

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

In the Matter of:

Zoe Industries, Inc.
(Showerheads)

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Case Number: 2011-SW-2912

ORDER

Issued: February 9, 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 Zoe Industries, 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 distributed in commerce in the United States the Giessdorf eight-jet basic model showerhead, SKU 150043, which failed to meet the applicable standard for water usage. *See* 10 C.F.R. § 430.32(p).

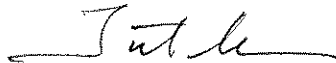
2. The DOE and Respondent have negotiated the terms of the Compromise Agreement that resolves this matter. A copy of the Compromise Agreement is attached hereto and incorporated by reference.

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 10 C.F.R. § 430.32(p). *See also* 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 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:

Zoe Industries, Inc.,
Respondent

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Case Number: 2011-SW-2912

COMPROMISE AGREEMENT

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, initiated this action against Zoe Industries, Inc. ("Zoe" or "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 the Giessdorf eight-jet basic model showerhead, SKU 150043 ("basic model 150043"), which failed to meet the applicable standard for water usage. See 10 C.F.R. § 430.32(p). 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 and water 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 January 6, 2012, and captioned as case number 2011-SW-2912.
- (f) "Parties" means DOE and Respondent.
- (g) "Respondent" means Zoe Industries, Inc.

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, DOE has promulgated water conservation standards for showerheads at 10 C.F.R. § 430.32(p); and

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

WHEREAS, Respondent admits:

1. Respondent has distributed in commerce in the United States at least 2235 units of showerhead basic model 150043, a model manufactured in China, since 2009, including 1475 units that it has imported and sold and 760 units, which it has imported, that remain in its inventory; and
2. Basic model 150043 is a "covered product" as defined in 42 U.S.C. § 6292(a)(15) and 10 C.F.R. § 430.2; and
3. Basic model 150043 does not meet the federal water conservation standards set forth at 10 C.F.R. § 430.32(p); and

WHEREAS, upon receiving DOE's Notice of Noncompliance Determination, Respondent ceased distribution in commerce of basic model 150043 and cooperated with DOE in formulating a plan for further action; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy and water conservation 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.**
 - a. Respondent agrees to pay the sum of \$25,000, as full satisfaction of the civil penalty proposed in the Notice, to be divided as follows.
 - i. Respondent agrees to pay \$12,500 within thirty (30) days of the issuance of an Adopting Order.
 - ii. Respondent agrees to make five (5) additional payments of \$2,500, and agrees to make these five (5) payments within sixty (60), ninety (90), one hundred and twenty (120), one hundred and fifty (150), and one hundred and eighty (180) days, respectively, of the issuance of an Adopting Order.
 - b. Respondent will permanently withdraw basic model 150043 from the U.S. market.
 - c. Respondent will take one of the following actions with regard to each of the 760 units of basic model 150043 remaining in its inventory: (1) modify the unit so it falls

within modified basic model 150043-N, (2) destroy the unit, or (3) sell the unit to a purchaser outside the U.S.

- d. Respondent will retain, for two years, records sufficient to demonstrate that it took one of the actions listed in 2(c), above, for each of the remaining 760 units in its inventory.

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 and performance pursuant to section 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 section 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 and water 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.

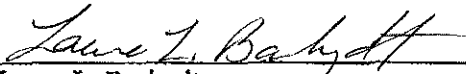
6. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement or the Notice associated with this case, including any right to judicial review that may be available to the Respondent. If either 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
Assistant General Counsel for
Enforcement
U.S. Department of Energy

Feb. 9, 2012

Date



(Signature)
Typed Name: DAVID DEWEY
Title: PRESIDENT
Company Name: ZOE INDUSTRIES, INC

FEB 9, 2012

Date