

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

In the Matter of:)
)
 Technical Consumer Products, Inc.,) Case Number: 2011-CE-3501
 Respondent)
)

ORDER

Issued: February 28, 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 Technical Consumer Products, Inc. (“Respondent”). The Compromise Agreement resolves the case initiated against Respondent pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty, alleging that Respondent failed to certify compliance for a medium base compact fluorescent lamp, basic model 28927M35K.

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 a Prohibited Act¹ by failing to comply with 42 U.S.C. § 6296(d) and the certification requirements in force at the time of the violation, which were located at 10 C.F.R. § 430.62.

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 \$3,000 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

U.S. DEPARTMENT OF ENERGY



Timothy G. Lynch
Acting General Counsel

¹ 42 U.S.C. § 6302.

² 42 U.S.C. § 6303.

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

In the Matter of:

Technical Consumer Products, Inc.,
Respondent

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Case Number: 2011-CE-3501

COMPROMISE AGREEMENT

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, initiated this action against Technical Consumer Products, Inc. ("TCP" or "Respondent") pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had failed to certify compliance for a medium base compact fluorescent lamp, basic model 28927M35K. 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 the current or, where noted, prior versions of 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 January 27, 2012, and captioned as case number 2011-CE-3501.
- (f) "Parties" means DOE and Respondent.
- (g) "Respondent" means Technical Consumer Products, 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 promulgated energy conservation standards for medium base compact fluorescent lamps at 10 C.F.R. § 430.32(u) and requires manufacturers to submit information and reports certifying compliance with those standards;¹ and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303, as well as regulations currently and previously in force,² 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 January 27, 2012, initiated an action to assess a civil penalty for failing to certify compliance and submit a certification report for basic model 28927M35K; and

WHEREAS, Respondent admits:

1. Respondent has manufactured and distributed medium base compact fluorescent lamps, including but not limited to basic model 28927M35K;
2. Basic model 28927M35K is a "covered product" as defined in 10 C.F.R. § 430.2;
3. Basic model 28927M35K was distributed in commerce in the U.S. for 169 days after and including July 6, 2010;
4. TCP did not certify basic model 28927M35K in its July 7, 2010 certification report (CCMS # 856) or any time on or before December 21, 2010.

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.

¹ At the time TCP violated DOE regulations, the general provisions governing certification reports were located at 10 C.F.R. § 430.62. See 75 Fed. Reg. 652, 666 (Jan. 5, 2010), effective Feb. 4, 2010. Certification requirements were moved to 10 C.F.R. Part 429, Subpart B by rule. See 76 Fed. Reg. 12,422 (Mar. 7, 2011). General requirements governing certification reports are now located at 10 C.F.R. § 429.12.

² At the time TCP violated DOE regulations, the provisions governing penalties for prohibited acts were located at 10 C.F.R. § 430.61. See 74 Fed. Reg. 66,029, 66,032 (Dec. 14, 2009), effective Jan. 13, 2010. 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). 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. **Obligations of Respondent.**
 - a. Respondent agrees to pay the sum of \$3,000, as full satisfaction of the civil penalty proposed in the Notice, 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 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 section III.2.a, 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.

Laura L. Barhydt
Laura L. Barhydt
Assistant General Counsel
for Enforcement
U.S. Department of Energy
2/28/12
Date

Valarie L. Campbell
(Signature)
Typed Name: Valarie L. Campbell
Title: CFO
Company Name: Technical Consumer Products, LLC
2/27/12
Date