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

In the Matter of:	)	
	)	
Air-Con International,	)	Case Number: 2010-SE-0301
(Air conditioning systems, heat pumps)	)	
	)	

Date issued: September 20, 2010

NOTICE OF NONCOMPLIANCE DETERMINATION AND NOTICE OF PROPOSED CIVIL PENALTY

The Energy Policy and Conservation Act (EPCA) prohibits manufacturers from distributing in commerce covered products that do not comply with an applicable energy conservation standard. *See* 42 U.S.C. 6302(a)(5); 10 C.F.R. 430.61(a)(4). Knowing violations of this provision are subject to civil penalty. *See* 42 U.S.C. 6303(a); 10 C.F.R. 430.61(b).

FINDINGS

On March 23, 2010, DOE served Air-Con International ("Air-Con") with a subpoena requesting certain information regarding Air-Con's sales of air conditioning units within and without the United States ("U.S."). Air-Con submitted written responses to DOE.

In relevant part, those responses admit that Air-Con has imported and unlawfully distributed in commerce in the United States at least 1902 air conditioning units that do not comply with the federal energy conservation standard. The Department of Energy (DOE or the Department) has determined that, by these actions, Air-Con has knowingly violated 42 U.S.C. 6302(a)(5).

Specifically, DOE has found that:

1. Air-Con imports air conditioning units, including, but not limited to, model numbers **ACN-09/12/18/24-GCH** and **ACN-MTS-09CO/12CO/09EV/12EV**, that are rated at 10 SEER. Under EPCA, Air-Con is a manufacturer of these units. *See* 42 U.S.C. 6291(10).

2. These models are "covered products" as defined by 42 U.S.C. 6291(2) and 10 C.F.R. § 430.2.

3. The above-named models do not meet the applicable energy conservation standard that is specified in 10 C.F.R. § 430.32.

4. Based on Air-Con's subpoena response, Air-Con imported and has distributed, and continues to distribute, covered air conditioning units in U.S. commerce.

5. Air-Con imported and has distributed at least 1659 of the above-named non-compliant models in commerce in the United States, before January 13, 2010. Air-Con has distributed at least 243 of these models in commerce in the United States, on or after January 13, 2010.

NOTICE OF NON-COMPLIANCE DETERMINATION

In light of the above findings, and in accordance with 10 CFR § 430.71, Air-Con must take the following actions with respect to the above-named models:

1. *Immediately* cease to offer, distribute and/or sell, in commerce within the U.S. all of the above-referenced models;[1] and

2. *Immediately* provide written notification of this noncompliance determination to all persons within the U.S. to whom Air-Con has distributed units of the above-referenced non-compliant models and provide to DOE a copy of each notification; and

3. *Within 30 calendar days of the date of this Notice*, provide DOE with any and all records, reports, and other documentation not yet provided to the Department pertaining to its ordering, acquisition, storage, sale and/or shipment of any or all of the above-referenced models. In particular, Air-Con must provide a record of sales within the United States since the date of its last response to DOE.

Failure to comply will result in legal action. Should Air-Con fail immediately to cease the distribution of the above-referenced non-compliant models in U.S. commerce, this letter serves as notice that DOE will seek a judicial order within 15 calendar days of the date of this notice to restrain further such distribution of those models. Air-Con may, however, within that 15-day period, provide DOE with a written statement which sets out in detail the steps that Air-Con will take to ensure that all noncompliant models will no longer be distributed in commerce within the U.S. for purposes other than re-exportation. If DOE finds that statement satisfactory, DOE may elect to defer seeking an injunction until a future time.

[1] Pursuant to DOE regulations, Air-Con may elect to modify the subject models in such fashion as to bring them into compliance with the applicable standard. Should Air-Con opt to do this: (A) each 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 CFR Part 430; and (B) Air-Con shall maintain records that demonstrate that the modifications have been made to all units of the new basic model prior to distribution in commerce for purposes other than re-exportation. These records shall be maintained for as long as these models are sold and until two years from the date at which the modified models are discontinued. *See* 10 CFR § 430.62(d).

NOTICE OF PROPOSED CIVIL PENALTY

Proposed civil penalty: **$231,090**

In light of the findings above and pursuant to 42 U.S.C. 6303 and 10 C.F.R. § 430.74, DOE issues this notice of proposed civil penalty.

The Office of the General Counsel of the U.S. Department of Energy (DOE) alleges that Air-Con has violated 42 U.S.C. 6302(a)(5) and 10 C.F.R. § 430.61(a)(4) by knowingly importing and distributing in U.S. commerce the above-named models that do not comply with the applicable energy conservation standard.

When must I respond?

You must respond to this penalty notice within thirty (30) calendar days after the receipt of this notice if you wish to choose Option 1, as described below.

What are my options?

Within thirty (30) calendar days of this Notice, you must select Option 1 or Option 2 below. *At any time, you may choose Option 3 to enter into an agreement with the DOE to resolve this matter.*

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.

Option 3: Regardless of whether you choose Option 1 or 2, at any time you may also contact DOE to seek a compromise agreement from the Department.

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days after receiving this notice DOE will refer the case to an ALJ for a full hearing. However, you may at any time contact DOE to seek a settlement.

What should I include in my response?

1) You should indicate whether you are interested in pursuing a compromise agreement.

2) You must specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2.

3) You should include any information that would show that the proposed penalty exceeds the statutory maximum civil penalty.

4) You should include any information that would show that the proposed penalty would affect your ability to continue in business or that you are unable to pay the proposed penalty. You should also include any information that would establish that you are considered a small business by the Small Business Administration (see 13 C.F.R. Part 121).

5) 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 was the maximum penalty calculated?

Federal law sets a maximum civil penalty for each noncompliant unit you distribute in commerce. Therefore, your maximum penalty is calculated based on each unit you distributed in commerce in the U.S. that did not meet the applicable energy or water conservation standard.

The maximum penalty is $200 per unit distributed in commerce starting January 13, 2010. The maximum penalty for units distributed in commerce prior to January 13, 2010, is $110 per unit. *See* 74 Federal Register 66029 (Dec. 14, 2009).

. . .

Air-Con's response to both the Notice of Non-Compliance and the Notice of Proposed Civil Penalty should be promptly submitted to the Department. You may submit your response via email to Arthur.Bruder@hq.doe.gov.

If you wish to submit your response by mail, DOE strongly encourages you to submit your response by an express delivery service to the General Counsel, 1000 Independence Avenue, Washington, DC 20585, Attn: Arthur Perry Bruder. Due to security concerns, mail delivery to DOE from the U.S. Postal Service (USPS) is experiencing significant delays. As a result, you should allow at least 72 hours for delivery for USPS overnight service.

Issued By: _____

Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement