

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

In the Matter of:)

Shandong Hongtai Electrical)
Appliance Co., Ltd.)
(Respondent))

Case Number: 2016-SE-42010

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 Shandong Hongtai Electrical Appliance Co., Ltd. (“Respondent”). The Compromise Agreement resolves the case initiated to pursue a civil penalty for distribution in commerce of units of a basic model of covered equipment that failed to meet the energy conservation requirements as described at 10 C.F.R. § 431.66.

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 ASSESS** a civil penalty of \$284,280 **AND ORDER** that the Compromise Agreement attached to this Order is adopted.

/s/

Steven P. Croley
General Counsel

4/14/16

Date

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 commercial refrigerators, freezers, and refrigerator-freezers at 10 C.F.R. § 431.66; and

WHEREAS, DOE, on January 6, 2016, issued a Notice of Noncompliance Determination with respect to commercial freezer basic model TUC-27F (the “subject model”), manufactured and distributed in commerce by Respondent; and

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

WHEREAS, DOE, on March 3, 2016, 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 manufactured the subject model;
2. Respondent has distributed in commerce in the United States at least 1,479 units of the subject model;
3. The subject model is a commercial freezer subject to the energy conservation standards set forth at 10 C.F.R. § 431.66;
4. The subject model does not meet the applicable energy conservation standard as set forth in 10 C.F.R. § 431.66; and

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. **Adopting Order.** 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. Respondent agrees to pay the sum of \$284,280 (two hundred eighty-four thousand, two hundred eighty dollars) as full satisfaction of the civil penalty proposed in the Notice, within thirty (30) days of the issuance of an Adopting Order.
 - b. Within sixty (60) calendar days following the effective date of this Compromise Agreement, Respondent will either export or destroy all sixty-four units of the subject

model that were in the possession or control of Respondent's customer, Broich Enterprises, Inc.

- i. If Respondent chooses to export any such units, then within ninety (90) calendar days following the effective date of this Compromise Agreement, Respondent will submit to DOE a sworn affidavit attesting to the exportation of the units of the subject model, identified by serial number, that have been exported. Respondent will also provide to DOE a bill of lading demonstrating that the units were exported.
 - ii. If Respondent chooses to destroy any such units, then within ninety (90) calendar days following the effective date of this Compromise Agreement, Respondent will submit to DOE a sworn affidavit attesting to the destruction of the units of the subject model, identified by serial number, that have been destroyed.
- c. Respondent agrees to abide by the terms of the Notice of Noncompliance Determination, issued on January 6, 2016, captioned under case number 2016-SE-42010.

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 promptly to issue an Adopting Order adopting this Compromise Agreement.
- c. DOE agrees to terminate this enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with Paragraph III.2, above.

4. **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.

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.
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. **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.
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.

/S/

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

4-13-16

Date

/S/

(Signature)

Typed Name: 董欣
Title: General Manager
Company Name: _____

Shandong Hongtai Electrical Appliance Co., Ltd.
Date 04/11/2016