

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

In the Matter of:

Bigwall Enterprises, Inc.
(room air conditioners)

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Case Number: 2014-SE-15006

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”) Bigwall Enterprises, Inc. (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distribution in commerce of units of a basic model of a covered product that failed to meet the energy conservation requirements as described at 10 C.F.R. § 430.32(b).

2. 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 Acts as described at 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** that the Compromise Agreement attached to this Order is adopted.

/S/

Steven P. Croley
General Counsel

12/17/14

Date

authorized or caused such product to be so labeled, and (iii) the brand or trademark of a manufacturer of such product does not appear on such label.

- (i) “Respondent” means Bigwall Enterprises, Inc. and any parent, subsidiary, division or other related entity.

The Agreement further incorporates by reference all of the definitions found within 42 U.S.C. § 6291 and 10 C.F.R. § 430.2.

II. RECITALS

WHEREAS, DOE, pursuant to the Act, is responsible for promulgating and enforcing the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for room air conditioners at 10 C.F.R. § 430.32(b); and

WHEREAS, DOE, on February 11, 2014, issued a Notice of Noncompliance Determination with respect to PerfectAire brand basic model PACH8000 (“the subject model”); and

WHEREAS, room air conditioners are a “covered product” as defined in 10 C.F.R. § 430.2; and

WHEREAS, DOE, on November 21, 2014, initiated an action to assess a civil penalty for Respondent’s distribution in commerce in the United States of the subject model; and

WHEREAS, Respondent admits:

1. Respondent has manufactured (including imported) and distributed the subject model in commerce in the United States;
2. Respondent is the private labeler of the subject model;
3. Respondent has distributed in commerce in the United States at least 600 units of the subject model;
4. The subject model is a room air conditioner subject to the conservation standard set forth at 10 C.F.R. § 430.32(b); and
5. The subject model does not meet the applicable energy conservation standard as set forth in 10 C.F.R. § 430.32(b); and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, and 6303 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 product that is not in conformity with an applicable energy or water conservation standard; 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 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. **Obligations of Respondent.** Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on February 11, 2014, captioned under case number 2014-SE-15006.
2. **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.1 above in full satisfaction of the penalty authorized by the Act.
 - b. DOE agrees to terminate this enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with Paragraph III.1, above.
3. **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 Respondent and primary jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.
4. **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.
5. **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.
6. **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.
7. **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.
8. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.

9. **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.
10. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
11. **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

December 17, 2014
Date

_____/S/_____
(Signature)
Typed Name: John Mikulski
Title: CEO
Company Name: Bigwall Enterprises, Inc.

December 16, 2014
Date