

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

In the Matter of:)
)
Leer, Inc.) Case Number: 2016-SE-53003
Respondent)
)

COMPROMISE AGREEMENT

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, initiated this action against Leer, Inc. (“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 walk-in cooler and freezer (“WICF”) panels that Respondent failed to properly test and certify pursuant to 10 C.F.R. Part 429, Subpart B and 10 C.F.R. Part 431, Subpart R. 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 29, 2018, and captioned under case number 2016-SE-53003.
- (h) “Parties” means DOE and Respondent.
- (i) “Respondent” means Leer, 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 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 walk-in cooler panels at 10 C.F.R. § 431.306; and

WHEREAS, a WICF manufacturer must submit a certification report to DOE for each basic model of a WICF panel prior to distributing that basic model in commerce in the United States. 10 C.F.R. §§ 429.12, 429.53; and

WHEREAS, prior to submitting a certification of compliance, a manufacturer must test a randomly selected sample of a sufficient quantity of each basic model to ensure the compliance of the basic model with the energy conservation standards in accordance with 10 C.F.R. §§ 429.11, 429.12, 429.53, 431.304, 431.306; and

WHEREAS, on February 26, 2013, in settlement of an enforcement action, Respondent agreed to certify the compliance of all products prior to distribution in commerce as required by 10 C.F.R. § 429.12, which includes a certification that all products listed have been tested in accordance with the applicable DOE test procedure; and

WHEREAS, basic model C/3.5 is a WICF cooler panel; and

WHEREAS, WICF cooler panels manufactured between July 14, 2014, and January 17, 2017, were required to be tested pursuant to 10 C.F.R. §§ 429.11, 429.53, and 10 C.F.R. Part 431, Subpart R; and

WHEREAS, on August 29, 2018, DOE initiated an action to assess a civil penalty for failing to properly test and certify the basic model prior to distributing the model in commerce in the United States; and

WHEREAS, Respondent admits that, between July 14, 2014, and January 17, 2017:

1. Respondent manufactured WICF basic model C/3.5;
2. Respondent has distributed WICF basic model C/3.5 in commerce for at least 365 days;
3. Respondent failed to properly test and certify WICF basic model C/3.5 before distributing the model in commerce; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, 6303, and 6316, and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil monetary penalties against any manufacturer for failure to properly certify the compliance of any covered product or covered equipment subject to an applicable energy conservation standard prior to distribution in commerce and annually thereafter; and

WHEREAS, DOE, on January 17, 2017, issued a Notice of Noncompliance Determination, finding that WICF cooler panel basic model C/3.5, manufactured and distributed in commerce by Respondent, does not comply with the applicable energy conservation standard; and

WHEREAS, DOE is authorized to assess civil monetary penalties against any manufacturer that knowingly distributes in commerce any new covered equipment that is not in conformity with an applicable energy or water conservation standard.

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.**
 - 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 **\$24,000 (twenty-four thousand dollars)**, as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) calendar days of the issuance of an Adopting Order.
 - b. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on January 17, 2017, captioned under case number 2016-SE-53003.
 - c. Respondent will, in accordance with 10 C.F.R. Part 429, properly test and annually certify all basic models of all covered products and covered equipment that Respondent manufactures and distributes in commerce in the United States, as required by DOE Rules.
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 enforcement actions captioned under case number 2016-SE-53003 with prejudice upon Respondent's completion of its Obligations in accordance with paragraphs III.2.a and III.2.b, above. If Respondent fails to complete its Obligations in accordance with paragraphs III.2.a and III.2.b, 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.
 - d. DOE agrees not to assess civil monetary penalties against Respondent for the distribution in commerce of any units of WICF cooler panel basic model C/3.5 prior to January 17, 2017.
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 with respect to this matter, whether oral or written.
11. **Modifications.** This Compromise Agreement cannot be modified without the 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; or if such modification is not possible, then the rest of this agreement remains enforceable to the maximum extent allowed by law.
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

____September 10, 2018_____
Date

_____/S/_____
(Signature)
Typed Name: _Mark J. Edmonds_____
Title: ___President_____
Company Name: ___Leer, Inc._____

____August 31, 2018_____
Date