

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
) Civil Action No.
 Plaintiff,)
)
 v.)
)
CUMMINS ENGINE COMPANY, INC.)
)
)
 Defendant.)

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and by authority of the Attorney General, filed the Complaint herein against Defendant, Cummins Engine Company, Inc. ("Cummins") alleging violations of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., (the "Act") in connection with certain heavy-duty diesel engines manufactured and sold by Cummins, and has filed similar complaints in related actions against other heavy-duty diesel engine manufacturers; and

WHEREAS, Cummins denies the violations alleged in the Complaint; and

WHEREAS, the United States and Cummins have consented to entry of this Consent Decree without trial of any issue; and

WHEREAS, EPA is charged with primary responsibility for enforcing the Clean Air Act; and

WHEREAS, EPA has conducted an extensive investigation of the matters which are the subject of the Consent Decree; and

WHEREAS, the United States has determined that the comprehensive relief set forth in this Consent Decree will provide protection of the health and welfare of the people of the United States; and

WHEREAS, the United States and Cummins agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the United States and Cummins in good faith, that implementation of this Consent Decree will avoid

disapproval of a proposed modification shall not be subject to dispute resolution.

46. Cummins shall implement any approved or agreed-upon improvement to the in-use monitoring equipment approved pursuant to Phase I by February 1, 2000. The cost of any such modification relating to improving the accuracy and precision of reported engine output torque shall be borne by Cummins and shall not be deducted from the amount Cummins is obligated to spend in accordance with Paragraph 38 and 83. The cost of any other approved modification, and the cost of procuring the equipment for the Phases III and IV studies, shall be considered to be part of the amount Cummins is obligated to spend in accordance with either Paragraph 38 or 83 or both, to be determined by the United States in its unreviewable discretion.

47. Cummins may not avoid its obligation to do testing under Phases III and IV on the basis of any claimed inadequacy in mobile monitoring technology. Notwithstanding the foregoing sentence, nothing herein shall constitute a waiver of rights any Party may have under applicable principles of law with respect to the use of test results in any proceeding to enforce this Consent Decree or the Act.

48. In Phase II of the In-Use Testing Program, Cummins shall develop in-use testing procedures to be used in connection

testing is to establish a baseline set of emission data on a wide range of in-use engines of varying age and service characteristics in order to demonstrate the effectiveness of the changes made to engines produced or modified in accordance with the Consent Decree. The focus of this testing shall be 1988 through 1998 Model Year engines, and shall include a mix of on-road and laboratory testing.

54. Cummins shall submit to the United States and CARB, for review and approval by each, a single Scope of Work for Phase III no later than November 1, 1999. The Scope of Work shall identify the proposed engines to be tested, the test schedule, and any testing routes or facilities. Within thirty (30) days after submission of the proposed Scope of Work, the United States shall approve the Scope of Work or propose modifications. Cummins shall incorporate the proposed modifications within 30 days of receiving the proposed modifications; but, if Cummins disputes the proposed modifications, or if the modifications requested by the United States conflict with modifications requested by CARB, the dispute shall be governed by the dispute resolution provisions of Section XVI. Cummins shall implement the Scope of Work as approved.

55. Not later than February 1, 2000, or, if EPA agrees, one month after the improvements to the in-use monitoring equipment

are implemented, Cummins shall commence testing for Phase III. Testing data shall be reported quarterly throughout Phase III.

56. Cummins shall complete Phase III eight months after commencement, and shall submit to the United States a report describing tests as performed, test conditions, engines tested, and test results. Cummins shall spend no more than 20% of the amount set forth in Paragraph 38 on Phase III.

57. In Phase IV, Cummins shall conduct on-road compliance monitoring on its HDDEs using the monitoring technology and previously defined testing procedures and driving routes approved pursuant to Phases I and II, until the funds set forth in Paragraph 38 have been fully expended. In addition to using the previously defined testing procedures and driving routes, Cummins shall follow the vehicle selection procedures and data reporting requirements set forth in Appendix D.

58. Cummins shall submit to the United States and CARB, for review and approval by each, a single proposed Scope of Work for Phase IV consistent with Appendix D no later than November 1, 1999. The Scope of Work shall include an itemized cost estimate of the testing identified in Appendix D and shall require testing to begin with Model Year 2000 HDDEs. Within thirty (30) days after submission of the proposed Scope of Work, the United States shall approve the Scope of Work or propose modifications. Cummins

(a) any HHDDE that has accumulated mileage greater than 290,000 miles, or any MHDDE that has accumulated mileage greater than 185,000 miles; or

(b) any HHDDE or MHDDE that has accumulated less than the applicable mileage specified in Paragraph 69(a), where the service event includes replacement or reconditioning of more than one Major Cylinder Component in all of the engine's cylinders.

70. A Low NOx Rebuild Kit may not increase any regulated emission beyond applicable limits when tested on the FTP.

71. Cummins shall install, and shall authorize its authorized dealers, distributors, repair facilities, and rebuild facilities to install only Low NOx Rebuild Kits as required under Paragraph 64 at no added cost to the owner above the amount the owner would otherwise pay to have the engine rebuilt or repaired. In addition, subject to the provisions of Paragraph 72, Cummins shall make available, either directly or through its affiliated distribution networks, at no added cost, the appropriate Low NOx Rebuild Kit to any non-affiliated engine rebuilder or person who requests it. For the purposes of this Section, "at no added cost" shall mean:

(a) if a Low NOx Rebuild Kit contains parts normally replaced at engine rebuild, Cummins shall not charge more than the then-current price for the original part; and

77. The Plan for Cummins's Low NOx Rebuild Program submitted to the United States shall provide that any of Cummins's authorized dealers, distributors, repair facilities, or rebuilders who install a Low NOx Rebuild Kit shall be instructed to complete and affix a label to the engine. The label shall contain a statement with appropriate blank spaces for the rebuilder to indicate when and by whom the Low NOx Rebuild Kit was installed on the engine. The label shall be placed in such location as approved by EPA consistent with State law and shall be fabricated of a material suitable for the location in which it is installed and not readily removable intact. Cummins shall also provide such label to any non-affiliated engine rebuilder who installs one of its Low NOx Rebuild Kits and instructions on how to complete the label and where to affix the label.

78. The United States (after consultation with CARB) shall provide Cummins with notice of approval or disapproval of its Low NOx Rebuild Plan within 30 days of its submittal to the United States. If the plan is disapproved, the United States shall provide the reasons for disapproval, and Cummins shall have 30 days to submit a revised Low NOx Rebuild Plan for approval. Any dispute between the Parties regarding the Low NOx Rebuild Plan shall be resolved in accordance with the dispute resolution provisions of Section XVI of this Decree (including circumstances

