

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

In the Matter of:

**ET Industries, Inc.**  
Respondent

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Case Number: 2012-SE-2902

**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 ET Industries, Inc. (“Respondent”). The Compromise Agreement resolves the case initiated against Respondent pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty, alleging that Respondent distributed in commerce in the United States the “Thunderhead” showerhead basic model, which failed to meet the applicable standard for water usage. *See* 10 C.F.R. § 430.32(p).

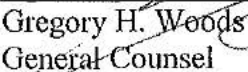
2. The DOE and Respondent have negotiated the terms of the Compromise Agreement that resolves this matter. A copy of the Compromise Agreement is attached hereto and incorporated by reference.

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, 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 by failing to comply with 10 C.F.R. § 430.32(p). *See also* 42 U.S.C. § 6295(j).

5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, **I HEREBY ASSESS** a civil penalty of \$39,000 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

/s/

  
Gregory H. Woods  
General Counsel

Date



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In the Matter of:

ET Industries, Inc.  
Respondent

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) Case Number: 2012-SE-2902  
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**COMPROMISE AGREEMENT**

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, initiated this action against ET Industries, Inc. ("Respondent") pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty, alleging that Respondent distributed in commerce in the United States the "ThunderHead" showerhead ("basic model TH-1"<sup>1</sup>), which failed to meet the applicable standard for water usage. See 10 C.F.R. § 430.32(p). 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) "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 Title 10, Parts 429 and 430 of the Code of Federal Regulations.
- (f) "Manufacture" means to manufacture, produce, assemble, or import.
- (g) "Notice" means the Notice of Proposed Civil Penalty issued by DOE to Respondent on May 24, 2013, and captioned as case number 2012-SE-2902.
- (h) "Parties" means DOE and Respondent.

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<sup>1</sup> This Compromise Agreement uses "TH-1" to distinguish the original basic model of "ThunderHead" showerhead from the modified basic model of "ThunderHead" showerhead, which ET certified through DOE's Compliance Certification Management System as "basic model TH2.5" in their submission at CCMS # 26776.

- (l) "Respondent" means ET Industries, Inc., and any parent, subsidiary, division or other related entity.

The Agreement further incorporates by reference all of the definitions found within 42 U.S.C. § 6291 and 10 C.F.R. § 430.2.

## II. RECITALS

WHEREAS, DOE, pursuant to 42 U.S.C. § 6291 *et seq.*, is responsible for promulgating and enforcing the energy and 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(p); and

WHEREAS, DOE, on May 24, 2013, issued an Amended Notice of Noncompliance Determination finding that showerhead basic model TH-1, manufactured by Respondent, was not in conformity with the applicable water conservation standard; and

WHEREAS, basic model TH-1 is a "covered product" as defined in 42 U.S.C. §§ 6292(a)(15) and 10 C.F.R. § 430.2; and

WHEREAS, DOE, on May 24, 2013, initiated an action to assess a civil penalty for distributing noncompliant basic model TH-1 in commerce in the United States; and

WHEREAS, Respondent admits:

1. Since March 1, 2010, ET has manufactured and distributed in commerce in the United States 974 units of basic model TH-1;
2. Basic model TH-1 is subject to the conservation standards set forth at 10 C.F.R. § 430.32(p);
3. Testing of basic model TH-1 demonstrates that it does not meet the federal water conservation standards set forth at 10 C.F.R. § 430.32(p);
4. Respondent has ceased distributing in commerce in the United States units of basic model TH-1; and

WHEREAS, Respondent has cooperated fully with DOE in connection with this investigation; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303, and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil monetary penalties against any manufacturer that distributes in commerce any new covered product that is not in conformity with an applicable energy or water conservation standard; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that 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.
2. **Obligations of Respondent.**
  - a. Respondent agrees to pay the sum of \$39,000, 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 to abide by the terms of the Amended Notice of Noncompliance Determination, issued on May 24, 2013, captioned under case number 2012-SE-2902.
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 this enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with section III.2, above.
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 shall 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 shall have the same force and effect as any other Order of the General Counsel.
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. **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. 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.

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 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, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

/S/

/S/

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

Date

5/30/13

\_\_\_\_\_  
(Signature)  
Typed Name: Martin Tracy  
Title: President  
Company Name: ET Industries Inc.

Date

May 30, 2013