

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter "Agreement") is entered into between the STATE OF CALIFORNIA AIR RESOURCES BOARD (hereinafter "ARB") 1001 I Street, Sacramento, California 95814, and Husqvarna Professional Products, Inc. (hereinafter "Husqvarna") with its principal place of business at 9335 Harris Comers Parkway Suite 500, Charlotte, North Carolina 28269.

I. RECITALS

- (1) California Code of Regulations, title 13, section 2400(a)(2) states, "Every new small off-road engine that is manufactured for sale, sold, or offered for sale in California, or that is introduced, delivered or imported into California for introduction into commerce, and that is subject to any of the standards prescribed in this article must be covered by an Executive Order, issued pursuant to this article."
- (2) California Code of Regulations, title 13, section 2401(a)(39) defines "small off-road engine" as "any engine that produces a gross horsepower less than 25 horsepower (at or below 19 kilowatts for 2005 and later model year), or is designed (e.g., through fuel feed, valve timing, etc.) to produce less than 25 horsepower (at or below 19 kilowatts for 2005 and later model year), that is not used to propel a licensed on-road motor vehicle, an off-road motorcycle, an all-terrain vehicle, a marine vessel, a snowmobile, a model airplane, a model car, or a model boat... Uses for small off-road engines include, but are not limited to, applications such as lawn mowers, weed trimmers, chain saws, golf carts, specialty vehicles, generators and pumps."
- (3) California Code of Regulations, title 13, section 2753(a) states, "evaporative emission control systems must be certified annually to the performance-based or system design standards set out in section 2754 through 2757 by the Air Resources board. An Executive Order of Certification for such engines or equipment must be obtained prior to the sale or lease, or the offering for sale or lease, for use or operation in California of the delivery or importation for introduction into commerce in California."
- (4) California Health and Safety Code section 43016 states, in pertinent part, "(a) (1) A person who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, and for which violation there is not provided in this part any other specific civil penalty or fine, shall be subject to a civil penalty not to exceed thirty-seven thousand five hundred dollars (\$37,500) for each such action pursuant to this part. Violations involving portable fuel containers or small off-road engines shall be subject to a civil penalty not to exceed five hundred dollars (\$500) per unit. For a manufacturer or distributor who violates any provision of this part, or any order, rule, or regulation of the state board adopted pursuant to this part, the payment of the penalty and making

the product compliant with applicable emission control laws may be required by the executive officer of the state board as conditions for the continued sale in this state of those products regulated by the state board pursuant to this division...

(b) Any penalty collected pursuant to this section shall be deposited in the Air Pollution Control Fund.”

- (5) Husqvarna manufacturers a variety of lawn and garden products that utilize small off-road engines. Some of those products are offered in both California compliant and US EPA 49-state compliant configurations.
- (6) Husqvarna unintentionally shipped US EPA 49-state compliant (non-California compliant) model YT42LS lawn mowers into its California distribution chain in mid-January 2017.
- (7) Husqvarna discovered the shipping and distribution error and immediately initiated an internal investigation, placed a stop shipment order and sales hold, and a voluntary California inventory buyback.
- (8) Husqvarna determined the inadvertent shipment of 29 non-California compliant YT42LS lawn mowers into California and concluded its internal investigation and self-initiated corrective actions with a comprehensive voluntary self-disclosure to ARB.
- (9) Husqvarna fully cooperated with ARB in the investigation and resolution of this matter, including all communication, disclosure, and remediation.

II. TERMS AND RELEASE

In consideration of ARB not filing a legal action against Husqvarna for the alleged violations referred to above, the ARB and Husqvarna agree as follows:

- (1) As a condition of this Agreement, Husqvarna shall pay the total sum of seven thousand three hundred and twelve dollars and fifty cents (\$7,312.50) as a penalty to the Air Resources Board upon execution of this Settlement Agreement. Payment shall be made by certified check payable to the **California Air Pollution Control Fund**.

Please send the signed Settlement Agreement and any future mailings or documents required per the terms of this Settlement Agreement to:

**Mr. Marco Banaga
Air Resources Board, Enforcement Division
9480 Telstar Avenue, Suite 4
El Monte, CA 91731**

Please send the payment along with the attached “Settlement Agreement Payment Transmittal Form” (Attachment A) to:

**California Air Resources Board
Accounting Office
P.O. Box 1436
Sacramento, California 95812-1436**

- (2) If the Attorney General files a civil action to enforce this settlement agreement, Husqvarna shall pay all costs of investigating and prosecuting the action, including expert fees, reasonable attorney’s fees and costs.
- (3) Husqvarna represents that it understands the legal requirements applicable to selling engines in California and agrees that it will not introduce products into commerce unless ARB certification has first been obtained. Husqvarna agrees that it will not manufacture, acquire, offer for sale or sell new, non-California certified engines for use or registration in California and Husqvarna promises that any engines in its possession not certified to California emission standards will be clearly marked: “Not for sale in CA”.
- (4) This Agreement shall apply to and be binding upon Husqvarna and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, dealers, distributors, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
- (5) This Agreement constitutes the entire agreement and understanding between ARB and Husqvarna concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between ARB and Husqvarna concerning these claims.
- (6) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
- (7) Advice of Counsel. Each party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
- (8) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California’s choice of law rules.

- (9) Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (10) Waiver. The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement. The rights and remedies granted all Parties herein are cumulative and the election of one right or remedy by a Party shall not constitute a waiver of such Party's right to assert all other legal remedies available under this Agreement or otherwise provided by law.
- (11) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either party on the ground that said party drafted it.
- (12) This Agreement may be executed in multiple counterparts and on facsimile copies with the same force and effect as an executed original of the same.
- (13) **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, statutes of 2010, Health and Safety Code section 39617) requires the ARB to provide information on the basis for the penalties it seeks. This required information, which is provided throughout this settlement agreement, is summarized here.

The manner in which the penalty amount was determined, including a per unit or per vehicle penalty.

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in Health and Safety Code section 43024.

The per unit penalty in this case is a maximum of \$500 per unit per strict liability violation. The penalty obtained in this case is approximately \$252 per unit for 29 units. The penalty amount reduction reflects Husqvarna's immediate corrective actions taken, exceptionally diligent efforts to comply promptly, full cooperation with the investigation, unintentional nature of the violations, and Husqvarna's voluntary self-disclosure.

The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.


ARB alleges that the penalty provision being applied in this case, Health and Safety Code section 43016, is appropriate because Husqvarna allegedly sold small off-road engines not certified by ARB.

Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.

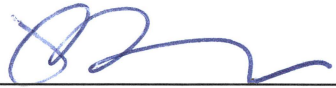
The provisions cited above do not prohibit emissions above a specified level. It is not practicable to quantify these emissions, because the information necessary to do so, such as emission rates and time of use, is not available. However, since the small off-road engines involved in this case are illegal for use or sale in California, all of the emissions attributable to them are illegal and excess as well.

- (14) Husqvarna acknowledges that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at Health and Safety Code section 43024, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specified level.
- (15) Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar case negotiation, and the potential costs and risk associated with litigating these particular violations. The penalty reflects violations extending over a certain period of time, considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per unit basis.
- (16) The penalty in this case was based in part on confidential business information provided by Husqvarna that is not retained by ARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between ARB and Husqvarna that ARB does not retain in the ordinary course of business either. The penalty also reflects ARB's assessment of the relative strength of its case against Husqvarna, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Husqvarna may have secured from its actions.
- (17) Now therefore, in consideration of the payment on behalf of Husqvarna to the Air Pollution Control Fund, ARB hereby releases Husqvarna and their principals, officers, agents, predecessors and successors from any and all claims, ARB may have or have in the future based on the circumstances described in paragraphs (1) through (9) of the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

California Air Resources Board

By: 
Name: Dr. Todd P. Sax
Title: Chief, Enforcement Division
Date: 6/15/17

Husqvarna Professional Products, Inc.

By: 
Name: Jill Jacobson
Title: General Counsel, Americas
Date: 05/19/2017

Jay Blase
Gary Blase
Assistant Secretary
05/19/2017