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

In the Matter of:	)	
	)	
Hayward Industries, Inc.	)	Case Number: 2010-CE-1110
(Pool heaters)	)	
	)	

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: September 8, 2010

Number of alleged violations: **20**

Maximum possible assessment: **$1,172,000**

Proposed civil penalty: **$146,000**

The Office of the General Counsel of the U.S. Department of Energy (DOE) alleges that Hayward Industries, Inc. violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, 10 C.F.R. Part 430, or both.

Specifically, DOE alleges:

1. Hayward Industries, Inc. manufactures or privately labels a variety of pool heaters, including models H150FDN, H200FDN, H250FDN, H300FDN, H350FDN, H400FDN, H1501, H150ED2, H2001, H200ED2, H2501, H250ED2, H3001, H300ED2, H350ED2, H4001, H400ED2, CSPAXI55, and CSPAXI11.
2. These models have been in distribution in the U.S. for at least 365 days.
3. The pool heaters referenced in paragraph 1 are "covered products" as defined by 42 U.S.C. § 6291 and 10 C.F.R. § 430.2.
4. Hayward Industries, Inc. failed to certify that each basic model meets the applicable energy conservation standard, as required by 10 C.F.R. § 430.62.
5. Hayward Industries, Inc. failed to submit a certification report and compliance statement to DOE for each basic model of covered product, as required by 10 C.F.R. § 430.62.

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

What do I do now?

DOE is offering a settlement of **$5,000** if you submit the signed compromise agreement and pay the fine within **30** days of the date of this notice. As part of that settlement, you must properly certify all models available for sale in the United States within 60 days of the settlement. If you do not submit the required certification documents within 60 days of settlement, you must pay an additional $150 per day per model for every day you do not certify each model.

You may settle the case for **$10,000** if you submit the signed compromise agreement and pay the fine between 31 and **60** days after the date of this notice. As part of that settlement, you must properly certify all models available for sale in the United States within 60 days of the settlement. If you do not submit the required certification documents within 60 days of settlement, you must pay an additional $150 per day per model for every day you do not certify each model.

If you do not choose to settle the case, DOE may seek the maximum penalty (**$1,172,000**) authorized by law. You have other options as described below.

What are my other options?

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

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within 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 a signed compromise agreement within 30 calendar days of the date of this notice to pay **the lowest fine ($5,000)**. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE within thirty (30) calendar days of the date you received this notice of your selection of Option 1. Otherwise, if you do not settle the case, DOE will refer to 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: kevin.shehan@hq.doe.gov

By Fax to: (202) 586-3437

By FedEx to: Kevin Shehan
U.S. Department of Energy
Office of the General Counsel (GC-77)
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days after receiving this notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full hearing.

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 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 which may give rise to a debt to the government.

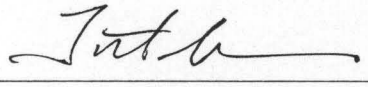
3) **To avoid additional liability, you should also immediately submit the required compliance statement and certification report for all basic models of covered products as required by 10 C.F.R. 430.62.**

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 and a compliance statement. 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 and an additional penalty calculated per day for failure to submit a compliance statement. In the maximum penalty calculation in this notice, DOE assumes that each basic model has been in distribution in the U.S. for at least 365 days. DOE is not pursuing violations more than 1 year old at this time. DOE may pursue violations up to five (5) years if the case goes to hearing.

The maximum penalty is $110 per day through January 12, 2010. Starting January 13, 2010, the maximum penalty is $200 per day. *See* 74 Federal Register 66029 (Dec. 14, 2009).

Issued by:



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement