

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

In the Matter of:)
)
)
Sanden Vendo America Inc.,) Case Number: 2014-SE-52002
Respondent)
)
)

ORDER

By the General Counsel, 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 Sanden Vendo America Inc. (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distribution in commerce in the U.S. of units of a basic model of a covered product that failed to meet the energy conservation requirements as described at 10 C.F.R. § 431.296.

2. DOE and Respondent have negotiated the terms of the Compromise Agreement that resolve 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)(6). *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 \$6,200 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

/signed/

5/27/14

Steven P. Croley
General Counsel

Date

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U.S. DEPARTMENT OF ENERGY
Washington, D.C. 20585**

In the Matter of:)	
)	
)	Case Number: 2014-SE-52002
Sanden Vendo America Inc.,)	
Respondent)	
)	

COMPROMISE AGREEMENT

The U.S. Department of Energy (“DOE”) Office of the General Counsel initiated this action against Sanden Vendo America Inc. (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty (“NPCP”). In the NPCP, DOE alleges that that Respondent distributed in commerce in the U.S. refrigerated bottled or canned beverage vending machine model Vue 30 (with 1128127 cassette refrigeration deck), which DOE has determined does not comply with applicable energy conservation standards. 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 431 of the Code of Federal Regulations.
- (e) “Notice” means the Notice of Proposed Civil Penalty issued by DOE to Respondent on April 30, 2014, and captioned as case number 2014-SE-52002.
- (f) “Parties” means DOE and Respondent.
- (g) “Respondent” means Sanden Vendo America Inc.

II. RECITALS

WHEREAS, DOE, pursuant to 42 U.S.C. § 6291 *et seq.*, is responsible for the promulgation and enforcement of the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has established procedures for testing for enforcement of energy conservation standards for covered products and covered equipment at 10 C.F.R. § 429.110; 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 distribution in commerce in the U.S. of covered equipment that is not in conformity with an applicable energy conservation standard; and

WHEREAS, DOE, on April 30, 2014, initiated an action to assess a civil penalty for Respondent's distribution in commerce of one (1) model of refrigerated bottled or canned beverage vending machine that is not in conformity with an applicable energy conservation standard; and

WHEREAS, Respondent admits:

1. Respondent manufactures and distributes, and has manufactured and distributed, refrigerated bottled or canned beverage vending machines, including, but not limited, to model Vue 30 with varying cassette refrigeration decks; and
2. Testing of the model Vue 30 (with 1128127 cassette refrigeration deck) found that it operates at an energy consumption rate greater than the 4.1 kWh/day standard required by 10 C.F.R. § 431.296 for units of this basic model manufactured on or after August 31, 2012;
3. Respondent has manufactured and distributed in commerce in the United States approximately 31 units of model Vue 30 (with 1128127 cassette refrigeration deck) since August 31, 2012; and
4. Respondent has ceased manufacturing and distributing in commerce in the United States model Vue 30 (with 1128127 cassette refrigeration deck).

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.** Respondent agrees to pay the sum of \$6,200 (six thousand two hundred dollars) within thirty (30) days of the issuance of an Adopting Order.
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 pursuant to Paragraph 2 above in full satisfaction of the penalty authorized by the Act.
 - b. DOE agrees promptly to issue an Adopting Order adopting this Agreement.
 - c. DOE agrees to terminate the enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with Paragraph 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. This Compromise Agreement resolves only the violations alleged in the Notice.
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. **Invalidity.** In the event that this Compromise Agreement in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.
11. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
12. **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.

/signed/

/signed/

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

Larry E. Hieb
 Vice President of Engineering
 Sanden Vendo America Inc.

May 27, 2014
 Date

5/23/2014
 Date