

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

In the Matter of:)

Aspen Manufacturing (Aspen))
(Central Air Conditioners and Heat Pumps))

Case Number: 2011-SE-1602)
)

NOTICE OF NONCOMPLIANCE DETERMINATION

CERTIFICATION TEST DATA

Manufacturers of certain covered products are required to certify compliance with the applicable Federal energy conservation standards through submission of a certification report to the U.S. Department of Energy (DOE or the Department). 10 C.F.R. § 429.12. *See* 42 U.S.C. § 6296. The Department received several test reports, product ratings, and other information from Aspen Manufacturing (Aspen) in response to two requests for data issued to Aspen on March 22 and 31, 2011, and a subpoena issued to Aspen on June 1, 2011. DOE also received a response from a June 1, 2011 subpoena issued to the Air Conditioning, Refrigeration, and Heating Institute. DOE has reviewed the submitted information and has determined that Aspen has filed documents with DOE indicating that the residential split system central air conditioning system consisting of indoor unit model AEW244 and outdoor unit model NCPC-424-3010 fails to meet the applicable Federal energy conservation standards.

FINDINGS

Based on the facts stated above, DOE has determined that Aspen's residential split system central air conditioning system consisting of indoor unit model AEW244 and outdoor unit model NCPC-424-3010, and other systems within the basic model of this system (if any), fail to meet the applicable Federal energy conservation standards.

MANDATORY ACTIONS BY ASPEN

In light of the above findings, with respect to the basic model of the residential split system central air conditioning system listed above, Aspen must take the following steps in accordance with 10 C.F.R. § 429.114(a):

- (1) Immediately cease distribution in commerce of all models within the basic model that includes the following residential split system air conditioning system: indoor unit model AAEW244 coupled with outdoor unit model NCPC-424-3010;

- (2) Provide immediate written notification to all persons to whom Aspen has distributed any model(s) within the basic model that includes the residential split system air conditioning system consisting of indoor unit model AAEW244 coupled with outdoor unit model NCPC-424-3010 that the system does not meet the applicable standard;
- (3) Provide to DOE within 15 calendar days of the date of this Notice a copy of the written notification required by paragraph (2) and a list of the parties Aspen notified; and
- (4) Provide to DOE within 30 calendar days of the date of this Notice any and all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of the residential split-system air conditioning and air conditioning system consisting of indoor unit model AAEW244 coupled with outdoor unit model NCPC-424-3010.

OPTIONAL ACTIONS BY ASPEN

In addition to the mandatory steps listed above that Aspen must complete, Aspen may elect to modify the basic model listed above to bring it into compliance with the applicable standard. The modified basic model shall be treated as a new basic model under the regulations and must be certified in accordance with the provisions of 10 C.F.R. § 429.12 and § 429.16.¹ Prior to distribution in commerce, Aspen must provide to DOE test data demonstrating the modified basic model complies with the applicable standard. All units must be tested in accordance with DOE regulations, and Aspen shall bear the costs of all testing that is conducted.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE shall issue a notice of allowance to permit Aspen to resume the distribution of the modified basic model. Until DOE determines that the modified basic model complies with the applicable standard, no units of the basic model may be sold or otherwise distributed by Aspen in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

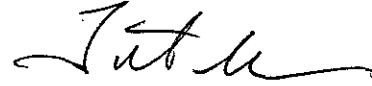
Should Aspen fail to cease immediately the distribution of the basic model described above, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Aspen provides DOE with a satisfactory statement within that 30-day period detailing the steps that Aspen will take to ensure that units of the noncompliant basic model will no longer be distributed in commerce, DOE may elect to defer seeking such an order until a more appropriate time, if needed.

The distribution of any non-compliant basic model, including during any manufacturer initiated testing as described above, may result in DOE seeking all appropriate legal remedies available

¹ Effective July 5, 2011, the certification provisions at 10 C.F.R. Part 429, subpart B, entitled "Certification," replaced the previous certification provisions under 10 C.F.R. § 430.62. Any certification submission made by Aspen on or after July 5, 2011, must be made in accordance with 10 C.F.R. Part 429, Subpart B.

under Federal law, including injunctive relief and civil penalties with respect to each unit of the basic models distributed in violation of Federal law.

Dated: 10-3-2011

A handwritten signature in black ink, appearing to read "T. Lynch", written over a horizontal line.

Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement