

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

In the Matter of:

Hydac Technology Corporation
Respondent

)
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) Case Number: 2012-SE-4107
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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 Hydac Technology Corporation ("Respondent"). The Compromise Agreement resolves the case initiated to pursue a civil penalty for (1) violations of the compliance certification requirements located at 10 C.F.R. § 431.36, (2) distribution in commerce in the U.S. of covered electric motors that failed to meet the energy conservation requirements as described at 10 C.F.R. § 431.25 and (3) failure to properly label covered electric motors as required by 10 C.F.R. § 431.31.

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 Acts as described at 10 C.F.R. § 431.382(a). *See* 42 U.S.C. §§ 6302, 6316.

5. Accordingly, pursuant to 10 C.F.R. § 431.382(b) and 42 U.S.C. § 6303, I **HEREBY ASSESS** a civil penalty of \$29,000 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.



Gregory H. Woods
General Counsel

November 28, 2012
Date

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

In the Matter of:)

Hydac Technology Corporation)
Respondent)

Case Number: 2012-SE-4107

COMPROMISE AGREEMENT

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, initiated this action against Hydac Technology Corporation ("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 for several basic models of electric motors, and distributed in U.S. commerce units of electric motors that either failed to comply with energy efficiency standards or were not properly marked with the motor's nominal full load efficiency. 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 specific enforcement 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 and 431 of the Code of Federal Regulations.
- (e) "Notice" means the Notice of Proposed Civil Penalty issued by DOE to Respondent on November 19, 2012, and captioned as case number 2012-SE-4107.
- (f) "Parties" means DOE and Respondent.
- (g) "Respondent" means Hydac Technology Corporation.

The Agreement further incorporates by reference all of the definitions found within 42 U.S.C. §§ 6291 and 6311.

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 efficiency standards for electric motors at 10 C.F.R. § 431.25 and requires manufacturers to submit information and reports to ensure compliance with those standards pursuant to 10 C.F.R. § 431.36; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6316 and 10 C.F.R. Part 431, Subpart U, is authorized to assess civil monetary penalties for actions prohibited by the Act, including failing to make reports or provide other required information and distribution in U.S. commerce of electric motors that are not in compliance with the applicable labeling and energy efficiency requirements; and

WHEREAS, DOE, on November 19, 2012, initiated an action to assess a civil penalty for Respondent's failure to certify compliance and submit a certification report for 23 basic models of electric motors, for Respondent's distribution in U.S. commerce of 57 units of electric motors that failed to comply with energy efficiency standards, and for Respondent's distribution in U.S. commerce of 607 units that were not marked with the motor's nominal full load efficiency; and

WHEREAS, after receiving the initial notification of potential compliance violations, Respondent fully cooperated with DOE throughout this investigation. As DOE identified compliance deficiencies, Respondent took action to avoid future compliance failures.

WHEREAS, Respondent represents it has redesigned its engineering systems to ensure that it will only purchase, use and distribute electric motors that are compliant with DOE's regulations in the future.

WHEREAS, Respondent admits:

1. Respondent manufactures¹ and distributes electric motors;
2. These products have been in distribution in the United States for at least 365 days;
3. Electric motors are "covered equipment" as defined in 10 C.F.R. § 431.2;
4. As of November 19, 2012, Respondent had not submitted the required certification reports and compliance statements for 23 basic models of electric motors Respondent manufactured and distributed in U.S. commerce;
5. Between approximately December 12, 2010, and November 19, 2012, Respondent distributed in U.S. commerce 53 units of electric motors that failed to meet the applicable energy conservation standards found in 10 C.F.R. § 431.25; and
6. Between approximately December 12, 2010 and November 19, 2012, Respondent distributed in U.S. commerce 607 units of electric motors that did not have the motor's nominal full load efficiency marked on the motor.

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;

¹ "Manufacture" means to manufacture, produce, assemble or import. 42 U.S.C. § 6291.


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. Respondent agrees to pay the sum of \$29,000, as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of the Adopting Order.
 - b. Respondent agrees to abide by the terms of a Notice of Noncompliance Determination to be issued pursuant to 10 C.F.R. § 429.114.
 - c. Within sixty (60) calendar days following the issuance of the Adopting Order, Respondent must provide a sworn statement that Respondent will no longer distribute in U.S. commerce the units of the basic models that have not been certified and will lawfully dispose of those units. Respondent must also ensure that all basic models of all covered products Respondent manufactures and distributes in commerce in the United States are certified in accordance with 10 C.F.R. § 431.36 and labeled in accordance with 10 C.F.R. § 431.31.
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 and performance pursuant to section III.2 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 this enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with section III.2, above. If Respondent fails to complete its Obligations in accordance with section 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 into 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.

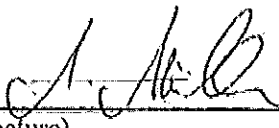
6. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement or the Notice associated with this case. If either Party (or the United States on behalf of DOE) brings a judicial action to enforce 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 issues addressed in the Compromise Agreement.
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. **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.
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.



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

November 27, 2012

Date



(Signature)
Typed Name: MATTHIAS MUELLER
Title: PRESIDENT
Company Name: HYDAC TECHNOLOGY CORP.

11/24/2012

Date