

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

In the Matter of:)
Mile High Equipment, LLC) Case Number: 2012-SE-4501
(automatic commercial ice makers))
)

Issued: December 20, 2013

NOTICE OF NONCOMPLIANCE DETERMINATION

Manufacturers and private labelers are prohibited from distributing covered equipment that does not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102; 42 U.S.C. § 6316.

On July 27, 2012, DOE received test data from Mile High Equipment, LLC ("Mile High") demonstrating that Ice-O-Matic brand automatic commercial ice maker basic model ICE2106 FW, HW may not meet the applicable energy conservation standard. On October 24, 2013, DOE issued a Test Notice pursuant to 10 C.F.R. § 429.110(b), requiring Mile High to ship four units of basic model ICE2106 FW, HW to a designated test lab. In November and December of 2013, DOE completed testing of these units of basic model ICE2106 FW, HW in accordance with DOE test procedures.

DOE's testing demonstrated that Mile High's Ice-O-Matic brand automatic commercial ice maker basic model ICE2106 FW, HW has a maximum energy consumption of 4.379 kilowatt-hours per 100 pounds of ice (kWh/100 lbs). Based on this model's represented harvest rate of 1605 pounds of ice per twenty-four hours, the maximum permissible rate of energy consumption is 4.0 kWh/100 lbs.¹

FINDING

Based on the facts stated above, DOE has determined, after applying the calculations set forth in 10 C.F.R. Part 429, Subpart C, Appendix B, that Mile High's Ice-O-Matic brand automatic commercial ice maker basic model ICE2106 FW, HW does not comply with the applicable federal energy conservation standard.

¹ According to 10 C.F.R. § 431.136, the maximum energy use of a water-cooled automatic commercial ice maker with an ice making head with a harvest rate of at least 1436 pounds per 24 hours may not exceed 4.0 kWh/100 lbs.

MANDATORY ACTIONS BY MILE HIGH

In light of the above findings, Mile High must take the following steps in accordance with 10 C.F.R. § 429.114(a):

- (1) Immediately cease distribution in commerce in the United States of all units of basic model ICE2106 FW, HW;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Mile High has distributed units of basic model ICE2106 FW, HW since January 1, 2010;
- (3) Provide to DOE within 15 calendar days of the date of this Notice a copy of the written notification required by paragraph (2) and a list of the parties Mile High notified; and
- (4) Provide to DOE within 30 calendar days of the date of this Notice any and all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of units of basic model ICE2106 FW, HW in the United States since January 1, 2010, in addition to a summary page listing the total number of units Mile High has distributed in commerce in the U.S. since January 1, 2010.²

The responses required by paragraphs (3) and (4) must be dated, signed, and notarized, and must include a declaration under penalty of perjury that the contents of the responses are true. Specifically, the person signing the response must attest the following: "I declare under penalty of perjury that the statements contained in this response are true, correct, and complete."

If you claim that any of the information sought by this Notice constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must (1) provide one complete and full copy and one copy with the confidential information deleted and (2) submit supporting information together with the materials that are the subject of the confidentiality request. *See* 10 C.F.R. § 429.7. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

OPTIONAL ACTIONS BY MILE HIGH

In addition to the mandatory steps listed above that Mile High must complete, Mile High may elect to modify basic model ICE2106 FW, HW to bring it into compliance with the applicable standard. The modified basic model shall be treated as a new basic model under the regulations. Prior to distribution in commerce in the United States, Mile High must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard. All units

² Please note that "[t]he terms 'to distribute in commerce' and 'distribution in commerce' mean to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce." 42 U.S.C. § 6291(16). Thus, the summary sheet must include all units that Mile High Service has imported into the U.S., even if these units have not been sold, as well as any other units that otherwise meet the definition in 42 U.S.C. § 6291(16). The summary sheet may distinguish between sold and unsold units.

must be tested in accordance with DOE regulations, and Mile High shall bear the costs of all such testing that is conducted.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE shall issue a Notice of Allowance to permit Mile High to resume distribution of the modified basic model in the United States. Until DOE determines that the modified basic model complies with the applicable standard, no units of the basic model may be sold or otherwise distributed by Mile High in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Mile High fail to cease immediately the distribution in the United States of all units of basic model ICE2106 FW, HW, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Mile High provides DOE with a satisfactory statement within that 30-day period detailing the steps that Mile High will take to ensure that units of the noncompliant basic model will no longer be distributed in commerce in the United States, DOE may elect to defer seeking such an order until a more appropriate time, if needed.

The distribution of any units of a noncompliant basic model may result in DOE seeking all appropriate legal remedies available under federal law, including injunctive relief and civil penalties with respect to each unit of the basic model distributed in violation of federal law.

/signed/

Laura L. Barhydt
Assistant General Counsel
for Enforcement