



Department of Energy

Washington, DC 20585

September 15, 2010

Mr. Edward J. Cooney
Vice-President
Nordyne, LLC
8000 Phoenix Parkway
O'Fallon, MO 63368

Dear Mr. Cooney:

Please find attached a Notice of Proposed Civil Penalty issued pursuant to the U.S. Department of Energy's enforcement authority under the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291, *et seq* ("EPCA"). The Notice explains your response options, which include the possibility of settlement.

DOE is making an offer to settle this matter for \$10,000 and your company's commitment to come into compliance within 60 days of settlement. The Notice explains the settlement offer in more detail. I also have attached a proposed compromise agreement for your review. If you agree to the terms of the agreement, simply sign and return the agreement via email or facsimile as directed in the Notice.

If you do not wish to accept DOE's settlement offer, DOE's default action under EPCA is to refer the matter to an Administrative Law Judge for adjudication.

Should you have any questions, please contact me at 202-586-8145 or via e-mail at Michael.Kido@hq.doe.gov. I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Kido".

Michael Kido
Office of the General Counsel

Enclosures



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

In the Matter of:)
)
Nordyne, LLC d/b/a Garrison Heating)
and Cooling Products,)
(Central air conditioners and central air)
conditioning heat pumps))

Case Number: 2010-CE-01/0210

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: September 15, 2010

Number of alleged violations: **64**

Maximum possible assessment: **\$3,970,820**

Proposed civil penalty: **\$333,367**

The Office of the General Counsel of the U.S. Department of Energy (DOE) alleges that Nordyne, LLC, 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. Nordyne, LLC, manufactures or privately labels a variety of central air conditioners and central air conditioning heat pumps, including models:
Outdoor units: 593131, 593132, 593133, 593134, 593135, 593136, 593137, 593030, 593031, 593032, 593033, 593034, 593035, and 593036.
Indoor units/coils: 593190, 593191, 593192, 593193, 593194, 593195, 593197, 490017, 490018, 490017, 490018, 490019, 490020, 490021, 490022, 490023, 490024, 490026, 490027, 490028, 490030, 490031, 490032, 490033, 490034, 490035, 490036, 490037, 490039, 490040, 490041, 490042, 593021, 593021, 593022, 593023, 593024, 593025, 593026, 593171, 593172, 593174, 593175, 593182, 593184, 593188, 593189, 593198, 490029, and 490038.
2. These models have been in distribution in the U.S. for at least 365 days.
3. The central air conditioners and central air conditioning heat pumps referenced in paragraph 1 are "covered products" as defined by 42 U.S.C. § 6291 and 10 C.F.R. § 430.2.

4. Nordyne, LLC, failed to certify that each basic model meets the applicable energy conservation standard, as required by 10 C.F.R. § 430.62.
5. Nordyne Toilets 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 **\$10,000** 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 **\$20,000** 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 (**\$3,970,820**) 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 (\$10,000)**. 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: Lisa.Mangi@nnsa.doe.gov

By Fax to: (202) 586-3437

By FedEx to: Lisa Daley Mangi
U.S. Department of Energy
Office of the General Counsel (NA-1)
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

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

In the Matter of:)
)
Nordyne, LLC d/b/a Garrison) Case Number: 2010-CE-01/0210
Heating and Cooling Products,)
Respondent)
)

COMPROMISE AGREEMENT

The U.S. Department of Energy Office of the General Counsel initiated this action against Nordyne, LLC (“Respondent”) pursuant to 10 C.F.R. § 430.74 by Notice of Proposed Civil Penalty alleging that Respondent had failed to submit a certification report and compliance statement for central air conditioners and central air conditioning heat pumps. Respondent on behalf of itself and any parent, subsidiary, division or other related entity and DOE, by their authorized representatives, hereby enter into this Compromise Agreement for the purpose of settling this civil penalty action.

I. DEFINITIONS

For the purposes of this Compromise Agreement, the following definitions shall apply:

- (a) “Act” means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291 *et seq.*
- (b) “Adopting Order” means an Order of the General Counsel adopting the terms of this Compromise Agreement without change, addition, deletion, or modification.
- (c) “DOE” means the U.S. Department of Energy.
- (d) “DOE Rules” means DOE’s energy conservation regulations found in Title 10, Part 430, of the Code of Federal Regulations.
- (e) “Notice” means the Notice of Proposed Civil Penalty issued by DOE to Respondent on September 15, 2010 and captioned as case number 2010-CE-01/0210.
- (f) “Parties” means DOE and Respondent.
- (g) “Respondent” means Nordyne, LLC.

II. RECITALS

WHEREAS, DOE, pursuant to 42 U.S.C. § 6291 *et seq.*, is responsible for the promulgation and enforcement of the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for central air conditioners and central air conditioning heat pumps at 10 C.F.R. § 430.32 and requires manufacturers to submit information and reports to insure compliance with those standards at 10 C.F.R. § 430.62; and

WHEREAS, DOE, pursuant to 42 U.S.C. §§ 6296, 6302, & 6303 and 10 C.F.R. § 430.61, is authorized to assess civil monetary penalties for actions prohibited by the Act, including failing to make reports or provide other required information; and

WHEREAS, DOE, on September 15, 2010 initiated an action against Respondent to assess a civil penalty for failure to certify that each basic model meets the applicable energy conservation standard as required by 10 C.F.R. § 430.62 and for failure 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

WHEREAS, Respondent admits:

1. Respondent manufactures or privately labels central air conditioners and central air conditioning heat pumps, including the following models:
Outdoor units: 593131, 593132, 593133, 593134, 593135, 593136, 593137, 593030, 593031, 593032, 593033, 593034, 593035, and 593036.
Indoor units/coils: 593190, 593191, 593192, 593193, 593194, 593195, 593197, 490017, 490018, 490017, 490018, 490019, 490020, 490021, 490022, 490023, 490024, 490026, 490027, 490028, 490030, 490031, 490032, 490033, 490034, 490035, 490036, 490037, 490039, 490040, 490041, 490042, 593021, 593021, 593022, 593023, 593024, 593025, 593026, 593171, 593172, 593174, 593175, 593182, 593184, 593188, 593189, 593198, 490029, and 490038..
2. These products have been in distribution in the United States at least since September 15, 2009.
3. As of September 15, 2010, Respondent had not submitted the required certification report and compliance statement for these basic models of central air conditioners and central air conditioning heat pumps; and

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, this Compromise Agreement properly balances the policies recognized in the Energy Policy and Conservation Act and is the appropriate way to resolve this matter;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

III. TERMS OF THE AGREEMENT

1. **Adopting Order.** The Parties agree that the provisions of this Compromise Agreement shall be subject to final approval by the General Counsel by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

2. **Obligations of Respondent.**
 - a. If this Compromise Agreement is executed within 30 days of the date of the Notice, Respondent agrees to pay the sum of \$10,000, as full satisfaction of the civil penalty proposed in the Notice, within 30 days of the issuance of an Adopting Order. If this Compromise Agreement is executed between 31 and 60 days after the date of the Notice, Respondent agrees to pay the sum of \$20,000, as full satisfaction of the civil penalty proposed in the Notice, within 30 days of the issuance of an Adopting Order.
 - b. Within sixty (60) calendar days following the date of this agreement, Respondent will certify in accordance with 10 C.F.R. § 430.62 all basic models Respondent offers for distribution in commerce in the United States.
 - c. Respondent agrees to pay \$150 per day for each day in excess of sixty (60) calendar days following the date of this agreement for each basic model it fails to certify in accordance with 10 C.F.R. § 430.62.

3. **Obligations of DOE.**
 - a. In express reliance on the covenants and representations in this Compromise Agreement and to avoid further expenditure of public resources, DOE agrees to accept Respondent's payment pursuant to paragraphs III.2.a. and III.2.c. in full satisfaction of the penalty authorized by the Act.
 - b. DOE agrees promptly to issue an Adopting Order adopting this Agreement.
 - c. DOE agrees to terminate the enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with Paragraph 2 above.

4. **Jurisdiction and Governing Law.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy efficiency and to enter into its own agreements interpreting and applying those rules. The Parties agree that DOE has jurisdiction over Respondent and exclusive jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.

5. **Effective Date.** The Parties agree that this Compromise Agreement shall become effective on the date on which the General Counsel issues the Adopting Order. Upon release, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel. Any violation of the Adopting Order or of the terms of this Compromise Agreement shall constitute a separate violation of an agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.

6. **Waivers.** Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement or the Notice associated with this case, including any right to judicial review that may be available to the Respondent. If either Party (or the United States on behalf of DOE) brings a judicial action to enforce the terms of this Compromise Agreement, neither Respondent nor DOE shall contest the validity of the Compromise Agreement, and Respondent waives any statutory right to a trial *de novo*. Respondent hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the matters addressed in this Compromise Agreement.

7. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only the violations alleged in the Notice.

8. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties, whether oral or written.

9. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.

10. **Invalidity.** In the event that this Compromise Agreement in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

11. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.

12. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement
U.S. Department of Energy

Date

Edward J. Cooney
Vice-President
Nordyne, LLC

Date

Certificate of Service

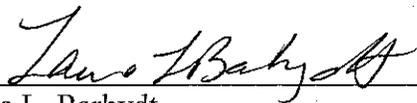
This is to certify that on Sep. 15, 2010, the undersigned served the designated copies on each of the parties listed below in the manner indicated.

Edward J. Cooney
VP and Treasurer of Sole Member
NORDYNE LLC
8000 Phoenix Parkway
O'Fallon, MO 63368

Original -- Certified Mail

CSC -- Lawyers Incorporating Service Company
221 Bolivar Street
Jefferson City, MO 65101

Copy -- Certified Mail



Laura L. Barhydt