

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

In the Matter of: )  
)  
**Electrolux North America** ) Case Number: 2012-CE-1901  
(dishwashers) )  
)

**NOTICE OF PROPOSED CIVIL PENALTY**

Date issued: June 27, 2012

Number of alleged violations: 768 (1 basic model; 768 days)

Maximum possible assessment: \$151,640

Proposed civil penalty: \$15,164

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Electrolux North America (“Electrolux”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and DOE’s certification regulations.<sup>1</sup>

Specifically, DOE alleges:

1. Electrolux manufactures and has manufactured a variety of dishwashers, including basic model EIDW 6305\*\*\*.<sup>2</sup>
2. Basic model EIDW 6305\*\*\* is a “covered product” as defined in 10 C.F.R. § 430.2.
3. As Electrolux acknowledged via email on June 5, 2012, Electrolux began distributing basic model EIDW 6305\*\*\* in commerce in the U.S. on or before January 1, 2010, and continued distributing this basic model in commerce in the U.S. until February 7, 2012.
4. Electrolux did not submit a certification report for basic model EIDW 6305\*\*\*, as required by DOE regulations,<sup>3</sup> either on or prior to February 7, 2012.

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<sup>1</sup> At the time Electrolux allegedly first violated DOE regulations, the general provisions governing certification reports were located at 10 C.F.R. § 430.62. Certification requirements were moved to 10 C.F.R. Part 429, Subpart B by rule. *See* 76 Fed. Reg. 12,422 (Mar. 7, 2011). General requirements governing certification reports are now located at 10 C.F.R. § 429.12.

<sup>2</sup> This Notice pertains only to basic model EIDW 6305\*\*\* (which, according to its Energy Guide label, has an estimated yearly electricity use of 324 kilowatt-hours (kWh)) and not to basic model EIDW 6305\*\*\*A (which has an estimated yearly electricity use of 299 kWh).

<sup>3</sup> On and prior to July 4, 2011, Electrolux’s failure to certify was a violation of 10 C.F.R. § 430.62. On and after July 5, 2011, Electrolux’s failure to certify was a violation of 10 C.F.R. § 429.12.

5. At no point on or after June 1, 2012, did Electrolux report to DOE, as required by 10 C.F.R. § 429.12(f), that production of basic model EIDW 6305\*\*\* had ceased and that this basic model was no longer being distributed.

**The following information is provided in question and answer format to help explain Electrolux's legal obligations and options.**

*What do I do now?*

DOE is offering a settlement of **\$6,500** if you submit the signed Compromise Agreement within thirty (30) days of the date of this Notice. As part of that settlement, you must pay the fine within thirty (30) days of the date of issuance of an order adopting the Agreement ("Adopting Order") and must properly certify all models that you are distributing in commerce in the U.S. within sixty (60) days of the date of the Adopting Order. If you do not submit the required certification documents within sixty (60) days of the date of the Adopting Order, you must pay an additional \$150 per day per basic model for every day you do not certify each basic model.

If you do not choose to settle the case, DOE may seek the **maximum penalty** (\$151,640) authorized by law. You have other options as described below.

*What are my other options?*

If you do *not* agree to DOE's settlement offer, you must select Option 1 or Option 2, below, within thirty (30) calendar days.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge ("ALJ") for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

*When must I respond?*

You must submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the settlement amount of \$6,500. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

*How should I submit my response?*

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: abigail.chingos@hq.doe.gov

By fax to: (202) 586-3274

By FedEx to: Abigail Burger Chingos  
U.S. Department of Energy  
Office of the General Counsel (GC-32)  
1000 Independence Ave., SW  
Washington, DC 20585

*What happens if I fail to respond?*

If you fail to respond within thirty (30) calendar days of the date of this Notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

*What should I include in my response?*

- 1) If you wish to accept DOE's settlement offer, you should submit the signed Compromise Agreement (which is enclosed). If you do not wish to accept DOE's settlement offer, you may specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act ("DCIA") requires all federal agencies to obtain the TIN in any case that may give rise to a debt to the government.

*How did you calculate the maximum possible assessment?*

Federal law sets a maximum civil penalty for each day you fail to submit to DOE the required information for a covered product. By regulation, you must submit a certification report for each basic model. Therefore, your maximum penalty is calculated based on each day you distributed each basic model in commerce in the U.S. without having submitted a certification report. The maximum penalty is now \$200 per day. 10 C.F.R. § 429.120; *see also* 74 Fed. Reg. 66,029, 66,032 (Dec. 14, 2009) (increasing maximum penalty to \$200 per day effective Jan. 13, 2010).

DOE is not, at this time, pursuing a penalty for Electrolux's failure to submit, as required by 10 C.F.R. § 429.12(f), a report indicating that basic model EIDW 6305\*\*\* has been discontinued. DOE is also not pursuing violations that occurred prior to January 9, 2010. DOE may, however, pursue all violations up to five (5) years old if the case goes to hearing.

Issued by:



Laura L. Barhydt  
Assistant General Counsel  
for Enforcement

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

In the Matter of: )  
 )  
Electrolux North America, ) Case Number: 2012-CE-1901  
Respondent )  
 )  
 )

**COMPROMISE AGREEMENT**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, initiated this action against Electrolux North America (“Respondent”) pursuant to 10 C.F.R. § 429.122 by Notice of Proposed Civil Penalty, alleging that Respondent had failed to submit a certification report for dishwasher basic model EIDW 6305\*\*\*. 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 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 the current or, where applicable, prior versions of 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 June 27, 2012, and captioned as case number 2012-CE-1901.
- (f) “Parties” means DOE and Respondent.
- (g) “Respondent” means Electrolux North America.

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 dishwashers at 10 C.F.R. § 430.32(f) and requires manufacturers to submit information and reports to ensure compliance with those standards;<sup>1</sup> and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303, as well as regulations currently and previously in force,<sup>2</sup> 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 June 26, 2012, initiated an action to assess a civil penalty for failing to certify compliance and submit a certification report for basic model EIDW 6305\*\*\*; and

WHEREAS, Respondent admits:

1. Respondent manufactures and has manufactured a variety of dishwashers that it distributes and has distributed in commerce in the U.S., including, but not limited to, basic model EIDW 6305\*\*\*;
2. Basic model EIDW 6305\*\*\* is a “covered product” as defined in 10 C.F.R. § 430.2;
3. As Respondent acknowledged via email on June 5, 2012, Respondent began distributing basic model EIDW 6305\*\*\* in commerce in the U.S. on or before January 1, 2010, and continued distributing this basic model in commerce in the U.S. until February 7, 2012; and
4. Respondent did not submit a certification report for basic model EIDW 6305\*\*\*, as required by DOE regulations, either on or prior to February 7, 2012; 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. Respondent agrees to pay the sum of \$6,500, as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the effective date of this Agreement.

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<sup>1</sup> Certification requirements were moved from 10 C.F.R. § 430.62 to 10 C.F.R. Part 429, Subpart B by rule. *See* 76 Fed. Reg. 12,422 (Mar. 7, 2011). General requirements governing certification reports are now located at 10 C.F.R. § 429.12.

<sup>2</sup> DOE’s enforcement provisions were moved from 10 C.F.R. § 430.61 to 10 C.F.R. Part 429, Subpart C by rule. *See* 76 Fed. Reg. 12,422 (Mar. 7, 2011). The provisions governing prohibited acts are now located at 10 C.F.R. § 429.102; those governing civil penalties are located at 10 C.F.R. § 429.120.

- b. Within sixty (60) calendar days following the effective date of this Agreement, Respondent will, in accordance with 10 C.F.R. § 429.12, certify all basic models of all covered products Respondent distributes in commerce in the United States.
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 section III.2 in full satisfaction of the penalty authorized by the Act.
  - b. DOE agrees to promptly issue an Adopting Order adopting this Agreement.
  - c. DOE agrees to terminate this enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with section III.2, above. If Respondent fails to complete its Obligations in accordance with section III.2, above, DOE may notify Respondent that the Agreement is null and void and may seek the statutory maximum penalty in accordance with 42 U.S.C. § 6303.
4. **Jurisdiction and Governing Law.** This Compromise Agreement is entered into 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. 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 issues addressed in the Compromise Agreement.
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.

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

\_\_\_\_\_  
(Signature)  
Typed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_

\_\_\_\_\_  
Date

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Date

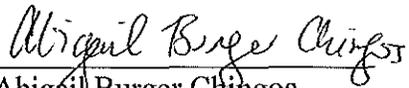
Certificate of Service

This is to certify that on 6/27/12, the undersigned served the designated copy of the Notice of Proposed Civil Penalty and Compromise Agreement on the party listed below in the manners indicated.

George E. Hawranko  
Senior Associate General Counsel  
Electrolux North America  
10200 David Taylor Drive  
Charlotte, NC 28262  
george.e.hawranko@electrolux.com

Certified mail

Email

  
Abigail Burger Clingos