendix C, ¶ 24).
- g. For importing vehicles or engines without the documents specified in Paragraph 14(a) of Appendix C: \$300/vehicle.
 - h. For failure to secure the Required Emission Offset (Tons), in accordance with Section VIII and Appendix E, by any of the dates specified in Paragraph 38: \$1,500 per ton of NOx; \$1,000 per ton of CO.
 - i. For failure to implement any provision of the Extended Emission-Related Warranty and Repair Reimbursement Program Communications Plan (Paragraph 22): \$750 per day for the first 30 days; \$1,000 per day for the next 30 days; and \$2,000 per day for every day thereafter.
 - j. For failure to provide for the repair of a vehicle or engine or to provide the owner with a written notice, as required in Paragraphs 30 and 31; or for failure to timely reimburse a claim or to provide the owner with a written notice, as required in Paragraphs 32 and 33: \$1,000 per vehicle or engine.
 - k. For failure to timely submit the Semi-Annual Progress Report as required by Paragraph 53: \$500/day.
 - l. For failure to cure, to EPA's satisfaction, any deficiency identified in a Semi-Annual Progress Report, including but not limited to the absence of the information and documents required to be reported by Appendix C, Paragraph 26, within 30 days of the notification by EPA of such deficiency: \$500 per day for the first 30 days, \$750 per day every day thereafter.

- m. For the sale of any vehicle or engine following the date Baja ceased, or should have ceased, sale and distribution of any Vehicle or Engine Model as provided in Appendix C, ¶¶ 17(b), 20(b), and 23(b): \$1,000 per vehicle or engine.
- n. For any violation of this Consent Decree not specified above: \$1,000 per violation.

C. General Provisions Applicable to Both Defendants

62. Stipulated penalties that apply per day shall automatically begin to accrue on the first day a Defendant fails to satisfy any obligation or requirement of this Consent Decree applicable to that Defendant and shall continue to accrue until the violation or deficiency is corrected. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

63. The Defendant to whom a written demand is made shall pay any stipulated penalty within 30 days of receiving the United States' written demand. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

64. Stipulated penalties shall continue to accrue as provided in Paragraphs 58 through 61, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, the Defendant shall pay accrued penalties determined or agreed to be owing, together with Interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order.



b. If the dispute is appealed to the Court and the United States prevails in whole or in part, the Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, the Defendant shall pay all accrued penalties determined to be owing, together with Interest, within 15 days of receiving the final appellate court decision.

65. The Defendant to whom a written demand is made shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 9, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

66. If the Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, the Defendant shall be liable for Interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due.

67. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

68. Subject to the provisions of Section XV of this Consent Decree (Effect of Settlement), the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Air Act or its implementing regulations, Defendants shall be allowed a



credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

69. The Defendant shall not deduct stipulated penalties paid under this Section in calculating its federal income tax.

XII. FORCE MAJEURE

70. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of either Defendant’s contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants’ best efforts to fulfill the obligation. The requirement that Defendants exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include Defendants’ financial inability to perform any obligation under this Consent Decree.

71. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice verbally or by electronic or facsimile transmission to the United States within five business days of when Defendants first knew that the event might cause a delay. Within seven business days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants’

rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Pep Boys shall be deemed to know of any circumstance of which Pep Boys, any entity controlled by Pep Boys, or Pep Boys' contractors knew or should have known, when such entities or contractors were performing the obligations of Pep Boys under the Decree. Likewise, Baja shall be deemed to know of any circumstance of which Baja, any entity controlled by Baja, or Baja's contractors knew or should have known when such entities or contractors were performing the obligations of Baja under the Decree.

72. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. EPA will notify Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

73. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Defendants in writing of its decision.



74. If either Defendant elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 70 and 71, above. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XIII. DISPUTE RESOLUTION

75. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under this Decree.

76. Informal Dispute Resolution. Disputes submitted to Dispute Resolution under this Consent Decree shall, in the first instance, be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute and shall include supporting documentation. The period of informal negotiations shall not exceed 30 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position



advanced by the United States shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, Defendants invoke formal dispute resolution procedures as set forth below.

77. Formal Dispute Resolution. Defendants shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph of this Consent Decree, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

78. The United States shall serve its Statement of Position within 45 days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Defendants, unless Defendants file a motion for judicial review of the dispute in accordance with the following Paragraph.

79. Defendants may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XVII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 20 days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendants' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the

relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

80. The United States shall respond to Defendants' motion within the time period allowed by the Local Rules of this Court. Defendants may file a reply memorandum, to the extent permitted by the Local Rules.

81. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 76, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and that it is entitled to relief under applicable principles of law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

82. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 64. If Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XIV. INFORMATION COLLECTION AND RETENTION

83. The United States and its authorized representatives, including attorneys, contractors, and consultants, shall have the right to enter into any Facility pertaining to this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. inspect motorcycles, recreational vehicles (including all-terrain vehicles, off-highway motorcycles, and snowmobiles) and small spark-ignition engines (whether contained in generators or other equipment), imported or purchased by or on behalf of Pep Boys or Baja;
- d. require emissions testing;
- e. obtain documentary evidence, including photographs and similar data; and
- f. assess Defendants' compliance with this Consent Decree.

84. Until five years after the termination of this Consent Decree, Defendants shall retain, and shall instruct their respective contractors and agents to retain all non-identical copies of all documents, records, data or other information (including documents, records, data or other information in electronic form) that relate to Defendants' performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States, Defendants shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

85. Defendants may assert that certain documents, records, or other information requested by EPA pursuant to Paragraph 84 are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, it shall provide the following: (1) the title of the document, record, or information; (2) the date of the



document, record, or information; (3) the name and title of each author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of being legally privileged.

86. Defendants may also assert that information required to be provided under this Section is protected as confidential business information (“CBI”) under 40 C.F.R. Part 2. As to any information that Defendants seek to protect as CBI, the asserting Defendant shall follow the procedures set forth in 40 C.F.R. Part 2.

87. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of the Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XV. EFFECT OF SETTLEMENT

88. This Consent Decree resolves the United States’ civil claims for penalties and injunctive relief against the Defendants for violations of sections 203, 204, 205, 207, and 213 of the Act, 42 USC §§ 7522, 7523, 7524, 7541, and 7547, and the regulations promulgated at 40 C.F.R. Parts 86, 90, 1051 and 1068, through the date of lodging, as to the following vehicles and engines:

a. all vehicles purchased by Pep Boys from Baja at any time before 3/31/09 that belong to any of the engine families or vehicle models, regardless of model year, listed in

Appendix K;

b. all vehicles imported by Pep Boys and supplied by KCR Motorsports at any time before 3/31/09 that belong to models KCR70 or KCR110 and Model Years 2008 and earlier; and

c. all engines imported or sold by Pep Boys that are listed on Appendix K or that belong to any of the engine families listed in Appendix K.

This Consent Decree resolves the claims specified above, regardless of the date of sale of the vehicle or engine to the ultimate purchaser. In consideration of the actions that will be performed by Defendants pursuant to this Consent Decree, EPA shall not base a determination under Section 207(c)(1) of the Act, 42 U.S.C. § 7541(c)(1), that a substantial number of the vehicles or engines identified in Appendix A to the Complaint filed in this action do not conform to the regulations prescribed under Section 213 of the Act, 42 U.S.C. § 7524.

89. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 88. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 88. Nothing in this Consent Decree shall be construed to limit the authority of the United States to undertake any action against any person, including, in response to conditions that may present an imminent and substantial endangerment to the environment or to the public health or welfare.

90. In any subsequent administrative or judicial proceeding initiated by the United States against either Defendant for injunctive relief, civil penalties, other appropriate relief,

Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 88 of this Section.

91. This Consent Decree shall not limit any authority of EPA under the Act or any applicable statute, including the authority to seek information from the Defendants or to seek access to the property of the Defendants. The United States reserves all remedies available to it for violations of the Act by the Defendants that are not alleged in the Complaint as well as for violations of the Act by the Defendants that occur after the date of lodging of this Consent Decree.

92. Notwithstanding any other provision of this Agreement, EPA reserves, and this Agreement is without prejudice to, the right to reinstitute or reopen this action as it pertains to Baja, or to commence a new action against Baja seeking relief other than as provided in this Agreement, if the Financial Information provided by Baja, or the financial certification made by Baja in Section XXV (Financial Certification by Baja) is false or, in a material respect, inaccurate.

93. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations. Defendants are responsible for achieving and maintaining compliance with all applicable federal, state, and local laws, regulations, and permits; and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The

United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, or with any other provisions of federal, state, or local laws, regulations, or permits. This Consent Decree does not resolve criminal liability, if any, that any person or entity might have for violations of the Act or any other law.

94. This Consent Decree does not limit or affect the rights of the Defendants against each other or against any third parties not a party to this Consent Decree, nor does it limit the rights of third parties not party to this Consent Decree, against the Defendants, except as otherwise provided by law. Defendants reserve all rights against each other.

95. This Consent Decree does not limit or affect the rights of the United States against any third parties not a party to this Consent Decree.

96. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Decree.

XVI. COSTS

97. The Parties shall bear their own costs of this action, including attorneys' fees.

XVII. NOTICES

98. Unless otherwise provided herein, reports, submissions, notifications to, or communications with the United States or the Defendants shall be deemed submitted on the date they are sent by overnight receipt mail service or by certified or registered mail, return receipt requested. Except as otherwise specifically provided herein, when written notification to or communication with the United States, EPA or the Defendants is required by the terms of this Consent Decree, it shall be addressed as follows:



To EPA and/or to the United States:

Director, Air Enforcement Division
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W. (2242A)
Washington, D.C. 20460

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
Re: DOJ No. 90-5-2-1-09240
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611

To Pep Boys:

The Pep Boys – Manny, Moe & Jack
3111 West Allegheny Avenue
Philadelphia, PA 19132
Attn: General Counsel

With a copy to:

LeAnn M. Johnson-Koch
DLA Piper LLP (US)
500 8th Street, NW
Washington, DC 20004
leann.johnson@dlapiper.com

To Baja:

Brett Smith
Baja, Inc.
P.O. Box 61150
Phoenix, AZ 85082
Brett.Smith@bajamotorsports.com

Michael Ford
Polsinelli Shughart PC
3636 N. Central Ave., Suite 1200
Phoenix, AZ 85012
mford@polsinelli.com

99. All Parties to the Consent Decree may change the address for providing notices to them by serving all other addressees identified above with a written notice setting forth the new

address.

100. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XVIII. EFFECTIVE DATE

101. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket; provided, however, that Defendants hereby agree that each shall be bound to perform duties scheduled to occur prior to the Effective Date. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XIX. RETENTION OF JURISDICTION

102. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XIII (Dispute Resolution) and XX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XX. MODIFICATION

103. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

104. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIII of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 81, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XXI. TERMINATION

105. Either Defendant may, at any time after five years from the Effective Date of this Consent Decree, serve upon the United States, together with all necessary supporting documentation, a Request for Termination of this Consent Decree as to that Defendant, stating that the requesting Defendant has:

- a. made the payments required by Section IV and any accrued Interest imposed by this Consent Decree;
- b. paid in full any stipulated penalties imposed by this Consent Decree; and
- c. completed all other applicable requirements of this Consent Decree.

106. Pep Boys may, at any time after four years from the Effective Date of this Consent Decree, serve upon the United States, together with all necessary supporting documentation, a Request for Partial Termination of this Consent Decree as to Pep Boys, stating that the Pep Boys has:

- a. made the payments required by Section IV and any accrued Interest imposed by this Consent Decree;
- b. paid in full any stipulated penalties imposed by this Consent Decree; and
- c. completed all other applicable requirements of this Consent Decree, except



for the contingent obligations set forth in Paragraph 35 and Paragraphs 20 through 34, as they may apply.

107. Following receipt by the United States of either Defendant's Request for Termination or Pep Boys' Request for Partial Termination, the United States and the requesting Defendant shall confer informally concerning the Request and any disagreement that the Parties may have as to whether the Defendant has satisfactorily complied with the requirements for termination (or partial termination) of this Consent Decree. The period of time for informal discussion of termination shall not exceed 60 days, unless agreed by the Parties. If the United States agrees that the Decree may be terminated (or partially terminated), the Parties shall submit, for the Court's approval, a joint stipulation terminating (or partially terminating) the Decree.

108. If the United States does not agree that the Decree may be terminated (or partially terminated), the Defendant may invoke Dispute Resolution under Section XIII (Dispute Resolution) of this Decree. However, the Defendant shall not seek Dispute Resolution of any dispute regarding termination (or partial termination), under Paragraph 76 of Section XIII (Dispute Resolution), until 90 days after service of its Request for Termination (or Partial Termination).

109. Notwithstanding the provisions of this Section (Termination), the requirements and obligations of Paragraph 35 (and of Paragraphs 20 through 34, as they may apply) are not subject to Partial Termination under this Section. In the event the Parties agree to, and the Court approves of, Partial Termination of this Consent Decree as to Pep Boys, the requirements and obligations of Paragraph 35 (and of Paragraphs 20 through 34, as they may apply) continue to apply until the Consent Decree is Terminated as to Pep Boys pursuant to



Paragraph 105.

XXII. PUBLIC PARTICIPATION

110. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate.

111. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.

XXIII. SIGNATORIES/SERVICE

112. Each undersigned representative of the Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

113. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendants agree to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIV. INTEGRATION

114. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXV. FINANCIAL CERTIFICATION BY BAJA

115. Baja hereby certifies, to the best of its knowledge and belief, after thorough inquiry, (a) that it has submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances; (b) that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Baja executes this Agreement; and (c) that it has fully disclosed the existence of any insurance policies that may cover any payment of a civil penalty relating to this matter.

XXVI. APPENDICES

116. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is “Recreational Vehicles, Motorcycles and Generators Subject to Export”

“Appendix B” is the “Pep Boys Corporate Compliance Plan”

“Appendix C” is the “Baja, Inc. Corporate Compliance Plan”

“Appendix D” consists of the “Extended Emission-Related Warranty and Repair

Reimbursement Program: Communications Plan Notices,” “Service Bulletin Extended Emission Control System Warranty and Repair Reimbursement Program” “Consumer Bulletin Extended Emission Control System Warranty and Repair Reimbursement Program,” and “Training Bulletin Extended Emission Control System Warranty and Repair Reimbursement Program”

“Appendix E” is the “Emissions Offset Projects”

“Appendix F” is the “Emissions Related Parts List”

“Appendix G” is the “Emissions Testing Guidelines and ‘Qualified Emissions Testing’ Program for New and In-Use Off-Highway Motorcycles and Generators”

“Appendix H” consists of the “Generator Engine Emissions Test Results,” “Table 5: Required Emission Offset Tons Calculation Methodology: Vehicles” and “Table 6: Required Emission Offset Tons Calculation Methodology: Generators”

“Appendix I” consists of the “Compliance Evaluation Checklists”

“Appendix J” is the “Administrative Settlement Agreement”

“Appendix K” is the “Effect of Settlement: Subject Vehicles and Engines.”

XXVII. FINAL JUDGMENT

117. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants.

SO ORDERED AND APPROVED in accordance with the foregoing this ___ day of ___, ___.

UNITED STATES DISTRICT JUDGE
U.S. District Court for the District of Columbia

DM

Signature Page to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja, Inc.

Through their undersigned representatives, the Parties agree and consent to the entry of this Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF, UNITED STATES OF AMERICA:

IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7415
Washington, DC 20044-7415
(202) 514-2718

Date:

NICOLE VEILLEUX
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 616-8746
(202) 514-8395 (fax)

Date:



Signature Page to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja, Inc.

Through their undersigned representatives, the Parties agree and consent to the entry of this Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

_____ Date:
CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

_____ Date:
ADAM M. KUSHNER
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

_____ Date:
PHILLIP A. BROOKS
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460



Signature Page to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja, Inc.

Through their undersigned representatives, the Parties agree and consent to the entry of this Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

OF COUNSEL FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date:


CHRISTOPHER A. THOMPSON
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Signature Page to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja Inc.

Through their undersigned representatives, the Parties agree and consent to the entry of this Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR THE PEP BOYS -- MANNY, MOE & JACK:

Date:



Brian Zuckerman, Esquire
General Counsel, The Pep Boys - Manny, Moe & Jack
3111 West Allegheny Avenue
Philadelphia, PA 19132

LeAnn M. Johnson-Koch
DLA Piper LLP (US)
500 8th Street, NW
Washington, DC 20004
(202) 799-4380

Counsel to The Pep Boys - Manny, Moe & Jack

Signature Page to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja, Inc.

Through their undersigned representatives, the Parties agree and consent to the entry of this Consent Decree subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR BAJA, INC.:

_____ Date:
Brett Smith
Baja, Inc.
P.O. Box 61150
Phoenix, AZ 85082

_____ Date:
Michael Ford
Polsinelli Shughart PC
3636 N. Central Ave., Suite 1200
Phoenix, AZ 85012
mford@polsinelli.com



**Appendix A to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja, Inc.**

Recreational Vehicles, Motorcycles and Generators Subject to Export

Appendix A Equipment: Vehicles				
Quantity	Model Year	Model Name	Entry Date	Entry Number
42	2007	BA250	10/15/2007	201-8761507-4
42	2007	BA250	10/29/2007	201-8761623-9
36	2007	WD250U	11/1/2007	201-1369088-6
62	2007	BA90	11/28/2007	201-1369383-1
62	2007	BA90	11/28/2007	201-1369382-3
108	2008	DR70	10/3/2008	201-8762601-4
48	2008	DR150	10/2/2008	201-8762551-1
36	2008	WD250U	10/23/2008	201-8762667-5
36	2008	WD250U	10/24/2008	201-8762663-4

Appendix A Equipment: Generators		
Engine Family	Quantity	Description
5ETQS.0635E1	2	Eastern Tools
5CLGS.19368F	1	Lifan 2200 Watt
5SLHS.1711GA	2	Jiangsu Sumec Linhai Gen ProForce 2500
5CLGS.19668F	1	Lifan 3500 Watt
5ETQS.1962E1	1	Eastern Tools TG3000
6CWPS.4202WM and 7CWPS.4202WM	2	Chongqing Weima Power Machine 9000
All Eastern Tools TG3000 and TG1200 generators (approximately 843 generators) located at any Pep Boys' Facility		

**Appendix B to Consent Decree in:
*U.S. v. The Pep Boys – Manny, Moe & Jack and Baja, Inc.***

Pep Boys' Corporate Compliance Plan

I. Definitions

1. "Subject Vehicles and Engines" means all EPA-regulated on-highway motorcycles, recreational vehicles (including all-terrain vehicles, off-highway motorcycles, and snowmobiles) and small spark-ignition engines (whether contained in generators or other equipment), imported or purchased by, or on behalf of, Pep Boys from a Vehicle or Engine Supplier. However, five or fewer vehicles or engines (per Vehicle or Engine Model) that are imported in compliance with any of the exemptions listed under 40 C.F.R. Part 85, Subpart R, Part 90, Subpart J, Part 1054, Subpart G, or Part 1068, Subpart C, are not included.

2. "Vehicle or Engine Supplier" or "Supplier" means any person or entity that supplies or provides Subject Vehicles and Engines to Pep Boys.

3. "Emissions Related Parts" refers to the parts listed in Appendix F of this Consent Decree.

4. "Vehicle or Engine Model" means any set of Subject Vehicles and Engines that is certified in the same EPA Engine Family, built by the same manufacturer in the same Model Year (as designated by the manufacturer), and with the same vehicle mass, transmission type, displacement, and power (i.e., HP or kW).

5. "Sample" means one representative and randomly selected vehicle or engine from a Vehicle or Engine Model.

6. "Certificate of Conformity" means a certification issued by EPA under the Clean Air Act that confirms an Engine Family meets all requirements of the Clean Air Act and implementing regulations for a specific Model Year.

II. Corporate Vehicle and Engine Compliance Group

7. Pep Boys must establish a Corporate Vehicle and Engine Compliance Group ("Compliance Group") to ensure the effective implementation of this Compliance Plan and the Offset Projects in Appendix E of the Consent Decree.

8. The Compliance Group must review and report compliance with the Consent Decree, including this Compliance Plan and the Offset Projects, as required by Paragraph 21 below.

9. The Compliance Group is responsible for implementation of the Consent



Decree and Compliance Plan.

10. The Compliance Group must include a Pep Boys' corporate officer, a designated corporate compliance representative responsible for implementation of the Consent Decree, and selected employees of Pep Boys responsible for the implementation of the pre-importation and post-importation verification programs, compliance hotline, training, and reporting requirements of the Compliance Plan.

III. Pre-Importation Compliance Verification Program and Contract Requirements

11. Contracts. All contracts for the purchase or importation of Subject Vehicles and Engines by Pep Boys must require the Vehicle or Engine Supplier:

(a) to conduct emission testing on at least one Sample of each Vehicle or Engine Model of the Subject Vehicles and Engines prior to the delivery or shipment of a new Vehicle or Engine Model to Pep Boys in the United States. The tests may also be performed on a vehicle or engine that was manufactured on a production line and is identical in all material respects to a Vehicle or Engine Model except that it is imported after the date of application for EPA certification and covered by an EPA-approved testing exemption. The tests must be performed in accordance with EPA regulations and by an independent testing laboratory, pre-approved by EPA under this Consent Decree.

(b) to provide Pep Boys with:

- (1) written notification, certified in accordance with Paragraph 54 of the Consent Decree, that the Supplier physically inspected at least one Sample and confirmed that it:
 - (i) is covered by an EPA-issued Certificate of Conformity that displays the Engine Family name, an effective date prior to the date the Vehicle or Engine Model entered or will enter the United States, and, for vehicles certified under 40 C.F.R. Part 86 or Part 1051, the commercial model name;
 - (ii) is labeled in accordance with all applicable regulations. See 40 C.F.R. §§ 86.413-2006 (highway motorcycles), 90.114 and 1054.135 (small spark-ignition engines) and 1051.135 (recreational vehicles);
 - (iii) is built, in all material respects, in conformity with the design specifications (e.g., Emission-Related Parts, adjustable parameters, and any other component that may reasonably be expected to affect emissions) in the corresponding application for the EPA-issued Certificate of Conformity; and
 - (iv) is accompanied by an owner's manual containing an emissions

warranty that complies with all applicable regulations.

- (2) a copy of the results of any emission or catalyst testing performed by, on behalf of, or at the request of the Supplier.
- (3) a copy of the owner's manual containing an emissions warranty that complies with all applicable regulations.
- (4) a copy of all EPA-issued Certificates of Conformity and their corresponding application(s), including any applications for any amendment to a Certificate of Conformity submitted to and approved by EPA for an Engine Family after issuance of the original Certificate of Conformity for that Engine Family.
- (5) a completed Vehicle Inspection Checklist or Engine (and Equipment) Inspection Checklist, as applicable, as set forth in Appendix I to this Consent Decree (hereinafter "Checklist"), documenting the results of the inspections conducted under Paragraph 11(b)(1) of this Appendix B, above, certified in accordance with Paragraph 54 of this Consent Decree.

12. Compliance Assurance. Pep Boys may not import any Vehicle or Engine Model until it has obtained the completed Checklist and the documents described in Paragraph 11(b) of this Appendix B, above. For Vehicle or Engine Models previously imported by any entity other than Pep Boys or a Supplier, Pep Boys must obtain sufficient documentation to demonstrate the above requirements were satisfied prior to delivery to Pep Boys.

IV. Post-Importation Compliance Verification Program

13. Beginning 30 days after the end of the second full calendar quarter following entry of this Consent Decree and continuing on a semi-annual basis thereafter, Pep Boys must inspect at least one Sample of each Vehicle or Engine Model using the Checklist, and confirm that the Sample is built, in all material respects, in conformity with the design specifications (e.g., Emission-Related Parts, adjustable parameters, and any other component that may reasonably be expected to affect emissions) in the corresponding application for the EPA-issued Certificate of Conformity. If the Vehicle or Engine Model includes a catalyst and the Supplier is Baja, the inspection under this Paragraph will not require disassembly of the Sample's exhaust system. Otherwise, as part of the inspection, Pep Boys must disassemble the exhaust system attached to the Sample and verify that the exhaust system catalyst part number, dimensions, and cell density conform to the design specifications in the corresponding application for the EPA-issued Certificate of Conformity.

14. Pep Boys must document all inspections of Subject Vehicles and Engines and provide these documents, including completed Checklists, to EPA as part of the Semi-Annual Progress Report required by Section X of the Consent Decree.

15. If Pep Boys identifies any nonconformance in an inspection

conducted under Paragraph 13 of this Appendix B, or otherwise obtains any other information indicating that a Subject Vehicle or Engine does not conform to the requirements of the Clean Air Act or its implementing regulations, Pep Boys must, within ten days, notify the Supplier and EPA of the deficiency, report the total inventory quantity of all affected Subject Vehicles and Engines that are recreational vehicles or on-highway motorcycles to EPA, and cease all sale and distribution of the Vehicle or Engine Model at issue until the deficiency has been remediated to EPA's satisfaction. Such remediation may include exportation of the Vehicle or Engine Model, as specified in Paragraph 15 (b), below.

(a) Following the identification of a nonconformance under Paragraph 15, Pep Boys may petition EPA for permission to resume sale of the Vehicle or Engine Model (or a subset thereof) by demonstrating that the nonconformity is limited to a subset of vehicles or engines within the Model. Any such petition shall include the results of any emission tests performed or required to be performed under this Appendix B. If EPA determines, on the basis of such petition, that a subset of the Vehicle or Engine Model is legally compliant, it shall grant Pep Boys permission to sell the identified subset of compliant vehicles or engines. EPA shall provide its response to any petition submitted under this subparagraph within 75 days of receipt.

(b) If Pep Boys elects to export the Vehicle or Engine Model of which the inspected vehicle or engine is a member, Pep Boys must export such vehicles or engines in compliance with the provisions of Section V of this Consent Decree no later than 60 days after notifying EPA of a nonconformity, pursuant to Paragraph 15, above.

16. Pep Boys must complete the following emission testing as part of the Post-Importation Compliance Verification Program:

(a) if an inspection or other information indicates the Subject Vehicle or Engine may not have been built in conformity with the design specifications in the application for the Certificate of Conformity, Pep Boys must conduct emission testing on a Sample of the affected Vehicle or Engine or export the Vehicle or Engine Model in compliance with the provisions of Section V of this Consent Decree. Pep Boys must provide the results of any emission tests performed to EPA no later than 60 days after notifying EPA of a nonconformity, pursuant to Paragraph 15, above;

(b) if Pep Boys purchases 2000 or more of a Vehicle or Engine Model that is a spark-ignition engine at or below 19 kW, whether loose or contained in a generator, Pep Boys must conduct emission testing on one Sample of such Vehicle or Engine Model each calendar year and provide emission test results to EPA no later than 60 days after completing a test; and

(c) EPA may request that Pep Boys conduct emission testing on one Sample of any Vehicle or Engine Model, up to a maximum of seven emission tests in a calendar year. Pep Boys must provide the emission test results to EPA no later than 60 days

after EPA's request. Upon a documented showing that no approved testing laboratory can provide test results within 60 days, EPA will consider a request by Pep Boys for an additional 30 days. The tests must be performed in accordance with EPA regulations and by an independent testing laboratory, pre-approved by EPA under this Consent Decree.

17. If the emission test results for any Subject Vehicle or Engine indicate emissions above the applicable standard, or otherwise indicate that the tested Sample may not have been manufactured in accordance with the specifications in the application for Certificate of Conformity, Pep Boys:

(a) must notify the Supplier and EPA within 10 business days of receipt of the test results and provide the Supplier and EPA with the total inventory quantity of all affected Vehicles and Engines that are recreational vehicles or on-highway motorcycles;

(b) must, within 10 days of receipt of the test results, cease sale and distribution of the affected Vehicle or Engine Model until the deficiency has been remediated to EPA's satisfaction. Such remediation may include exportation of the Vehicle or Engine Model, in compliance with the provisions of Section V of this Consent Decree and no later than 60 days after providing EPA with the test results, pursuant to Paragraph 17(a); and

(c) may perform additional tests to confirm or rebut test results in accordance with 40 C.F.R. Part 1068 Subpart E for vehicles, and 40 C.F.R. Part 90 Subpart F for small spark-ignition engines; and

(d) may petition EPA for permission to resume sale of the Vehicle or Engine Model (or a subset thereof) by demonstrating that the nonconformity is limited to a subset of vehicles or engines within the Model. Any such petition shall include the results of any emission tests performed or required to be performed under this Appendix B. If EPA determines, on the basis of such petition, that a subset of the Vehicle or Engine Model is legally compliant, it shall grant Pep Boys permission to sell the identified subset of compliant vehicles or engines. EPA shall provide its response to any petition submitted under this subparagraph within 90 days of receipt.

V. Creation of Vehicle and Engine Compliance Hotline

18. Pep Boys must establish a vehicle and engine compliance hotline, which may be a dedicated prompt on an existing customer service number, designed to address customer complaints regarding warranty and performance of emission control components and through which employees and other interested persons may submit confidential, anonymous information about performance and implementation of this Compliance Plan. Pep Boys must notify all employees of the establishment and purpose of vehicle and engine compliance hotline.

(a) Within 10 business days after receiving a call pertaining to Pep Boys' compliance with this Compliance Plan, the performance of the emission control components

of any Subject Vehicle or Engine, or a warranty for emission control components, Pep Boys must investigate and submit an incident report to the Compliance Group.

(b) If Pep Boys identifies any deficiency or obtains any other information indicating that a Subject Vehicle or Engine does not conform to the requirements of the Clean Air Act or its implementing regulations:

- i. Pep Boys must, within ten days of receiving such information, notify the Supplier and EPA of the deficiency, and cease all sale and distribution of the affected Vehicle or Engine Model until the deficiency has been remediated to EPA's satisfaction. Such remediation may include exportation of the Vehicle or Engine Model, in compliance with the provisions of Section V of this Consent Decree and no later than 60 days after notifying EPA of the nonconformity pursuant to this subparagraph;
- ii. Pep Boys must report to EPA the total inventory quantity of all affected Subject Vehicles and Engines that are recreational vehicles or on-highway motorcycles.
- iii. Pep Boys may petition EPA for permission to resume sale of the Vehicle or Engine Model (or a subset thereof) by demonstrating that the nonconformity is limited to a subset of vehicles or engines within the Model. Any such petition shall include the results of any emission tests performed or required to be performed under this Appendix B. If EPA determines, on the basis of such petition, that a subset of the Vehicle or Engine Model is legally compliant, it shall grant Pep Boys permission to sell the identified subset of compliant vehicles or engines. EPA shall provide its response to any petition submitted under this subparagraph within 90 days of receipt.

VI. Staff Training Program

19. Pep Boys must provide initial and annual refresher training to all staff implementing this Compliance Plan. Comparable initial training must be provided to any person who subsequently assumes responsibility for implementing this Compliance Plan. The training must include a review of the procedures in this Plan. The individual(s) responsible for conducting inspections under the Post-Importation Compliance Verification Program must have adequate technical training to evaluate compliance with vehicle and engine design specifications and emission controls.

20. Each employee of Pep Boys implementing this Compliance Plan must certify that the employee participated in the training, received a copy of the Compliance Plan, has been informed of the compliance hotline, and understands that violations of the applicable

regulations can result in the imposition of significant civil penalties on Pep Boys.

VII. Semi-Annual Reports

21. Beginning 30 days after the end of the second full calendar quarter following entry of this Consent Decree and continuing on a semi-annual basis thereafter, Pep Boys must submit Semi-Annual Progress Reports to EPA regarding the implementation of the Compliance Plan in accordance with Section X of this Consent Decree. Each Semi-Annual Progress Report must include:

(a) the total number of Subject Vehicles and Engines (organized by Vehicle or Engine Model and including Supplier information) that have been imported, purchased, or sold by Pep Boys, during the reporting period;

(b) the results of all emission tests performed by either the Supplier or by Pep Boys under this Compliance Plan and the test plan used for the testing;

(c) a summary of all notifications to EPA under Paragraph 18 of this Appendix B, including an explanation of actions taken in response to compliance hotline calls;

(d) the total number of warranty claims submitted for Subject Vehicles and Engines (organized by Vehicle or Engine Model), and how the warranty claims were resolved; and

(e) all information necessary to determine Pep Boys' compliance with this Compliance Plan.

22. Pep Boys must provide emission test data and inspection documents to EPA upon request.

VIII. Implementation of Compliance Plan Requirements

23. It will not be a violation of this Compliance Plan for a party other than Pep Boys to implement any of its terms on behalf of Pep Boys. Notwithstanding the foregoing, however, Baja's performance of the terms of Appendix C does not, alone, satisfy Pep Boy's obligation to perform the terms of Appendix B. Pep Boys alone is responsible for the implementation of the Compliance Plan and paying any stipulated penalties. Pep Boys must submit the reports and notifications to EPA required by this Compliance Plan and any required Certifications must be made by an officer of Pep Boys.

24. All emission testing required by this Appendix B shall be low-hour, post-certification testing and conducted according to the guidelines set forth in Section I of Appendix G.



**Appendix C to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja Inc.**

Baja, Inc. Corporate Compliance Plan

I. Definitions

1. “Subject Vehicles and Engines” means all EPA-regulated on-highway motorcycles, recreational vehicles (including all-terrain vehicles, off-highway motorcycles, and snowmobiles) and small spark-ignition engines, whether contained in generators or other equipment, imported or purchased by, or on behalf of, Baja. However, five or fewer vehicles or engines (per Vehicle or Engine Model) that are imported in compliance with any of the exemptions listed under 40 C.F.R. Part 85, Subpart R, Part 90, Subpart J, Part 1054, Subpart G, or Part 1068, Subpart C, are not included.

2. “Manufacturer” means any person or entity which produces or provides Subject Vehicles and Engines to Baja.

3. “Emissions Related Parts” refers to the parts listed in Appendix F of this Consent Decree.

4. “Vehicle or Engine Model” means any set of Subject Vehicles and Engines that is certified in the same EPA Engine Family, built by the same Manufacturer in the same Model Year (as designated by the Manufacturer), and with the same vehicle mass, transmission type, displacement, and power (i.e., HP or kW).

5. “Sample” means one representative and randomly selected engine or vehicle from an Vehicle or Engine Model. If the requirements of 40 C.F.R. 1068.103(c) are satisfied, “Sample” may also mean one representative and randomly selected engine or vehicle that is not yet certified, but for which an application for an EPA Certificate of Conformity has been submitted.

6. “Running Change” means any application for any amendment to a Certificate of Conformity submitted to and approved by EPA for an Engine Family after issuance of the original Certificate of Conformity for that Engine Family.

7. “Certificate of Conformity” means a certification issued by EPA under the Clean Air Act that confirms an Engine Family meets all requirements of the Clean Air Act and implementing regulations for a specific Model Year.

8. “Test Lot” means all vehicles or engines of the same Vehicle or Engine Model manufactured during a quarterly production period.

II. Corporate Vehicle and Engine Compliance Group

9. Baja must establish a Corporate Vehicle and Engine Compliance Group (“Compliance Group”) to ensure the effective implementation of this Compliance Plan and the Offset Projects in Appendix E of the Consent Decree.

10. The Compliance Group must review and report compliance with the Consent Decree, including this Compliance Plan and the Offset Projects, as required by Paragraph 26 of this Appendix C, below.

11. The Compliance Group is responsible for implementation of the Consent Decree and Compliance Plan.

12. The Compliance Group must consist of a Baja corporate officer, factory relations team representative, and customer service team representative, and selected employees of Baja Inc. responsible for the implementation of the pre-importation and post-importation verification programs, compliance hotline, training, and reporting requirements of this Compliance Plan.

III. Pre-Importation Compliance Verification Program and Contract Requirements:

13. **Contracts.** Baja must assure all contracts between Baja and manufacturers of the Subject Vehicles and Engines specify that the Subject Vehicles and Engines must be certified, properly labeled, and meet applicable emissions standards, including the identification, as required, of Emissions Related Parts in the Certificate of Conformity application and in any applicable EPA-approved Running Changes. Where Baja is not the Certificate holder, the contracts must also require the Subject Vehicle and Engine Manufacturers to provide Baja, prior to importation of any Subject Vehicles and Engines to the United States, copies of all Certificates of Conformity for each Engine Family, all Certificate of Conformity applications, and all Running Change applications relating to the Subject Vehicles and Engines for Baja’s review, comment and approval.

14. **Inspections.** Prior to importation of any Subject Vehicles and Engines to the United States, Baja must:

- a. Obtain a copy of:
 - i. the results of any emission or catalyst testing performed by, on behalf of, or at the request of the Manufacturer or certificate holder;
 - ii. owner’s manuals containing emissions warranties that comply with all applicable legal requirements; and
 - iii. all EPA-issued Certificates of Conformity and their corresponding applications, including any applications for any Running Changes.

- b. Conduct and document, using the Vehicle Inspection Checklist, as set forth in Appendix I to this Consent Decree (hereinafter "Checklist"), an inspection of at least one Sample representative of the new Model Year (including its Certificate of Conformity, application and any amendments, and owner's manual) and confirm that it is:
 - i. covered by a Certificate of Conformity that displays the Engine Family name and an effective date prior to the date the Vehicle or Engine Model will enter the United States (vehicle models certified under 40 C.F.R. Parts 86 and 1051 also must display the commercial model name on the Certificate of Conformity);
 - ii. labeled in accordance with EPA's applicable regulatory requirements for emission control information labels. See 40 C.F.R. §§ 86.413-2006 (highway motorcycles), 90.114 and 1054.135 (small spark-ignition engines) and 1051.135 (recreational vehicles);
 - iii. built in conformity with the design specifications in all material respects (e.g., Emissions Related Parts, adjustable parameters, and any other component that may reasonably be expected to affect emissions) as described in the corresponding application for the Certificate of Conformity; and
 - iv. accompanied by an owner's manual with an emissions warranty that complies with all applicable legal requirements.
- c. Request a copy of EPA's Compliance Determination Guidelines and provide such Guidelines to each employee or contractor that may make a compliance determination based on a vehicle or engine inspected in accordance with this Corporate Compliance Plan.

15. Emission Testing. Prior to importation of any Subject Vehicles and Engines to the United States, Baja must conduct emission testing on one Sample representative of the new Model Year, or on a vehicle or engine that was manufactured on a production line and is identical in all material respects to a Vehicle or Engine Model except that it is imported after the date of application for EPA certification and covered by an EPA-approved testing exemption. The tests must be performed in accordance with EPA regulations and by an independent testing laboratory approved by EPA under the Consent Decree. All testing required by this Appendix C shall be low-hour, post-certification testing and conducted according to the guidelines set forth in Section I of Appendix G.

16. Catalyst Testing. If a new Vehicle or Engine Model will contain a catalyst, prior to importation of any Subject Vehicles and Engines to the United States, Baja must obtain one

representative sample catalyst and submit the catalyst for analytical testing to determine metal loading, metal ratios, and cell density in accordance with a test plan approved by EPA. Once the test results are obtained, Baja must compare the results to the Certificate of Conformity application to determine the catalyst's conformity with the Certificate of Conformity application.

17. If the inspection or catalyst testing results indicate any nonconformance with the specifications in the application for certification or the emissions test results from the tested Sample exceed the applicable regulatory standards, Baja:

- a. must notify the Manufacturer, the certificate holder, and EPA within 10 business days after completing the testing of the initial Sample; and
- b. must stop sale and stop importation of the affected Vehicle or Engine Model until the noncompliance is remediated to EPA's satisfaction.

IV. Post-Importation Compliance Verification Program

Within 90 days after the first delivery or shipment of a new Vehicle or Engine Model to the United States, and continuing on a quarterly basis thereafter, Baja must conduct the following compliance verification activities.

18. Quarterly Inspections. Baja must, for each Test Lot:

- a. inspect at least three Samples and verify that the Samples meet the requirements of Paragraph 14 of this Appendix C, using the Checklist; and
- b. verify that the Subject Vehicles and Engine's Emissions Related Parts are consistent with the certification application by disassembling one of the Samples, to the extent necessary to verify the Emissions Related Parts. This inspection must include, if the Vehicle or Engine Model includes a catalyst, the inspection of one catalyst to verify its part number, dimensions, and cell density.

19. Testing. For Engine or Vehicle Models for which Baja is not the certificate holder, Baja must conduct emissions and catalyst testing on one Sample vehicle or engine per Test Lot in accordance with Paragraphs 15 and 16 of this Appendix C.

20. If the quarterly inspection or catalyst testing results indicate any nonconformance with the specifications in the application for certification or the emissions test results from the tested Sample exceed an applicable regulatory standard, Baja:

- a. must notify, within 10 business days after testing the initial Sample: (i) the Manufacturer, (ii) the certificate holder, (iii) EPA, and (iv) any customers who have purchased the affected Vehicle or Engine Model;

- b. must stop selling the affected Vehicle or Engine Model and cancel or postpone any pending orders with the Manufacturer; and
- c. may perform additional emission tests to confirm or rebut test results in accordance with 40 C.F.R. Part 1068 Subpart E for vehicles, and 40 C.F.R. Part 90 Subpart F for small spark-ignition engines.
- d. Upon fulfillment of the obligations under Paragraph 20(a) and (b) of this Appendix C, Baja is permitted to export the nonconforming Vehicle or Engine Model, to the extent any have been imported into the United States, Canada, or Mexico. Alternatively, Baja may submit a proposal to EPA for remediation of the problem in order to resume selling the affected Vehicle or Engine Model if and when the nonconformance is remediated to EPA's satisfaction.

21. Documentation. Baja must document all quarterly inspections and emissions and catalyst testing and retain these documents for five years, notwithstanding any corporate document retention policies, and provide the documents to EPA upon request.

22. Production Line Compliance - Running Changes. A representative of the Compliance Team must audit production facility activities related to Baja's vehicles. For each production change on any certified vehicle, a representative of the Compliance Team must make a written determination regarding whether or not a Running Change must be submitted to EPA, and ensure that a valid Running Change is submitted to EPA, whenever required. These determinations must be reviewed by the Compliance Team at each quarterly meeting.

V. Creation of Vehicle and Engine Compliance Hotline

23. Baja must establish a vehicle and engine compliance hotline, which may be a dedicated prompt on an existing customer service number, designed to address customer complaints regarding warranty and performance of emission control components and through which employees and other interested persons may submit confidential, anonymous information about performance and implementation of this Compliance Plan. Baja must notify all employees of the establishment and purpose of this hotline. Within 10 business days after receiving any call relating to potential non-compliance with this Compliance Plan, the performance of Emissions Related Parts, or emissions warranty matters, Baja must investigate and submit an incident report for each call to the Compliance Group. If the investigation determines that any Subject Vehicles and Engines are not in conformance with the requirements of the Clean Air Act or its implementing regulations, Baja must inform the Manufacturer, the certificate holder, and any customers who purchased the Vehicle or Engine Model, of the apparent noncompliance, stop sale of the affected Vehicle or Engine Model, and cancel or postpone any pending orders with the Manufacturer. Baja must submit a report to EPA within 10 business days of the date the incident report was submitted to the Compliance Group. Upon fulfillment of these obligations, Baja is permitted to export the nonconforming Vehicle or Engine Model. Alternatively, Baja may submit a proposal to EPA for remediation of the problem in order to

resume selling the affected Vehicle or Engine Model if and when the nonconformance is remediated to EPA's satisfaction.

VI. Staff Training Program

24. Baja must provide appropriate initial and annual refresher training to all staff implementing this Compliance Plan. Comparable initial training must be provided to any person who subsequently assumes responsibility for implementing this Compliance Plan. The training must include a review of the procedures in this Plan. The individual(s) responsible for conducting inspections under the Post-Importation Compliance Verification Program must have adequate technical training or practical experience to evaluate compliance with vehicle and engine design specifications and emission controls.

25. Each employee of Baja implementing this Compliance Plan must certify that he or she has participated in the training, received a copy of the Compliance Plan, been informed of the Compliance Hotline, and understands that violations of the applicable regulations can result in the imposition of significant civil penalties on Baja.

VII. Semi-Annual Reports

26. Beginning 30 days after the end of the second full calendar quarter following entry of the Consent Decree, Baja must submit Semi-Annual Progress Reports to EPA, pursuant to Section X of this Decree, regarding the implementation of the Compliance Plan. Each Semi-Annual Progress Report must include:

- a. The total number of Subject Vehicles and Engines (organized by Vehicle or Engine Model) that have been imported or sold by Baja during the reporting period;
- b. The results of all inspections and emission or catalyst tests performed by Baja under Paragraphs 14, 15, 16, 18, 19, and 20 of this Appendix C, with the corresponding test plan;
- c. A report summarizing Baja's actions performed under Paragraphs 17 and 20 of this Appendix C;
- d. A summary of all reports to EPA under Paragraph 23 of this Appendix C, including an explanation of actions taken in response to compliance hotline calls; and
- e. The total number of emission control system warranty claims submitted for Subject Vehicles and Engines (organized by Vehicle or Engine Model), and how the claims were resolved; and
- f. Supporting test data, inspection documents, and any and all other

information necessary to determine Baja's compliance with this Compliance Plan must be provided to EPA upon request.

Handwritten initials or signature, possibly "DA", in the bottom right corner.

**Appendix D to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja Inc.**

Extended Emission-Related Warranty and Repair Reimbursement Program:
Communications Plan Notices

In accordance with Paragraph 22 of the Consent Decree, the notices, bulletins, and communications shall conform to the following specifications:

1. Baja shall issue the Service Bulletin (attached hereto as Appendix D-1) to each Authorized Service Center, via e-mail and as an addition to the Service Information CD or via Baja's website.
2. Baja shall prominently post an interactive link on the homepage of Baja's website, in a font size no smaller than 14 points for the header and 12 points for the text, that reads as follows, and serves as a link to the Baja Consumer Bulletin, provided herein as Appendix D-2:

“Click Here for more on Baja’s FREE Extended Emission Control System Warranty and Repair Reimbursement Program, available for specified Baja vehicles and certain generators.”

3. Baja shall send the Consumer Bulletin, provided herein as Appendix D-2, to all purchasers in Baja's database of the vehicles listed in Tables 1 and 2 in Section VII of this Decree.
4. Pep Boys shall (a) post a link that reads “FREE Emission Warranty” on the bottom navigation bar of the homepage of the Pep Boy website and (b) prominently post a link on the Accessories/Powersports page of the Pep Boys website, in a font no smaller than 11 points in size, that reads as follows:

“Click Here for more on Baja’s FREE Extended Emission Control System Warranty and Repair Reimbursement Program, available for specified Baja vehicles and certain generators.”

Both links shall lead directly to the Consumer Bulletin, provided herein as Appendix D-2.

5. Baja shall issue the Training Bulletin, provided herein as Appendix D-3, to all current Baja employees, and shall provide it to all new employees upon hiring.
6. No later than 30 days after entry of this Decree, Pep Boys shall post and maintain a sign in each Pep Boys store, no smaller than 8.5 by 11 inches, with an easel back, on one or more display tables, with the following text, in at least 14 point font:

“New! FREE Extended Emission Control System Warranty and Repair Reimbursement Program available for specified previously purchased Baja Vehicles and certain generators.

Baja is extending the emission control system (ECS) warranty for its Model Year 2006 and 2007 vehicles (including all-terrain vehicles and motorcycles), and certain generators sold by Pep

Boys, effective [date]. As part of this program, Baja will also reimburse owners for certain repair expenses previously incurred. Visit Bajamotorsportsonline.com for details.”

**Appendix D-1 to Consent Decree in:
*U.S. v. The Pep Boys – Manny, Moe & Jack and Baja Inc.***

***Service Bulletin
Extended Emission Control System Warranty and Repair Reimbursement Program***

Baja is extending the emission control system (ECS) warranty for its Model Year 2006 and 2007 vehicles (including all-terrain vehicles and motorcycles), and certain generators sold by Pep Boys, effective [date]. As part of this program, Baja will also reimburse owners for certain repair expenses previously incurred, as described below.

(1) Extended ECS warranty. Baja is extending the ECS warranty for the Model Year 2006 and 2007 vehicles as follows:

- Off-highway motorcycles and ATVs: additional 30 months from [Effective Date]
- Highway motorcycles: additional 60 months from [Effective Date]
- Generators: additional 24 months from [Effective Date].

Eligible models and engine families are listed in the Tables below. Where a warrantable condition exists, Baja will repair the vehicle at no cost to the consumer, including diagnosis, parts and labor. If an emission-related part on the vehicle is defective, the part will be repaired or replaced by Baja. The ECS warranty covers components whose failure would increase an engine's emission, including electronic controls, fuel injection system, carburetor, the ignition system, catalytic converter, or any other system utilized in this vehicle to control emissions. Also included may be hoses, connectors and other emission-related assemblies. A list of emission-related parts is provided at <http://www.bajamotorsportsonline.com/> [link to ECS parts list]. Certain terms and conditions of the standard Baja ECS warranty continue to apply (available at <http://www.bajamotorsportsonline.com/> [link to warranty]).

(2) Unpaid Repair Reimbursement. Baja will reimburse reasonable expenses incurred by an owner of a Baja vehicle covered by the Extended ECS Warranty program. To be eligible for reimbursement, the repair expenses must have been incurred prior to [Effective Date], and proof of payment is required. Within 60 days from the date the reimbursement claim is submitted, Baja will either (1) pay the claim; (2) provide the owner, in writing, with a conditional approval, requesting additional information needed in order to validate the claim; or (3) deny the claim with an explanation of the basis for denial and a notice that the owner may obtain further information concerning the Extended Emission-Related Warranty and Repair Reimbursement Program from U.S. EPA.

Please contact a Level II Technician at Baja when a claim is made under this Extended ECS Warranty Program.

BM

Consumers may report questions or concerns regarding compliance with the terms of this Extended ECS Warranty program by contacting:

Director, Air Enforcement Division
 U.S. Environmental Protection Agency
 1200 Pennsylvania Ave., N.W. (2242A)
 Washington, DC 20460
 (202) 564-2260

Note: This project is being undertaken in connection with the settlement of an enforcement action, United States v. The Pep Boys – Manny, Moe & Jack and Baja, Inc., taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act.

Table 1	
Recreational Vehicle Model	Engine Family
Model Year 2006	
BA90/Baja 90, WD50, Wilderness 50	6GDDX0.90NFG
BA150/Baja 150	6CQLX0.15ATV
WD50U, WD50U1, WD90, WD90U/Wilderness 50U, 50U1, 90, 90U / BA49, BA50 / Baja 49, 50	Unknown
DB30/Doodle Bug, Viper, Blitz, Dirt Bug, Racer	6CLGS.09852F
DN150/Dune 150 / BR150, BR150-1 / Reaction 150, 150-1	6AVIX.150SB1
DR49, DR70, DR50, DR50-R/Dirt Runner 49, 70, 50, 50-R	6CGQX.049DB1
DR90/Dirt Runner 90	6CGQX.107DB1
DR125, DR150/Dirt Runner 125, 150	6CGQX.149DB1
MB165, MB165C/Mini Baja 165, 165C, HT65/Heat 65, TR65/Trail 65, BB65/Blaster 65	6CHGS.1961CH
STR125/ Storm	6DDIX0.12NFG
WD250U, WD250UR, WD250U-2/Wilderness 250U, 250UR, 250U-2	6CQLX0.25ATV 6JNHX.229001
X150/ Extreme	6NMRX0.15
X300/ Extreme	6NMRX0.29NFG
Model Year 2007	
BA49, BA50/Baja 49, 50, WD50, WD50U, WD50U1/Wilderness 50, 50U, 50U1	7LGGX0.07LTF 7AVIX.049FYM
BA90/Baja 90	7FYMX.090AM4
BA150/Baja 150	7LGGX.150AA1
BA250/Baja 250	7KYKX.250AM5
BR150, BR150-1/Reaction 150, 150-1, DN150/Dune 150	7DAZX.150EC1 7TJPX.150150
DB30/Doodlebug, Viper, Blitz, Dirt Bug, Racer	7CGQX.100BAA 7CLGS.09852F
DN250/Dune 250	7RUNX.300XM5
DR49, DR70/Dirt Runner 49, 70	7CGQX.049DB1

DR90/Dirt Runner 90, WR90/Warrior 90	7CGQX.107DB1
DR125, DR150/Dirt Runner 125, 150	7CGQX.149DB1
DX70, KCR70*	7CQYX.070A01
DX110, KCR110*	7CQYX.125A02
MB165, MB165C/Mini Baja 165, 165C, HT65/Heat 65	7CGQX.200CAA
STR125/ Storm	7FYM.125AM4
TR65/Trail 65, BB65/Blaster 65	7CGQX.200GAA
WD90, WD90U/Wilderness 90, 90U	7AVIX.086FYA
WD250U, WD250UR, WD250U-2/Wilderness 250U, 250UR, 250U-2	7LGGX.0.250AM5
WD400U/Wilderness 400U	7TMTX.400A01
X250/ Extreme	7XMTX.250DMA

Table 2	
Highway Motorcycle Model	Engine Family
Model Year 2006	
PX250/Phoenix 250	6DDIC0.23NFG
SC50, SC50-P/Scooter 50, 50-P	6SGMC0.05GSV
SC125/Scooter 125	6ZGNC0.12NFG
SSR200	6ZGNC.197GY1
Model Year 2007	
BV250/ Vision	7TKSC0.25001
PX250/Phoenix 250	7FYMC.250MMA
SC50, SC50-P/Scooter 50, 50-P, RT50-2, RT50-R/Retro 50-2, 50-R	7TMTC.049MC3 7QMGC.049QJ4
SC125, SC150/Scooter 125, 150	7TMTC.150MC2

Table 3	
Generator Model	Engine Family
Model Year 2004	
Jiangsu Jiangdong 3500 Watt*	4JDGS.1961GA
Model Year 2005	
Jiangsu Sumec-Linhai 2500 Watt*	5SLHS.1711GA
Lifan, Dajiang 3500 Watt*	5CLGS.19668F 5CDPS.1961GA
Lifan, Powerful Machinery 2200 Watt*	5CLGS.16368F 5PMES.1731GA
Loncin, Dajiang 5500 Watt*	5CDPS.3892GA 5CGPS.3892GA
Model Year 2006	
Chongqing Weima 9000 Watt*	6CWPS.4202WM
Wenling Jennfeng 3500 Watt*	6WJFS.1961GA
Model Year 2007	
Chongqing Weima 9000 Watt*	7CWPS.4202WM

* Requires proof of purchase from Pep Boys.

Bm

**Appendix D-2 to Consent Decree in:
*U.S. v. The Pep Boys – Manny, Moe & Jack and Baja, Inc.***

***Consumer Bulletin
Extended Emission Control System Warranty and Repair Reimbursement Program***

Baja is extending the emission control system (ECS) warranty for its Model Year 2006 and 2007 vehicles (including all-terrain vehicles and motorcycles), and certain generators sold by Pep Boys, effective [date]. As part of this program, Baja will also reimburse owners for certain repair expenses previously incurred, as described below.

(1) Extended ECS warranty. Baja is extending the ECS warranty for the Model Year 2006 and 2007 vehicles as follows:

- Off-highway motorcycles and ATVs: additional 30 months from [Effective Date]
- Highway motorcycles: additional 60 months from [Effective Date]
- Generators: additional 24 months from [Effective Date].

Eligible models and engine families are listed in the Tables below. Where a warrantable condition exists, Baja will repair your vehicle at no cost to you, including diagnosis, parts and labor. If an emission-related part on your vehicle is defective, the part will be repaired or replaced by Baja. Your ECS warranty covers components whose failure would increase an engine's emission, including electronic controls, fuel injection system, carburetor, the ignition system, catalytic converter, or any other system utilized in this vehicle to control emissions. Also included may be hoses, connectors and other emission-related assemblies. A list of emission-related parts is provided at <http://www.bajamotorsportsonline.com/> [link to ECS parts list]. Certain terms and conditions of the standard Baja ECS warranty continue to apply (available at <http://www.bajamotorsportsonline.com/> [link to warranty]).

(2) Unpaid Repair Reimbursement. Baja will reimburse reasonable expenses incurred by an owner of a Baja vehicle covered by the Extended ECS Warranty program. To be eligible for reimbursement, the repair expenses must have been incurred prior to [Effective Date], and proof of payment is required. Within 60 days from the date the reimbursement claim is submitted, Baja will either (1) pay the claim; (2) provide the owner, in writing, with a conditional approval, requesting additional information needed in order to validate the claim; or (3) deny the claim with an explanation of the basis for denial and a notice that the owner may obtain further information concerning the Extended Emission-Related Warranty and Repair Reimbursement Program from U.S. EPA.



For questions regarding this consumer bulletin, or to obtain a repair reimbursement claim form, please call Baja Motorsports toll free at:

866-260-8630
 Monday – Friday, 9:00 AM - 7:00 PM EST
 Baja Motorsports
 P.O. Box 61150
 Phoenix, AZ 85082
 service@bajamotorsports.net

You may report questions or concerns regarding compliance with the terms of this Extended ECS Warranty program by contacting:

Director, Air Enforcement Division
 U.S. Environmental Protection Agency
 1200 Pennsylvania Ave., N.W. (2242A)
 Washington, DC 20460
 (202) 564-2260

Note: This project is being undertaken in connection with the settlement of an enforcement action, United States v. The Pep Boys – Manny, Moe & Jack and Baja, Inc., taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act.

Table 1	
Recreational Vehicle Model	Engine Family
Model Year 2006	
BA90/Baja 90, WD50, Wilderness 50	6GDDX0.90NFG
BA150/Baja 150	6CQLX0.15ATV
WD50U, WD50U1, WD90, WD90U/Wilderness 50U, 50U1, 90, 90U / BA49, BA50 / Baja 49, 50	Unknown
DB30/Doodle Bug, Viper, Blitz, Dirt Bug, Racer	6CLGS.09852F
DN150/Dune 150 / BR150, BR150-1 / Reaction 150, 150-1	6AVIX.150SB1
DR49, DR70, DR50, DR50-R/Dirt Runner 49, 70, 50, 50-R	6CGQX.049DB1
DR90/Dirt Runner 90	6CGQX.107DB1
DR125, DR150/Dirt Runner 125, 150	6CGQX.149DB1
MB165, MB165C/Mini Baja 165, 165C, HT65/Heat 65, TR65/Trail 65, BB65/Blaster 65	6CHGS.1961CH
STR125/ Storm	6DDIX0.12NFG
WD250U, WD250UR, WD250U-2/Wilderness 250U, 250UR, 250U-2	6CQLX0.25ATV 6JNHX.229001

X150/ Extreme	6NMRX0.15
X300/ Extreme	6NMRX0.29NFG
Model Year 2007	
BA49, BA50/Baja 49, 50, WD50, WD50U, WD50U1/Wilderness 50, 50U, 50U1	7LGGX0.07LTF 7AVIX.049FYM
BA90/Baja 90	7FYMX.090AM4
BA150/Baja 150	7LGGX.150AA1
BA250/Baja 250	7KYKX.250AM5
BR150, BR150-1/Reaction 150, 150-1, DN150/Dune 150	7DAZX.150EC1 7TJPX.150150
DB30/Doodlebug, Viper, Blitz, Dirt Bug, Racer	7CGQX.100BAA 7CLGS.09852F
DN250/Dune 250	7RUNX.300XM5
DR49, DR70/Dirt Runner 49, 70	7CGQX.049DB1
DR90/Dirt Runner 90, WR90/Warrior 90	7CGQX.107DB1
DR125, DR150/Dirt Runner 125, 150	7CGQX.149DB1
DX70, KCR70*	7CQYX.070A01
DX110, KCR110*	7CQYX.125A02
MB165, MB165C/Mini Baja 165, 165C, HT65/Heat 65	7CGQX.200CAA
STR125/ Storm	7FYMX.125AM4
TR65/Trail 65, BB65/Blaster 65	7CGQX.200GAA
WD90, WD90U/Wilderness 90, 90U	7AVIX.086FYA
WD250U, WD250UR, WD250U-2/Wilderness 250U, 250UR, 250U-2	7LGGX0.250AM5
WD400U/Wilderness 400U	7TMTX.400A01
X250/ Extreme	7XMTX.250DMA

Table 2	
Highway Motorcycle Model	Engine Family
Model Year 2006	
PX250/Phoenix 250	6DDIC0.23NFG
SC50, SC50-P/Scooter 50, 50-P	6SGMC0.05GSV
SC125/Scooter 125	6ZGNC0.12NFG
SSR200	6ZGNC.197GY1
Model Year 2007	
BV250/ Vision	7TKSC0.25001
PX250/Phoenix 250	7FYMC.250MMA
SC50, SC50-P/Scooter 50, 50-P, RT50-2, RT50-R/Retro 50-2, 50-R	7TMTC.049MC3 7QMGC.049QJ4
SC125, SC150/Scooter 125, 150	7TMTC.150MC2

Table 3	
Generator Model	Engine Family
Model Year 2004	
Jiangsu Jiangdong 3500 Watt*	4JDGS.1961GA
Model Year 2005	
Jiangsu Sumec-Linhai 2500 Watt*	5SLHS.1711GA
Lifan, Dajiang 3500 Watt*	5CLGS.19668F 5CDPS.1961GA
Lifan, Powerful Machinery 2200 Watt*	5CLGS.16368F 5PMES.1731GA
Loncin, Dajiang 5500 Watt*	5CDPS.3892GA 5CGPS.3892GA
Model Year 2006	
Chongqing Weima 9000 Watt*	6CWPS.4202WM
Wenling Jennfeng 3500 Watt*	6WJFS.1961GA
Model Year 2007	
Chongqing Weima 9000 Watt*	7CWPS.4202WM

** Requires proof of purchase from Pep Boys.*

**Appendix D-3 to Consent Decree in:
*U.S. v. The Pep Boys – Manny, Moe & Jack and Baja Inc.***

***Training Bulletin
Extended Emission Control System Warranty and Repair Reimbursement Program***

Baja is extending the emission control system (ECS) warranty for its Model Year 2006 and 2007 vehicles (including all-terrain vehicles and motorcycles), and certain generators sold by Pep Boys, effective [date]. As part of this program, Baja will also reimburse owners for certain repair expenses previously incurred, as described below.

(1) Extended ECS warranty. Baja is extending the ECS warranty for the Model Year 2006 and 2007 vehicles as follows:

- Off-highway motorcycles and ATVs: additional 30 months from [Effective Date]
- Highway motorcycles: additional 60 months from [Effective Date]
- Generators: additional 24 months from [Effective Date].

Eligible models and engine families are listed in the Tables below. Where a warrantable condition exists, Baja will repair vehicle at no cost to the consumer, including diagnosis, parts and labor. If an emission-related part on a vehicle is defective, the part will be repaired or replaced by Baja. The ECS warranty covers components whose failure would increase an engine's emission, including electronic controls, fuel injection system, carburetor, the ignition system, catalytic converter, or any other system utilized in this vehicle to control emissions. Also included may be hoses, connectors and other emission-related assemblies. A list of emission-related parts is provided at <http://www.bajamotorsportsonline.com/> [link to ECS parts list]. Certain terms and conditions of the standard Baja ECS warranty continue to apply (available at <http://www.bajamotorsportsonline.com/> [link to warranty]).

(2) Unpaid Repair Reimbursement. Baja will reimburse reasonable expenses incurred by an owner of a Baja vehicle covered by the Extended ECS Warranty program. To be eligible for reimbursement, the repair expenses must have been incurred prior to [Effective Date], and proof of payment is required. Within 60 days from the date the reimbursement claim is submitted, Baja will either (1) pay the claim; (2) provide the owner, in writing, with a conditional approval, requesting additional information needed in order to validate the claim; or (3) deny the claim with an explanation of the basis for denial and a notice that the owner may obtain further information concerning the Extended Emission-Related Warranty and Repair Reimbursement Program from U.S. EPA.

All inquiries (consumer, service center, or retailer) regarding the Extended Emission Control System Warranty and Repair Reimbursement Program must be directed to a Level II Technician.

Consumers may report questions or concerns regarding compliance with the terms of this Extended ECS Warranty program by contacting:

Director, Air Enforcement Division
 U.S. Environmental Protection Agency
 1200 Pennsylvania Ave., N.W. (2242A)
 Washington, DC 20460
 (202) 564-2260

Note: This project is being undertaken in connection with the settlement of an enforcement action, United States v. The Pep Boys – Manny, Moe & Jack and Baja, Inc., taken on behalf of the U.S. Environmental Protection Agency under the Clean Air Act.

Table 1	
Recreational Vehicle Model	Engine Family
Model Year 2006	
BA90/Baja 90, WD50, Wilderness 50	6GDDX0.90NFG
BA150/Baja 150	6CQLX0.15ATV
WD50U, WD50U1, WD90, WD90U/Wilderness 50U, 50U1, 90, 90U / BA49, BA50 / Baja 49, 50	Unknown
DB30/Doodle Bug, Viper, Blitz, Dirt Bug, Racer	6CLGS.09852F
DN150/Dune 150 / BR 150, BR150-1 / Reaction 150, 150-1	6AVIX.150SB1
DR49, DR70, DR50, DR50-R/Dirt Runner 49, 70, 50, 50-R	6CGQX.049DB1
DR90/Dirt Runner 90	6CGQX.107DB1
DR125, DR150/Dirt Runner 125, 150	6CGQX.149DB1
MB165, MB165C/Mini Baja 165, 165C, HT65/Heat 65, TR65/Trail 65, BB65/Blaster 65	6CHGS.1961CH
STR125/ Storm	6DDIX0.12NFG
WD250U, WD250UR, WD250U-2/Wilderness 250U, 250UR, 250U-2	6CQLX0.25ATV 6JNHX.229001
X150/ Extreme	6NMRX0.15
X300/ Extreme	6NMRX0.29NFG
Model Year 2007	
BA49, BA50/Baja 49, 50, WD50, WD50U, WD50U1/Wilderness 50, 50U, 50U1	7LGGX0.07LTF 7AVIX.049FYM
BA90/Baja 90	7FYMX.090AM4
BA150/Baja 150	7LGGX.150AA1

BA250/Baja 250	7KYKX.250AM5
BR150, BR150-1/Reaction 150, 150-1, DN150/Dune 150	7DAZX.150EC1 7TJPX.150150
DB30/Doodlebug, Viper, Blitz, Dirt Bug, Racer	7CGQX.100BAA 7CLGS.09852F
DN250/Dune 250	7RUNX.300XM5
DR49, DR70/Dirt Runner 49, 70	7CGQX.049DB1
DR90/Dirt Runner 90, WR90/Warrior 90	7CGQX.107DB1
DR125, DR150/Dirt Runner 125, 150	7CGQX.149DB1
DX70, KCR70*	7CQYX.070A01
DX110, KCR110*	7CQYX.125A02
MB165, MB165C/Mini Baja 165, 165C, HT65/Heat 65	7CGQX.200CAA
STR125/ Storm	7FYM.125AM4
TR65/Trail 65, BB65/Blaster 65	7CGQX.200GAA
WD90, WD90U/Wilderness 90, 90U	7AVIX.086FYA
WD250U, WD250UR, WD250U-2/Wilderness 250U, 250UR, 250U-2	7LGGX.0.250AM5
WD400U/Wilderness 400U	7TMTX.400A01
X250/ Extreme	7XMTX.250DMA

Table 2	
Highway Motorcycle Model	Engine Family
Model Year 2006	
PX250/Phoenix 250	6DDIC0.23NFG
SC50, SC50-P/Scooter 50, 50-P	6SGMC0.05GSV
SC125/Scooter 125	6ZGNC0.12NFG
SSR200	6ZGNC.197GY1
Model Year 2007	
BV250/ Vision	7TKSC0.25001
PX250/Phoenix 250	7FYMC.250MMA
SC50, SC50-P/Scooter 50, 50-P, RT50-2, RT50-R/Retro 50-2, 50-R	7TMTC.049MC3 7QMGC.049QJ4
SC125, SC150/Scooter 125, 150	7TMTC.150MC2

Table 3	
Generator Model	Engine Family
Model Year 2004	
Jiangsu Jiangdong 3500 Watt*	4JDGS.1961GA
Model Year 2005	
Jiangsu Sumec-Linhai 2500 Watt*	5SLHS.1711GA
Lifan, Dajiang 3500 Watt*	5CLGS.19668F 5CDPS.1961GA
Lifan, Powerful Machinery 2200 Watt*	5CLGS.16368F 5PMES.1731GA
Loncin, Dajiang 5500 Watt*	5CDPS.3892GA 5CGPS.3892GA

Model Year 2006	
Chongqing Weima 9000 Watt*	6CWPS.4202WM
Wenling Jennfeng 3500 Watt*	6WJFS.1961GA
Model Year 2007	
Chongqing Weima 9000 Watt*	7CWPS.4202WM

** Requires proof of purchase from Pep Boys.*



Appendix E to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja Inc.

Emissions Offset Projects

I. Lawn and Garden Exchange Project

1. Under the Lawn and Garden Exchange Project (“Project”), Defendants shall provide an opportunity for consumers (including municipalities or community organizations) to exchange used, working, gas-powered lawn and garden equipment (“Gas Mowers”) for battery-powered, electric-powered, or push lawn mowers (“Replacement Mowers”) for free or at a discount. Due to the significantly lower emissions of the Replacement Mowers, this project will generate substantial emissions reductions. Under the Project:
2. Defendants may use contractors or consultants in planning and implementing the Project.
3. Defendants may offer a discount voucher for the purchase of a Replacement Mower from a third party. If Defendants offer a discount voucher for the purchase of a Replacement Mower in exchange for a Gas Mower, (a) Defendants may not provide the discount voucher until the consumer tenders an operable Gas Mower; and (b) any participating retailers shall track what products are purchased with the voucher in order to ensure that emission reductions are properly calculated.
4. Defendants shall ensure that all Gas Mowers exchanged under this program are Permanently Destroyed and properly disposed.
5. Defendants shall implement the Project to the maximum extent practicable in minority and low-income communities or ozone non-attainment areas around the United States.
6. To be eligible for replacement under the Project, each Gas Mower must be able to be turned on and the engine started at the time it is tendered for exchange by the consumer.
7. In the first Semi-Annual Progress Report submitted after entry of this Decree pursuant to Section X (Reporting Requirements), and in each Semi-Annual Progress Report submitted thereafter, Defendants shall: (a) describe the steps taken to comply with this Section I of Appendix E, including but not limited to the date(s), terms, and contents of the offers extended to consumers, the manner in which these offers were communicated; the geographic areas involved in the Project; and a list of any third parties involved and a brief description of their involvement; and (b) provide, for

BM

every destroyed Gas Mower: the date of Permanent Destruction, the manufacturer, the model, and the name and address of the consumer who tendered the Gas Mower; and for every Replacement Mower: the date the Replacement Mower was obtained by the consumer, the manufacturer, and the full model name.

8. For purposes of satisfying the Emissions Offset Requirements set forth in Paragraph 38 of this Decree, each time a Gas Mower is received and destroyed from a consumer and that consumer obtains a Replacement Mower, Defendants shall earn credit equal to 0.343 tons of CO and 0.009 tons of HC+NO_x, per mower.

9. For each Gas Mower replaced with an electric or battery-powered mower, Defendants shall:

- a. purchase renewable energy credits (i.e., wind, geothermal, solar or hydroelectric) equal to the amount of electricity that would be required to power the replacement mower over its full useful life; or
- b. discount the per-mower offset credit, described in this Appendix E, Paragraph 8, above, by 0.0002 tons of CO and 0.001 tons of HC+NO_x per mower, which is equivalent to the emissions associated with the replacement mower's electricity consumption.

II. Averaging, Banking and Trading Project

10. If Baja elects to implement the Averaging, Banking and Trading Project ("AB&T Project"), Baja shall submit a plan to EPA for the implementation of the AB&T Project prior to implementation, describing how the Project will comply with the requirements set forth in this Section. Under the AB&T Project, Baja shall certify a newly redesigned recreational vehicle(s) ("AB&T Vehicle"), equipped with a catalyst to control CO and HC+NO_x, to levels lower than the currently applicable emissions standard.

11. Baja's AB&T Project plan shall include (a) specifications for the proposed vehicle and its catalyst (i.e., dimensions, cell density, active material loading and ratio); (b) a certification, in accordance with Paragraph 54, indicating that the AB&T Vehicle was not previously built with a catalyst; and (c) information about the previous Model Year Engine Family, if any, under which the AB&T Vehicle was certified.

12. EPA shall provide a response to Defendants on the AB&T Project plan within 90 days. If EPA disapproves the proposed plan, EPA's response will include the steps necessary for Baja to obtain EPA's approval.

13. Regarding the redesigned AB&T Vehicle, Baja shall:

- a. enroll in EPA's Averaging, Banking and Trading program, pursuant to 40 C.F.R. Part 1051, Subpart H, by certifying the redesigned model(s) to comply with a Family Emissions Limit lower than the currently applicable emissions standard. See 40 C.F.R. § 1051.105.
- b. permanently retire all credits generated by Baja's participation in the AB&T program to the extent that such credits are needed to satisfy the Required Emission Offset set forth in Paragraph 38 of this Decree;
- c. conduct production line testing, as well as all other applicable requirements, as set forth in 40 C.F.R. Part 1051 Subpart D; and
- d. not claim, for any purpose, that the small volume manufacturer exemption applies to these vehicles.

14. No Defendant shall use or rely on the emission reductions generated as part of any projects undertaken pursuant to this Consent Decree in any federal or state emission averaging, banking, trading or other emission compliance program, unless such credits are generated after Defendants' compliance with all three years of the Required Emission Offset, as set forth in Paragraph 38 of this Decree;

15. For purposes of satisfying the Emissions Offset Requirements set forth in Paragraph 39 of this Decree, Defendants shall calculate emission credits per 40 C.F.R. § 1051.720(b), based on actual U.S.-directed production volume at the end of the Model Year, per § 1051.720(a)(1)(ii).

16. All supporting documentation regarding the emission credits generated and retired under this project must be submitted to EPA annually under Section X (Reporting Requirements) of this Consent Decree.

17. The final reports submitted to EPA pursuant to 40 C.F.R. § 1051.730 must state that the credits generated will be retired per the Consent Decree and permanently removed from any account affiliated with either Defendant.

III. Purchase & Retire NO_x Allowances

18. For purposes of satisfying the Emissions Offset Requirements in this Decree, Defendants may purchase and Permanently Retire NO_x Allowances.

19. “NO_x Allowance” means an authorization to emit a specified amount of NO_x that is allocated or issued under an emissions trading or marketable permit program of any kind that has been established under the Clean Air Act or a state implementation plan, including ozone seasonal NO_x allowances.

20. “Permanently Retire” a NO_x Allowance means to submit to EPA a NO_x Allowance so it may never be used by any entity thereafter to meet any compliance requirement under the Clean Air Act, a state implementation plan, any federal or state emission averaging, banking and trading program, or this Consent Decree. To Permanently Retire a NO_x allowance, Defendants must first submit a NO_x Allowance transfer request form to EPA’s Office of Air and Radiation, Clean Air Markets Division, directing the transfer of such NO_x Allowances to the EPA Enforcement Surrender Account or to any other EPA account that EPA may direct in writing. When submitting such transfer request, Defendants must irrevocably authorize the transfer of the NO_x Allowances and identify – by name of account and any applicable serial or other identification numbers – the source and location of the allowances being surrendered.

Handwritten signature or initials, possibly 'BJ', in the bottom right corner of the page.

**Appendix F to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja, Inc.**

Emissions Related Parts List

***PARTS LIST FOR SECTION 207 (a) EMISSION DESIGN AND DEFECT
WARRANTY***

I. Air Induction System parts, components and seals including but not limited to:

1. Temperature sensor elements
2. Air door
3. Air cleaner housing
4. Cold air duct
5. Heated air duct
6. Intake manifold
7. Turbocharger (including wastegate, pop-off, etc.), by-pass valves, ducting
8. Charge air cooler or intercooler
9. Supercharger
10. Vacuum motor for air control

II. Fuel Metering System:

1. Carburetor
 - a. Carburetor assembly, housing, and idle mixture adjustment limiting device
 - b. Internal carburetor parts, components, and seals, including but not limited to:
 - i) metering jets and rods
 - ii) needle and seat
 - iii) accelerator pump
 - iv) power valve
 - v) float circuit
 - c. External carburetor parts, components, and seals including but not limited to:

- i) altitude compensator
 - ii) vacuum diaphragms
 - iii) engine coolant temperature sensor - - ECTS
 - iv) intake air temperature sensor - - IATS
 - v) manifold absolute pressure sensor - - MAP
 - vi) manifold vacuum sensor - - MVS
 - vii) manifold vacuum zone switch - - MVZS
 - viii) mixture control solenoid - - MSC
 - d. Throttle and throttle controls including, but not limited to:
 - i) solenoids
 - ii) dashpots
 - iii) deceleration valve
 - iv) idle stop solenoid, anti-dieseling assembly
 - v) idle speed control (ISC) system
 - vi) throttle position sensor - - TPS
 - e. Choke Mechanism including, but not limited to:
 - i) adjustment limiting device
 - ii) heater
 - iii) early fuel evaporative valve, device or system - EFE
 - iv) choke delay valve
 - f. Non-maintenance adjustments
 - i) idle mixture
 - ii) idle speed
 - iii) choke adjustment
- 2. Fuel Injection, Throttle Body or Multipoint (Mechanical or Electronic)
 - a. Temperature sensors including, but not limited to:
 - i) engine coolant temperature sensor - - ECTS
 - ii) intake air temperature sensor - - IATS
 - iii) manifold surface temperature sensor - - MSTs
 - b. Air flow devices or sensors including, but not limited to:
 - i) air flow sensor
 - ii) manifold pressure sensor - - MAP
 - iii) altitude/barometric pressure sensor

- iv) manifold vacuum sensor - - MVS
 - c. Engine position sensors including, but not limited to:
 - i) engine speed sensor
 - d. Fuel system including, but not limited to:
 - i) early fuel evaporation switch or system
 - ii) fuel damper or accumulator
 - iii) fuel pressure regulator
 - iv) injectors
 - v) fuel delivery/return lines
 - vi) fuel distributor (distribution manifold)
 - vii) inertia fuel shut-off switch - - IFSS
 - viii) cold start valve or injector
 - e. Throttle body assembly and housing
 - f. Throttle and throttle controls including, but not limited to:
 - i) idle air control valve system - - IACV
 - ii) idle speed control system - - ISC
 - iii) throttle position sensor - - TPS
 - g. Fuel composition sensors and control system (e.g., oxygenated fuel sensor)
3. Fuel Injection - - Diesel
- a. Injectors
 - b. Fuel pressure regulator
 - c. Fuel supply pump (only if no separate fuel injection pump exists)
 - d. Fuel injection pump
 - e. Smoke puff limiter - - SPL
 - f. Glow plugs
 - g. Engine coolant temperature sensor - - ECTS
 - h. Crankshaft position sensor
 - i. Metering valve solenoid
 - j. Fast idle solenoid
 - k. Cold start solenoid
 - l. Altitude control solenoid

III. Ignition System including, but not limited to:

1. Distributor assembly and internal parts
2. Initial timing
3. Initial timing limiting device
4. Spark plugs
5. Spark plug wires/coil wire
6. Breakerless pickup (all types)
7. Ignition module
8. Spark timing control module
9. Coil/coil pack
10. Dwell/points
11. Vacuum advance assembly
12. Weights/springs
13. Spark delay devices
14. Knock sensors - - KS
15. Engine speed sensors
16. Camshaft position sensor
17. Crankshaft position sensor - - CPS
18. Engine coolant temperature sensor - - ECTS
19. Thermal vacuum switch - - TVS
20. Distributorless ignition control module
21. Vacuum switching valve
22. Vacuum by-pass valve
23. Vacuum solenoid
24. Transmission switch
25. Time delay

IV. Exhaust Gas Recirculation (EGR) System including, but not limited to:

1. ERG valve assembly(ies)
2. ERG flow sensor
3. ERG spacer plate
4. Internal passages and exhaust gas orifices
5. ERG function sensor - - ERGS
6. ERG function control - - ERGC
7. Delay solenoid/valves
8. Vacuum amplifier
9. Vacuum reservoir

10. Engine coolant temperature sensor - - ECTS
11. Speed sensors
12. Solenoid vacuum valve
13. Thermal-controlled vacuum valve
14. Temperature-controlled vacuum valve
15. Vacuum reducing valve
16. ERG coolant override valve
17. Backpressure transducer
18. Exhaust pressure regulator

V. Positive Crankcase Ventilation System - PCV

1. PCV valve or orifice
2. Oil filler cap
3. PCV Connection Assembly

VI. Fuel Evaporative Control (EVAP) System including, but not limited to:

1. Canister
2. Canister purge solenoid/valve
3. Fuel filler cap
4. Fuel filler neck restrictor
5. Fuel fill pipe
6. Fuel tank
7. Fuel lines
8. Vapor separator
9. On-board refueling evaporative system
10. Pressure relief valve
11. Rollover valve
12. Anti-siphon valve (only if related to evaporative system)
13. Bowl vent valve

VII. Secondary Air Injection System, including but not limited to:

1. Secondary air management control valves including, but not limited to:
 - i) secondary air bypass valve - - SABV
 - ii) secondary air anti-backfire valve - - SABFV
 - iii) secondary air switching valve - - SASV
 - iv) secondary air pulse valve - - SAPV

2. Secondary air injection pump
3. Drive belt
4. Injection tubes or manifolds
5. Pressure relief valve
6. Pressure setting plug
7. Pulse air system
8. Deceleration control valve
9. Temperature sensors

VIII. Exhaust

1. Exhaust manifold
2. Thermal reactor casing and lining
3. Catalytic convertors
4. Catalytic converter shell, nipples and heat shield
5. Traps, filters, precipitators, and any other device used to capture particulate emissions
6. Regenerators, oxidizers, fuel additive devices, and any other device used to regenerate or aid in the regeneration of the particulate control device
7. Control device enclosures and manifolding
8. Exhaust port liners
9. Double walled portion of exhaust system
10. Heat riser valve and control assembly
11. All parts or pipes between converters or between converters and exhaust manifold

IX. Engine Emission Control System Sensors (modules, sensors, solenoids, valves) including, but not limited to:

1. Ambient air temperature sensor
2. Electronic control unit (module) - - ECU or ECM
3. Powertrain control module (engine) - - PCM
4. Powertrain control module (transmission) - - PCTM
5. Oxygen sensors
6. Heated oxygen sensors
7. Air conditioner sensor - - ACS
8. Barometric absolute pressure sensor - - BARO
9. Coolant level sensor - - COLS
10. Engine coolant temperature sensor - - ECTS



11. Fuel temperature sensor
12. Manifold absolute pressure sensor - - MAP
13. Manifold vacuum sensor - - MVS
14. Manifold vacuum zone switch - - MVZS
15. Wide open throttle switch - - WOTS
16. Engine speed sensor
17. Torque sensor
18. Cylinder chamber temperature sensor
19. Catalyst temperature sensor
20. Coolant fan control switch
21. Thermal vacuum switch - - TVS
22. Vehicle speed sensor - - VSS
23. Vehicle speed pulse generator - - VSPG
24. Operating gear selector switch - - OGSS
25. Gear selector switch - - GSS
26. Torque convertor lockup switch - - TCLS
27. Park neutral switch - - PNS

X. On Board Diagnostics - - OBD

1. Malfunction indicator light - - MIL
2. MIL bulb
3. OBD system
4. Service reminder
5. Data link connector - - DLC

XI. Related Parts Associated With The Above Systems

1. Hoses
2. Switches, sensors, solenoids
3. Gaskets/seals
4. Wires/harnesses/connectors

* Effective for Model Year 1992, and later vehicles and engines. EPA will use this list as guidance for all earlier Model Year vehicles and engines.

**Appendix G to Consent Decree in:
*U.S. v. The Pep Boys – Manny, Moe & Jack and Baja, Inc.***

**Emissions Testing Guidelines and “Qualified Emissions Testing” Program for New and In-Use
Off-Highway Motorcycles and Generators**

I. Emission Testing Guidelines

Any emission testing performed under this Consent Decree must be performed at an independent emissions testing laboratory approved in advance by EPA. The testing shall be conducted in accordance with a detailed written test plan that includes the following criteria:

1. Specifies that each test engine shall be subject to emissions testing in conformity with the applicable specifications set forth in 40 C.F.R. Parts 86, 90, 1051, 1054, and 1068 to determine the levels of regulated exhaust emissions. For generator engines, this means that the engines must be removed from the generators during testing, unless the engine was certified with a special test procedure that allows testing of the engine while it is in the generator.
2. Includes, at a minimum, a detailed description of:
 - a. the equipment that will be used to conduct the emissions test and collect emissions test data;
 - b. the procedures that will be used to prepare engines for testing, including the procedure to determine when emissions are stabilized; and
 - c. the procedures that will be used to record and report the conduct of the emissions testing and the emissions test results, and engine power and speed, in each test mode
 - d. the procedures that will be used if the air-fuel ratio of a subject test engine can be adjusted. Specifically, emissions tests shall be conducted: one test with the mixture setting unadjusted, i.e., as received by the testing laboratory, in addition to tests at maximum lean and rich conditions (to include air screw and carburetor jet adjustments, as applicable). Unless the testing laboratory determines that an engine’s air-fuel ratio is not adjustable and obtains EPA’s concurrence on this determination, the testing laboratory will test at the lean and rich limits as defined at 40 C.F.R. §§ 1051.115(d)(2) or 1051.115(d)(3), as applicable, for all recreational vehicles. For generators and highway motorcycles, adjustable parameters (e.g., the air-fuel mixture screw or jet needle clip) are defined at 40 C.F.R. §§ 90.2, 86.416-80(a)(2)(ii), and 1054.115(b), respectively.
3. Specifies the nature of any maintenance, modification or adjustment performed on the test



engines after they were received by Defendants or the testing laboratory.

4. Specifies that the laboratory will create and maintain records regarding the identity of each vehicle or engine that is the subject of testing, and the generator in which the engine is installed. This information shall include, at a minimum, any identifying numbers on the vehicle, generator, and/or engine, photographs of the vehicle or generator showing the model name and number, photographs of the engine, and photographs of any emission control label present on the vehicle or engine. For vehicles, this information shall also include the vehicle identification number.
5. Specifies that the useful life emissions for the test vehicle/engine will be calculated based on the low-hour emission levels of the test vehicle/engine. The deterioration factors for the engine family will be calculated based on the certification test data adjusted according to the estimated vehicle/engine age or vehicle miles traveled.
6. Specifies that the test vehicles and generators shall be retained by Defendants or the independent laboratory for 120 days after testing.

II. "Qualified Emission Testing" Program for Off-highway Motorcycle (OFMCs) and Generators: Procurement, Qualifying, and Preparation Procedures

The engine families for the OFMCs and generator engines eligible for testing using this procedure are listed in Tables 5 and 6 of Appendix H-2 and H-3.

7. Locate and procure new OFMCs, or locate and procure used OFMCs through randomized procurement as follows:
 - a. Issue an invitation letter to all purchasers in Baja's database of the vehicles listed in Table 5 and located in any one or more of the following states: Nevada, Utah, Colorado, New Mexico, Wyoming, Montana, North Dakota and South Dakota. The invitation letter will include a deadline for their response, and may also include incentives for participation (e.g. free full service maintenance, voucher for trade in etc.).
 - b. Randomize a list of all OFMCs owners in the chosen state(s) who have responded by the stated deadline and are interested in participating.
 - c. Interview by telephone the owner of the first OFMC on the randomized list regarding damage or alteration to the vehicle, part replacement, and maintenance records.

Photographs of the vehicle may be requested. OFMCs may be eliminated from participating from testing only if they have been in an accident (or any collision that impacts an area that houses emissions-related parts), or if records or owner's attestations indicate non-adherence to recommended maintenance procedures. OFMCs with carburetors, intake systems, or exhaust systems that are not listed on the certificate application may be rejected with EPA's concurrence. If an OFMC is determined not to be eligible for testing, proceed to procure the next OFMC on the randomized list. Continue the selection process in this fashion until an eligible OFMC is found. Pick up OFMC at owner's home or have it delivered to the independent emissions testing laboratory identified in Baja's test plan.

d. If the randomized list is exhausted without procuring an eligible OFMC, Defendants or the testing laboratory may procure OFMCs via Internet or newspaper "recreational vehicle for sale" listings (e.g. classifieds, Craigslist). Again, with regard to procurement from local "recreational vehicle for sale" listings, OFMCs may be eliminated from participating in testing only if they have been in an accident, or if records or owner's attestation indicate non-adherence to recommended maintenance procedures. Vehicles with carburetors, intake systems, or exhaust systems that are not listed on the certificate application may be rejected with EPA's concurrence.

8. Locate and procure new or used generators. Used generators may be procured via Internet or newspaper "for sale" listings (e.g., classifieds, Craigslist). Generators may be eliminated from participating in testing only if they have been damaged, or if records or owner's written statements indicate non-adherence to recommended maintenance procedures.

9. Photograph OFMC/generator at pick up site (if applicable).

10. Conduct testing in accordance with Testing Guidelines (see Section I of this Appendix G) approved by EPA.

11. Once testing has begun, an OFMC/generator may not be eliminated unless there is a malfunction before completing the test cycle that cannot be corrected in accordance with 40 C.F.R. Part 86/Part 90/Part 1054 procedures.

III. New and In-Use Off-highway Motorcycle (OFMC) and Generator Program: Reporting

12. For each emissions test performed, regardless of whether it is completed, Defendants shall submit a report to EPA in accordance with the schedule defined in Paragraphs 42

and 47 of this Consent Decree. The report should include, at a minimum, the following information:

- a. emissions test results for all settings tested under Paragraph 2(d) above;
- b. photographs and other information obtained under Paragraph 4, above;
- c. all background information on the test OFMC/generator (for used generators, including, but not limited to, the owner's contact information, a description of the records the owner provided, the mileage, and a description of the selection process that was used to procure the OFMC/generator, including the number of identical model vehicles/generators eliminated);
- d. a copy of the emission test plan; and
- e. a description of any maintenance, modification, or adjustment performed on the OFMC/generator engine after it was received by Defendants or the testing laboratory.

**Appendix H-1 to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja Inc. Inc.**

Generator Engine Emissions Test Results

Engine and Test Description	Useful Life Results (g/kW·hr)		Test ID
	HC+NOx	CO	
Phase 2, Class I engines			
Eastern Tools TG3000 - SETQS.1962E1			
As Received	15.99	250.87	8SED450
High Idle Screw Adjustment	11.18	201.57	8SED454
Low Idle Screw Adjustment	11.22	249.36	8SED453
Maximum Mixture Adjustment	15.71	374.64	8SED452
Minimum Mixture Adjustment	18.9	393.44	8SED451
Lifan 3500 - 5CLGS.19668F			
As Received	27.19	49.65	8SED455
High Idle Screw Adjustment	27.65	34.88	8SED456
Low Idle Screw Adjustment	27.06	46.08	8SED466
Lifan 2200 - 5CLGS.16368F			
As Received	27.27	92.05	8SED457
High Idle Screw Adjustment	27.35	103.22	8SED459
Low Idle Screw Adjustment	27.27	92.05	8SED458
Jiangsu Sumec Linhai - 5SLHS.1711GA			
Engine 1457-6: As Received	22.26	417.92	8SED460
High Idle Screw Adjustment	21.15	422.30	8SED461
Engine 1457-7: As Received	22.78	431.39	8SED462
High Idle Screw Adjustment	17.86	416.84	8SED463
Low Idle Screw Adjustment	22.62	427.28	8SED464
Minimum Mixture Adjustment	94.62	790.85	8SED465
Phase 2, Class II engine			
Chongqing Weima 9000 - 6CWPS.4202WM			
Engine 1457-1: As Received	16.64	317.08	8SED467
High Idle Screw Adjustment	16.55	330.42	8SED469
Low Idle Screw Adjustment	16.64	317.08	8SED468
Maximum Mixture Adjustment	19.03	323.98	8SED470
Minimum Mixture Adjustment	17.69	233.76	8SED471
Engine 1457-2: As Received	29.20	1267.19	8SED472
High Idle Screw Adjustment	29.77	1322.72	8SED473
Low Idle Screw Adjustment	28.57	1277.82	8SED474

Phase 2, Class V engine			
Eastern Tools TG1200 - 5ETQS.0635E1			
Engine 1457-8: As Received	79.46	14.24	2SED125
High Idle Screw Adjustment	77.50	40.62	2SED127
Low Idle Screw Adjustment	79.46	14.24	2SED126
Maximum Mixture Adjustment	85.14	12.92	2SED128
Minimum Mixture Adjustment	95.15	13.69	2SED129
Engine 1457-9: As Received	102.17	16.21	2SED130
High Idle Screw Adjustment	120.95	73.91	2SED131
Low Idle Screw Adjustment	102.17	16.21	2SED132
Maximum Mixture Adjustment	101.86	15.88	2SED133
Minimum Mixture Adjustment	99.28	18.72	2SED134

Appendix H-2 to Consent Decree in: U.S. v. The Pep Boys – Manny, Moe & Jack and Baja Inc.

Table 5: Required Emission Offset Tons Calculation Methodology: Vehicles

Vehicles (4-stroke off-highway motorcycles):												
Model year	Alleged Engine Family	Model	Qty	Useful Life	Conversion	HC+NOx			CO			
						Emission Factor	Std	Offset Value	Emission Factor	Std	Offset Value	
						mi	tons/g	g/mi	g/mi	tons	g/mi	g/mi
Formula			F	J	L	H	I	(H-I)*F*J*L	N	O	(N-O)*F*J*L	
2006	6CGQX.149DB1	DR125/ DR150	3,600	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	204	
	6CGQX.107DB1	DR90	1,560	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	88	
	6CGQX.049DB1	DR49	5,640	3,107	1.10E-06	2.81	3.2	-	48.5	40.2	160	
		DR50/ DR50-R	4,633	3,107	1.10E-06	2.81	3.2	-	48.5	40.2	131	
		DR70	3,996	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	226	
	6CLGS.09852F	DB30	6,147	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	348	
	6CHGS.1961CH	MB165/ MB165C/ HT65/ TR65	5,225	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	296	
2007	7CGQX.049DB1	DR49/ DR70	6,167	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	349	
	7CGQX.107DB1	DR90	780	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	44	
	7CGQX.149DB1	DR125/ DR150	1,392	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	79	
	7CGQX.100BAA or 7CLGS.09852F	DB30	11,447	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	648	
	7CGQX.200CAA	MB165/ MB165C/ HT65	4,830	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	273	
	7CQYX.070A01	DX70/ KCR70	1,485	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	84	
	7CQYX.125A02	DX110/ KCR110	810	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	46	
	7XMTX.250DM5	X250	1,466	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	83	
2008	8CGQX.200CAA	MB165/ MB165C/ HT65	3,150	6,214	1.10E-06	2.81	3.2	-	48.5	40.2	178	
Remainder of vehicle offsets not subject to adjustment via QET								140			5	
Source for all vehicle emission factors listed above is Exhaust Emission Factors for Nonroad Engine Modeling: Spark-Ignition. Dec. 2005, EPA 420-R-05-019. pg 9.												

Appendix H-3 to Consent Decree in: U.S. v. The Pep Boys – Manny, Moe & Jack and Baja Inc. Inc.

Table 6: Required Emission Offset Tons Calculation Methodology: Generators

Generators:														
Year	Alleged Engine Family	Model	Small SI Engine Mfr	Qty	Power (cert)	Conversion	Load Factor *	Useful Life (cert)	HC+NOx			CO		
					kW	tons/g		hr	Emission Factor	Std	Offset Value	Emission Factor	Std	Offset Value
									g/kW·hr		tons	g/kW·hr		tons
Formula				F	G	H	I	J	L	M	(L-M)* G* J*H*F*I	P	R	(P-R)* G* J*H*F*I
2004	none	ELM3000	Elim	4,850	3.00	1.10E-06	0.68	500	20.53	16.1	24.12	552.49	610	-
	4JDGS.1961GA	3500W	Jiangsu Jiangdong	5,376	3.60	1.10E-06	0.68	500	20.53	16.1	32.08	552.49	610	-
2005	5CLGS.16368F 5PMES.1731GA	2200W Generator	Chongqing Lifan and Powerful Machinery	1,956	3.40	1.10E-06	0.68	125	27.35	16.1	7.00	103.22	610	-
	5SLHS.1711GA	2500W -- Gen ProForce	Jiangsu Sumec-Linhai	10,825	2.98	1.10E-06	0.68	125	94.62	16.1	237.11	790.85	610	546.13
	5ETQS.1962E1	3500W Generator	Eastern Tools	820	2.29	1.10E-06	0.68	250	18.9	16.1	0.98	393.44	610	-
	5CLGS.19668F 5CDPS.1961GA	3500W, 6.5 HP Generator	Chongqing Lifan and Chongqing Dajiang	10,156	4.20	1.10E-06	0.68	125	27.65	16.1	46.12	49.65	610	-
2006/7	6CWPS.4202WM 7CWPS.4202WM	9000W Generator	Chongqing Weima	8,280	7.80	1.10E-06	0.68	250	23.16	12.1	133.73	826.57	610	2,618.70

*The load factor of 0.68 for generator engines was taken from Median Life, Annual Activity, and Load Factor Values for Nonroad Engine Emissions Modeling. Dec. 2002, EPA 420-P-02-014. pg 22 and 24.

The source for the MY04 generator engine emission factors is Exhaust Emission Factors for Nonroad Engine Modeling: Spark-Ignition. Dec. 2005, EPA 420-R-05-019. pg 7. These engines were assumed to be overhead-valved, Class I, 4 stroke engines. The source for the MY05, MY06, and MY07 engine emissions factors was test data supplied by Pep Boys to EPA in September 2008 (Appendix H-1).

Appendix I to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe & Jack and Baja, Inc.

Compliance Evaluation Checklists:

I. Engine (and Equipment) Inspection Checklist

II. Vehicle Inspection Checklist

III. Catalyst Worksheet



Engine (and Equipment) Inspection Checklist

For loose engines or engines contained in equipment, but not vehicle engines.

Exam Date and Time:

Facility Name and Location:

Inspector Name and Company:

For post-importation inspections only, complete the following:

Purchase Order No. (if available):

SKU:

Please insert N/A for items that are not applicable to the engine/equipment undergoing inspection.

For engines contained in equipment only:

Equipment Type (e.g., generators, pumps, tractors, etc.)

Equipment Model – Note source of information:

Equipment Manufacturer – Note source of information:

Equipment Date of Manufacture (or Model Year) – Note source of information:

Equipment Dry Weight – Note source of information:

Engine (and Equipment) Inspection Checklist

Appendix I to Consent Decree in U.S. v. Pep Boys – Manny, Moe & Jack and Baja, Inc., Page 2

Engine Serial No.:

From owner's manual, note the following. If information is not available, respond with "N/A".

Engine Power (HP):

Engine Displacement (cc):

Engine Stroke: 2 / 4 (circle one)

Fuel Type:

Length of Emissions Warranty (include source of information in response)

Engine Model – Based on decals/ badges on equipment/engine:

From EPA label, note:

Engine Family –

Engine Model Year –

Engine Manufacturer –

Engine Date of Manufacture –

Evaporative Family –

Fuel Type –

Emission Control System Abbreviations –

Emission Controls – Note presence and part number (if applicable) for each of the following. Also fill out applicable section of the catalyst worksheet if the catalyst is inspected or tested, as required: TWC, OC, O2S, HO2S, AIR, PAIR, EM, DFI, CFI, MFI, TBI, EGR

From carburetor on engine, note:

Manufacturer –

Part Number –

Air-Fuel Ratio:

Identify any of the following if present on the engine/equipment: air-fuel mixture screw or jet needle clip (circle those that apply)

Does COC application indicate that these components are adjustable?

Air-fuel mixture screw: Yes or No (circle one)

Jet Needle Clip: Yes or No (circle one)

If yes to all items, move to the next question, “Fuel Tank”.

If no to any item, note whether these components are permanently sealed or not normally accessible using ordinary tools (check air-fuel mixture screw and jet needle clip accessibility and adjustability within one half hour using ordinary tools).

Air-Fuel Mixture Screw: Yes or No (circle one)

Jet Needle Clip: Yes or No (circle one)

Tools used:

Is there any other design element that can be adjusted to affect the engine’s air-fuel ratio? If so, identify.

Fuel Tank: metal or plastic (circle one)

Fuel Line Markings:

Does the EPA Label Peel Off Without Destroying or Defacing? Yes or No (circle one)

Does Crankcase Vent Directly to Open Air? Yes or No (circle one)

Engine (and Equipment) Inspection Checklist

Appendix I to Consent Decree in U.S. v. Pep Boys – Manny, Moe & Jack and Baja, Inc., Page 4



Was the engine/equipment or any portion thereof kept for further inspection? If so, list (e.g., carburetor, exhaust system, etc.) Maintain chain of custody.

As part of the inspection, take clear photos to document the following:

- Equipment
- Any model name/number or decal on the equipment
- Serial number
- EPA label
- Any of the following emission controls: TWC, OC, O2S, HO2S, AIR, PAIR, EM, EFI, MFI, TBI, EGR
- Fuel Tank
- Crankcase
- Carburetor (from as many sides as possible)
- Carburetor components (if applicable)
- Box (if applicable)

Attach a copy of the owner's manual.

Handwritten signature or initials in the bottom right corner of the page.

Vehicle Inspection Checklist

Exam Date and Time:

Facility Name and Location:

Inspector Name and Company:

For post-importation inspections only, complete the following:

Purchase Order No. (if available):

SKU:

Please insert N/A for items that are not applicable to the vehicle undergoing inspection.

Vehicle Type (as defined in the regulations): ATV, off-road motorcycle, snowmobile, UTV, highway motorcycle, (circle one)

If motorcycle, note presence of: headlight, taillight/stoplight, turn signal, mirror(s), horn (circle which are applicable)

Vehicle Maximum Speed (note source of information, including owner's manual where available):

Vehicle Identification Number (VIN) - note source of information:

Vehicle Manufacturer (WMI) based on first 3 digits of the VIN:

Type the first 3 letters of the VIN into the box labeled "WMI" at <http://www.nhtsa.dot.gov/cars/rules/manufacture/> and then hit "Start Search". Provide the manufacturer's name listed under "WMI" in the search results.

Vehicle Inspection Checklist

BW

Vehicle Manufacturer – Based on EPA label:

Based on box (if available):

Vehicle Model Year – Based on 10th digit of the VIN (e.g. A=2010, B=2011, C=2012, etc.):

Based on EPA engine family listed on EPA label:

Based on EPA conformity statement on EPA label:

Vehicle Model – Based on decals/ badges on vehicle/engine:

From owner’s manual, note the following for the vehicle model in question. If information is not available, respond with “N/A”.

Engine Power (HP):

Engine Displacement (cc):

Engine Stroke: 2 / 4 (circle one)

Transmission: Automatic / Manual (circle one)

Vehicle Date of Manufacture – Listed on EPA label:

Listed on DOT label (if applicable):

Listed on box (if available):

From EPA label, note:

Engine Family –

Evaporative/Permeation Emissions Family –

Fuel Type –

Emission Control System Abbreviations –

Vehicle Inspection Checklist

Emission Controls – Note presence and part number (if applicable) for each of the following. Also fill out applicable sections of the catalyst worksheet if catalyst is inspected or tested, as required: TWC, OC, O2S, HO2S, AIR, PAIR, EM, DFI, CFI, MFI, TBI

From carburetor on vehicle, note:

Manufacturer (including any name, other words or characters, any label or other markings (e.g., barcode)) –

Part Number –

Air-Fuel Ratio:

Identify any of the following if present on the vehicle/engine: air-fuel mixture screw, jet needle clip, needle jet, pilot jet, or main jet (circle those that apply)

Does COC application indicate that these components are adjustable parameters or otherwise adjustable?

Air-fuel mixture screw: Yes or No (circle one)

Jet Needle Clip: Yes or No (circle one)

Needle Jet: Yes or No (circle one)

Pilot Jet: Yes or No (circle one)

Main Jet: Yes or No (circle one)

If yes to all items, move to the next question, “Fuel Tank”.

If no to any item:

(1) note whether you can change the vehicle’s air-fuel ratio in less than one hour with a few parts whose total cost is under \$60 (check jets’ accessibility and replaceability and carburetor bowl).

BW

Needle Jet: Yes or No (circle one)

Describe Markings (if any):

Pilot Jet: Yes or No (circle one)

Describe Markings (if any):

Main Jet: Yes or No (circle one)

Describe Markings (if any):

(2) note whether the following components are permanently sealed or not normally accessible using ordinary tools within one half hour (check e.g., air-fuel mixture screw and jet needle clip accessibility and adjustability).

Air-Fuel Mixture Screw: Yes or No (circle one)

Jet Needle Clip - Single Setting? Yes or No (circle one)

Tools used:

(3) note whether there is any other design element that can be changed or adjusted to affect the vehicle's air-fuel ratio. If so, identify.

Fuel Tank: metal or plastic (circle one)

Fuel Line Markings:

Does the EPA Label Peel Off Without Being Destroyed or Defaced? yes or no (circle one)

Length of Emissions Warranty – (include source of information in response)

Does Crankcase Vent Directly to Open Air? (yes or no)

Was the vehicle/engine or any portion thereof kept for further inspection? If so, list (e.g., carburetor, exhaust system, etc.) Maintain chain of custody.

Vehicle Inspection Checklist

DM

As part of the inspection, take clear photos to document the following:

- Entire vehicle (from all sides), including headlight, taillight/stoplight, turn signal, mirror(s), and horn (as applicable)
- Any model name/number or decal on the vehicle
- VIN
- EPA label
- DOT label (if applicable)
- Any of the following emission controls that are present: TWC, OC, O2S, HO2S, AIR, PAIR, EM, DFI, CFI, MFI, TBI
- Fuel tank
- Crankcase
- Carburetor (from as many sides as possible)
- Carburetor components (if applicable)
- Box (if applicable)
- Hangtag (if post-importation)

Attach a copy of the owner's manual.

B

Catalyst Measurement Worksheet

Please insert N/A for items that are not applicable to the vehicle undergoing inspection.

Engine Family _____

VIN/Serial No. _____

	Measured Values (inches)	Calculated (mm)	Certificate Values
Outside diameter of casing	_____	_____	_____
Inside diameter of casing	_____	_____	_____
Overall length of casing	_____	_____	_____
Length of catalyst material	_____	_____	_____
Counted cells (total)	_____	_____	_____
Calculated cells per inch ² (cpi)	_____	_____	_____
If laboratory tested:			
Active Material Loading (g/L)	_____	_____	_____
Ratio	_____	_____	_____

Inspector: _____

Date: _____

Catalyst Worksheet

BMJ

**U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In the Matter of:

Pep Boys – Manny, Moe & Jack,

Respondent

**Administrative Settlement
Agreement**

AED/MSEB # 7863

Purpose

1. The United States Environmental Protection Agency (EPA) and The Pep Boys – Manny, Moe & Jack, a Pennsylvania corporation, (Pep Boys) enter into this Administrative Settlement Agreement (Agreement) to resolve potential allegations of non-compliance with the Clean Air Act, 42 U.S.C. § 7401 *et seq.* (Act), and its implementing regulations at 40 C.F.R. Parts 86, 1051 and 1068.

Statutory & Regulatory Authority

2. Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), prohibits a manufacturer or importer from selling, offering for sale, introducing, delivering for introduction into commerce, or importing, any vehicle or engine after the applicable effective date of the regulations unless such vehicle or engine is covered by a certificate of conformity issued by EPA. Section 203(a) also prohibits any person or entity from causing such actions.
3. Section 213(d) of the Act, 42 U.S.C. § 7547(d), together with the recreational vehicle regulations at 40 C.F.R. Parts 1051 and 1068, extend the prohibition in § 203(a)(1) to the sale or importation of any nonroad vehicle or engine, such as the off-road motorcycles

and all-terrain vehicles (ATVs) at issue here, unless the vehicle or engine is covered by an EPA-issued certificate of conformity. 40 C.F.R. §§ 1068.101(a)(1) and (b)(5).

4. Beginning in 2006, the requirement for a certificate of conformity became applicable to the types of vehicles and engines at issue in this matter: new highway motorcycles beginning with 2006 model year (40 C.F.R. § 86.401-2006); and new recreational vehicles, including off-road motorcycles and ATVs, beginning with the 2006 model year (40 C.F.R. §§ 1051.105 and 1051.107).
5. For these vehicles and engines, EPA's issuance of a certificate of conformity permits the production and introduction into commerce of vehicles and engines (a) built in accordance with the manufacturer's application for the certificate of conformity; and (b) produced on or after the effective date of the certificate and no later than December 31st of the covered model year. *See, e.g.*, 40 C.F.R. § 1051.201(a) (recreational vehicles).

Background

6. Pep Boys imported certain model year 2008 DR150, WD90/BA90, DR49, DR70, and WD250 off-road motorcycles and ATVs, currently held in Pep Boys' inventory under the direction of a "stop-sale" memorandum issued by Pep Boys' Operations Administration on December 18, 2008, and certain model year 2008 SC50 highway motorcycles held in inventory by Pep Boys (collectively, the "Subject Vehicles").
7. EPA and Pep Boys have an agreement on the material terms of a settlement involving alleged violations of the Act and its implementing regulations related to the importation of vehicles and engines, and alleged violations of warranty and emission control system label requirements, including, without limitation, alleged violations involving the Subject Vehicles.

8. Pep Boys wants to sell the Subject Vehicles in its retail stores before the entry of a consent decree resolving these allegations.
9. Pep Boys, without admitting any fact or law, and without admission of the allegations contained herein, agrees as follows.

Effect of Administrative Settlement Agreement and Reservation of Rights

10. Pep Boys must identify and prepare a list of all vehicles that fall within the definition of Subject Vehicles above. This list must identify each Subject Vehicle by vehicle identification number, be kept for five years, notwithstanding any corporate document retention policies, and must be provided to EPA upon request.
11. Pep Boys agrees to perform the requirements of the Subject Vehicle Corrective Action Plan attached hereto as Appendix A.
12. Upon the performance by Pep Boys of the Subject Vehicle Corrective Action Plan, EPA agrees not to bring or allege any claim of noncompliance with the Act that arises solely from the sale of any of the Subject Vehicles by Pep Boys.
13. Regardless of Pep Boys' performance or nonperformance under this Agreement, EPA reserves its right to allege violations of the Act that do not arise from the sale of the Subject Vehicles, including, without limitation, any allegations related to the importation of the Subject Vehicles. EPA reserves its right to allege violations of the Act that arise from the sale of any of the Subject Vehicles by Pep Boys if (a) Pep Boys and the United States do not execute, and a court does not approve, a consent decree that resolves all allegations of noncompliance with the Act related to the Subject Vehicles, or (b) Pep Boys does not satisfy the requirements set forth in the Subject Vehicle Corrective Action Plan.

14. Nothing in this Agreement limits EPA's right to proceed against Pep Boys in the event of default or noncompliance with this Agreement, for other violations of law, or with respect to other matters not within the scope of this Agreement. This Agreement in no way affects or relieves Pep Boys of the responsibility to comply with other state, federal or local laws or regulations, and does not address Pep Boys' potential liability to the U.S. Department of Homeland Security's Bureau of Customs and Border Protection for engines and vehicles that are seized or detained now or in the future.
15. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive relief, civil penalties, or other relief concerning the Subject Vehicles, Pep Boys agrees not to assert, and may not maintain, any defense or claim based on the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the EPA in the subsequent proceeding were or should have been brought in the instant case, except for claims that are specifically resolved pursuant to this Agreement.
16. This Agreement does not limit or affect the rights of EPA or Pep Boys against any third party, and does not create any right in, or create any cause of action to, any third party.

Notice

17. All written correspondence to EPA concerning this Agreement must be sent via traceable overnight mail/delivery service and electronic mail to:

Christopher A. Thompson
Air Enforcement Division
Office of Civil Enforcement
U.S. Environmental Protection Agency (2242A)
1200 Pennsylvania Ave., NW
Washington, DC 20004
Attn: AED/MSEB # 7863
thompson.christopher@epa.gov

General Provisions

18. This Agreement becomes effective upon the date it is executed by EPA, at which time a fully executed electronic copy will be returned to Pep Boys.
19. The individual or individuals executing this Agreement on behalf of Pep Boys are authorized to do so on behalf of Pep Boys, and agree that such execution is intended and is sufficient to bind Pep Boys, its agents, successors, and assigns.
20. Notwithstanding any other provision of this Agreement, the parties agree that, upon any default or failure of Pep Boys to comply with the terms of this Agreement, EPA may refer this matter to the United States Department of Justice to recover civil penalties pursuant to Section 205(b) of the Act, 42 U.S.C. § 7524(c), commence an action to enforce this Agreement or to recover a civil penalty pursuant to Section 205(d) of the Act, 42 U.S.C. § 7524(d), or pursue any other remedies available. Pep Boys expressly waives its right to assert that any such action is barred by 28 U.S.C. § 2462, other statutes of limitation, or other provisions limiting actions as a result of passage of time.
21. The validity, enforceability, and construction of all matters pertaining to this Agreement will be determined in accordance with applicable federal law.

[SIGNATURES ON FOLLOWING PAGES]

U.S. Environmental Protection Agency

Administrative Settlement Agreement

In the Matter of The Pep Boys – Manny, Moe & Jack

AED/MSEB # 7863

The following agrees to the terms of this Agreement:

The Pep Boys – Manny, Moe & Jack

By: _____ Date: 11/24/09

Typed or Printed Name: Brian D. Zuckerman

Typed or Printed Title: SVP. General Counsel & Secretary

BZ

Appendix A

Subject Vehicle Corrective Action Plan

I. MY 2008 DR150, and WD90/BA90 Off-Road Motorcycles and ATVs

Prior to the sale of any model year (MY) 2008 DR150 model off-road motorcycles, and any WD90/BA90 model ATVs, Pep Boys must:

1. (a) permanently seal the adjustable air-fuel mixture screws contained in the carburetors in the manner described in the attached Fuel Mixture Screw Field-Fix Proposal, with the condition that the final setting for the air-fuel mixture screw for the DR150/WD90/BA90 model Subject Vehicles is the "as received" OEM setting used for the test vehicles belonging to these models, defined as the number of screw turns from the stop position; or

(b) obtain certificates of conformity for MY 2009 or MY 2010 vehicles, and modify the Subject DR150/WD90/BA90s to conform to the design specifications described in the certificate of conformity applications for the MY 2009 or MY 2010 models;
2. affix a permanent supplemental label to the DR150/WD90/BA90 model Subject Vehicles that states: "Vehicle has been field modified to conform to the design specifications described in the application for certification for [applicable engine family]. Vehicle is legal for sale pursuant to an agreement with the United States in connection with settlement of disputed claims in an enforcement action under the Clean Air Act." Examples of the specifications for supplemental labels are shown on the drawings attached hereto. The labels must be secured to a part of the vehicle that does not normally require replacement, near the vehicle emission control information label, and in a location that is easily visible to the purchasers of the vehicles. Photographs showing acceptable locations for the supplemental label on the DR150 and WD90/BA90 model vehicles are attached hereto; and
3. provide EPA with:
 - (a) either the MY 2009 or MY 2010 DR150 certificate of conformity applicable to the WD90/BA90 model vehicles, or certification of the completion of the necessary modifications to the DR150/WD90/BA90 model Subject Vehicles as described above;
 - (b) certification of the completion of the required supplemental labeling of each vehicle as described above; and
 - (c) a copy of a representative warranty for these vehicles that complies with applicable legal requirements.

II. MY 2008 WD250 ATVs

Prior to the sale of any MY 2008 WD250 model Subject Vehicles (ATVs), Pep Boys must:

1. obtain a certificate of conformity for the MY 2009 or MY 2010 WD250 model vehicles, and modify the MY 2008 WD250 model Subject Vehicles to conform to the design specifications described in the certificate of conformity application for the MY 2009 or MY2010 model; and
2. provide EPA with:
 - (a) the MY 2009 or MY 2010 certificate of conformity applicable to the model WD250 ATV;
 - (b) certification of the completion of the necessary modifications to the MY 2008 WD250 Subject Vehicles;
 - (c) certification and a representative photograph of the required supplemental labeling of each WD250 model Subject Vehicle as described in Paragraph I.2, above; and
 - (d) a copy of a representative warranty for these vehicles that complies with applicable legal requirements.

III. MY 2008 SC50 Highway Motorcycles

A. Prior to the sale of any MY 2008 SC50 model Subject Vehicle, Pep Boys must:

1. obtain a certificate of conformity for MY 2009 or 2010 SC50 model vehicles, based on a carburetor jet replacement (or other credible design change pre-approved by EPA), and modify the MY 2008 SC50 model Subject Vehicles to conform to the design specifications described in the certificate application for the MY 2009 or MY 2010 model.
2. provide EPA with:
 - (a) the MY 2009 or MY 2010 certificate of conformity applicable to the model SC50 vehicles;
 - (b) certification of the completion of the necessary modifications to the MY 2008 Subject Vehicles;
 - (c) certification and a representative photograph of the supplemental labeling of each SC50 model Subject Vehicle as described in Paragraph I.2. above; and
 - (d) a copy of a representative warranty for these vehicles that complies with applicable legal requirements.

IV. MY 2008 DR49 and DR70 Off-Road Motorcycles

No corrective action is required for the DR49 or DR70 model off-road motorcycles.

V. Implementation

- A. All vehicle emission control information labels and any supplemental labels must be affixed so they are not removable without being destroyed or defaced.
- B. A party other than Pep Boys may implement any of the requirements of this Subject Vehicle Corrective Action Plan on behalf of Pep Boys. However, Pep Boys alone is responsible for the implementation of the Subject Vehicle Corrective Action Plan and must submit the information to EPA as required.
- C. Each report or document submitted by Pep Boys to EPA must be signed by a corporate officer, and must contain the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gather and present the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowingly and willfully submitting a materially false statement.

A handwritten signature in black ink, appearing to be 'BMJ', is located in the bottom right corner of the page.

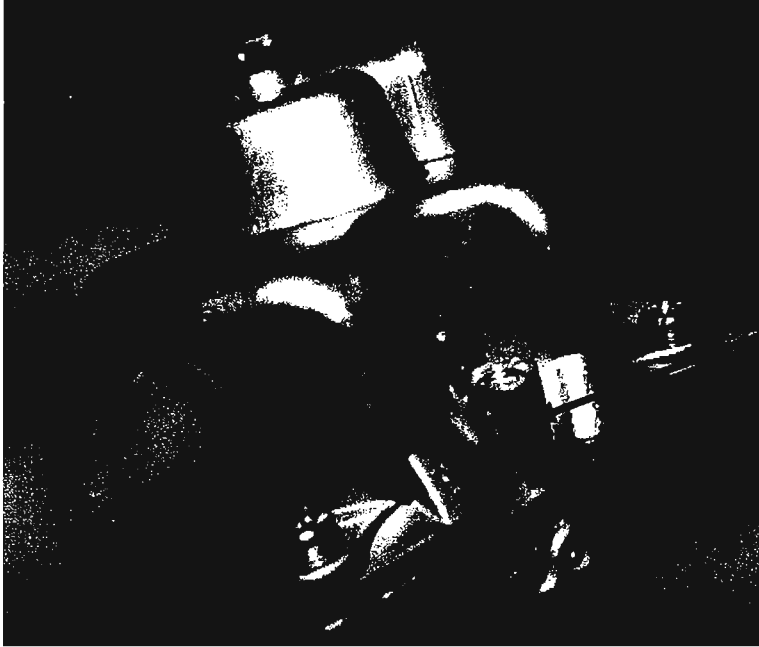
FUEL MIXTURE SCREW FIELD-FIX PROPOSAL
DR150, WD90

The replacement fuel-mixture screw for both vehicles will feature a specially machined head that will render it unable to be adjusted without a specially-manufactured tool. The screw head will be milled with two small holes on top (where normally a Phillips or Torqs pattern would appear), which can only be adjusted with a tool resembling a golf ball divot repair tool (only with much finer prongs). Photo 1, below, shows a prototype of the screw next to the original screw, for comparison. Our supplier has indicated that it manufactured a similar product for another client to satisfy EPA requirements. The screw dimensions will match the original screw, with the exception of the head, which will be shorter in length. The special screw with the shorter head will be recessed below the surrounding housing. A final version of the special screw with the shorter head has not been manufactured yet, but a version of the shorter screw has been installed in the carburetors to illustrate the recessed setting that will be achieved with the replacement screws. (See Photos 2 and 3, below).

Photo 1: prototype special screw head (on left).



Photo 2: DR150 carburetor with shorter fuel mixture screw installed to show final recessed setting.



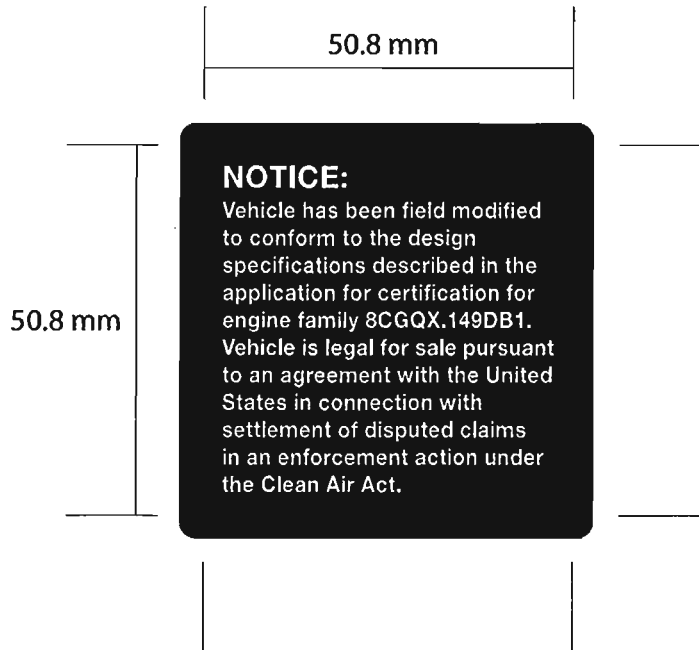
Recessed Fuel
Mixture Screw

Photo 3: WD90 carburetor with shorter fuel mixture screw installed to show final recessed setting.

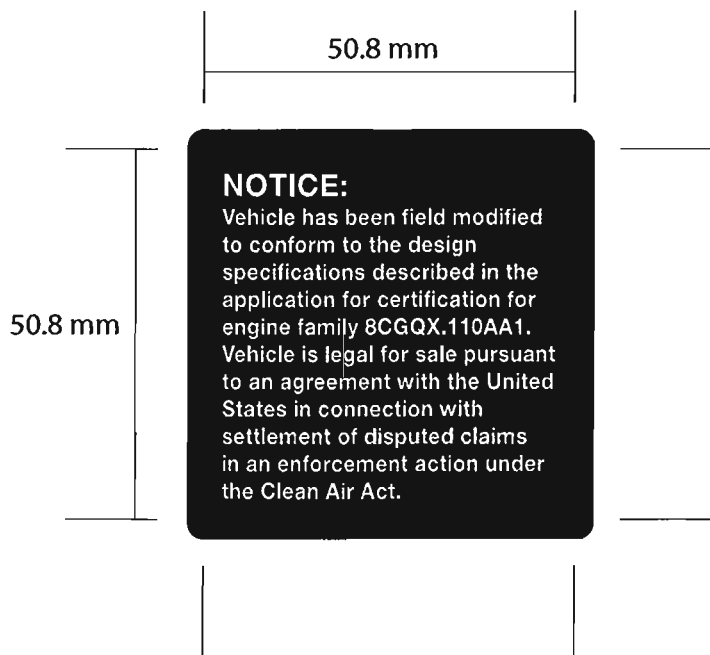


Recessed Fuel
Mixture Screw

BJ



Material: 3M FMV02 + Transparent PET (void material) or approved alternate material



Material: 3M FMV02 + Transparent PET (void material) or approved alternate material

Handwritten initials or signature in the top right corner.

01881
15374
0848181
01-0223

NOTICE:
Notice that this card is intended
to inform the dealer in the
event that the dealer has
applied for a contract with the
engine company of this 1981
to be put for sale pursuant
to an agreement with the dealer
to be completed with the dealer
check to complete the sale
in an agreement with the dealer
in an agreement with the dealer
the Clean Air Act.





Faint, illegible text block located in the center of the dashboard area, possibly a license plate or a small sign.

By Manny, Moe & Jack

**Appendix K to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe Jack and Baja Inc.
Effect of Settlement: Subject Vehicles**

Vehicle Type	Engine Family	Model Name
Highway Motorcycle	7FYMC.250MMA or 6DDIC0.23NFG	PX250
Highway Motorcycle	6ZGNC0.12NFG	SC150/ SC125
Highway Motorcycle	6SGMC0.05GSV	SC50/ SC50-P
Highway Motorcycle	6ZGNC.197GY1	
Highway Motorcycle	not provided	SSR200
Highway Motorcycle	7TKSC0.25001	BV250
Highway Motorcycle	7TMTX.150MC2	SC150/ SC125
Highway Motorcycle	7TMTX.049MC3	SC50/ RT50-R
Highway Motorcycle	8HBMC0.12NFG	MC125
Highway Motorcycle	8ZNNC.150SA1	RT150
Highway Motorcycle	8CGQC.250MMA	PX250
Highway Motorcycle	8TMTX.049MC3	SC50/ RT50-R
Highway Motorcycle	8TMTX.150MC2	SC150/ SC125
Highway Motorcycle	not provided	RT150
Highway Motorcycle	9TMTX.150MC2	SC150
Recreational Vehicle	6CQLX0.15ATV	BA150
Recreational Vehicle	7DAZX.150EC1	
Recreational Vehicle	6AVIX.150SB1	BR150 / BR150-1 / DN150
Recreational Vehicle	6GDDX0.90NFG	
Recreational Vehicle	not provided	BA90 / WD50
Recreational Vehicle	6CLGS.09852F	DB30
Recreational Vehicle	6CGQX.149DB1	DR150/ DR125
Recreational Vehicle	6CGQX.049DB1	DR49 / DR50 / DR50-R / DR70
Recreational Vehicle	6CGQX.107DB1	DR90
Recreational Vehicle	6CHGS.1961CH	MB165 / MB165C / HT65 / TR65 / BB65
Recreational Vehicle	6DDIX0.12NFG	STR125
Recreational Vehicle	6JNHX.229001	
Recreational Vehicle	6CQLX0.25ATV	WD250U/ WD250UR/ WD250U-2
Recreational Vehicle	7TMTX.400A01	WD400U
Recreational Vehicle	6GDDX0.90NFG	
Recreational Vehicle	not provided	BA49/ BA50/ WD50
Recreational Vehicle	not provided	WD50U / WD50U1
Recreational Vehicle	not provided	WD90U
Recreational Vehicle	not provided	WD90
Recreational Vehicle	6NMRX0.15NFG	X150
Recreational Vehicle	6NMRX0.29NFG	X300/ BA250
Recreational Vehicle	not provided	DX110
Recreational Vehicle	not provided	DX70
Recreational Vehicle	7LGGX0.07LTF	
Recreational Vehicle	7AVIX.049FYM	BA49/ BA50/ WD50
Recreational Vehicle	7AVIX.049FYM	WD50U / WD50U1
Recreational Vehicle	7AVIX.086FYA	WD90 / WD90U
Recreational Vehicle	7DAZX.150EC1	
Recreational Vehicle	7TJPX.150150	BR150 / BR150-1 / DN150
Recreational Vehicle	7CLGS.09852F	
Recreational Vehicle	7CGQX.100BAA	DB30
Recreational Vehicle	7RUNX.300XM5	DN250
Recreational Vehicle	7CGQX.149DB1	DR150/ DR125
Recreational Vehicle	7CGQX.049DB1	DR49 / DR70
Recreational Vehicle	7CGQX.107DB1	DR90 / WR90
Recreational Vehicle	7CGQX.200CAA	MB165 / MB165C / HT65
Recreational Vehicle	7FYMX.125AM4	STR125
Recreational Vehicle	7KYKX.250AM5	X300/ BA250
Recreational Vehicle	7FYMX.090AM4	BA90
Recreational Vehicle	7CQYX.070A01	DX70
Recreational Vehicle	7CQYX.125A02	DX110
Recreational Vehicle	7LGGX.250AM5	WD250U/ WD250UR/ WD250U-2
Recreational Vehicle	7CGQX.200GAA	TR65 / BB65
Recreational Vehicle	7TMTX.400A01	WD400U
Recreational Vehicle	7XMTX.250DMA	X250
Recreational Vehicle	8LNCX0.15LTF	BA150
Recreational Vehicle	8LNCX0.07A1L	
Recreational Vehicle	8UQGX.110AAA	BA49/ BA50/ WD50
Recreational Vehicle	8TJPX.150GAL	BR150 / BR150-1 / DN150
Recreational Vehicle	7RUNX.300XM5	
Recreational Vehicle	8TJPX.250GAL	DN250
Recreational Vehicle	8CGQX.110AA1	BA90 / WD90
Recreational Vehicle	8CGQX.100BAA	DB30
Recreational Vehicle	8CGQX.149DB1	DR150/ DR125
Recreational Vehicle	8CGQX.049DB1	DR49 / DR70
Recreational Vehicle	8CGQX.200CAA	MB165 / MB165C / HT65
Recreational Vehicle	8LNCX0.25LTF	WD250U/ WD250UR/ WD250U-2
Recreational Vehicle	9CGQX.200CAA	MB165 / HT65
Recreational Vehicle	9LNCX0.15LTF	BA150
Recreational Vehicle	9TJPX.150GAL	BR150 / BR150-1 / DN150
Recreational Vehicle	9TJPX.250GAL	DN250

**Appendix K to Consent Decree in:
U.S. v. The Pep Boys – Manny, Moe Jack and Baja Inc.
Effect of Settlement: Subject Engines**

Manufacturer	Watt	Engine Families
Elim	3000	Not provided
Jiangsu Jiangdong	3500	4JDGS.1961GA, 5JDGS.1961GA, 6JDGS.1961GA, 7JDGS.1961GA
Jiangsu Sumec-Linhai	2500	4SLHS.1711GA, 5SLHS.1711GA, 6SLHS.1711GA
Eastern Tools	1200	4ETQS.0635E1, 5ETQS.0635E1, 6ETQS.0635E1, 7ETQS.0635E1
Lifan or Powerful Machinery	2200	5CLGS.16368F, 6CLGS.16368F, 7CLGS.16368F (Lifan) and 5PMES.1731GA, 6PMES.1731GA, 7PMES.1731GA (Powerful Machinery)
Lifan or Dajiang	3500	5CLGS.19668F, 6CLGS.19668F, 7CLGS.19668F (Lifan) and 5CDPS.1961GA, 6CDPS.1961GA, 7CDPS.1961GA (Dajiang)
Dajiang	5500	5CDPS.3892GA, 6CDPS.3892GA, 7CDPS.3892GA
Loncin	5500	5CGPS.3892GA, 6CGPS.3892GA, 7CGPS.3892GA
Wenling Jennfeng or Eastern Tools	3500	4WJFS.1961GA, 5WJFS.1961GA, 6WJFS.1961GA, 7WJFS.1961GA (Wenling Jennfeng) or 4ETQS.1962E1, 5ETQS.1962E1, 6ETQS.1962E1, 7ETQS.1962E1 (Eastern Tools)
Chongqing Weima	9000	6CWPS.4202WM and 7CWPS.4202WM