

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

-----)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
HYUNDAI CONSTRUCTION EQUIPMENT)
AMERICAS, INC.)
)
and)
)
HYUNDAI HEAVY INDUSTRIES CO., LTD.)
)
Defendants.)
-----)

Civil No.: 1:19-CV-724

Consent Decree

CONSENT DECREE

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I. INTRODUCTION

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint in this action on March 15, 2019, alleging that Defendants, Hyundai Construction Equipment Americas, Inc. and Hyundai Heavy Industries Co., Ltd., violated Section 203(a)(1) of the Clean Air Act (“Act”), 42 U.S.C. § 7522(a)(1).

The Complaint against Defendants alleges that they violated the Act by importing, selling, offering for sale, and/or introducing into commerce certain nonroad compression-ignition engines in heavy construction equipment that were neither covered by the certificates of conformity required under Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1), nor exempt from that certification requirement.

Specifically, the Complaint alleges that Defendants pre-purchased, or “stockpiled,” engines meeting older emissions standards in the years before those standards changed for the purpose of being able to continue to manufacture, and to import, offer for sale, sell, and/or introduce or cause to be introduced into commerce in the United States, equipment containing those engines while evading the newly applicable, more stringent emissions standards, and that they then imported, sold, offered for sale, and/or introduced into commerce equipment containing these uncertified, non-compliant engines in violation of the Act. In addition, the Complaint alleges that additional units of equipment that Defendants imported, sold, offered for sale, and/or introduced or delivered into commerce failed to meet the Transition Program for Equipment Manufacturers (TPEM) program regulations, and were therefore uncertified.

II. RECITALS

A. The United States believes it could establish, if this case were litigated rather than resolved via settlement, that the Defendants committed at least 2,269 violations of the Act as

alleged in the Complaint.

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

C. In April of 2017, Defendant Hyundai Heavy Industries Co., Ltd. (“HHI”) underwent a corporate reorganization. As a result, the division of HHI responsible for the manufacture, distribution, and importation of the heavy construction equipment identified in the Complaint was spun off into a new corporate entity organized as Hyundai Construction Equipment Co., Ltd. (“HCE”).

D. In October of 2017, HCE and Defendant Hyundai Construction Equipment Americas (“HCEA”) implemented an Environmental Compliance Plan (updated as of September 2018), with the intention to ensure their future compliance with environmental regulations governing nonroad equipment manufacturers and importers in the United States.

E. 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 between 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 III, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

III. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section(s) 204 and 205 of the Act, 42 U.S.C. §§ 7523 and 7524, and over the Parties. Venue lies in this District pursuant to Section 205 of the Act, 42 U.S.C. § 7524, and 28 U.S.C. §§ 1391(b)(1), (c)(2) and (c)(3) and 1395(a), because Defendant

HHI is a foreign corporation. For purposes of this Decree, or any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

2. For purposes of this Consent Decree, Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 203(a)(1) of the Act, 42 U.S.C. § 7522(a)(1).

IV. 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. Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this 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.

V. DEFINITIONS

6. Terms used in this Consent decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Complaint” shall mean the complaint filed by the United States in this action;

“Consent Decree” or “Decree” shall mean this Decree;

“Day” shall mean 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;

“Defendants” shall mean Hyundai Construction Equipment Americas, Inc. and Hyundai Heavy Industries Co., Ltd.;

“EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies;

“Effective Date” shall have the definition provided in Section XI.

“Paragraph” shall mean a portion of this Decree identified by an arabic numeral;

“Parties” shall mean the United States and Defendants;

“Section” shall mean a portion of this Decree identified by a roman numeral;

“United States” shall mean the United States of America, acting on behalf of EPA;

VI. CIVIL PENALTY

7. Within 30 Days after the Effective Date, Defendants shall pay the sum of \$47,000,000 as a civil penalty, together with interest accruing from the date on which the United States files a motion to enter this Consent Decree, at the rate specified in 28 U.S.C. § 1961 as of the date the United States files a motion to enter this Consent Decree.

8. Defendants shall pay the civil penalty due 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 the Effective Date. 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 Consent Decree. The FLU will provide the payment instructions to counsel for Defendants listed in Paragraph 26, on behalf of Defendants. Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to the United States and EPA in accordance with Section X (Notices).

At the time of payment, Defendants shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to the United States via email or regular mail in accordance with Section X. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *United States v. Hyundai Construction Equipment Americas, Inc., et al.*, and shall reference the civil action number, CDCS Number, and DOJ case number 90-5-2-1-11819.

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

VII. STIPULATED PENALTIES

10. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below. 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.

11. Late Payment of Civil Penalty. If Defendants fail to pay the civil penalty required to be paid under Section VI (Civil Penalty) when due, Defendants shall pay a stipulated penalty of \$10,000 per Day for each Day that the payment is late.

12. Stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

13. Defendants shall pay any stipulated penalty within 30 Days of receiving the United States' written demand.

14. The United States may in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

15. Defendants shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 8, 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.

16. If Defendants fail to pay stipulated penalties according to the terms of this Consent Decree, Defendants 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. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendants' failure to pay any stipulated penalties.

17. The payment of penalties and interest, if any, shall not alter in any way Defendants' obligation to complete the performance of the requirements of this Consent Decree.

18. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section VIII (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendants' violation of this Decree or applicable

law, including, but not limited to, an action against Defendants for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

VIII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

19. This Consent Decree resolves the civil claims of the United States for all of the violations alleged in the Complaint filed in this action for the time period identified therein.

20. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree. 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 19.

21. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to the Defendants' violations, 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 19.

22. 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 complete 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, 42 U.S.C. § 7401, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

23. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendants, except as otherwise provided by law.

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

IX. COSTS

25. 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.

X. NOTICES

26. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-2-1-11819

As to the United States by mail: 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 # 90-5-2-1-11819

As to EPA: Director, Air Enforcement Division
1200 Pennsylvania Ave., N.W.
William J. Clinton Federal Building, South
Room 2117C Mailcode 2242A
Washington, DC 20460
(202) 564-8894
palermo.mark@epa.gov

As to Defendants: Douglas S. Arnold
One Atlantic Center
1201 West Peachtree Street
Suite 4900
Atlanta, GA 30309-3424
(404) 881-7637
doug.arnold@alston.com

Bernard Taylor
One Atlantic Center
1201 West Peachtree Street
Suite 4900
Atlanta, GA 30309-3424
(404) 881-7288
bernard.taylor@alston.com

27. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

28. 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.

XI. EFFECTIVE DATE

29. 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.

XII. RETENTION OF JURISDICTION

30. 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 Section XIII, or effectuating or enforcing compliance with the terms of this Decree.

XIII. MODIFICATION

31. The terms of this Consent Decree 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.

32. In any dispute concerning modification of this Decree, 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). The Defendants' financial inability to perform any obligation under this Consent Decree shall not, without the consent of the United States, be a valid basis for modification of the Consent Decree.

XIV. TERMINATION

33. After Defendants have paid the civil penalty and any accrued interest and stipulated penalties as required by this Consent Decree, Defendants may serve upon the United States a Request for Termination, stating that Defendants have satisfied those requirements, together with all necessary supporting documentation.

34. Following receipt by the United States of Defendants' Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendants have satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

35. If the United States does not agree that the Decree may be terminated, Defendants may file a motion to terminate the Consent Decree. However, Defendants shall not file such a motion until 60 days after service of its Request for Termination.

XV. SIGNATORIES/SERVICE

36. 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 Consent Decree and to execute and legally bind the Party he or she represents to this document.

37. 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. Defendants need not file an answer or responsive pleading to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

38. 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.

XVI. INTEGRATION

39. 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. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVII. FINAL JUDGMENT

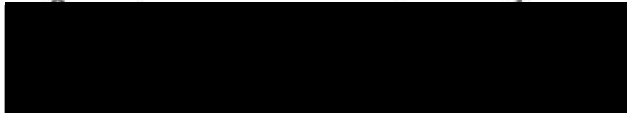
40. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants.



DABNEY L. FRIEDRICH
UNITED STATES DISTRICT JUDGE

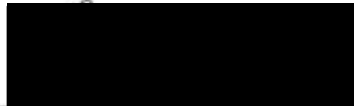
FOR PLAINTIFF THE UNITED STATES OF AMERICA:

9/18/19
Date




A handwritten signature in blue ink, appearing to read "JB Clark", written over the typed name.


JEFFREY BOSSERT CLARK
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice





ERIC D. ALBERT
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611

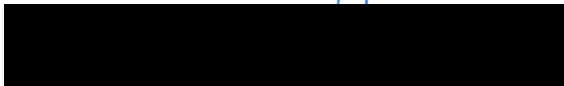
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 9/16/19 
SUSAN PARKER BODINE
Assistant Administrator
Office of Enforcement Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Date: 9/13/19 
ROSEMARIE A. KELLEY
Director, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, DC 20460

Date: 9/12/19 
PHILLIP A. BROOKS
Director, Air Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, DC 20460

Date: 9/9/19 
MARK J. PALERMO
Air Enforcement Division, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, DC 20460

Date: 9/9/19 
PROVIDENCE SPINA
Air Enforcement Division, Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, DC 20460

FOR DEFENDANT HYUNDAI CONSTRUCTION EQUIPMENT AMERICAS, INC.:

9/9/2019
Date



M.S. KANG, President
Hyundai Construction Equipment Americas, Inc.

FOR DEFENDANT HYUNDAI HEAVY INDUSTRIES, CO. LTD.:



9/9/2019

Date

K.Y. YONG, President
Hyundai Construction Equipment, Ltd.
(as successor to the Heavy Equipment Division of Hyundai Heavy Industries Co., Ltd.)