

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

In the Matter of:)
)
)
Goodman Manufacturing) Case Number: 2011-SE-4301
Company, L.P.,)
(Commercial package air conditioners))
)

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: December 2, 2011

Number of alleged violations: 74

Maximum possible assessment: \$14,800

Proposed civil penalty: \$14,800

The Office of the General Counsel of the U.S. Department of Energy (DOE) alleges that Goodman Manufacturing Company, L.P. (Goodman) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.*, and 10 C.F.R. Part 431.

Specifically, DOE alleges:

1. Goodman has manufactured and distributed in commerce in the United States approximately 74 units of commercial package air conditioner basic model CPC180*.
2. Goodman commercial package air conditioner basic model CPC180* is “covered equipment” as defined in 42 U.S.C. § 6311(1) and 10 C.F.R. § 431.2.
3. Pursuant to results of testing four units of commercial package air conditioner basic model CPC180* at Intertek Testing Services in Plano, Texas, this model does not operate at an Energy Efficiency Ratio (EER) of at least 11, as required under 42 U.S.C. § 6313(a) and 10 C.F.R. § 431.97(b).

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

What do I do now?

DOE is offering a settlement of \$12,500 if you submit the signed compromise agreement (enclosed herewith) and pay the fine within 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. 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 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 thirty (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 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 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: david.case@hq.doe.gov

By Fax to: (202) 586-7396

By Mail to: David W. Case
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 which may give rise to a debt to the government.
- 3) **To avoid additional liability, you should also immediately ensure all covered products have been tested in accordance with DOE test procedures and sampling plans and that all basic models meet the applicable federal conservation standards.**

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. In the maximum penalty calculation in this notice, DOE has determined, based on Goodman's response to the October 17, 2011 Notice of Noncompliance Determination, that Goodman has distributed 74 units in the U.S. This number could be adjusted based on any additional information obtained if the case goes to hearing. The maximum penalty is \$200 per unit. See 74 Federal Register 66029 (Dec. 14, 2009).

Issued by:



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement