

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

In the Matter of:

Topstar International, Inc.,
Respondent

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Case Number: 2011-CE-2703

ORDER

Issued: May 20, 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 Topstar International, Inc. ("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 \$6,000.
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.

~~DRAFT—SUBJECT TO REVIEW~~ SW

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In the Matter of:)
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Topstar International, Inc.) Case Number: 2011-CE-2703
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COMPROMISE AGREEMENT

The U.S. Department of Energy Office of the General Counsel initiated this action against Topstar International, Inc. ("Respondent") pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had failed to submit a certification report and compliance statement for incandescent reflector lamps. 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 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 April 22, 2011, and captioned as case number 2011-CE-2703.
- (f) "Parties" means DOE and Respondent.
- (g) "Respondent" means Topstar International, Inc.

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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 incandescent reflector lamps 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. § 430.62¹; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, & 6303 and 10 C.F.R. Part 429, Subpart C, 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 April 22, 2011, initiated an action to assess a civil penalty 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; and

WHEREAS, Respondent admits:

1. Respondent manufactures and distributes incandescent reflector lamps, including but not limited to basic models 50PAR20/120/FL 50W E26base, 75PAR30/120/SP 75W E26base and 75PAR38/120/FL 75W E26base.
2. These products have been in distribution in the United States at least since April 22, 2010.
3. As of April 22, 2011, Respondent had not submitted the required certification report and compliance statement for these basic model(s) of incandescent reflector lamps; 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.

¹ The certification provisions currently found at 10 C.F.R. § 430.62 will be recodified at 10 C.F.R. § 429.12, effective July 5, 2011.

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 \$6,000, as full satisfaction of the civil penalty proposed in the Notice, within 30 days of the effective date of this agreement. If this Compromise Agreement is executed between 31 and 60 days after the date of the Notice, Respondent agrees to pay the sum of \$12,000, as full satisfaction of the civil penalty proposed in the Notice, within 30 days of the effective date of this agreement.
- b. Within sixty (60) calendar days following the effective date of this agreement, Respondent will provide a statement signed by a company official stating how Respondent determined that the three above-named lamp models meet or exceed the energy conservation standard set forth for such models at 10 C.F.R. § 430.32(n). Respondent will also provide test and technical data for each of the models supporting that determination ("initial response"). NVLAP-accredited lab testing is not required for this initial response. In addition, compliance with DOE sample size requirements and DOE test procedures is not required for this initial response. If Respondent fails to demonstrate compliance for any of the above-named models with any of the energy conservation standards at 10 C.F.R. § 430.32(n) within such sixty (60) day period, Respondent shall immediately cease all distribution in commerce in the United States of all such models for which it failed to demonstrate compliance until such time as Respondent is able to certify compliance in accordance with 10 C.F.R. § 430.62 (if prior to July 5, 2011) or 10 C.F.R. § 429.12 (if July 5, 2011, or later). Distribution of any units of a model for which Respondent has not demonstrated compliance with the applicable energy conservation standard will be subject to the maximum statutory civil penalty of \$200 per unit, in addition to the \$6,000 settlement amount for the failure to certify compliance.
- c. Within six (6) months following the effective date of this agreement, Respondent will certify compliance, in accordance with the then-applicable certification requirements, as set forth in Paragraph 2.b above, for all basic models (including, without limitation, the three above-named models) of all covered products Respondent offers for distribution in commerce in the United States.
- d. Respondent agrees to pay \$150 per day for each day in excess of six (6) months following the effective date of this agreement for each basic model it fails to certify in accordance with 10 C.F.R. § 430.62 and paragraph c above.

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.d. 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 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.



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement
U.S. Department of Energy

20 May 2011
Date



Sheng Wang
President
Topstar International, Inc.

05/20/2011
Date