

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

In the Matter of:

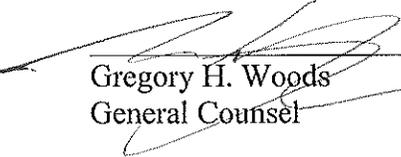
**Simkar Corporation,**  
Respondent

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) Case Number: 2012-SE-5408  
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**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 Simkar Corporation ("Respondent"). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distributing in commerce in the United States metal halide lamp fixtures that failed to meet the applicable standard for energy consumption. *See* 10 C.F.R. § 431.326.
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.
4. Based on the information in the case file and Respondent's admission of facts establishing violations, I find that Respondent committed Prohibited Acts by distributing in commerce metal halide lamp fixtures that were not in conformity with the applicable energy conservation standard. *See* 42 U.S.C. §§ 6295(hh), 6302.
5. Accordingly, pursuant to 42 U.S.C. § 6303, I **HEREBY ASSESS** a civil penalty of \$28,193 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

  
\_\_\_\_\_  
Gregory H. Woods  
General Counsel

December 20, 2012  
\_\_\_\_\_  
Date

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

In the Matter of:

**Simkar Corporation,**  
Respondent

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Case Number: 2012-SE-5408

**COMPROMISE AGREEMENT**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, initiated this action against Simkar Corporation (“Respondent”) pursuant to 10 C.F.R. § 429.106 after receiving a complaint that Respondent may have distributed in commerce metal halide lamp fixtures that did not conform to the 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 specific enforcement 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) “Distribute in Commerce” or “Distribution in Commerce” means to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.
- (d) “DOE” means the U.S. Department of Energy.
- (e) “DOE Rules” means DOE’s energy conservation regulations found in Title 10, Parts 429, 430 and 431 of the Code of Federal Regulations.
- (f) “Manufacture” means to manufacture, produce, assemble, or import.
- (g) “Notice” means the Notice of Proposed Civil Penalty issued by DOE to Respondent on November 21, 2012, and captioned as case number 2012-SE-5408.
- (h) “Parties” means DOE and Respondent.
- (i) “Respondent” means Simkar Corporation, and any parent, subsidiary, division or other related entity.

The Agreement further incorporates by reference all of the definitions found within 42 U.S.C. § 6291.

## 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 metal halide lamp fixtures at 10 C.F.R. § 431.326; and

WHEREAS, DOE, on November 21, 2012, issued a Notice of Noncompliance Determination finding that the basic models CFM0425-M, CFM0440-M, FBD4440-M, FBD4440-M5, FCM8440-M, FFM8425-M, FFS8417-M, GVV3417-M, JM0417M, JM0440M, WFM0417-M, WSL0425-M, WSL0440-M5, WSM9417-M, YP0425M, YP02405, YP0240MQ, YP0440M, FCM8820-M-BK, FFM8825-1P, JM0820M, JM0820MW, JM0920M, JM28201, JM28204, JM08325-GQ, JM28325, WPL0820-1 and WSL0820-1B (the “Simkar Basic Models”) manufactured by Respondent were not in conformity with the applicable energy conservation standard; and

WHEREAS, the Simkar Basic Models are “covered product[s]” as defined in 42 U.S.C. § 6292(a) and 10 C.F.R. § 430.2; and

WHEREAS, the energy conservation standards set forth in 10 C.F.R. § 431.326(a)(2) apply to all units manufactured on or after January 1, 2009; and

WHEREAS, DOE, on November 21, 2012, initiated an action to assess a civil penalty for distributing the non-compliant basic models in commerce in the United States; and

WHEREAS, Respondent admits:

1. Respondent has manufactured basic models CFM0425-M, CFM0440-M, FBD4440-M, FBD4440-M5, FCM8440-M, FFM8425-M, FFS8417-M, GVV3417-M, JM0417M, JM0440M, WFM0417-M, WSL0425-M, WSL0440-M5, WSM9417-M, YP0425M, YP02405, YP0240MQ, YP0440M, FCM8820-M-BK, FFM8825-1P, JM0820M, JM0820MW, JM0920M, JM28201, JM28204, JM08325-GQ, JM28325, WPL0820-1 and WSL0820-1B (the “Simkar Basic Models”) of metal halide lamp fixtures in the United States;
2. The Simkar Basic Models are subject to the energy conservation standards set forth in 10 C.F.R. § 431.326(a)(2);
3. Since January 1, 2010, Respondent distributed in commerce in the United States 326 units of the Simkar Basic Models of metal halide lamp fixtures that did not meet the applicable energy conservation standards; and

WHEREAS, Respondent has cooperated fully with DOE in connection with this investigation; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303, and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil monetary penalties against any manufacturer that distributes in commerce any new covered product that is not in conformity with an applicable energy conservation standard; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that 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 \$28,193, as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of an Adopting Order.
  - b. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on November 21, 2012, captioned under case number 2012-SE-5408.
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.a in full satisfaction of the penalty authorized by the Act.
  - b. DOE agrees to issue promptly an Adopting Order adopting this Agreement.
  - c. DOE agrees to terminate this enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with Paragraph 2 above.
4. **Jurisdiction.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy conservation 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. As of that date, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel.
6. **Limitations.** Nothing in this agreement binds any other agency of the United States government beyond DOE.
7. **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.

8. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only issues addressed in the Compromise Agreement.
9. **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.
10. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
11. **Severability.** If any provision of this agreement is held to be invalid, illegal, void, or unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable.
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. **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.

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

December 20, 2012  
Date

Glenn M. Brunewald  
(Signature)  
Typed Name: GLENN M. BRUNEWALD  
Title: PRESIDENT  
Company Name: SIMKAR LLC

DECEMBER 19, 2012  
Date