

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

In the Matter of:)

Mueller Streamline Co.,)
Respondent)

Case Number: 2011-SW-2802

December 1, 2011

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 Mueller Streamline Co. (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for violations of Federal water conservation requirements at 10 C.F.R. § 430.32(o) and 42 U.S.C. § 6295(j).

2. The 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 Acts¹ by failing to comply with 10 C.F.R. § 430.32(o) and 42 U.S.C. § 6295(j).

5. Accordingly, pursuant to Section 333 of the Energy Policy and Conservation Act of 1975, as amended,² **I HEREBY ASSESS** a civil penalty of \$25,000 and the Compromise Agreement attached to this Order **IS ADOPTED**.

U.S. DEPARTMENT OF ENERGY



Sean A. Lev
Acting General Counsel

¹ 42 U.S.C. § 6302.

² 42 U.S.C. § 6303.

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COMPROMISE AGREEMENT

The U.S. Department of Energy Office of the General Counsel initiated this action against Mueller Streamline Co. ("Respondent") pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent distributed in commerce in the United States faucet model 120-003NL that failed to meet the standard for water usage contained at 42 U.S.C. § 6295(j) and 10 C.F.R. § 430.32(o). 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) "Notice" means the Notice of Proposed Civil Penalty issued by DOE to Respondent on October 4, 2011, and captioned as case number 2011-SW-2802.
- (f) "Parties" means DOE and Respondent.
- (g) "Respondent" means Mueller Streamline Co.

II. RECITALS

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

WHEREAS, Congress has enacted energy conservation standards for faucets, which DOE has promulgated at 10 C.F.R. § 430.32(o); and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303 and 10 C.F.R. Part 429, is authorized to assess civil monetary penalties for actions prohibited by the Act; and

WHEREAS, Respondent admits:

1. Respondent has private labeled and distributed in commerce in the United States approximately 17,412 units of faucet model 120-003NL beginning in 2009.
2. Respondent's faucet model 120-003NL is a "covered product" as defined in 42 U.S.C. § 6292(a)(16) and 10 C.F.R. § 430.2.
3. Pursuant to a test report submitted by Respondent to DOE by letter dated June 24, 2011, faucet model 120-003NL consumes more than the 2.2 gallons per minute permitted under 42 U.S.C. § 6295(j) and 10 C.F.R. § 430.32(o).

WHEREAS, upon being notified by DOE that faucet model 120-003NL did not comply with Federal water conservation standards, Mueller immediately ceased distribution in commerce in the United States of this model and otherwise cooperated fully with DOE's investigation; and

WHEREAS, Mueller has modified model 120-003NL in such manner as to make it comply with the applicable standard, has certified the new basic model in accordance with the provisions of 10 Code of Federal Regulations Part 429 (including assigning a new model number to the modified model), and has been issued by DOE a Notice of Allowance to resume sale of the modified model under the new model number; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, and considering all of the information Mueller has provided to DOE during the course DOE's investigation, and in light of other considerations that ensure the fair and reasonable application of penalties (including the size of the violator, the extent of deviation from the EPCA requirements, the technical reason, if any, for the noncompliance, a violator's history of compliance or non-compliance, a violator's ability to pay, a violator's self-reporting and corrective actions, and the need to encourage prompt and comprehensive resolution of cases), 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 \$25,000, as full satisfaction of the civil penalty proposed in the Notice, within 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 III.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 submission of payment of the civil penalty 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. 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.

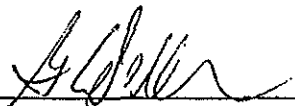
10. **Invalidity.** In the event that this Compromise Agreement in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.
11. **Authorized Representative.** Each party represents and warrants to 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.



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement
U.S. Department of Energy

1 December 2011

Date



(Signature)
Typed Name: GARY WILKERSON
Title: VP/Gen. Sec.
Company Name: MUELER STREAMLINE CO.

11/23/2011

Date