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

In the Matter of:	)	
	)	
Perlick Corporation	)	Case Number: 2011-CE-1401
(residential refrigerators, refrigerator-freezers, and freezers)	)	
	)	

ORDER

Issued: June 29, 2012

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 Perlick Corporation ("Respondent"). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distribution in commerce of a product not in compliance with the applicable energy conservation standard, located at 10 C.F.R. § 430.32(a).

2. 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 a Prohibited Act by distributing in commerce products that did not meet the applicable conservation standard.

5. Accordingly, pursuant to Section 333 of the Energy Policy and Conservation Act of 1975, as amended,[1] **I HEREBY ASSESS** a civil penalty of $400 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

U.S. DEPARTMENT OF ENERGY

Gregory H. Woods
General Counsel

[1] 42 U.S.C. § 6303.

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COMPROMISE AGREEMENT

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, initiated this investigation into the compliance of the electric refrigerator model HP48RO-S ("HP48RO") manufactured by Perlick Corporation ("Respondent") after model HP48RO was selected for testing as part of the U.S. Department of Energy's ENERGY STAR® Verification Testing Pilot Program. 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 matter.

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 the current or, where noted, prior versions of Title 10, Parts 429 and 430 of the Code of Federal Regulations.

(e) "Parties" means DOE and Respondent.

(f) "Respondent" means Perlick Corporation.

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 promulgated energy conservation standards for electric refrigerators at 10 C.F.R. § 430.32 and requires manufacturers to test the refrigerators to ensure compliance with those standards at 10 C.F.R. Part 430, Subpart B; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, & 6303 and 10 C.F.R. Part 429, Subpart C,[1] is authorized to assess civil monetary penalties for actions prohibited by the Act, including distribution of any new covered product that is not in conformity with an applicable energy conservation standard; and

WHEREAS, Respondent admits:

1. Respondent manufactured and distributed electric refrigerator model HP48RO between November 9, 2009, and May 23, 2011; and
2. At least two electric refrigerator model HP48RO units manufactured and distributed after October 2009 did not conform to the applicable energy conservation standard; and
3. In October 2009, Respondent tested the HP48RO model in a manner that was not in accordance with the DOE test procedure set forth in 10 C.F.R. Part 430, Subpart B, Appendix A1;[2] and

WHEREAS, Respondent has, as of March 29, 2012, re-tested all basic models of covered products (as defined in 10 C.F.R. § 430.2) currently offered for distribution in commerce and determined that all basic models meet the applicable energy conservation standards; and

WHEREAS, Respondent has redesigned the HP48RO model line as the HP48RR basic model line; 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, this Compromise Agreement properly balances the policies recognized in the Energy Policy and Conservation Act and is the appropriate way to resolve this matter;

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[1] Prior to April 6, 2011, the provisions governing penalties for prohibited acts were located at 10 C.F.R. § 430.61. DOE's enforcement provisions were moved to 10 C.F.R. Part 429, Subpart C by rule. *See* 76 Fed. Reg. 12,422 (Mar. 7, 2011; effective Apr. 6, 2011). The provisions governing prohibited acts are now located at 10 C.F.R. § 429.102; those governing civil penalties are located at 10 C.F.R. § 429.120.

[2] Specifically, Respondent tested the HP48RO model at the factory setpoint, which is lower than the midpoint of the operating range and generally would have resulted in a higher estimate of annual power consumption than the DOE test procedure.

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 $400 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 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 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, 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 matters addressed in this Compromise Agreement.
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

27 June 2012
Date

Paul R. Peot
President and CEO, Perlick Corporation

June 18, 2012
Date