

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

In the Matter of: )

GE Appliances, a Division of )  
General Electric Company, )  
Respondent )

Case Number: 2012-SE-1403

**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 GE Appliances, a Division of General Electric Company (“Respondent”). The Compromise Agreement resolves the case initiated after DOE was informed, based on test results made available as a result of verification testing by the Association of Home Appliance Manufacturers (“AHAM”), that a GE refrigerator basic model may not meet the energy conservation standard set forth in 10 C.F.R. § 430.32(a).

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 failing to comply with 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** Respondent to pay a sum of \$63,000 **AND ADOPT** the Compromise Agreement attached to this Order.

  
Gregory H. Woods  
General Counsel

October 3, 2012  
Date

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

In the Matter of: )  
)  
GE Appliances, a Division of General ) Case Number: 2012-SE-1403  
Electric Company )  
)

**COMPROMISE AGREEMENT**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, with the cooperation of GE Appliances (“GE”), initiated this action after DOE was informed, based on test results made available as a result of verification testing by the Association of Home Appliance Manufacturers (“AHAM”), in which GE is a voluntary participant, that the GE refrigerator basic model that was certified as basic model SMR04GAZCS, including models SMR04GAZACS and SMR04GAZBCS, may not meet the energy conservation standard set forth in 10 C.F.R. § 430.32(a). GE, 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 shall 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) “AHAM” means the Association of Home Appliance Manufacturers, the trade association for home appliance manufacturers, which is also a standards development organization, accredited by the American National Standards Institute (“ANSI”), and an Environmental Protection Agency (“EPA”)-recognized verification administrator maintaining six performance and energy verification programs.
- (d) “Basic Model” means the basic model that was certified under the model number SMR04GAZCS, which includes all units of two GE model numbers, SMR04GAZACS and SMR04GAZBCS, as well as all refrigerator units manufactured or imported by GE that have the same primary energy source and essentially identical electrical, physical, and functional characteristics that affect energy consumption as models SMR04GAZACS and SMR04GAZBCS. All units within the Basic Model are GE 4 cubic feet capacity compact refrigerators.

- (e) "DOE" means the U.S. Department of Energy.
- (f) "DOE Rules" means DOE's energy conservation regulations found in Title 10, Parts 429 and 430 of the Code of Federal Regulations.
- (g) "GE" means GE Appliances, an operating division of the General Electric Company.
- (h) "Guangzhou Wanbao" means Guangzhou Wanbao Group Refrigerator Co., Ltd., the original equipment manufacturer of units of the Basic Model.
- (i) "Manufacture" means to manufacture, produce, assemble, or import.
- (j) "Parties" means DOE and GE.
- (k) "Person" includes (1) any individual, (2) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, and (3) the government and any agency of the United States or any State or political subdivision thereof.

The Agreement further incorporates by reference all of the definitions found within 42 U.S.C. § 6291.

## II. RECITALS

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

WHEREAS, DOE has promulgated energy conservation standards for refrigerators at 10 C.F.R. § 430.32(a); and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6295, 6302, and 6303 and 10 C.F.R. Part 429, Subpart C, is authorized to assess civil penalties against any manufacturer that distributes in commerce any new covered product that is not in conformity with an applicable energy conservation standard; and

WHEREAS, all units within the Basic Model are "covered product[s]" as defined in 10 C.F.R. § 430.2; and

WHEREAS, the Basic Model was privately labeled by GE and produced by Guangzhou Wanbao; and

WHEREAS, under its contract with Guangzhou Wanbao, GE set energy performance specifications for the Basic Model that were consistent with DOE energy conservation standards and, pursuant to its compliance assurance program, required Guangzhou Wanbao to perform periodic energy tests of the Basic Model; and

WHEREAS, Guangzhou Wanbao's energy testing laboratory has been certified by the Canadian Standards Association ("CSA") as a supervised manufacturer's test laboratory capable of testing product compliance with energy conservation standards under 10 C.F.R. Part 430, Subpart B, Appendix A1; and

WHEREAS, Guangzhou Wanbao performed energy tests in December 2009 on units of the Basic Model manufactured in December 2009, in July 2010 on units of the Basic

Model manufactured in July 2010, and in April 2011 on units of the Basic Model manufactured in April 2011; and

WHEREAS, these energy tests indicated that the energy consumption of the Basic Model met or was better than the specifications set by GE and the applicable DOE standard for the Basic Model at 340 kilowatt-hours per year (kWh/yr), 340 kWh/yr, and 338 kWh/yr, respectively; and

WHEREAS, each year, GE requires all basic models manufactured by each of its suppliers to be tested by an independent laboratory; and

WHEREAS, units of the Basic Model manufactured in January 2012 were tested by an independent laboratory, the Underwriters Laboratories ("UL") facility in SuZhou, China, which thereafter sent a report to GE dated February 28, 2012, stating that the Basic Model complied with the specifications set by GE and the applicable DOE standard at 308 kWh/yr; and

WHEREAS, GE participated in the development of the voluntary AHAM verification program, which program is recognized by EPA as meeting the audit requirements for its ENERGY STAR Program and participation in which is part of GE's commitment to provide additional and independent assurance that products manufactured by GE and products sourced from others and distributed by GE comply with DOE energy conservation standards; and

WHEREAS, in April 2012, a unit of the Basic Model was tested pursuant to AHAM's verification program in accordance with the procedures for conducting such tests set forth in DOE Rules, which took place at a CSA International testing facility in Toronto, Ontario, Canada; and

WHEREAS, the test results from AHAM's April 2012 verification testing indicated that a unit of the Basic Model consumed energy at a rate of 402 kWh/yr, which information was reported to DOE in accordance with the provisions of the voluntary AHAM verification program; and

WHEREAS, pursuant to 10 C.F.R. § 430.32(a), the applicable energy conservation standard for the Basic Model is 347 kWh/yr; and

WHEREAS, solely for purposes of this Compromise Agreement, GE admits the following:

1. GE imported<sup>1</sup> units of the Basic Model;
2. GE, by importing and selling units of the Basic Model, has distributed the Basic Model in commerce in the United States; and
3. The Basic Model does not meet the federal minimum energy conservation standard set forth at 10 C.F.R. § 430.32(a); and

WHEREAS, GE received notification of AHAM's verification program test results for the Basic Model on April 27, 2012, and quickly thereafter took steps to stop units of the Basic Model from entering commerce, including taking the following actions:

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<sup>1</sup> As an importer, GE is a "manufacturer" under 42 U.S.C. § 6291 and 10 C.F.R. § 430.2.

1. Notifying Guangzhou Wanbao to stop production of the Basic Model;
2. Placing all inventory of the Basic Model on hold to prevent it from being sold;
3. Requesting that its principal customer stop selling units of the Basic Model to consumers;
4. Beginning efforts to retrieve units of the Basic Model from its principal customer's premises; and
5. Confirming that no other retail customer had any remaining units of the Basic Model available for sale; and

WHEREAS, GE has created and maintains purchasing processes to attempt to ensure that sourced products comply with applicable regulations, including the following:

1. Requiring periodic energy testing of sourced products;
2. Requiring suppliers to (a) submit, for GE's review and approval, all product changes and (b) perform confirmatory energy testing if there may have been an impact on energy-critical components or processes; and
3. Requiring random third-party testing; and

WHEREAS, GE has cooperated fully with DOE in connection with this investigation; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, 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 GE.**
  - a. GE, on May 2, 2012, ordered Guangzhou Wanbao to cease manufacture of the Basic Model and, on May 3, 2012, ceased all sales of the Basic Model. Upon the issuance of an Adopting Order, GE will never again import, or otherwise distribute in commerce in the United States, any units of the Basic Model.
  - b. No units of the Basic Model were imported between May 3 and May 31, 2012, when the last shipment of units of the Basic Model entered the customs territory of the United States at the Port of Los Angeles. That shipment had already been exported from China by Guangzhou Wanbao by May 3, 2012. However, none of the units in that shipment were sold or ever left the GE Los Angeles warehouse until they were shipped back to Guangzhou Wanbao.

Upon the issuance of an Adopting Order, GE will never again import, or otherwise distribute in commerce within the United States, any units of the Basic Model under any model number.

- c. On August 1, 2012, and September 24, 2012, GE submitted certification reports through DOE's electronic Compliance and Certification Management System ("CCMS"), CCMS numbers 16595 and 18708, indicating that GE has discontinued the Basic Model.
- d. GE will ensure that any individual model number used to designate a 4 cubic feet capacity refrigerator will be sufficiently distinct from the model numbers "SMR04GAZBCS" and "SMR04GAZACS" to make sure that there is no confusion in the marketplace.
- e. GE will not manufacture or distribute in commerce in the United States a modified or retrofitted version of the Basic Model without DOE's express permission in the form of a Notice of Allowance. Further, GE will not manufacture or distribute in commerce any product under a different model number that is a modification of the Basic Model without DOE's express permission in the form of a Notice of Allowance.
  - i. If GE wishes to manufacture or distribute in commerce a basic model with the same design as the Basic Model, GE must submit test data to DOE demonstrating that the modified basic model's energy consumption characteristics are different from those of the Basic Model. DOE will evaluate whether a Notice of Allowance is appropriate.
  - ii. If GE wishes to manufacture and distribute in commerce a 4 cubic feet capacity refrigerator with a different design, it may do so without express DOE permission. The model must, however, be certified as a new basic model prior to distribution in commerce.
- f. Within one hundred twenty (120) calendar days following the issuance of an Adopting Order, GE will either export or destroy all units of the Basic Model that are currently in GE's possession or control within the United States except for twenty-seven (27) units that will be preserved. The twenty-seven (27) units will be clearly marked to preclude distribution in commerce in the United States, and GE will provide to DOE the serial numbers and model numbers of the units to be preserved.
- g. Within one hundred eighty (180) calendar days following the issuance of an Adopting Order, GE will submit a list, Bills of Lading and a sworn affidavit attesting to the exportation of the units of the Basic Model, identified by serial number and model number, that have been exported.
- h. If GE chooses to destroy any of the units required to be destroyed or exported, within one hundred eighty (180) calendar days following the issuance of an Adopting Order, GE will submit a sworn affidavit attesting to the destruction of the units of the Basic Model, identified by serial number and model number, that have been destroyed.

- i. GE agrees to pay the sum of \$63,000 within thirty (30) calendar days of the issuance of an Adopting Order.

**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 GE's performance pursuant to paragraphs III.2.a through III.2.i in lieu of pursuing enforcement actions, including but not limited to issuing a Notice of Noncompliance Determination pursuant to 10 C.F.R. § 429.114 or assessing any additional possible financial penalties available pursuant to 10 C.F.R. § 429.120.
- b. DOE agrees promptly to issue an Adopting Order adopting this Agreement.
- c. DOE agrees to terminate this investigation, which relates to the noncompliance of the Basic Model with energy conservation standards, with prejudice to any future enforcement actions, upon GE's completion of its Obligations in accordance with paragraphs III.2.a through III.2.i, above.

**4. Failure to Comply.**

- a. If DOE believes that GE has failed to comply with any of its obligations under this Compromise Agreement, DOE will provide written notice to GE. DOE will allow GE thirty (30) days from the date of the written notice to submit any relevant materials to DOE and to discuss, by telephone or in person, any relevant issues with DOE. If, after reviewing all submitted materials and participating in all discussions, DOE is not satisfied that GE has fulfilled its obligations under this Compromise Agreement, DOE will issue a notification of DOE's determination. Any such notification will (a) explain the basis for DOE's determination and (b) indicate the amount that GE will pay to the U.S. Treasury, determined pursuant to section III.5 of the Compromise Agreement dependent upon the nature of any such breach of the agreement. DOE may issue multiple notifications if GE fails to comply with more than one provision of the Compromise Agreement and/or fails to comply with one provision on multiple occasions.
- b. Any dispute that may arise about whether GE has breached this Compromise Agreement shall be deemed a separate dispute that is not resolved by this Compromise Agreement.

**5. Penalties for Failure to Comply.**

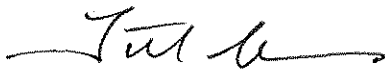
- a. If DOE determines that GE has failed to cease permanently distribution in commerce in the U.S. of units of the Basic Model, as required under the Compromise Agreement, GE agrees to pay an additional \$126,000.
- b. If DOE determines that GE has not exported or destroyed the relevant units of the Basic Model by the date required under paragraph III.2.f of the Compromise Agreement, GE agrees to pay \$200 per unit for every unit that GE has not exported or destroyed. After any and every subsequent 30-calendar-day period during which GE does not export or destroy the

relevant units of the Basic Model, GE agrees to pay an additional \$200 per unit for every unit that GE has not exported or destroyed.

- c. If DOE determines that GE has not submitted an affidavit and, if required, a list and Bills of Lading documenting the destruction and/or exportation of all units required to be exported and/or destroyed by the date required under paragraphs III.2.g and III.2.h of the Compromise Agreement, GE agrees to pay \$200 per unit for every unit for which GE has not submitted proper documentation. After any and every subsequent 60-calendar-day period during which GE does not submit a list and Bills of Lading documenting exportation of all units claimed to be exported and/or the affidavit, GE agrees to pay an additional \$200 per unit for every unit for which GE has not submitted proper documentation.
  - d. If DOE determines that GE has imported into the United States any units of the Basic Model after the date of the Adopting Order, GE agrees to pay an additional \$200 per unit that DOE determines GE has imported.
6. **Jurisdiction.** This Compromise Agreement is entered 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 GE and primary jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.
  7. **Effective Date.** The Parties agree that this Compromise Agreement shall become effective on the date on which the General Counsel issues the Adopting Order. Upon release, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel.
  8. **Limitations.** Nothing in this agreement binds any other agency of the United States government beyond DOE.
  9. **Waivers.** GE agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement, including any right to judicial review that may be available to GE, except that GE reserves the right to seek judicial review of a determination DOE issues pursuant to section III.4 of this Compromise Agreement. If either Party (or the United States on behalf of DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither GE nor DOE shall contest the validity of the Compromise Agreement, and GE waives any statutory right to a trial *de novo*. GE 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.
  10. **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.
  11. **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.

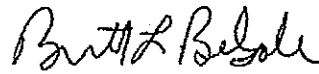


12. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
13. **Invalidity.** In the event that this Compromise Agreement in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.
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.



Timothy G. Lynch  
Deputy General Counsel for  
Litigation and Enforcement  
U.S. Department of Energy

28 September 2012  
Date



Brett BeGole  
General Manager, Appliances Product  
Management  
GE Appliances

9/28/2012  
Date