

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

In the Matter of:

**Empire Comfort Systems**  
Respondent

Case Numbers: 2015-SE-22002  
and 2016-SE-22002

**ORDER**

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 Empire Comfort Systems (“Respondent”). The Compromise Agreement resolves two cases initiated to pursue a civil penalty for distribution in commerce of units of basic models of covered product that failed to meet the energy conservation requirements as described at 10 C.F.R. § 430.32(i).

2. DOE and Respondent have negotiated the terms of the Compromise Agreement that resolves these matters. 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 cases.

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 Acts as described at 10 C.F.R. § 429.102(a)(6). *See* 42 U.S.C. § 6302.

5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, **I HEREBY ASSESS** a civil penalty of \$241,100 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

\_\_\_\_\_  
/S/  
Steven P. Croley  
General Counsel

\_\_\_\_\_  
9/22/16  
Date

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

In the Matter of:

**Empire Comfort Systems,**  
Respondent

Case Numbers: 2015-SE-22002 and  
2016-SE-22002

**COMPROMISE AGREEMENT**

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, initiated these actions against Empire Comfort Systems ("Respondent") pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had distributed in commerce in the United States units of direct heating equipment that do not conform to the applicable energy conservation standard. 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 these specific enforcement actions.

**I. DEFINITIONS**

For the purposes of this Compromise Agreement, the following definitions 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) "Distribute in Commerce" or "Distribution in Commerce" means to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce;
- (d) "DOE" means the U.S. Department of Energy.
- (e) "DOE Rules" means DOE's energy and water conservation regulations found in Title 10, Parts 429, 430, and 431 of the Code of Federal Regulations.
- (f) "Manufacture" means to manufacture, produce, assemble, or import.
- (g) "March 2016 Notice" means the Notice of Proposed Civil Penalty DOE issued to Respondent on March 1, 2016, and captioned as case number 2015-SE-22002.
- (h) "September 2016 Notice" mean the Notice of Proposed Civil Penalty DOE issued to Respondent on September 8, 2016, and captioned as case number 2016-SE-22002.
- (i) "Parties" means DOE and Respondent.

- (j) “Respondent” means Empire Comfort Systems, and any parent, subsidiary, division or other related entity.

The Agreement further incorporates by reference all of the definitions set forth in 42 U.S.C. §§ 6291 and 10 C.F.R. Parts 429 and 430.

## II. RECITALS

WHEREAS, pursuant to 42 U.S.C. § 6291 *et seq.*, DOE is responsible for promulgating and enforcing the energy and water conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for direct heating equipment at 10 C.F.R. § 430.32(i); and

WHEREAS, Respondent manufactures basic models FAW-40-2(SP,IP), DV55, DVC35, DV210, DV215, FAW55, HWDV081BN, HWDV081BP, HWDV150BN, HWDV150BP, 3588, 5088, 7088, and MV130 (together, the “subject basic models”); and

WHEREAS, the subject basic models are “covered products”; and

WHEREAS, on August 13, 2015, DOE issued a Notice of Noncompliance Determination in case number 2015-SE-22002 finding that direct heating equipment basic model FAW-40-2(SP,IP) does not comply with the applicable energy conservation standard; and

WHEREAS, on July 20, 2016, DOE issued a Notice of Noncompliance Determination in case number 2016-SE-22002 finding that direct heating equipment basic models DV55, DVC35, DV210, DV215, FAW55, HWDV081BN, HWDV081BP, HWDV150BN, HWDV150BP, 3588, 5088, 7088, and MV130 do not comply with the applicable energy conservation standards; and

WHEREAS, the energy conservation standards set forth in 10 C.F.R. § 430.32(i) apply to all units of the subject basic models manufactured by Respondent on or after April 16, 2013; and

WHEREAS, on March 1, 2016, DOE initiated an action in case number 2015-SE-22002 to assess a civil penalty for distributing 1,462 noncompliant units of basic model FAW-40-2(SP,IP) in commerce in the United States; and

WHEREAS, on September 8, 2016, DOE initiated an action in case number 2016-SE-22002 to assess a civil penalty for distributing 23,008 noncompliant units of basic models DV55, DVC35, DV210, DV215, FAW55, HWDV081BN, HWDV081BP, HWDV150BN, HWDV150BP, 3588, 5088, 7088, and MV130 in commerce in the United States; and

WHEREAS, Respondent admits:

1. Respondent manufactured the subject basic models;
2. The subject basic models are subject to the energy conservation standards set forth in 10 C.F.R. § 430.32(i)(2);
3. The subject basic models do not comply with applicable energy conservation standards; and
4. Respondent distributed in commerce in the United States at least 24,470 units of the subject basic models that were manufactured on or after April 16, 2013; 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 against any manufacturer that knowingly distributes in commerce any new covered product that is not in conformity with an applicable energy conservation standard; and

WHEREAS, Respondent self-reported to DOE that direct heating equipment basic models DV55, DVC35, DV210, DV215, FAW55, HWDV081BN, HWDV081BP, HWDV150BN, HWDV150BP, 3588, 5088, 7088, and MV130 do not comply with the applicable energy conservation standards; and

WHEREAS, Respondent represents that it no longer distributes units of the subject basic models equipped with thermostats and has provided test data indicating that the subject models, when tested as manually controlled models, comply with the applicable energy conservation standard; and

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 are 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 Respondent executes this Compromise Agreement and returns it to DOE within thirty (30) calendar days after the date of the September 2016 Notice, Respondent agrees to pay the sum of \$241,100, as full satisfaction of the civil penalty proposed in the March 2016 and September 2016 Notices, within thirty (30) calendar days of the issuance of an Adopting Order.
  - b. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on August 13, 2015, captioned under case number 2015-SE-22002.
  - c. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on July 20, 2016, captioned under case number 2016-SE-22002.
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 civil penalty authorized by the Act.
  - b. DOE agrees to issue promptly an Adopting Order adopting this Agreement.
  - c. DOE agrees to terminate enforcement actions associated with case numbers 2015-SE-22002 and 2016-SE-22002 with prejudice upon Respondent's completion of its



Obligations in accordance with paragraph III.2, above. If Respondent fails to complete its Obligations in accordance with paragraph III.2, above, DOE may notify Respondent that the Agreement is null and void and may seek the maximum penalty in accordance with 10 C.F.R. § 429.120 for both cases 2015-SE-22002 and 2016-SE-22002.

4. **Jurisdiction.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy conservation 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 will become effective on the date on which the General Counsel issues the Adopting Order. As of that date, the Adopting Order and this Compromise Agreement 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 constitutes a separate violation of an Agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.
6. **Payment Instructions and Late Payments.** Respondent agrees to make all payments in a timely manner and in a method set forth in the attached "Payment Instructions." Respondent acknowledges and agrees to comply with the "Late Payment" provisions provided therein.
7. **Limitations.** Nothing in this agreement binds any other agency of the United States government beyond DOE.
8. **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 Notices associated with these cases, 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 will 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.
9. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement constitutes a final settlement between the Parties. This Compromise Agreement resolves only issues addressed in the Compromise Agreement.
10. **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.
11. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
12. **Severability.** If any provision of this agreement is held to be invalid, illegal, void, or unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable.

13. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
14. **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, is an original, and all of which counterparts together constitute one and the same fully executed instrument.

\_\_\_\_\_/S/  
Laura L. Barhydt  
Assistant General Counsel for  
Enforcement  
U.S. Department of Energy

\_\_\_\_\_  
September 22, 2016  
Date

\_\_\_\_\_/S/  
(Signature)  
Typed Name: Edward L. Grinde  
Title: CFO  
Company Name: Empire Comfort Systems

\_\_\_\_\_  
9-13-16  
Date