

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HUSQVARNA AB and HUSQVARNA
CONSUMER OUTDOOR PRODUCTS
N.A., INC.,

Defendants.

Civil Action No.

STIPULATION OF SETTLEMENT AND JUDGMENT

WHEREAS, Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed a Complaint concurrently with this Stipulation of Settlement and Judgment (“Stipulation”) against Defendants Husqvarna AB and Husqvarna Consumer Outdoor Products N.A., Inc. (collectively “Defendants”).

WHEREAS, the Complaint seeks civil penalties for violations of the Clean Air Act (“Act”), and regulations promulgated thereunder, in connection with Defendants’ submission of false, inaccurate, or incomplete Production Line Testing (“PLT”) and Averaging, Banking, and Trading (“ABT”) reports.

WHEREAS, the Complaint also seeks civil penalties for violations of the Act, and regulations promulgated thereunder, in connection with Husqvarna AB’s importation and sale of 1,235 Model Year 2012 nonroad engines that were not covered by an EPA-issued certificate of conformity.

WHEREAS, Defendants have cooperated with EPA and (1) amended their PLT reports and resubmitted them to EPA, (2) increased the Family Emission Limit (“FEL”) for each engine family, as necessary, consistent with the amended PLT reports, (3) adjusted ABT credit balances based on the revised FELs, (4) commissioned a third-party audit of their emissions compliance procedures, implemented recommendations from the audit, and shared the results with EPA, and (5) increased their PLT reporting staff and supervision, created a new compliance division, enhanced training, established corporate-wide procedures for PLT certification, and instituted ongoing internal compliance audits with periodic third-party audits.

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

WHEREAS, Plaintiff and Defendants (the “Parties”) agree that settlement of this action without litigation is in the public interest and that entry of this Stipulation is the most appropriate means of resolving this action.

NOW THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Paragraphs 1 and 2, and with the consent of the Parties, it is hereby ADJUDGED, ORDERED, and DECREED:

1. This Court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. § 7524(b) and 28 U.S.C. §§ 1331, 1345, and 1355, and over the Parties. Venue is proper in this District pursuant to 42 U.S.C. § 7524(b) because the Administrator has his principal place of business here. For purposes of this Stipulation, and any action to enforce this Stipulation, Defendants consent to this Court’s jurisdiction over this Stipulation and any such action and over Defendants and consent to venue in this District.

2. For purposes of this Stipulation, Defendants agree that the Complaint states claims upon which relief can be granted.

3. Within 30 days after entry by the Court of this Stipulation, Defendants shall pay the sum of \$2,850,000 to the United States as a civil penalty.

4. Defendants shall pay the civil penalty by FedWire Electronic Funds Transfer (EFT) to the U.S. Department of Justice account, in accordance with instructions provided to Defendants by the Financial Litigation Unit (“FLU”) of the United States Attorney’s Office for the District of Columbia after entry. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (“CDCS”) number, which Defendants shall use to identify all payments required to be made in accordance with this Stipulation. The FLU will provide the payment instructions to: Robert Tesch, 9335 Harris Corners Parkway, Suite 500, Charlotte, NC 28269, on behalf of Defendants. Defendants may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States.

5. At the time of payment, Defendants shall send notice that payment has been made to:

a. EPA via email at cinwd.acctsreceivable@epa.gov or regular mail to EPA Cincinnati Finance Office, 26 Martin Luther King Drive, Cincinnati, Ohio 45268;

b. the United States via email at eescdcopy.enrd@usdoj.gov or regular mail at EES Case Management Unit, Environment and Natural Resources Division, U.S.

Department of Justice, P.O. Box 7611, Washington, D.C. 20044-7611, Re: DJ # 90-5-2-1-11609; and

c. EPA via its attorney, David E. Alexander, via email at Alexander.David@epa.gov or regular mail at Air Enforcement Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Room WJC South 1111-B, Washington, D.C. 20044.

Such notice shall state that the payment is for the civil penalty owed pursuant to the Stipulation in *United States of America v. Husqvarna AB et al.* and shall reference the civil action number, CDCS Number, and DOJ Case Number 90-5-2-1-11609.

6. If Defendants fail to pay the civil penalty when due, Defendants shall pay a stipulated penalty of \$5,000 for each day that the payment is late. Stipulated penalties shall begin to accrue on the day after the civil penalty is due and shall continue to accrue until payment of the civil penalty is made. Defendants shall pay any stipulated penalties within 30 days of receiving the United States' written demand. Payment of any stipulated penalties shall be made in the manner set forth in Paragraph 4, except that the notice required by Paragraph 5 shall state that the payment is for stipulated penalties for late payment of the civil penalty. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Stipulation.

7. Interest shall accrue on the balance of any unpaid civil penalty and/or stipulated penalties, as provided for in 28 U.S.C. § 1961, commencing on the day after the deadline for paying such civil penalty and/or stipulated penalties.

8. The payment obligations of this Stipulation apply to and are binding upon Defendants and their successors. Any change in ownership or corporate status shall not alter Defendants' payment obligations under this Stipulation.

9. Defendants shall not deduct any penalties paid under this Stipulation in calculating their federal, state, or local income tax.

10. Nothing in this Stipulation shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay the civil penalty or any stipulated penalties when due.

11. This Stipulation resolves the civil claims of the United States against Defendants for the violations alleged in the Complaint.

12. Within 30 days after receipt of all amounts due under this Stipulation, the United States shall provide notice to the Court that full payment has been made, at which time the civil claims of the United States for the violations alleged in the Complaint shall be dismissed with prejudice.

13. This Stipulation in no way affects the right of the United States to bring an action for any violation not alleged in the Complaint.

14. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

15. The Court retains jurisdiction to enforce this Stipulation until such time that the United States provides notice of full payment pursuant to Paragraph 12.

16. This Stipulation constitutes the entire agreement between the United States and Defendants and supersedes any prior agreements, discussions, or representations, oral or written, concerning the settlement embodied herein.

17. Each undersigned representative of 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 Stipulation and to execute and legally bind the Party he or she represents to this document.

18. This Stipulation may be signed in counterparts, and its validity shall not be challenged on that basis.

19. Each Defendant shall identify, on its attached signature page, the name, address, telephone number, and email address of an agent who is authorized to accept service of process by mail or email on its behalf with respect to all matters arising under or relating to this Stipulation. Defendants agree to accept service in that manner 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. Defendants need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Stipulation.

20. Defendants consent to entry of this Stipulation without further notice.

ORDER

As stipulated to and agreed by the Parties, IT IS SO ORDERED AND ADJUDGED this _____ day of _____, 2017.

United States District Judge

THE UNDERSIGNED, ON BEHALF OF PLAINTIFF THE UNITED STATES OF AMERICA,
enter into this Stipulation of Settlement and Judgment:



JEFFREY H. WOOD
Acting Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C.



MARK C. ELMER
Senior Counsel
U.S. Department of Justice
Environmental Enforcement Section
999 18th Street, South Terrace, Suite 370
Denver, Colorado 80202
(303) 844-1352 (PHONE)
Mark.Elmer@usdoj.gov

THE UNDERSIGNED, ON BEHALF OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY, enter into this Stipulation of Settlement and Judgment:



LAWRENCE E. STARFIELD
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460-0001

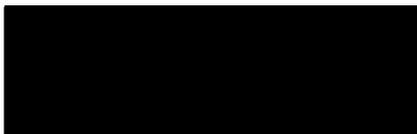


PHILLIP A. BROOKS
Director
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460-0001



DAVID E. ALEXANDER
Senior Attorney
Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

THE UNDERSIGNED, ON BEHALF OF DEFENDANT HUSQVARNA AB, enter into this Stipulation of Settlement and Judgment:



JEFF HOHLER

President

Husqvarna Consumer Outdoor Products N.A., Inc.
9335 Harris Corners Parkway, Suite 500
Charlotte, NC 28269

THE UNDERSIGNED, ON BEHALF OF DEFENDANT HUSQVARNA CONSUMER
OUTDOOR PRODUCTS N.A., INC., enter into this Stipulation of Settlement and Judgment:



JILL JACOBSON
General Counsel, Americas
Husqvarna Consumer Outdoor Products N.A., Inc.
9335 Harris Corners Parkway, Suite 500
Charlotte, NC 28269