

**Before the
U.S. Department of Energy
Washington, D.C. 20554**

In the Matter of:

**Zoe Industries, Inc.,
Respondent**

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Case Number: 2010-CW-1405

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 Zoe Industries, Inc. (“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. § 430.62.
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 the facts agreed upon in the Compromise Agreement, I find that Respondent committed a Prohibited Act¹ by failing to comply with 10 C.F.R. § 430.62 and 42 U.S.C. § 6296(d).
5. Accordingly, **IT IS ORDERED** that, pursuant to Section 333 of the Energy Policy and Conservation Act, of 1975, as amended,² the Compromise Agreement attached to this Order **IS ADOPTED**.

U.S. DEPARTMENT OF ENERGY



Scott Blake Harris
General Counsel

¹ 42 U.S.C. § 6302 lays out the specific acts prohibited by the Energy Policy and Conservation Act, of 1975, as amended, 42 U.S.C. § 6291, *et seq.*

² 42 U.S.C. § 6303.

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COMPROMISE AGREEMENT

The U.S. Department of Energy Office of the General Counsel initiated this action against Zoe Industries, Inc., pursuant to 49 C.F.R. § 430.74 by Notice of Proposed Civil Penalty on January 25, 2010, alleging that Respondent had failed to submit a certification report and a compliance statement for each basic model of showerhead. Respondent on behalf of itself and any parent, subsidiary, division or other related entity and the DOE, by their authorized representatives, hereby enter 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, Part 430, of the Code of Federal Regulations.
- (e) "Notice" means the Notice of Proposed Civil Penalty issued by the DOE to Respondent on January 25, 2010, and captioned as DOE case number 2010-CW-1405.
- (f) "Parties" means the DOE and Respondent.
- (g) "Respondent" means Zoe Industries, Inc.

II. RECITALS

WHEREAS, the 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 the DOE Rules; and

WHEREAS, the DOE has promulgated energy conservation standards for showerheads at 10 C.F.R. § 430.32 and requires manufacturers to submit information and reports to insure compliance with those standards at 10 C.F.R. § 430.62; and

WHEREAS, the DOE, pursuant to 42 U.S.C. §§ 6296, 6302, & 6303 and 10 C.F.R. § 430.61, 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, the DOE, on January 25, 2010, initiated an action to assess a civil penalty for failing to submit a certification report for each basic model and for failing to submit a compliance statement in accordance with 10 C.F.R. § 430.62; and

WHEREAS, Respondent:

1. Manufactures and distributes showerheads, including basic models 52051*, 52064*, 52075*, 52076*, 52079*, 52098*, 150096, 150079, 150005, and 150094.
2. Has distributed these products in the United States at least since January 25, 2009;
3. Claims it submitted in 2006 a compliance statement to the DOE and a certification report for some basic models of showerhead listed in the Notice; and
4. As of January 25, 2010, had not submitted a certification report to the DOE for basic models 52051*, 52064*, 52075*, 52076*, 52079*, 52098*, 150096, 150079, 150005, and 150094; and

WHEREAS, Respondent has now submitted a certification report for each basic model and has certified compliance with the applicable water conservation standard by submitting the required compliance statement; and

WHEREAS, Respondent has demonstrated it is a small business as defined by the Small Business Administration (see 13 C.F.R. Part 121) and has demonstrated the civil penalty proposed in the Notice would cause severe financial hardship; 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 \$5,000, as full satisfaction of the civil penalty proposed in the Notice, within 30 days of the issuance of an adopting order.
 - b. Respondent will properly certify all basic models in the future in accordance with applicable DOE Rules.
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, the DOE agrees to accept Respondent's payment pursuant to paragraph III.1.a. in full satisfaction of the penalty authorized by the Act.
 - b. The DOE agrees to promptly issue an order adopting this Agreement.
 - c. The DOE agrees to terminate the enforcement action with prejudice upon receipt of Respondent's civil penalty payment.
4. **Jurisdiction and Governing Law.** This Compromise Agreement is entered pursuant to the 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 the DOE has jurisdiction over Respondent and exclusive 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 the 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 the DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither Respondent nor the DOE shall contest the validity of the Compromise Agreement, and Respondent shall waive 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

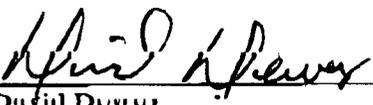
7. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only the violations alleged in the Notice.
8. **Merge.** This Compromise Agreement constitutes the entire agreement between 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), 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.



Laura L. Barhydt
Special Advisor to the General Counsel
U.S. Department of Energy

4/26/10

Date



David Dornoy
Title **PRESIDENT**
Zoe Industries, Inc.

4/26/2010

Date