

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

In the Matter of:)

National Comfort Products)
(Residential central air conditioners and)
heat pumps))

Case Number: 2010-SE-0307


ORDER

Issued: October 28, 2011

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 National Comfort Products (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for violations of the compliance certification requirements at 10 C.F.R. § 429.12.
2. The 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 Acts¹ by failing to comply with 10 C.F.R. § 429.12 and 42 U.S.C. § 6296(d).
5. Accordingly, pursuant to Section 333 of the Energy Policy and Conservation Act, of 1975, as amended,² **I HEREBY ASSESS** a civil penalty of \$8,000 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

U.S. DEPARTMENT OF ENERGY


Sean A. Lev
Acting General Counsel

¹ 42 U.S.C. § 6302.

² 42 U.S.C. § 6303.

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U.S. DEPARTMENT OF ENERGY
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In the Matter of:)
)
National Comfort Products,) Case Number: 2010-SE-0307
Respondent)
)
)

COMPROMISE AGREEMENT

The U.S. Department of Energy Office of the General Counsel initiated this action against National Comfort Products ("Respondent") pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty alleging that Respondent had improperly certified compliance for central air conditioners, models NCPC-424-1010, NCPC-424-3010 and NCPD-430-3010 by submitting certification reports that were not based on the required testing. Respondent on behalf of itself and any parent, subsidiary, division or other related entity and DOE, by their authorized representatives, hereby enters into this Compromise Agreement for the purpose of settling this civil penalty 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) "DOE" means the U.S. Department of Energy.
- (d) "DOE Rules" means DOE's energy conservation regulations found in Title 10, Parts 429 and 430 of the Code of Federal Regulations.
- (e) "Notice" means the Notice of Proposed Civil Penalty issued by DOE to Respondent on September 28, 2011, and captioned as case number 2010-SE-0307.
- (f) "Parties" means DOE and Respondent.
- (g) "Respondent" means National Comfort Products.

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 central air conditioners and heat pumps at 10 C.F.R. § 430.32 and requires manufacturers to submit information and reports certifying compliance with those standards at 10 C.F.R. § 429.12; and

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

WHEREAS, DOE, on September 28, 2011, initiated an action to assess a civil penalty for improperly certifying compliance and submitting certification reports for basic models NCPC-424-1010*, NCPC-424-3010* and NCPD-430-3010*; and

WHEREAS, Respondent admits:

1. Respondent manufactures and distributes, and/or has manufactured and distributed, central air conditioners, including but not limited to basic models NCPC-424-1010*, NCPC-424-3010* and NCPD-430-3010*;
2. These products have been in distribution in the United States for at least 365 days; and
3. As of September 28, 2011, Respondent had not properly tested and submitted valid certification reports and compliance statement for these basic models of central air conditioners; 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 Respondent.**

- a. If this Compromise Agreement is executed within 30 days of 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 30 days of the issuance of an Adopting Order. If this Compromise Agreement is executed between 31 and 60 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 30 days of the issuance of an Adopting Order.
- b. Within sixty (60) calendar days following the issuance of an Adopting Order, all basic models Respondent offers for distribution in commerce in the United States shall have been properly certified in accordance with 10 C.F.R. § 429.12, including testing a minimum of two units in accordance with 10 C.F.R. § 429.11. Respondent will provide DOE with copies of the test data underlying Respondent's certification of basic model NCPD-430-3010*.
- c. Respondent agrees to pay \$200 per day for each day in excess of sixty (60) calendar days following the issuance of an Adopting Order for any basic model it fails to certify in accordance with 10 C.F.R. § 429.12.

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 paragraphs III.2.a. and III.2.c. in full satisfaction of the penalty authorized by the Act.
- b. DOE agrees promptly to issue an Adopting Order adopting this Agreement.
- c. DOE agrees to terminate the enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with paragraph III. 2 above.

4. **Jurisdiction and Governing Law.** 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 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. Upon release, 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. **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.

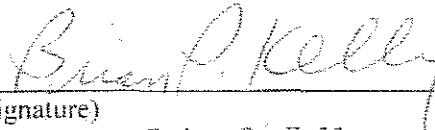
7. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only the violations alleged in the Notice and certification violations related to basic models properly certified by Respondent under paragraph III.2.b, *provided that*, Respondent fully complies with paragraph III.2.b.
8. **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.
9. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
10. **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.
11. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
12. **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 October 2011

Date



(Signature)

Typed Name: Brian P. Kelly

Title: President

Company Name: National Comfort Products
(Division of National Refrigeration &
A/C Products, Inc.)

Date 10/28/11