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

In the Matter of:	)	
	)	
USA Manufacturing	)	Case Number: 2013-CE-5336
(walk-in coolers and walk-in freezers)	)	
	)	

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: January 31, 2013

Number of alleged violations: **1825** (365 days, 5 models)

Maximum possible assessment: **$365,000**

Proposed civil penalty: **$36,500**

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, alleges that USA Manufacturing 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. § 429.12.

Specifically, DOE alleges:

1. USA Manufacturing has manufactured[1] a variety of walk-in cooler or freezer (WICFs) components.
2. USA Manufacturing has distributed for at least 365 days, and continues to distribute, WICF components in commerce in the U.S.
3. WICF components are "covered equipment" as defined in 10 C.F.R. § 431.2.
4. USA Manufacturing failed to submit a certification report certifying that the WICF components that they manufacture, including at least three basic models of WICF panels and two basic models of WICF doors, meet the applicable energy conservation standards before distribution of the basic model in U.S. commerce as required by 10 C.F.R. §§ 429.12 and 429.53.
5. Failure to submit a certification report for each basic model of covered equipment as required by 10 C.F.R. §§ 429.12 and 429.53 is a prohibited act pursuant to 10 C.F.R. § 429.102(a)(1) and subject to civil penalty as described in 10 C.F.R. § 429.120.

[1] "Manufacture" means to manufacture, produce, assemble, or import. 42 U.S.C. § 6291.

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 **$8,000** if you submit the signed Compromise Agreement within thirty (30) days of the date of this Notice. As part of that settlement, you must pay the fine within thirty (30) days of the date of issuance of an order adopting the agreement ("Adopting Order") and must properly certify all models available for sale in the United States within sixty (60) days of the date of the Adopting Order. If you do not submit the required certification documents within sixty (60) days of the date of the Adopting Order, you will be subject to the maximum penalty of $200 per day per basic model for every day you do not certify each basic model.

If you do not choose to settle the case, DOE may seek the **maximum penalty** ($365,000) authorized by law. You have other options as described below.

What are my other options?

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

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 fine ($8,000).** 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. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: douglas.rawald@hq.doe.gov

By fax to: (202) 586-3274

By FedEx to: Doug Rawald
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 (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 that may give rise to a debt to the government.

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. 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 valid certification report, beginning on October 1, 2011, when WICF components were first required to be certified. DOE is not pursuing violations more than one (1) year old at this time. The maximum penalty is $200 per day. 10 C.F.R. § 429.120; *see also* 74 Fed. Reg. 66,029, 66,032 (Dec. 14, 2009) (increasing maximum penalty to $200 per day effective Jan. 13, 2010).

Issued by:

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Enforcement