

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

In the Matter of:

Maxx Cold Food Service
Respondent

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Case Number: 2012-SE-4506

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 Maxx Cold Food Service ("Respondent"). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distribution in commerce of units of a basic model of covered equipment that fail to meet the energy conservation requirements located at 10 C.F.R. § 431.136 and for failing to supply at Respondent's expense three automatic commercial ice makers to a designated testing facility in accordance with the time limits set forth in a test notice issued by DOE.
2. 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 as described at 10 C.F.R. § 429.102(a)(4) and (6). *See* 42 U.S.C. §§ 6302, 6316.
5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, **I HEREBY ASSESS** a civil penalty of \$75,000 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

/s/

Gregory H. Woods
General Counsel

Date May 9, 2013

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

In the Matter of:

**Maxx Cold Food Service,
Respondent**

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COMPROMISE AGREEMENT

The U.S. Department of Energy ("DOE") Office of the General Counsel initiated this action against Maxx Cold Food Service ("Respondent") pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty ("NPCP"). In the NPCP, DOE alleges that Respondent failed to supply at Respondent's expense three automatic commercial ice makers, basic model MIM450, to Intertek Testing services, Inc., in Cortland, New York, in accordance with the time limits set forth in a test notice issued by DOE. DOE also alleges in the NPCP that Respondent distributed in commerce in the U.S. basic model MIM450, which DOE has determined does not comply with applicable energy conservation 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 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 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 February 13, 2013, and captioned as case number 2012-SE-4506.
- (f) "Parties" means DOE and Respondent.

(g) "Respondent" means Maxx Cold Food Service.

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 established procedures for testing for enforcement of energy conservation standards for covered products and covered equipment at 10 C.F.R. § 429.110; 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 (1) failing to supply at the manufacturer's expense a requested number of covered products or covered equipment to a designated test laboratory in accordance with a test notice issued by DOE; and (2) distribution in commerce in the U.S. of covered equipment that is not in conformity with an applicable energy conservation standard; and

WHEREAS, in accordance with a Test Notice issued by DOE to Respondent on July 25, 2012, Respondent was required to ship three units of automatic commercial ice maker basic model MIM450, manufactured by Respondent, from a retail source to a designated test laboratory by August 1, 2012, but did not ship the units until August 9, 2012; and

WHEREAS, DOE, on December 11, 2012, issued a Notice of Noncompliance Determination to Respondent indicating that, based on DOE testing of four units of basic model MIM450, this basic model is not in compliance with the applicable federal energy conservation standard; and

WHEREAS, DOE, on February 13, 2013, initiated an action to assess a civil penalty for Respondent's failure to supply at the Respondent's expense a requested number of covered products or covered equipment to a designated test laboratory in accordance with a test notice issued by DOE, to wit, three units of automatic commercial ice maker basic model MIM450; and for Respondent's distribution in commerce of one (1) model of automatic commercial ice maker that is not in conformity with an applicable energy conservation standard; and

WHEREAS, Respondent admits:

1. Respondent manufactures and distributes, and has manufactured and distributed, automatic commercial ice makers, including but not limited to basic model MIM450;
2. Respondent failed to supply at Respondent's expense a requested number of automatic commercial ice makers to a designated test laboratory in accordance with a test notice issued by DOE on July 25, 2012; and

3. Respondent has manufactured and distributed in commerce in the United States approximately 423 units of basic model MIM450 since January 1, 2012.

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.
2. **Obligations of Respondent.** If this Compromise Agreement is executed within thirty (30) days of the date of the Notice, Respondent agrees to pay the sum of \$75,000 (seventy-five thousand dollars), as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of an Adopting Order.
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 Paragraph 2 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 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 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. **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.

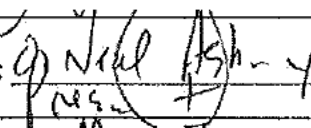
/S/

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

5/8/13

Date

/S/

(Signature) 
 Typed Name: Neal Ashby
 Title: President
 Company Name: Max Ice

4/30/13

Date