

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

In the Matter of:

Engineered Products Company,
(metal halide lamp fixtures)

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) Case Number: 2012-SE-5401
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NOTICE OF PROPOSED CIVIL PENALTY

Date issued: July 19, 2012

Number of alleged violations: 19
Maximum possible assessment: \$3,800
Proposed civil penalty: \$3,800

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, alleges that Engineered Products Company ("EPCO") has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* ("the Act"), and 10 C.F.R. Parts 429, 430, and 431.

Specifically, DOE alleges:

1. EPCO's basic model 15701 is a metal halide lamp fixture with a magnetic probe-start ballast. 10 C.F.R. §§ 431.322, 431.326;
2. A metal halide lamp fixture is a "covered product" as defined in 42 U.S.C. § 6292(a)(19) and 10 C.F.R. § 430.2;
3. According to information EPCO provided in response to a subpoena issued May 18, 2012, by DOE ("Subpoena"), metal halide lamp fixture basic model 15701 is not in conformity with the applicable energy conservation standard. The ballast efficiency of basic model 15701 is less than the required 94%.
4. EPCO has manufactured¹ EPCO brand metal halide lamp fixture basic model 15701. In 2009 EPCO imported 3,510 units of basic model 15701.
5. As EPCO acknowledged in response to the Subpoena, in 2010 EPCO distributed in commerce in the United States 19 units of metal halide lamp fixture basic model 15701 under an EPCO private label².

¹ "Manufacture" means to manufacture, produce, assemble or import. 42 U.S.C. § 6291(16).

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

What do I do now?

DOE is offering a settlement of \$480 if you submit the signed Compromise Agreement and pay the fine within thirty (30) days of the date of an Adopting Order adopting the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law (\$3,800). You have other options as described below.

What are my other options?

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

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 lowest penalty (\$480). 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, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: christina.studt@hq.doe.gov

² The term "private labeler" means an owner of a brand or trademark on the label of a product which bears a private label. 42 U.S.C. § 6291 (15)(A). A product bears a private label if

- (i) such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product,
- (ii) the person with whose brand or trademark such product (or container) is labeled has 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. *See id.* § 6291(15)(B).

By fax to: (202) 586-3274

By FedEx to: Christina Studt
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).

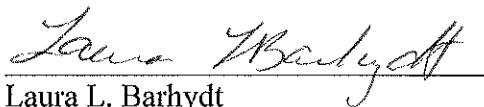
What should I include in my response?

- 1) If you wish to accept DOE's settlement offer, you should submit the signed Compromise Agreement. If you do not wish to accept DOE's settlement offer, you should 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 DOE calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. The maximum penalty is \$200 per unit. 10 C.F.R. § 429.120. DOE has calculated a penalty of \$200 per unit for 19 units distributed in commerce in 2010. DOE is not pursuing potential violations in 2009 at this time. This number would be adjusted based on any additional information obtained if the case goes to hearing.

Issued by:



Laura L. Barhydt
Assistant General Counsel
for Enforcement