

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

In the Matter of:

Hudson-Reed Limited,
Respondent

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Case Number: 2010-CW-1403

ORDER

Issued: August 2, 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 Hudson-Reed Limited (“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 \$80,000.
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.

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COMPROMISE AGREEMENT

The U.S. Department of Energy Office of the General Counsel initiated this action against Hudson-Reed Limited (“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 for showerheads. 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 water conservation regulations found in Title 10, Parts 429 and 430, of the Code of Federal Regulations.
- (e) “Notice” means the Notice of Proposed Civil Penalty issued by DOE to Respondent on March 2, 2010, and captioned as case number 2010-CW-1403.
- (f) “Parties” means DOE and Respondent.
- (g) “Respondent” means Hudson-Reed Limited.

II. RECITALS

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

WHEREAS, DOE has promulgated water conservation standards for showerheads at 10 C.F.R. § 430.32 and requires manufacturers to test the showerheads and submit information and reports to insure compliance with those standards at 10 C.F.R. Part 430, Subpart B, and 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 perform the required tests and make reports or provide other required information; and

WHEREAS, DOE, on March 2, 2010, initiated an action to assess a civil penalty for failure to certify that each basic model of showerheads meets the applicable water conservation standard and failure to submit a certification report and compliance statement to DOE for each basic model of showerheads as required by 10 C.F.R. § 430.62; and

WHEREAS, Respondent admits:

1. Respondent manufactured and distributed showerheads, including but not limited to basic models A303, A3041, A3042, A3043, A306, A307, A3082, A3088, A3167, A3168, A3202, A3207, A3212A, A3216, A3217, A3218, A3223, A3226, A3234, A3235, A3239, A3240, A3242, A3287, A3288, A341, A342, A3601, A3602, A3604, A3605, A388, A389, A397, A398, A398R, AP387, AP396, AS333, AS397, AS398, FH308, FH311, FH312, FH313, FH315, HJ350, HM350, TRUA3170, TRUA3213, TRUA3214, TRUA3236, TRUA3272, TRUAM312, TRUSP301, TRUSP302, TRUSP303, TRUSP304, TRUSP306, TRUSP307, TRUSP310.
2. These products were in distribution in the United States at least since March 2, 2009, without flow restrictors, and did not meet the applicable water conservation standards under the DOE Rules.
3. Respondent had not submitted the required certification report and compliance statement for these basic models of showerheads; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national water conservation 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;

¹ Effective July 5, 2011, the certification provisions at 10 C.F.R. § 430.62 will be replaced by certification provisions under new 10 C.F.R. Part 429, Subpart B, entitled "Certification." Therefore, any certification submission made by Hudson-Reed on or after July 5, 2011, must be made in accordance with 10 C.F.R. Part 429, Subpart B.

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 by Respondent by August 1, 2011, Respondent agrees to pay the sum of \$80,000.00, as full satisfaction of the civil penalty proposed in the Notice, within calendar 30 days of the effective date of this agreement. If Respondent does not execute this Compromise Agreement by August 1, 2011, then this offer and Compromise Agreement is null and void.
 - b. Within sixty (60) calendar days following the effective date of this agreement, Respondent will test in accordance with DOE Rules, and certify in accordance with 10 C.F.R. § 430.62, all basic models of all covered products that Respondent offers for distribution in commerce in the United States; further, Respondent will correct, in accordance with 10 C.F.R. § 430.62(b)-(c), any certifications Respondent has made to date to account for any modified or discontinued basic models.
 - c. Respondent agrees to pay \$150 per day for each day in excess of sixty (60) calendar days following the effective date of this agreement for each basic model of each covered product it fails and certify in accordance with DOE Rules.

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 water 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 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

1 August 2011

Date



~~Peter Lilly~~ NICHOLAS ROBERT NOCKER
~~Managing Director~~ FINANCE DIRECTOR,
Hudson-Reed Limited

01/08/2011

Date