

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

In the Matter of:

Air-Con International, Inc.
Respondent

Case Number: 2017-SE-16004

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 Air-Con International, Inc. (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distribution in commerce of units of a basic model of a covered product that failed to meet the energy conservation requirements as described at 10 C.F.R. § 430.32(c).

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)(6). *See* 42 U.S.C. § 6302.

5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, **I HEREBY ORDER** that the Compromise Agreement attached to this Order is adopted.

/S/

John T. Lucas
Acting General Counsel

8/23/2017

Date

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

In the Matter of:

Air-Con International, Inc.
Respondent

Case Number: 2017-SE-16004

COMPROMISE AGREEMENT

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, initiated this action against Air-Con International, Inc. (“Respondent”) pursuant to 10 C.F.R. § 429.122¹ by Notice of Proposed Civil Penalty alleging that Respondent had distributed in commerce in the United States units of central air conditioning heat pumps that do not conform to an applicable energy conservation standard. 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 DOE issued to Respondent on August 15, 2017, and captioned as case number 2017-SE-16004.

¹ All references to the Code of Federal Regulations refer to the January 1, 2015 edition of Title 10 Parts 200-499 of the Code of Federal Regulations.

- (h) “Parties” means DOE and Respondent.
- (i) “Respondent” means Air-Con International, Inc., 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 10 C.F.R. Parts 429 and 430.

II. RECITALS

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

WHEREAS, on July 28, 2017, DOE issued a Notice of Noncompliance Determination finding that the split-system central air conditioning heat pump basic model manufactured by _____, consisting of the outdoor model branded and sold as Air-Con International, Inc. (“Air-Con”) model A13CH4H4G09 and the indoor model branded and sold as Air-Con model A13EM4H4G09 (together, and including all individual models covered by this basic model, the “subject model”), manufactured by Respondent, does not comply with the applicable energy conservation standard; and

WHEREAS, the subject model is a “covered product”; and

WHEREAS, the energy conservation standards set forth in 10 C.F.R. § 430.32(c)(1) apply to all units manufactured by Respondent on or after January 23, 2006, and before January 1, 2015; and

WHEREAS, on August 15, 2017, DOE initiated an action to assess a civil penalty for distributing these noncompliant units in commerce in the United States; and

WHEREAS, Respondent admits:

1. Respondent manufactured the subject model;
2. The subject model is subject to the energy conservation standard set forth in 10 C.F.R. § 430.32(c)(1);
3. The subject model does not comply with that energy conservation standard; and
4. Respondent distributed in commerce in the United States at least 2,434 units of the subject model; 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 against any manufacturer that knowingly distributes in commerce any new covered product that is not in conformity with an applicable energy conservation standard; and

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 are 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.** Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on July 28, 2017, captioned under case number 2017-SE-16004.
3. **Obligations of DOE.**
 - a. DOE agrees to issue promptly an Adopting Order adopting this Agreement.
 - b. 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 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 will 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 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 constitutes 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 will 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, is an original, and all of which counterparts together constitute one and the same fully executed instrument.

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

August 21, 2017
Date

_____/S/
(Signature)
Typed Name: Jaime Maldonado

Title: President

Company Name: Air-Con International, Inc.

8/21/2017
Date