

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.

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges:

NATURE OF ACTION

1. This is a civil action against Husqvarna AB and Husqvarna Consumer Outdoor Products N.A., Inc. (collectively, “Husqvarna”) pursuant to Sections 203, 205, and 213(d) of the Clean Air Act (the “Act”), 42 U.S.C. §§ 7522, 7524, and 7547(d), and regulations promulgated pursuant to Section 213(a) of the Act, 42 U.S.C. § 7547(a), that are codified at 40 C.F.R. Part 1054 (Control of Emissions from New, Small Nonroad Spark-Ignition Engines and Equipment) and 40 C.F.R. Part 1068 (General Compliance Provisions for Engine Programs).

2. The United States seeks civil penalties for violations of the Act, and regulations promulgated thereunder, in connection with Husqvarna’s submission to EPA of inaccurate or incomplete Production Line Testing (“PLT”) and Averaging, Banking, and Trading (“ABT”)

reports.

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

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to Section 205(b) of the Act, 42 U.S.C. § 7524(b), and 28 U.S.C. §§ 1331 (Federal Question), 1345 (United States as Plaintiff), and 1355 (Fine, Penalty, or Forfeiture).

5. Venue is proper in this District pursuant to Section 205(b) of the Act, 42 U.S.C. § 7524(b), because the Administrator of EPA has his principal place of business in this District.

DEFENDANTS

6. Husqvarna AB is a Swedish company, with its principal place of business in Huskvarna, Sweden.

7. Husqvarna Consumer Outdoor Products N.A., Inc. ("Husqvarna Consumer Products") is an American company, incorporated under the laws of the state of Delaware, with its principal place of business in Charlotte, North Carolina.

8. Husqvarna AB and Husqvarna Consumer Products are corporate affiliates.

9. Husqvarna AB and Husqvarna Consumer Products are collectively referred to herein as "Husqvarna."

10. Husqvarna manufactures handheld spark-ignition ("SI") engines – a type of small nonroad engine – used in a variety of outdoor power products including trimmers, leaf blowers,

and chainsaws.

STATUTORY AND REGULATORY BACKGROUND

11. This case arises under Part A of Section II of the Act, 42 U.S.C. § 7521 *et seq.*, and the regulations promulgated thereunder, which aim to protect public health and the environment by reducing emissions of nitrogen oxides (“NOx”) and other pollutants from mobile sources of air pollution, including new handheld SI engines.

12. Pursuant to Section 213(a) of the Act, 42 U.S.C. § 7547(a), EPA promulgated regulations for small nonroad SI engines. These regulations are codified at 40 C.F.R. Part 1054 (“Part 1054 Regulations”).

A. Certificates of Conformity

13. Small nonroad SI engines must meet certain emission standards. *See* 40 C.F.R. §§ 1054.101 and 1054.103.

14. To ensure that every new small nonroad SI engine sold in the United States meets these emission standards, EPA administers a certification program. Pursuant to this program, EPA issues “certificates of conformity.”

15. To obtain a certificate of conformity, a manufacturer must submit an application to EPA for each “engine family.” An engine family is a group of engines, selected by the manufacturer, with similar designs and subject to the same emission standards. *See* 40 C.F.R. § 1054.230.

16. The application must demonstrate that the engines covered by the certificate meet the applicable emission standards. *See* 42 U.S.C. §§ 7525(a) and 7547(d) and 40 C.F.R. §§ 1054.201 and 1054.205. The applicable emission standards for small nonroad SI engines are set

forth in the Part 1054 Regulations.

17. It is illegal to sell, offer for sale, introduce into commerce, deliver for introduction into commerce, or import into the United States a new nonroad engine unless it is covered by a certificate of conformity. 42 U.S.C. §§ 7522(a)(1) and 7547(d) and 40 C.F.R. §§ 1054.201, 1068.101(a)(1), and 1068.101(b)(5).

B. Applicable Emission Standards for Small Nonroad SI Engines

18. The Part 1054 Regulations contain exhaust emission standards for hydrocarbon plus oxides of nitrogen (“HC + NO_x”). *See* 40 C.F.R. § 1054.103(a) (specifying emission standards for handheld engines). The specific numeric standards for HC + NO_x are referred to herein as “default limits.”

19. As an alternative to meeting the default limits, a manufacturer may participate in the Averaging, Banking, and Trading (“ABT”) program. *See* 40 C.F.R. § 1054.103(b) and Part 1054, Subpart H.

20. The ABT program allows a manufacturer to choose a HC + NO_x limit for each of its engine families (subject to certain emission “caps”). *See* 40 C.F.R. § 1054.103(b). This limit – called a “Family Emission Limit” or “FEL” – serves as the applicable emission standard for the engine family. 40 C.F.R. § 1054.103(b).

21. A manufacturer generates emission credits when the FEL is less than the default limits. These credits can be used to offset emissions from engine families that have FELs higher than the default limits, banked for use in future years, or traded. The manufacturer must, at the end of the year, have a non-negative emission credit balance. *See* 40 C.F.R. §§ 1054.710 and 1054.730(c)(1).

22. Manufacturers who participate in the ABT program must submit to EPA an end-of-year (“EOY”) report within 90 days after the end of the model year and a final report within 270 days after the end of the model year. 40 C.F.R. § 1054.730(a). These reports must contain the number of emission credits generated or used for each engine family and the net balance of emission credits from all the manufacturer’s participating engine families. 40 C.F.R. § 1054.730(b) and (c).

23. Husqvarna participates in the ABT program.

C. Production Line Testing (“PLT”)

24. A manufacturer must demonstrate compliance with the applicable emission standards for each of its engine families by performing “production line testing” (“PLT”). *See* 40 C.F.R. §§ 1054.300 and 1054.301.

25. The PLT requirements for small nonroad SI engines are found in 40 C.F.R. Part 1054, Subpart D.

26. PLT involves randomly selecting engines from the end of the assembly line and testing those engines to demonstrate that the applicable emission standards are being met. 40 C.F.R. §§ 1054.310(b) and 1054.305(a).

27. Engines selected for testing must be assembled in a way that is representative of other engines in the engine family. 40 C.F.R. § 1054.305.

28. Once an engine is selected for testing, it may not be adjusted, repaired, prepared, or modified except under specific, limited circumstances. 40 C.F.R. § 1054.305(b).

29. The results from PLT are used to determine (a) the minimum number of engines from the engine family that must be tested and (b) whether the engine family, as a whole, meets

the applicable emission standards.

30. The minimum number of engines that must be tested is determined by the sample-size (sometimes called “N-value”) equation. The sample-size equation is set forth in 40 C.F.R. § 1054.310(c).

31. Whether an engine family, as a whole, meets the applicable emission standards is determined by the “Cumulative Sum” or “CumSum” equation. The CumSum equation is set forth in 40 C.F.R. § 1054.315(b).

D. PLT Reporting

32. A manufacturer is required to report certain information about its production line testing to EPA (referred to herein as a “PLT report”). 40 C.F.R. § 1054.345(a).

33. Each PLT report must contain the information set forth in 40 C.F.R. § 1054.345, including “the CumSum analysis required in § 1054.315 and the sample-size calculation required in § 1054.310 for each engine family.” 40 C.F.R. § 1054.345(a)(8).

34. In addition, each PLT report must be signed by an authorized representative with the statement “We submit this report under sections 208 and 213 of the Clean Air Act. Our production line testing conformed completely with the requirements of 40 C.F.R. part 1054. We have not changed production processes or quality-control procedures for test engines in a way that might affect emission controls. All the information in this report is true and accurate to the best of my knowledge. I know of the penalties for violating the Clean Air Act and the regulations.” 40 C.F.R. § 1054.345(c).

E. Enforcement Provisions

35. Section 213(d) of the Act, 42 U.S.C. § 7547(d), provides that regulations

applicable to nonroad engines shall be enforced in the same manner as the standards for new motor vehicles and new motor vehicle engines. The standards for new motor vehicles and new motor vehicle engines are enforced pursuant to Sections 203 (Prohibited Acts), 204 (Actions to Restrain Violations), and 205 (Civil Penalties) of the Act, 42 U.S.C. §§ 7522, 7523, and 7524.

36. Anyone who violates Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), is subject to a penalty of up to \$25,000 per engine. 42 U.S.C. § 7524(a). Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, the maximum penalty for violations occurring after January 12, 2009 and before November 3, 2015 is \$37,500 per engine. 40 C.F.R. § 19.4. *See also* 40 C.F.R. § 1068.101(a)(1).

37. Anyone who violates Section 203(a)(2) of the Act, 42 U.S.C. § 7522(a)(2), is subject to a penalty of up to \$25,000 per day of violation. 42 U.S.C. § 7524(a). Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended, the maximum penalty for violations occurring after January 12, 2009 and before November 3, 2015 is \$37,500 per day of violation. 40 C.F.R. § 19.4. *See also* 40 C.F.R. § 1068.101(a)(2).

GENERAL ALLEGATIONS

38. Husqvarna AB and Husqvarna Consumer Products are “persons” within the meaning of Section 302(e) of the Act, 42 U.S.C. § 7602(e).

39. Husqvarna AB and Husqvarna Consumer Products are “manufacturers” within the meaning of Section 216(1) of the Act, 42 U.S.C. § 7550(1).

40. Husqvarna AB and Husqvarna Consumer Products manufacture handheld SI engines that are intended for sale in the United States. These engines must be covered by a valid certificate of conformity issued by EPA and comply with the requirements of 40 C.F.R. Parts

1054 and 1068.

41. Husqvarna AB obtained a certificate of conformity for each engine family listed in Table A below (referred to herein as the “Subject Husqvarna AB Engine Families”):

Table A. Subject Husqvarna AB Engine Families

| | Emission Family | | | |
|------------------------|------------------------|--------------|--------------|--------------|
| Model Year 2011 | BHVXS.0224EA | BHVXS.0254ER | BHVXS.0254ES | BHVXS.0254FD |
| | BHVXS.0414AB | BHVXS.0454AE | BHVXS.0464AA | BHVXS.0505AA |
| | BHVXS.0505EB | BHVXS.0565AA | BHVXS.0605AA | BHVXS.0885AA |
| | BHVXS.0945AB | | | |
| Model Year 2012 | CHVXS.0224EA | CHVXS.0254ER | CHVXS.0254ES | CHVXS.0254FD |
| | CHVXS.0354ED | CHVXS.0394AB | CHVXS.0414AB | CHVXS.0454AE |
| | CHVXS.0464AA | CHVXS.0505AA | CHVXS.0505EB | CHVXS.0525EA |
| | CHVXS.0535AB | CHVXS.0565AA | CHVXS.0595EA | CHVXS.0605AA |
| | CHVXS.0605AB | CHVXS.0605AC | CHVXS.0685AA | CHVXS.0685AB |
| | CHVXS.0715AD | CHVXS.0715AE | CHVXS.0745AC | CHVXS.0745AD |
| | CHVXS.0885AA | CHVXS.0945AB | CHVXS.0945AC | |
| Model Year 2013 | DHVXS.0224EA | DHVXS.0254ER | DHVXS.0254ES | DHVXS.0254FD |
| | DHVXS.0354ED | DHVXS.0384AA | DHVXS.0414AB | DHVXS.0454AE |
| | DHVXS.0464AA | DHVXS.0505AA | DHVXS.0505AC | DHVXS.0505AD |
| | DHVXS.0535AB | DHVXS.0565AA | DHVXS.0605AA | DHVXS.0605AB |
| | DHVXS.0685AB | DHVXS.0715AD | DHVXS.0715AE | DHVXS.0745AB |
| | DHVXS.0885AA | DHVXS.0945AB | DHVXS.0945AC | DHVXS.1195AA |

42. Husqvarna Consumer Products obtained a certificate of conformity for each

engine family listed in Table B below (referred to herein as the “Subject Husqvarna Consumer Products Engine Families”):

Table B. Subject Husqvarna Consumer Products Engine Families

| | Emission Family | | | |
|----------------------------|------------------------|--------------|--------------|--------------|
| Model Year 2011 | BPWES.0254BD | BPWES.0254BM | BPWES.0254EY | BPWES.0254HB |
| | BPWES.0254TK | BPWES.0254TL | BPWES.0254TM | BPWES.0254TN |
| | BPWES.0284BM | BPWES.0284HA | BPWES.0284TC | BPWES.0304BF |
| | BPWES.0334TB | BPWES.0344CP | BPWES.0384CP | BPWES.0424CM |
| | BPWES.0424CN | BPWES.0464CY | BPWES.0505CA | |
| Model Year 2012 | CPWES.0254BD | CPWES.0254BM | CPWES.0254EY | CPWES.0254HB |
| | CPWES.0254TK | CPWES.0254TL | CPWES.0254TM | CPWES.0254TN |
| | CPWES.0284BM | CPWES.0284TC | CPWES.0284TF | CPWES.0304BF |
| | CPWES.0304TA | CPWES.0334TB | CPWES.0384CP | CPWES.0424CM |
| | CPWES.0424CN | CPWES.0505CA | | |
| Model Year 2013 | DPWES.0254BD | DPWES.0254BM | DPWES.0254EY | DPWES.0254HB |
| | DPWES.0254TC | DPWES.0254TK | DPWES.0254TN | DPWES.0254TO |
| | DPWES.0284BM | DPWES.0284BO | DPWES.0284HA | DPWES.0284TC |
| | DPWES.0284TF | DPWES.0334TC | DPWES.0384CP | DPWES.0424CM |
| | DPWES.0424CN | DPWES.0505CA | | |

FIRST CLAIM FOR RELIEF

(Violations by Husqvarna AB of PLT Reporting Requirements)

43. The foregoing paragraphs are re-alleged and incorporated herein by reference.
44. Husqvarna AB was required to perform production line testing, in accordance

with 40 C.F.R. Part 1054, Subpart D, to demonstrate compliance with the applicable emission standards for each of the Subject Husqvarna AB Engine Families.

45. Husqvarna AB was required to submit periodic PLT reports to EPA for each of the Subject Husqvarna AB Engine Families, containing the information specified in 40 C.F.R. § 1054.345(a). These reports were required to be accurate and complete. 40 C.F.R. § 1068.101(a)(2). *See also* 40 C.F.R. § 1054.345(c).

46. Husqvarna AB submitted one or more PLT reports to EPA for each of the Subject Husqvarna AB Engine Families. One or more of these reports was not accurate and/or complete, in violation of Section 203(a)(2)(A) of the Act, 42 U.S.C. § 7522(a)(2)(A), and 40 C.F.R. § 1054.345(c) and 40 C.F.R. § 1068.101(a)(2).

47. The erroneous PLT reports referenced in Paragraph 46 above improperly (a) used average emission test results in the sample-size and CumSum equations and/or (b) failed to include emission test results in the sample-size and CumSum equations.

48. Pursuant to Section 205(a) of the Act, 42 U.S.C. § 7524(a), and 40 C.F.R. § 1068.101(a)(2), Husqvarna AB is liable for civil penalties of up to \$37,500 per day of violation.

SECOND CLAIM FOR RELIEF

(Violations by Husqvarna Consumer Products of PLT Reporting Requirements)

49. The foregoing paragraphs are re-alleged and incorporated herein by reference.

50. Husqvarna Consumer Products was required to perform production line testing, in accordance with 40 C.F.R. Part 1054, Subpart D, to demonstrate compliance with the applicable emission standards for each of the Subject Husqvarna Consumer Products Engine Families.

51. Husqvarna Consumer Products was required to submit periodic PLT reports to EPA for each of the Subject Husqvarna Consumer Products Engine Families, containing the

information specified in 40 C.F.R. § 1054.345(a). These reports were required to be accurate and complete. 40 C.F.R. § 1068.101(a)(2). *See also* 40 C.F.R. § 1054.345(c).

52. Husqvarna Consumer Products submitted one or more PLT reports to EPA for each of the Subject Husqvarna Consumer Products Engine Families. One or more of these reports was not accurate and/or complete, in violation of Section 203(a)(2)(A) of the Act, 42 U.S.C. § 7522(a)(2)(A), and 40 C.F.R. § 1054.345(c) and 40 C.F.R. § 1068.101(a)(2).

53. The erroneous PLT reports referenced in Paragraph 52 above improperly (a) used average emission test results in the sample-size and CumSum equations and/or (b) failed to include emission test results in the sample-size and CumSum equations.

54. Pursuant to Section 205(a) of the Act, 42 U.S.C. § 7524(a), and 40 C.F.R. § 1068.101(a)(2), Husqvarna Consumer Products is liable for civil penalties of up to \$37,500 per day of violation.

THIRD CLAIM FOR RELIEF

(Violations by Husqvarna AB of ABT Reporting Requirements)

55. The foregoing paragraphs are re-alleged and incorporated herein by reference.

56. Husqvarna AB was required to submit ABT reports to EPA after the end of each model year. 40 C.F.R. § 1054.730.

57. These reports were required to be accurate and complete, 40 C.F.R. § 1068.101(a)(2), and include the number of emission credits generated or used for each engine family and the net emission credit balance across all participating engine families. *See* 40 C.F.R. § 1054.730(b)(7) and (c).

58. Husqvarna AB submitted to EPA the following ABT reports:

| File Name | Model Year | Date Submitted |
|---------------------------------|------------|--------------------|
| CBI_BHVXS_COMMON_CR9FABT.xls | 2011 | September 26, 2012 |
| CBI_CHVXS_AB_T_Final Report.xls | 2012 | September 25, 2013 |
| ABT 2013 Final Report.xls | 2013 | September 16, 2014 |

59. Each of the ABT reports referenced in Paragraph 58 above overstated the number of emission credits generated for one of more of the Subject Husqvarna AB Engine Families and/or understated the number of emission credits used, and, thus, overstated Husqvarna AB's net balance of emission credits for its participating engine families, in violation of Section 203(a)(2)(A) of the Act, 42 U.S.C. § 7522(a)(2)(A), and 40 C.F.R. § 1054.345(c) and 40 C.F.R. § 1068.101(a)(2).

60. Pursuant to Section 205(a) of the Act, 42 U.S.C. § 7524(a), and 40 C.F.R. § 1068.101(a)(2), Husqvarna AB is liable for civil penalties of up to \$37,500 per day of violation.

FOURTH CLAIM FOR RELIEF

(Violations by Husqvarna Consumer Products of ABT Reporting Requirements)

61. The foregoing paragraphs are re-alleged and incorporated herein by reference.

62. Husqvarna Consumer Products was required to submit ABT reports to EPA after the end of each model year. 40 C.F.R. § 1054.730.

63. These reports were required to be accurate and complete, 40 C.F.R. § 1068.101(a)(2), and include the number of emission credits generated or used for each engine family and the net emission credit balance across all participating engine families. *See* 40 C.F.R. § 1054.730(b)(7) and (c).

64. Husqvarna Consumer Products submitted to EPA the following ABT reports:

| File Name | Model Year | Date Submitted |
|--|------------|--------------------|
| Husqvarna Outdoor Products Inc 2011 Final Report.xls | 2011 | September 18, 2012 |
| PWE 2012 ABT Final Report.xls | 2012 | September 24, 2013 |
| PWE 2013 ABT Final Report.xls | 2013 | September 29, 2014 |

65. Each of the ABT reports referenced in Paragraph 64 above overstated the number of emission credits generated for one of more of the Subject Husqvarna Consumer Products Engine Families and/or understated the number of emission credits used, and, thus, overstated Husqvarna Consumer Products' net balance of emission credits for its participating engine families, in violation of Section 203(a)(2)(A) of the Act, 42 U.S.C. § 7522(a)(2)(A), and 40 C.F.R. § 1054.345(c) and 40 C.F.R. § 1068.101(a)(2).

66. Pursuant to Section 205(a) of the Act, 42 U.S.C. § 7524(a), and 40 C.F.R. § 1068.101(a)(2), Husqvarna Consumer Products is liable for civil penalties of up to \$37,500 per day of violation.

FIFTH CLAIM FOR RELIEF

(Violations by Husqvarna AB of Section 203(a)(1) of the Act: Introducing into Commerce Engines Not Covered by a Certificate of Conformity)

67. The foregoing paragraphs are re-alleged and incorporated herein by reference.

68. In 2012 and 2013, Husqvarna AB sold, offered for sale, introduced into commerce, delivered for introduction into commerce, or imported into the United States thousands of new chainsaw engines.

69. Approximately 1,235 of these new chainsaw engines from engine family CHVXS.0565AB were not covered by a certificate of conformity, in violation of Section 203(a)(1) of the act, 42 U.S.C. § 7522(a)(1).

70. Pursuant to Section 205(a) of the Act, 42 U.S.C. § 7524(a), and 40 C.F.R. § 1068.101(a)(1), Husqvarna AB is liable for civil penalties of up to \$37,500 for each new engine not covered by a certificate of conformity.

PRAYER FOR RELIEF

WHEREFORE, the United States requests that this Court:

- A. Assess civil penalties against Husqvarna AB for each violation of the applicable provisions of the Act and regulations, as permitted by law;
- B. Assess civil penalties against Husqvarna Consumer Products for each violation of the applicable provisions of the Act and regulations, as permitted by law;
- C. Award Plaintiff its costs of this action; and
- D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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