

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

In the Matter of:)
)
Herbeau Creations of America, Inc.,) Case Number: 2015-CW-28005
Respondent)
)

ORDER

By the General Counsel, U.S. Department of Energy:

1. In this Order, I adopt the attached Compromise Agreement entered into by the U.S. Department of Energy (“DOE”) and Herbeau Creations of America, Inc., (“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. 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, which would complete the adjudication of the case.
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 failing to comply with 10 C.F.R. § 429.12. *See* 10 C.F.R. § 429.102(a)(1); 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 \$8,000 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

_____/S/_____
Steven P. Croley
General Counsel

_____3 / 9 / 16_____
Date

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Herbeau Creations of America, Inc.,) Case Number: 2015-CW-28005
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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 Herbeau Creations of America, Inc., (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty, alleging that Respondent had 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 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 February 10, 2016, and captioned as case number 2015-CW-28005.
- (h) “Parties” means DOE and Respondent.
- (i) “Respondent” means Herbeau Creations of America, 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 6311 and 10 C.F.R. Parts 429, 430, and 431.

II. RECITALS

WHEREAS, pursuant to 42 U.S.C. § 6291 *et seq.*, DOE is responsible for promulgating and enforcing the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for faucets at 10 C.F.R. § 430.32(o), and for showerheads at 10 C.F.R. § 430.32(p), and requires manufacturers to submit information and reports to ensure compliance with those standards pursuant to 10 C.F.R. §§ 429.12, 429.28, and 429.29; and

WHEREAS, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303 and 10 C.F.R. Part 429, Subpart C, DOE is authorized to assess civil monetary penalties for knowingly committing a prohibited act, including failing to make reports or provide other required information; and

WHEREAS, on February 10, 2016, DOE initiated an action to assess a civil penalty for failing to certify compliance and submit a certification report for various faucet and showerhead basic models; and

WHEREAS, Respondent admits:

1. Respondent has manufactured, distributed in commerce, and continues to distribute in commerce faucets, including units of basic models “3202 Royale High Arc Lavatory Set” and “4203 Namur Single Hole Mixer”;
2. Respondent has manufactured, distributed in commerce, and continues to distribute in commerce showerheads, including units of basic models “3665 Monarque Adjustable Showerhead” and “2258 Pompadour Shower Combination on Sliding Bar with ½” Wall Elbow”;
3. These basic models have been in distribution in commerce in the United States for at least 365 days;
4. These basic models are “covered products”; and
5. As of February 10, 2016, Respondent had failed to submit the required certification reports for these basic models; and

WHEREAS, failure to submit the required certification report for a covered product as required by 10 C.F.R. Part 429 is a prohibited act pursuant to 10 C.F.R. § 429.102(a)(1) and subject to civil penalty as described in 10 C.F.R. § 429.120;

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 within thirty (30) calendar days after the date of the Notice, Respondent agrees to pay the sum of \$8,000 as full satisfaction of the civil penalty proposed in the Notice within

- thirty (30) calendar days after DOE issues the Adopting Order. If Respondent executes this Compromise Agreement and returns it to DOE between thirty-one (31) and sixty (60) calendar days after the date of the Notice, Respondent agrees to pay the sum of \$16,000 as full satisfaction of the civil penalty proposed in the Notice within thirty (30) calendar days after DOE issues the Adopting Order.
- b. Within sixty (60) calendar days following the issuance of the Adopting Order, Respondent will, in accordance with 10 C.F.R. Part 429, properly 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 section III.2.a in full satisfaction of the 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. If Respondent fails to complete its Obligations in accordance with section 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 into 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. 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.** 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 constitutes 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

_____/S/_____
(Signature)
Typed Name: Holger Baron
Title: President
Company Name: Herbeau Creations of America

 March 8, 2016
Date

 3/7/16
Date