

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

In the Matter of:

FHP Manufacturing Company
Respondent

Case Numbers: 2018-SE-43006

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 Company (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distributing in commerce in the United States water source heat pumps that failed to meet the applicable energy conservation standards.
2. 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.
4. Based on the information in the case file and Respondent’s admission of facts establishing violations, I find that Respondent knowingly committed Prohibited Acts by distributing in commerce water source heat pumps that were not in conformity with the applicable energy conservation standards. *See* 42 U.S.C. § 6302; 10 C.F.R. §§ 429.102(a)(6), 431.97(b).
5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, I **HEREBY ASSESS** a civil penalty of \$328,500 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

/S/
Bill Cooper
General Counsel

9/8/20
Date

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

In the Matter of:

FHP Manufacturing Company
(commercial package air-conditioners and
heat pumps)

)
)
)
)
)
)
)

Case Number: 2018-SE-43006

COMPROMISE AGREEMENT

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of the Assistant General Counsel for Enforcement, initiated this action against FHP Manufacturing Company (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty, alleging that Respondent had manufactured and distributed in commerce water source heat pumps that are not in compliance with an applicable energy conservation standard. Respondent, on behalf of itself and any parent, subsidiary, division or other related entity, and DOE, by their authorized representatives, enter into this Compromise Agreement for the purpose of settling this specific enforcement action.

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) “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;
- (c) “DOE” means the U.S. Department of Energy.
- (d) “Manufacture” means to manufacture, produce, assemble, or import.
- (e) “Notice” means the Notice of Proposed Civil Penalty issued by DOE to Respondent on August 26, 2020, and captioned as case number 2018-SE-43006.
- (f) “Parties” means DOE and Respondent.
- (g) “Respondent” means FHP Manufacturing Company, 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 6311 and 10 C.F.R. Parts 429, 430, and 431.

II. RECITALS

WHEREAS, pursuant to the Act, DOE is responsible for promulgating and enforcing the energy conservation requirements set forth in DOE's energy conservation regulations found in Title 10, Parts 429, 430 and 431 of the Code of Federal Regulations; and

WHEREAS, small commercial package air conditioning and heating equipment are "covered equipment" (42 U.S.C. § 6311(1)(B); 42 U.S.C. § 6313(a); 10 C.F.R. § 431.97); and

WHEREAS, DOE has promulgated energy conservation standards for water source heat pumps at 10 C.F.R. § 431.97; and

WHEREAS, DOE, on April 20, 2020, issued a Notice of Noncompliance Determination with respect to various basic models of water source heat pumps, manufactured and distributed in commerce by Respondent; and

WHEREAS, DOE, on August 26, 2020, initiated an action to assess a civil penalty for Respondent's distribution in commerce in the United States of various basic models of water source heat pumps; and

WHEREAS, Respondent admits:

1. Respondent manufactured the basic models of water source heat pumps listed in the Notice of Proposed Civil Penalty and Notice of Noncompliance Determination ("the subject models");
2. Respondent has distributed in commerce in the United States at least 8,776 units of the subject models;
3. The subject models are water source heat pumps manufactured on or after October 9, 2015;
4. The subject models do not comply with the applicable energy efficiency ratio and/or coefficient of performance standards at 10 C.F.R. § 431.97(b); and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6303 and 6316 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 equipment that is not in conformity with an 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 the Parties acknowledge, 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 Respondent executes this Compromise Agreement and returns it to DOE within thirty (30) calendar days after the date of the Notice, Respondent agrees to pay the sum of **\$328,500** (three hundred and twenty-eight thousand, five hundred dollars) as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) calendar days of the issuance of an Adopting Order.
- b. Respondent agrees not to distribute in commerce in the United States the subject models and to abide by the terms of the Notice of Noncompliance Determination, issued on April 20, 2020, and captioned under case number 2018-SE-43006.

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 above in full satisfaction of the penalty authorized by the Act.
 - b. DOE agrees to issue promptly an Order adopting this Agreement ("Adopting Order").
 - c. DOE agrees to terminate the enforcement action captioned under case number 2018-SE-43006 with prejudice upon Respondent's completion of its Obligations in accordance with Paragraph III.2.a., 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.
4. **Jurisdiction.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its regulations and to enter into its own agreements interpreting and applying those regulations. 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 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 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 shall constitute a final settlement between the Parties. This Compromise Agreement resolves only the violations alleged in the Notice.
10. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties with respect to this matter, whether oral or written.
11. **Modifications.** This Compromise Agreement cannot be modified without the 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; or if such modification is not possible, then the rest of this agreement remains enforceable to the maximum extent allowed by law.
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, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

_____/S/_____
Stephen C. Skubel
Acting Assistant General Counsel for
Enforcement
U.S. Department of Energy

Sept. 2, 2020
Date

_____/S/_____
(Signature)
Typed Name: Scott D. Langston
Title: General Manager
Company Name: FHP Manufacturing Company

September 01, 2020
Date

_____/S/_____
(Signature)
Typed Name: Saim.Kirgiz
Title: Director of Engineering
Company Name: FHP Manufacturing Company

September 01, 2020
Date