

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

In the Matter of:

National Comfort Products
(Residential central air conditioners and
heat pumps)

)
)
)
)
)

Case Number: 2010-SE-0307

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: September 28, 2011

Number of alleged violations: **3**
Maximum possible assessment: **\$219,000**
Proposed civil penalty: **\$21,900**

The Office of the General Counsel of the U.S. Department of Energy (DOE) alleges that **National Comfort Products** has violated, and is continuing to violate, 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 and 430.

Specifically, DOE alleges:

1. National Comfort Products manufactures and has manufactured a variety of central air conditioners and heat pumps that it distributes and has distributed in commerce in the United States of America, including, but not limited to, basic models NCPC-424-1010*, NCPC-424-3010* and NCPD-430-3010*.
2. These models have been in distribution in the U.S. for at least 365 days.
3. Each of the central air conditioner basic models referenced in paragraph 1 is a “covered product” as defined in 42 U.S.C. § 6292(a)(3) and 10 C.F.R. § 430.2.
4. National Comfort Products has not tested at least two units of basic models NCPC-424-1010*, NCPC-424-3010* and NCPD-430-3010* in accordance with 10 C.F.R. §§ 429.11, 429.16, 430.23 and Part 430, Subpart B, Appendix M.
5. Due to the lack of sufficient test data, basic models NCPC-424-1010*, NCPC-424-3010* and NCPD-430-3010* have been and continue to be distributed in

commerce without being properly certified in accordance with 10 C.F.R. §§ 429.11(b), 429.12(c)(2) and 429.16.¹

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 \$10,000 if you submit the signed compromise agreement and pay the fine within 30 days of the date of an Adopting Order adopting the compromise agreement. As part of that settlement, you must properly certify all basic models available for sale in the United States within 60 days of DOE's issuance of the Adopting Order. If you do not submit the required certification documents within 60 days following issuance of the Adopting Order, you must pay an additional \$200 per day per model for every day you do not certify each basic model.

You may settle the case for \$18,000 if you submit the signed compromise agreement between 31 and 60 days after the date of this notice and you pay the fine within 30 days of the issuance of the Adopting Order. As part of that settlement, you must properly certify all basic models available for sale in the United States within 60 days of DOE's issuance of the Adopting Order. If you do not submit the required certification documents within 60 days, you must pay an additional \$200 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 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.

¹ Citations given are for the regulations currently in effect. Citations for the regulations prior to the effective dates of DOE's March 7, 2011 Certification, Compliance, and Enforcement final rule were 10 C.F.R. §§ 430.24 and 430.62.

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. 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: ronald.stewart@hq.doe.gov

By Fax to: (202) 586-3437

By Mail to: Ronald N. Stewart
U.S. Department of Energy
Office of the General Counsel (GC-52)
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 administrative 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. 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 complete the required testing and submit the required compliance statement and certification report for all basic models of covered products as required by 10 C.F.R. § 429.12.**

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 certification report. 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 \$200 per day. 10 C.F.R. § 429.120.

Issued by:



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement