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

In the Matter of:	)	
	)	
Stajac Industries, Inc.	)	Case Number: 2016-SE-42042
Respondent	)	
	)	

<u>ORDER</u>

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 Stajac Industries, Inc. ("Respondent"). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distributing in commerce in the United States commercial ice cream freezers that are not in compliance with the applicable energy conservation standard in 10 C.F.R. § 431.66.

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 commercial ice cream freezers that are not in compliance with the applicable energy conservation standard. *See* 42 U.S.C. § 6302; 10 C.F.R. § 429.102(a)(6).

5. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. § 6303, **I HEREBY ASSESS** a civil penalty of $177,000 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

_/S/____________________________
John T. Lucas
Acting General Counsel

_4/26/2018________________________
Date

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

In the Matter of:	)	
	)	
Stajac Industries, Inc. Respondent	)	Case Number: 2016-SE-42042
	)	
	)	

COMPROMISE AGREEMENT

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, initiated this action against Stajac Industries, 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 commercial ice cream freezers that are not in compliance with the 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 enforcement 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) "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.

(c) "DOE" means the U.S. Department of Energy.

(d) "DOE Rules" means DOE's energy conservation regulations found in Title 10, Parts 429, 430 and 431 of the Code of Federal Regulations.

(e) "Manufacture" means to manufacture, produce, assemble, or import.

(f) "Notice" means the Notice of Proposed Civil Penalty issued by DOE to Respondent on December 27, 2017, and captioned as case number 2016-SE-42042.

(g) "Parties" means DOE and Respondent.

(h) "Respondent" means Stajac Industries, 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 commercial ice cream freezers at 10 C.F.R. § 431.66; 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, 429.42, 431.64, 431.66; and

WHEREAS, DOE, on August 4, 2017, issued a Notice of Noncompliance Determination with respect to commercial ice cream freezer basic models DS-30 and DS-48 (the "subject models"), manufactured and distributed in commerce by Respondent; and

WHEREAS, commercial ice cream freezers are "covered equipment" as defined in 42 U.S.C. § 6311 and 10 C.F.R. § 431.2; and

WHEREAS, DOE, on December 27, 2017, initiated an action to assess a civil penalty for Respondent's distribution in commerce in the United States of the subject models; and

WHEREAS, Respondent admits:

1. Respondent manufactured the subject models.
2. Respondent has distributed in commerce in the United States at least 886 units of the subject models.
3. The subject models are self-contained, horizontal closed transparent, commercial ice cream freezers manufactured on or after January 1, 2012.
4. The subject models do not comply with the maximum permissible rate of energy consumption set forth at 10 C.F.R. § 431.66(d)(1) and 10 C.F.R. § 431.66(e)(1).

WHEREAS, DOE, pursuant to 42 U.S.C. § 6316 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 equipment that is not in conformity with an applicable energy or water 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. **<u>Adopting Order</u>.** The parties agree that the provisions of the 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 not later than April 20, 2018, Respondent agrees to pay the sum of **$177,000** (one hundred and seventy-seven thousand dollars) as full satisfaction of the civil penalty proposed in the Notice in three equal payments of $59,000, as follows:

      i. Payment 1: $59,000 within thirty (30) calendar days of the issuance of an Adopting Order;

      ii. Payment 2: $59,000 not later than October 15, 2018; and

      iii. Payment 3: $59,000 not later than April 15, 2019.

   b. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on August 4, 2017, captioned under case number 2016-SE-42042.

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 performance pursuant to Paragraph III.2.a above 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 enforcement actions captioned under case number 2016-SE-42042 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 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 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 the violations alleged in the Notice.

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. **Acceleration.** In the event that Respondent fails to make any payment in strict accordance with the payment schedule in section 2.a above, time being of the essence hereof, DOE may, without notice or demand, declare the entire outstanding balance immediately due and payable.

13. **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.

14. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.

15. **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

__ April 20, 2018_________________
Date

_/S/__________________________________
(Signature)
Typed Name: _Howard Noskowicz______
Title: _CEO_________________________
Company Name: Stajac Industries, Inc.__

_4/20/2018______________________________
Date