

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

In the Matter of:

Sanden Vendo America Inc.
(refrigerated bottled or canned beverage
vending machines)

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) Case Number: 2014-SE-52002
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NOTICE OF PROPOSED CIVIL PENALTY

Date issued: April 30, 2014

Number of alleged violations: **31**

Maximum possible assessment: **\$6,200**

Proposed civil penalty: **\$6,200**

The Office of the General Counsel of the U.S. Department of Energy (“DOE”) alleges that Sanden Vendo America Inc. (“SVA”) 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. Part 431.

Specifically, DOE alleges:

1. SVA manufactures and has manufactured a variety of refrigerated bottled or canned beverage vending machines that it distributes and has distributed in commerce in the United States of America, including, but not limited to, basic model Vue 30 (with varying cassette refrigeration decks).
2. SVA refrigerated bottled or canned beverage vending machine basic model Vue 30 is subject to the energy conservation standards at 10 C.F.R. § 431.296.¹

¹ Section 135(c)(4) of the Energy Policy Act of 2005 amended the Act to direct DOE to prescribe energy conservation standards for refrigerated bottled or canned beverage vending machines. (42 U.S.C. § 6295(v)). In promulgating a final rule that established these standards, DOE placed the regulatory provisions regarding refrigerated bottled or canned beverage vending machines in the commercial and industrial equipment section of the energy conservation regulations found at 10 C.F.R. Part 431. *See* 74 FR 44914, 44917.

3. DOE had reason to believe, based upon an assessment test conducted pursuant to 10 C.F.R. § 429.104, that model Vue 30 may not meet the applicable energy conservation standard.

Distribution of Noncompliant Covered Equipment

4. Pursuant to the results of testing one unit² of SVA refrigerated bottled or canned beverage vending machine Vue 30 (with 1128127 cassette refrigeration deck), this model operates at an energy consumption rate of 5.4 kilowatt-hours per day (kWh/day), approximately 31 percent greater than the 4.1 kWh/day standard for the tested unit, as required by 10 C.F.R. § 431.296 for units of this basic model manufactured on or after August 31, 2012.
5. On April 25, 2014, DOE issued a Notice of Noncompliance Determination finding that SVA refrigerated bottled or canned beverage vending machine Vue 30 (with 1128127 cassette refrigeration deck) fails to meet the applicable energy conservation standard.
6. SVA has manufactured and distributed in commerce in the United States since August 31, 2012, approximately 31 units of the noncompliant refrigerated bottled or canned beverage vending machine model Vue 30 (with 1128127 cassette refrigeration deck).

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 \$6,200 (six thousand two hundred dollars) if you submit the signed compromise agreement and pay the fine within thirty (30) days of the date of an Adopting Order adopting the compromise agreement.

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 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.

² In January of 2014, DOE completed testing of three units of the Vue30 (with 1216973 cassette refrigeration deck), which were not the same basic model as the unit initially tested by DOE. See 10 C.F.R. § 431.292 (definition of basic model). SVA no longer has any units of the Vue30 (with 1128127 cassette refrigeration deck) in stock or within the distribution chain and no longer manufactures this model, so DOE relied upon the results from the testing of one unit performed pursuant to 10 C.F.R. § 429.104 to find this equipment noncompliant. See 10 C.F.R. § 429.110(e)(1)(iv).

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 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: douglas.rawald@hq.doe.gov

By fax to: (202) 586-6734

By mail 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 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.

How did you 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. 10 C.F.R. § 429.102(a)(6). In the maximum penalty calculation in this notice, DOE has determined that SVA has distributed approximately 31 units of refrigerated bottled or canned beverage vending machine unit of Vue 30 (with 1128127 cassette refrigeration deck) in the U.S. since August 31, 2012. This number could be adjusted based on any additional information obtained if the case goes to hearing. The maximum penalty is \$200 per unit. Id. at § 429.120.

Issued by:

/signed/

Laura L. Barhydt
Assistant General Counsel for
Enforcement