

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

In the Matter of:

Kenneth Grill,
Respondent

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Case Number: 2011-SW-2902

ORDER

Issued: June 28, 2011

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 Kenneth Grill (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for violations of the compliance certification requirements at 10 C.F.R. § 430.62.
2. The DOE and Respondent have negotiated the terms of the Compromise Agreement that resolve 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 Prohibited Acts¹ by failing to comply with 10 C.F.R. § 430.62 and 42 U.S.C. § 6296(d) and hereby assess a civil penalty of \$10,000.
5. Accordingly, **IT IS ORDERED** that, pursuant to Section 333 of the Energy Policy and Conservation Act, of 1975, as amended,² the Compromise Agreement attached to this Order **IS ADOPTED**.

U.S. DEPARTMENT OF ENERGY



Sean A. Lev
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:

Kenneth Grill
(Showerheads)

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Case Number: 2011-SW-2902

COMPROMISE AGREEMENT

The U.S. Department of Energy Office of the General Counsel initiated this action against Kenneth Grill (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had manufactured and sold showerheads within the United States that failed to meet the standard for water usage contained at 42 U.S.C. § 6295(j) and 10 C.F.R. § 430.32(p). Respondent 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 Title 10, Parts 429 & 430, of the Code of Federal Regulations.
- (e) “Notice” means the Notice of Proposed Civil Penalty issued by DOE to Respondent on June 10, 2011, and captioned as case number 2011-SW-2902.
- (f) “Parties” means DOE and Respondent.
- (g) “Respondent” means Kenneth Grill.

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, Congress has enacted and DOE has promulgated energy conservation standards for showerheads at 10 C.F.R. § 430.32; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, & 6303 and 10 C.F.R. Part 429, is authorized to assess civil monetary penalties for actions prohibited by the Act; and

WHEREAS, Respondent admits:

1. Respondent sold and distributed at least 5,000 showerheads in the period between June 3, 2006, and February 7, 2011; and
2. Respondent manufactured these showerheads by altering them to consume water in excess of the 2.5 gallons per minute standard enacted by Congress. *See* 42 U.S.C. § 6295.

WHEREAS, DOE 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:

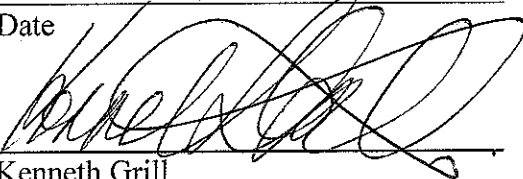
III. TERMS OF THE AGREEMENT

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 \$10,000, 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 \$20,000, as full satisfaction of the civil penalty proposed in the Notice, within 30 days of the issuance of an Adopting Order.
 - b. Respondent agrees to cease permanently all sales within the United States of showerheads that violate the Department's energy and water conservation standards.

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 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 Obligation in accordance with paragraph III.2a. 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), 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 *25 June 2011*
 Deputy General Counsel for
 Litigation and Enforcement
 U.S. Department of Energy

06-16-2011
 Date

 Kenneth Grill

06-16-2011
 Date

STATE OF ARIZONA
 COUNTY OF PIMA

This instrument was acknowledged before me on *16 June 2011*
 by _____


 (Signature of notarial officer)



Frances Urcadez
 Notary Public
 Pima County, Arizona
 My Comm. Expires 04-07-2015