BEFORE THE
U.S. DEPARTMENT OF ENERGY
WASHINGTON, D.C. 20585

In the Matter of:	)	
	)	Case Number: 2011-SCE-1624
AeroSys, Inc.	)	
Respondent	)	
	)	

ORDER

By authority of the Secretary, U.S. Department of Energy:

1. In this Order, I adopt the attached Compromise Agreement entered into between the U.S. Department of Energy ("DOE") and AeroSys, Inc. ("Respondent"). The Compromise Agreement resolves the case initiated to pursue a civil penalty for violations of DOE regulatory requirements at 10 C.F.R. §§ 429.12, 429.16, and 430.32(c).

2. The DOE and Respondent have negotiated the terms of the Compromise Agreement that resolves this matter. A copy of the Compromise Agreement is attached hereto and incorporated by reference.

3. After reviewing the terms of the Compromise Agreement and evaluating the facts before me, I find that the public interest would be served by adopting the Compromise Agreement, which completes the adjudication of the case.

4. Based on the information in the case file and Respondent's admission of violation in the Compromise Agreement, I find that Respondent committed Prohibited Acts as described at 10 C.F.R. § 429.102(a). *See* 42 U.S.C. § 6302.

5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, **I HEREBY ASSESS** a civil penalty of $100,000, to be paid, with interest, as set forth in the Compromise Agreement, **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

Eric J. Fygi
Deputy General Counsel

12/20/13
Date

BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585

In the Matter of:	)	
	)	Case Number: 2011-SCE-1624
AeroSys, Inc.,	)	
Respondent	)	
	)	

COMPROMISE AGREEMENT

The U.S. Department of Energy ("DOE") Office of the General Counsel initiated this action against AeroSys, Inc. ("Respondent") pursuant to 10 C.F.R. § 429.122 by Amended Notice of Proposed Civil Penalty, issued September 30, 2013, alleging that Respondent had knowingly (1) distributed units of basic models of covered products after certifying to DOE that such models had been discontinued and that Respondent would no longer manufacture or distribute those models; (2) distributed basic models of covered products in U.S. commerce without first submitting the required certification reports; (3) submitted certification reports without the required underlying test data; (4) distributed units of basic models after being notified by DOE that the models had been found not to comply with applicable energy conservation standards; and (5) manufactured and distributed basic models that were not compliant with the applicable energy conservation standard. Respondent on behalf of itself and any parent, subsidiary, division or other related entity and DOE, by their authorized representatives, hereby enter into this Compromise Agreement for the purpose of settling this civil penalty action.

I. DEFINITIONS

For the purposes of this Compromise Agreement, the following definitions shall apply:

(a) "Act" means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291 *et seq.*

(b) "Adopting Order" means an Order of the General Counsel adopting the terms of this Compromise Agreement without change, addition, deletion, or modification.

(c) "DOE" means the U.S. Department of Energy.

(d) "DOE Rules" means DOE's energy conservation regulations found in Title 10, Parts 429 and 430 of the Code of Federal Regulations.

(e) "Matters Addressed" means all violations of the Act by Respondent related to the actions, occurrences, or events identified or alleged in the Amended Notice of Proposed Civil Penalty issued by DOE to Respondent on September 30, 2013, including all violations identified in

such Notice, and that were fairly disclosed to DOE over the course of DOE's Investigation of case number 2011-SCE-1624.

(f) "Notice" means the Amended Notice of Proposed Civil Penalty issued by DOE to Respondent on September 30, 2013, and captioned as case number 2011-SCE-1624.

(g) "Parties" means DOE and Respondent.

(h) "Respondent" means AeroSys, Inc.

II. RECITALS

WHEREAS, DOE, pursuant to the Act, is responsible for the promulgation and enforcement of the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for space-constrained central air conditioners and central air conditioning heat pumps at 10 C.F.R. § 430.32(c)(2) and requires manufacturers to submit information and reports certifying compliance with those standards at 10 C.F.R. § 429.12; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, & 6303 and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil monetary penalties for actions prohibited by the Act, including failing to make reports or provide other required information; and

WHEREAS, DOE, on September 30, 2013, initiated an action to assess a civil penalty for knowingly (1) distributing units of basic models of covered products after certifying to DOE that such models had been discontinued and that Respondent would no longer manufacture or distribute those models; (2) distributing basic models of covered products in U.S. commerce without first submitting the required certification reports; (3) submitting certification reports without the required underlying test data; (4) distributing units of basic models after being notified by DOE that the models had been found not to comply with applicable energy conservation standards; and (5) manufacturing and distributing basic models that were not compliant with the applicable energy conservation standard; and

WHEREAS, Respondent admits:

1. Respondent manufactured and distributed various basic models of space-constrained central air conditioners and air conditioning heat pumps;

2. Respondent knowingly distributed units of basic models of covered products after certifying to DOE that such models had been discontinued and that Respondent would no longer manufacture or distribute those models;

3. Respondent knowingly distributed basic models of covered products in U.S. commerce without first submitting the required certification reports;

4. Respondent knowingly submitted certification reports without the required underlying test data;

5. Respondent knowingly distributed units of basic models after being notified by DOE that the models had been found not to comply with applicable energy conservation standards;

6. Respondent knowingly manufactured and distributed basic models that were not compliant with the applicable energy conservation standard.

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, this Compromise Agreement properly balances the policies recognized in the Energy Policy and Conservation Act and is the appropriate way to resolve this matter;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

III. TERMS OF THE AGREEMENT

1. Adopting Order. The Parties agree that the provisions of this Compromise Agreement shall be subject to final approval by the General Counsel by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

2. Obligations of Respondent.

    a. Respondent agrees to pay the sum of $100,000, plus one percent interest as described below, over the course of three years, as full satisfaction of the civil penalty proposed in the Notice. Specifically, assuming interest accrues beginning 30 days after issuance of the Adoption Order adopting this Agreement, Respondent agrees to pay $100,000 plus accrued interest in nine payments according to the following schedule:

        i. Payment 1: $15,000 plus 1% accrued interest on the total outstanding obligation no later than March 31, 2014;

        ii. Payment 2: $15,000 plus 1% accrued interest on the total outstanding obligation no later than April 30, 2014;

        iii. Payment 3: $15,000 plus 1% accrued interest on the total outstanding obligation no later than September 30, 2014;

        iv. Payment 4: $15,000 plus 1% accrued interest on the total outstanding obligation no later than March 31, 2015;

        v. Payment 5: $10,000 plus 1% accrued interest on the total outstanding obligation no later than April 30, 2015;

        vi. Payment 6: $10,000 plus 1% accrued interest on the total outstanding obligation no later than September 30, 2015;

        vii. Payment 7: $10,000 plus 1% accrued interest on the total outstanding obligation no later than March 31, 2016;

viii. Payment 8: $5,000 plus 1% accrued interest on the total outstanding obligation no later than April 30, 2016; and

ix. Payment 9: $5,000 plus 1% accrued interest on the total outstanding obligation no later than September 30, 2016.

b. Respondent reaffirms its obligation to abide by the terms of (1) the Notice of Noncompliance Determination, issued on December 11, 2012, captioned under case number 2011-SCE-1624; and (2) the Notices of Noncompliance Determination, issued on March 25 and April 10, 2010, captioned under case number 2010-SE-0302.

3. **Obligations of DOE.**

a. In express reliance on the covenants and representations in this Compromise Agreement and to avoid further expenditure of public resources, DOE agrees to accept Respondent's payment and performance pursuant to paragraph III.2.a above in full satisfaction of the penalty authorized by the Act.

b. DOE agrees promptly to issue an Adopting Order adopting this Agreement.

c. Upon issuance of the Adopting Order, DOE agrees to provide Respondent with a payment schedule based on (1) interest accrual beginning 30 days after issuance of the Adopting Order; (2) a 1% simple interest rate on the total outstanding obligation; and (3) the payment schedule set forth in paragraph III.2.a above.

d. DOE agrees to terminate the enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with paragraph III.2 above.

4. **Jurisdiction and Governing Law.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy efficiency and to enter into its own agreements interpreting and applying those rules. The Parties agree that DOE has jurisdiction over Respondent and primary jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.

5. **Effective Date.** The Parties agree that this Compromise Agreement shall become effective on the date on which the General Counsel issues the Adopting Order. Upon release, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel. Any violation of the Adopting Order or of the terms of this Compromise Agreement shall constitute a separate violation of an agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.

6. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement or the Notice associated with this case, including any right to judicial review that may be available to the Respondent. If either Party (or the United States on behalf of DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither Respondent nor DOE shall contest the validity of the Compromise Agreement, and Respondent waives any statutory right to a trial *de novo*. Respondent

hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the Matters Addressed in this Compromise Agreement.

7. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties with respect to all Matters Addressed.

8. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties, whether oral or written.

9. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.

10. **Acceleration.** In the event that Respondent fails to make any payment of principal and/or interest in strict accordance with the payment schedule provided to Respondent by DOE pursuant to section 3.c above, time being of the essence hereof, DOE may, without notice or demand, declare the entire outstanding principal and accrued interest immediately due and payable.

11. **Severability.** If any provision or provisions of this Agreement shall be held to be invalid, illegal, void, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.

13. **Limitations.** Nothing in this agreement binds any other agency of the United States government beyond DOE.

14. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile or electronic mail), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

15. **No Admission.** Except for the purposes of this Compromise Agreement, Respondent does not admit any issue of fact or law alleged by DOE or any liability under the Act. Except in an action to enforce the terms of the Compromise Agreement, this Compromise Agreement shall not be admissible in any administrative or judicial proceeding. Nothing in this Compromise Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to the Compromise Agreement.

Laura L. Barhydt
Assistant General Counsel for
Enforcement
U.S. Department of Energy

December 19, 2013
Date

(Signature)
Typed Name: James Garrett
Title: President
Company Name: AeroSys, Inc

December 19, 2013
Date

Payment Schedule

Pursuant to the Compromise Agreement entered into between AeroSys, Inc. ("AeroSys") and the United States Department of Energy ("DOE") on December 19, 2013, to resolve DOE case number 2011-SCE-1624, the following is the schedule of payments AeroSys shall make to DOE on the dates indicated and in a manner consistent with the attached Payment Instructions.

DOE Case # 2011-SCE-1624 Civil Penalty Payment Schedule			
Payment Date	**Payment Due**	**Accrued Interest**	**Total Payment**
March 31, 2014	$15,000	$194.52	$15,194.52
April 30, 2014	$15,000	$235.21	$15,235.21
September 30, 2014	$15,000	$487.12	$15,487.12
March 31, 2015	$15,000	$656.99	$15,656.99
April 30, 2015	$10,000	$510.68	$10,510.68
September 30, 2015	$10,000	$508.77	$10,508.77
March 31, 2016	$10,000	$439.45	$10,439.45
April 30, 2016	$5,000	$227.95	$5,227.95
September 30, 2016	$5,000	$134.93	$5,134.93