



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

In the Matter of: )  
 )  
Avanti Products, LLC ) Case Number: 2013-CE-2105  
(residential clothes dryers) )  
 )

**COMPROMISE AGREEMENT**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, initiated this action against Avanti Products, LLC (“Avanti” or “Respondent”), formerly a subsidiary of the Mackle Company, Inc., pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had failed to submit the required certification report for residential clothes dryer models D110 and D110-1.<sup>1</sup> 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) “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 conservation regulations found in the current or, where noted, prior versions of Title 10, Parts 429 and 430 of the Code of Federal Regulations.
- (f) “Notice” means the Notice of Proposed Civil Penalty issued by DOE to Respondent on March 19, 2013, and captioned as case number 2013-CE-2105.
- (g) “Parties” means DOE and Respondent.

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<sup>1</sup> In 2011 and 2013, Avanti certified individual model D110-I and individual model D110-JIS as two distinct basic models. Avanti now avers that this was in error because these covered products have essentially identical electrical, physical, and functional characteristics and therefore may be certified as individual models within the same basic model.

(h) "Respondent" means Avanti Products, LLC, as presently constituted and as a former subsidiary of the Mackle Company, Inc.

## 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 residential clothes dryers at 10 C.F.R. § 430.32(h) and requires manufacturers to submit information and reports certifying compliance with those standards, in accordance with 10 C.F.R. § 429.12; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303, as well as regulations currently and previously in force, 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 February 5, 2013, initiated an action to assess a civil penalty for failing to certify compliance and submit a certification report for models D110 and D110-1; and

WHEREAS, Respondent admits:

1. Respondent has manufactured<sup>2</sup> and distributed residential clothes dryers, including models D110 and D110-1;
2. Models D110 and D110-1 are "covered products" as defined in 10 C.F.R. § 430.2;
3. As of February 5, 2013, Respondent had not submitted an annual certification report, which was due no later than October 1, 2012, for either model D110 or model D110-1.
4. Models D110 and D110-1 were distributed in commerce by Respondent in the U.S. for at least 126 days without a current, valid certification report; 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.

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<sup>2</sup> "Manufactured" means to have manufactured, produced, assembled, or imported. 42 U.S.C. § 6291.

2. **Obligations of Respondent.**

- a. Respondent agrees to pay the sum of \$8,000, as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of an Adopting Order.
- b. Respondent agrees to submit annually a certification report for all covered products distributed within the United States.

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 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 section III.2.a, 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. **Payment Instructions and Late Payments.** The Parties agree that all payments shall be made 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. **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.

8. **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.

9. **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.
10. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
11. **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.
12. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
13. **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  
Laura L. Barhydt  
Assistant General Counsel  
for Enforcement  
U.S. Department of Energy  
April 12, 2013  
Date

W.E. Quales Jr.  
(Signature)  
Typed Name: W.E. QUALES JR.  
Title: VICE PRESIDENT - OPERATIONS  
Company Name: AVANTI PRODUCTS, LLC  
4/12/2013  
Date