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

In the Matter of:	)	
	)	
Penguin Toilets, LLC,	)	Case Number: 2010-CW-1615
Respondent	)	
	)	
	)	

COMPROMISE AGREEMENT

The U.S. Department of Energy Office of the General Counsel initiated this action against Penguin Toilets, LLC, ("Respondent") pursuant to 10 C.F.R. § 430.74 by Notice of Proposed Civil Penalty alleging that Respondent had failed to submit a certification report and compliance statement for water closets. 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, Part 430, of the Code of Federal Regulations.

(e) "Notice" means the Notice of Proposed Civil Penalty issued by DOE to Respondent on September 14, 2010 and captioned as case number 2010-CW-1615.

(f) "Parties" means DOE and Respondent.

(g) "Respondent" means Penguin Toilets, LLC.

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 water closets at 10 C.F.R. § 430.32 and requires manufacturers to submit information and reports to insure compliance with those standards at 10 C.F.R. § 430.62; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, & 6303 and 10 C.F.R. § 430.61, 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 September 14, 2010 initiated an action against Respondent to assess a civil penalty for failure to certify that each basic model meets the applicable water conservation standard as required by 10 C.F.R. § 430.62 and for failure to submit a certification report and compliance statement to DOE for each basic model of covered product as required by 10 C.F.R. § 430.62

WHEREAS, Respondent admits:

1. Respondent manufactures or privately labels water closets, including basic models 011, 012, 014, 015, and 016.
2. These products have been in distribution in the United States at least since September 14, 2009.
3. As of September 14, 2010, Respondent had not submitted the required certification report and compliance statement for these basic models of water closet; 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;

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. If this Compromise Agreement is executed within 30 days of the date of the Notice, Respondent agrees to pay the sum of $5,000, as full satisfaction of the civil penalty proposed in the Notice, within 30 days of the issuance of an Adopting Order. If this Compromise Agreement is executed between 31 and 60 days after the date of the Notice, Respondent agrees to pay the sum of $10,000, as full satisfaction of the civil penalty proposed in the Notice, within 30 days of the issuance of an Adopting Order.

   b. Within sixty (60) calendar days following the date of this agreement, Respondent will certify in accordance with 10 C.F.R. § 430.62 all basic models Respondent offers for distribution in commerce in the United States.

   c. Respondent agrees to pay $150 per day for each day in excess of sixty (60) calendar days following the date of this agreement for each basic model it fails to certify in accordance with 10 C.F.R. § 430.62.

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 paragraphs III.2.a. and III.2.c. 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 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 exclusive 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), 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

8 October 2010
Date

Pat Stack
President
Penguin Toilets, LLC

9-30-2010
Date