

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

In the Matter of:)	
)	
National Comfort Products,)	Case Number: 2014-SE-16014
Respondent)	
)	

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 National Comfort Products (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for violations of the compliance certification requirements located at 10 C.F.R. § 429.12.

2. 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. § 429.102(a)(1). *See* 42 U.S.C. § 6302.

5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, **I HEREBY ASSESS** a civil penalty of \$16,000 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

/S/
Steven P. Croley
General Counsel

7/14/2014
Date

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

In the Matter of:)
)
)
National Comfort Products) Case Number: 2014-SE-16014
(central air conditioners and heat pumps))
)

COMPROMISE AGREEMENT

The U.S. Department of Energy (“DOE”) Office of the General Counsel initiated this action against National Comfort Products (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had distributed in commerce in the United States certain central air conditioners and heat pumps without first certifying the products as compliant with applicable energy efficiency standards. 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 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 in the United States, or to hold for sale or distribution after introduction into commerce in the United States;
- (d) “DOE” means the U.S. Department of Energy.
- (e) “DOE Rules” means DOE’s energy conservation regulations found in Title 10, Parts 429, 430 and 431 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 July 10, 2014, and captioned as case number 2014-SE-16014.
- (h) “Parties” means DOE and Respondent.
- (i) “Respondent” means National Comfort Products.

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 the Act, 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 central air conditioners and heat pumps at 10 C.F.R. § 430.32(c) and requires manufacturers to submit information and reports to ensure compliance with those standards pursuant to 10 C.F.R. §§ 429.12 and 429.16(b); and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6302 and 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 make reports or provide other required information; and

WHEREAS, DOE entered into a settlement agreement with Respondent on October 28, 2011, in which Respondent admitted that it had failed to submit required certification reports for central air conditioners, agreed to pay \$8,000, and agreed to certify all basic models of all covered products that it distributed in the U.S.; and

WHEREAS, DOE, on July 10, 2014, initiated an action to assess a civil penalty for failing to certify compliance and submit a certification report for at least eight basic models of central air conditioners; and

WHEREAS, Respondent admits:

1. Respondent manufactures and distributes, and has manufactured and distributed, at least eight basic models of central air conditioners and heat pumps;
2. Respondent certified eight basic models of central air conditioners and heat pumps as “Discontinued” over four certification reports submitted between December 22, 2011, and September 6, 2012.
3. Respondent distributed these products in commerce for a combined 6,518 days after certifying them as “Discontinued,” a prohibited act under 10 C.F.R. § 429.102(a)(1);
4. Respondent submitted a certification for these products on June 10, 2014;
5. These products are “covered products” as defined in 10 C.F.R. § 430.2; 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 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 \$16,000 (sixteen thousand dollars), as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of an Adopting Order.
 - b. Within sixty (60) calendar days following the issuance of the Adopting Order, Respondent will, in accordance with 10 C.F.R. § 429.12, certify all basic models of all covered products and equipment Respondent manufactures and distributes in commerce in 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 pursuant to Paragraph III.2.a above 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 Paragraph III.2, above.
4. **Jurisdiction.** 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. **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. **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.

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

 July 14, 2014
 Date

_____/S/_____
 (Signature)
 Typed Name: Brian P. Kelly
 Title: President
 Company Name: National Comfort Products

 July 14, 2014
 Date