

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

In the Matter of:

Harrington Creations, LLC
d/b/a Harrington Brass Works,
Respondent

Case Number: 2014-SW-28011

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 Harrington Creations, LLC (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distributing in commerce in the United States faucets that failed to meet the applicable standard for water use in 10 C.F.R. § 430.32(o) and violations of the compliance certification requirements in 10 C.F.R. Part 429.
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.
4. Based on the information in the case file and Respondent’s admission of facts establishing violations, I find that Respondent committed Prohibited Acts by distributing in commerce faucets that were not in conformity with the applicable water conservation standard and failing to comply with 10 C.F.R. § 429.12. *See* 42 U.S.C. § 6302; 10 C.F.R. §§ 429.102(a)(1), 430.32(o).
5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, I **HEREBY ASSESS** a civil penalty of \$10,000 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

_____/S/_____
Steven P. Croley
General Counsel

_____3 / 6 / 15_____
Date

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In the Matter of:)
)
Harrington Creations, LLC) Case Number: 2014-SW-28011
d/b/a Harrington Brass Works,)
Respondent)

COMPROMISE AGREEMENT

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, initiated this action against Harrington Creations, LLC d/b/a Harrington Brass Works (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had 1) distributed in commerce in the United States faucets that did not conform to the applicable water conservation standard and 2) failed to submit a certification report for various basic models of faucets and showerheads. 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 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 and water 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 October 15, 2014, and captioned as case number 2014-SW-28011.
- (h) “Parties” means DOE and Respondent.
- (i) “Respondent” means Harrington Creations, LLC, and any parent, subsidiary, division or other related entity.

The Agreement further incorporates by reference all of the definitions set forth in 42 U.S.C. §§ 6291 and 6311 and 10 C.F.R. Parts 429, 430, and 431.

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 faucets at 10 C.F.R. § 430.32(o) and for showerheads at 10 C.F.R. § 430.32(p); and

WHEREAS, DOE, on July 30, 2014, issued a Notice of Noncompliance Determination finding that the faucet basic model containing Harrington individual model 20-210-026, manufactured by Respondent, does not comply with the applicable water conservation standard; and

WHEREAS, this basic model contains part numbers 20-210 and 20-211, in various finishes; and

WHEREAS, this basic model is a “covered product”; and

WHEREAS, the water conservation standards set forth in 10 C.F.R. § 430.32(o) apply to all units imported to, sold, or held for sale in the United States by Respondent on or after January 1, 1994; and

WHEREAS, DOE, on October 15, 2014, initiated an action to assess a civil penalty for distributing this non-compliant basic model in commerce in the United States; and

WHEREAS, DOE, on October 15, 2014, initiated an action to assess a civil penalty for failing to certify compliance and submit a certification report for the basic models containing part numbers 31-111, 32-110, 33-111, 04-100, 12-100, 20-200, and 31-200, each in various finishes; and

WHEREAS, Respondent admits:

1. Respondent manufactured the faucet basic model containing part numbers 20-210 and 20-211, in various finishes;
2. This basic model is subject to the water conservation standard set forth in 10 C.F.R. § 430.32(o);
3. Since January 13, 2010, Respondent distributed in commerce in the United States a total of at least 832 units of this faucet basic model that did not meet the applicable water conservation standard; and
4. Respondent has manufactured, distributed in commerce, and continues to distribute in commerce faucets and showerheads, including units of the basic models containing part numbers 31-111, 32-110, 33-111, 04-100, 12-100, 20-200, and 31-200;
5. The basic models containing part numbers 31-111, 32-110, 33-111, 04-100, 12-100, 20-200, and 31-200, each in various finishes, have been in distribution in commerce in the United States for at least 365 days;
6. The basic models in paragraphs 4 and 5 of these admissions also are “covered products”; and
7. As of October 14, 2014, Respondent had failed to submit the required certification reports for these basic models; 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 knowingly distributes in commerce any new covered product that is not in conformity with an applicable water conservation standard or fails to make reports or provide other required information; 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. If Respondent executes this Compromise Agreement and returns it to DOE no later than March 5, 2015, as full satisfaction of the civil penalty proposed in the Notice, Respondent agrees to pay a total sum of \$10,000, in four (4) equal installments of \$2,500 each on or before the following dates:
 - March 15, 2015
 - May 15, 2015
 - July 15, 2015
 - September 15, 2015.
 - b. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on July 30, 2014, captioned under case number 2014-SW-28011.
 - c. Within sixty (60) calendar days after the issuance of the Adopting Order, Respondent will, in accordance with 10 C.F.R. Part 429, certify all basic models of all covered products and covered equipment that 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 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 paragraph III.2, above. If Respondent fails to complete its Obligations in accordance with paragraph 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 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. 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.** Respondent agrees to make all payments 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, 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.
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/_____
 Laura L. Barhydt
 Assistant General Counsel for
 Enforcement
 U.S. Department of Energy

 March 6, 2015
 Date

_____/S/_____
 (Signature)
 Typed Name: Timothy Herley
 Title: Managing Director
 Company Name: Harrington
 Creations,LLC /dba Harrington Brass
 Works_____
 Date 3/02/15