U.S. Department of Energy

1000 Independence Ave, SW
Washington, DC 20585

In the Matter of:	)	
	)	Case Number 2010-SE-0305
Aspen Manufacturing	)	
	)	

NOTICE OF NONCOMPLIANCE DETERMINATION

CERTIFICATION

Manufacturers of certain covered products are required to certify compliance with the applicable energy conservation standards through submission of a compliance statement and a certification report. 10 CFR § 430.62. *See* 42 U.S.C. 6296. The compliance statement is a legal statement by the manufacturer that the information provided in its certification reports is true, accurate and complete, that the basic models certified meet the applicable energy conservation standard, that the energy efficiency information report is the result of testing performed in conformance with the applicable test requirements in 10 CFR part 430, subpart B; and that the manufacturer is aware of the penalties associated with violations of the statute and with making false statements to the Federal Government.

The U.S. Department of Energy (DOE) permits a third-party representative to submit certification reports on behalf of the manufacturer. The Air-Conditioning, Heating, and Refrigeration Institute submitted a certification report to DOE on February 5, 2010, on behalf of Aspen Manufacturing (Aspen). That certification report reported the following information for split-system air conditioning heat pumps with heat pump coils manufactured by Aspen:

Basic Model Number	Cooling capacity	SEER	Heating capacity	HSPF
2HP13*18P-1 + C(A,C,D,E)24A4X+TDR	17300	13.5	17000	7.65
2HP13*24P-1 + C(A,C,D,E)24A4F+TDR	23200	13	21400	7.6
2HP13*24P-1 + C(A,C,D,E)24A4X+TDR	23200	13.5	21400	7.6
2HP13*48P-1 + C(A,C,D,E)48B4F+TDR	43500	13	43500	7.65
2HP13*48P-1 + C(A,C,D,E)48B4X+TDR	43500	13.5	43500	7.65
4SHP14LE124P + C(A,C,D,E)24A44+TDR	22200	13.5	23000	7.65
4SHP14LE124P + C(A,C,D,E)24A44+TDR	22200	13.5	23000	7.65
GHGD30S21S1 + A(A,B)W30X+TDR	28400	13	29000	7.6
GHGD30S21S1 + EW(W,N)302T1*	28400	13	29000	7.6
GHGD30S21S1 + HW(W,N)302T1*	28400	13	29000	7.6
THGD30S21S1 + A(A,B)W30X+TDR	28400	13	29000	7.6
THGD30S21S1 + EW(W,N)302T1*	28400	13	29000	7.6

THGD30S21S1 + HW(W,N)302T1*	28400	13	29000	7.6
YMB06011 + C(A,C,D,E)60B3F+MV20D+TDR	56000	13	58000	7.65
YMB06011 + C(A,C,D,E)60B3X+MV20D+TDR	56000	13.5	58000	7.65
YMB06011 + C(A,C,D,E)60C3F+MV20D+TDR	56000	13	58000	7.65
YMB06011 + C(A,C,D,E)60C3X+MV20D+TDR	56000	14	58000	7.65
YZB04211 + C(A,C,D,E)60B34+TDR + G*9V*B12	40500	14	40000	7.55
YZB04211 + C(A,C,D,E)60B34+TDR + Y*(8,L)C*B12	41500	13.5	41000	7.55
YZB04211 + C(A,C,D,E)60B34+TDR + Y*9C*B12	40500	14	40000	7.55
YZB04211 + C(A,C,D,E)60B3G+TDR + G*9V*B12	40500	13	40000	7.55
YZB04211 + C(A,C,D,E)60B3G+TDR + Y*(8,L)C*B12	41500	13	41000	7.55
YZB04211 + C(A,C,D,E)60B3G+TDR + Y*9C*B12	40500	13	40000	7.55
YZB04211 + C(A,C,D,E)60C34+TDR + G*9V*B12	40500	14	40000	7.6
YZB04211 + C(A,C,D,E)60C34+TDR + Y*9C*B12	40500	14	40000	7.6
YZB04211 + C(A,C,D,E)60C3G+TDR + G*9V*B12	40500	13	40000	7.6
YZB04211 + C(A,C,D,E)60C3G+TDR + Y*(8,L)C*B12	41500	13	41000	7.6
YZB04211 + C(A,C,D,E)60C3G+TDR + Y*9C*B12	40500	13	40000	7.6
YZB06011 + C(A,C,D,E)60B34+MV20D+TDR	55500	13.5	57500	7.65
YZB06011 + C(A,C,D,E)60B3G+MV20D+TDR	55500	13	57500	7.65
YZB06011 + C(A,C,D,E)60C34+MV20D+TDR	55500	13.5	57500	7.65
YZB06011 + C(A,C,D,E)60C3G+MV20D+TDR	55500	13	57500	7.65
YZB06012 + C(A,C,D,E)60B34+MV20D+TDR	55500	13.5	57500	7.65
YZB06012 + C(A,C,D,E)60B34+TDR	55500	13.5	57000	7.55
YZB06012 + C(A,C,D,E)60B34+TDR + G*9V*C20	55000	13.5	56500	7.55
YZB06012 + C(A,C,D,E)60B34+TDR + G*9V*D20	55000	13.5	56500	7.65
YZB06012 + C(A,C,D,E)60B34+TDR + Y*(8,L)C*C20	55500	14	56000	7.65
YZB06012 + C(A,C,D,E)60B34+TDR + Y*9C*C20	55000	13.5	56500	7.55
YZB06012 + C(A,C,D,E)60B34+TDR + Y*9C*D20	55000	13.5	56500	7.65
YZB06012 + C(A,C,D,E)60B3G+MV20D+TDR	55500	13	57500	7.65
YZB06012 + C(A,C,D,E)60B3G+TDR + G*9V*C20	55000	13	56500	7.55
YZB06012 + C(A,C,D,E)60B3G+TDR + G*9V*D20	55000	13	56500	7.65
YZB06012 + C(A,C,D,E)60B3G+TDR + Y*(8,L)C*C20	55500	13	56000	7.65
YZB06012 + C(A,C,D,E)60B3G+TDR + Y*9C*C20	55000	13	56500	7.55
YZB06012 + C(A,C,D,E)60B3G+TDR + Y*9C*D20	55000	13	56500	7.65
YZB06012 + C(A,C,D,E)60C34+MV20D+TDR	55500	13.5	57500	7.65
YZB06012 + C(A,C,D,E)60C34+TDR	56000	13.5	57500	7.6
YZB06012 + C(A,C,D,E)60C34+TDR + G*9V*C20	55500	13.5	57000	7.6
YZB06012 + C(A,C,D,E)60C34+TDR + G*9V*D20	55500	13.5	57000	7.65

YZB06012 + C(A,C,D,E)60C34+TDR + Y*(8,L)C*C20	56000	14	56500	7.65
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YZB06012 + C(A,C,D,E)60C3G+MV20D+TDR	55500	13	57500	7.65
YZB06012 + C(A,C,D,E)60C3G+TDR + G*9V*C20	55500	13	57000	7.6
YZB06012 + C(A,C,D,E)60C3G+TDR + G*9V*D20	55500	13	57000	7.65
YZB06012 + C(A,C,D,E)60C3G+TDR + Y*(8,L)C*C20	56000	13.5	56500	7.65
YZB06012 + C(A,C,D,E)60C3G+TDR + Y*9C*C20	55500	13	57000	7.6
YZB06012 + C(A,C,D,E)60C3G+TDR + Y*9C*D20	55500	13	57000	7.65

Split-system air conditioning heat pumps manufactured on or after January 23, 2006, must have a Seasonal Energy Efficiency Ratio (SEER) no less than 13 and a Heating Seasonal Performance Factor (HSPF) no less than 7.7.

The certification report also reported the following information for split-system air conditioners with air conditioning coils manufactured by Aspen:

Model Number	Cooling capacity	SEER
CZE06011 + C(A,C,D,E)60B44+MV20D+TDR	56000	12.1

Split-system air conditioners manufactured on or after January 23, 2006, must have a Seasonal Energy Efficiency Ratio (SEER) no less than 13.

FINDINGS

Based on Aspen's certification, made through its third-party representative as described above, DOE has determined that the above-listed basic models of air conditioners and air conditioning heat pumps do not meet the applicable DOE standards.

MANDATORY ACTIONS BY ASPEN

In light of the above finding, with respect to the above-listed basic models, Aspen must take the following steps:

(1) Immediately cease distribution in commerce of each basic model;

(2) Provide immediate written notification to all persons to whom Aspen has distributed any of the above listed model combinations that the combinations do not meet the applicable standards;

(3) Provide written notification to all persons to whom Aspen has distributed components of the above listed models that those combinations do not meet the applicable standard;[1] and

(4) Provide within 30 calendar days of the date of this letter any and all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of all affected models, including the affected heat pump coils and air conditioning coil.

OPTIONAL ACTIONS BY ASPEN

In addition to the mandatory steps listed above that Aspen must complete, Aspen may make immediate changes to its products to bring them into compliance with the applicable standard.

Should Aspen opt to do so, 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 CFR part 430.

If Aspen chooses this option, Aspen shall also maintain records that demonstrate that the modifications have been made to all units of the new basic model prior to distribution in commerce.

Records addressing these new basic models shall be maintained for a period of time that is consistent with DOE's regulations for product certification -- i.e., for a period of two years from the date that production has ceased. *See* 10 CFR § 430.62(d).

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Aspen fail to immediately cease the distribution of the above models, 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 distribution of these models. If, however, Aspen provides DOE with a satisfactory statement within that 15-day period detailing the steps that Aspen will take to ensure that all noncompliant models will no longer be distributed in commerce, DOE may elect to defer seeking such an order until a more appropriate time, if needed.

Should Aspen fail to provide the required notifications or documentation identified above, DOE may seek civil penalties.

Dated: May 28, 2010

Scott Blake Harris
General Counsel

[1] Aspen should contact DOE to determine the best means to fulfill this notification requirement.

U.S. Department of Energy

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Washington, DC 20585

In the Matter of:	)	
	)	
Aspen Manufacturing	)	Case Number: 2010-SE-0305
	)	

SUBPOENA
FOR INFORMATION AND PRODUCTION OF DOCUMENTS

Issued: May 27, 2010

The Department of Energy (DOE) issues this Subpoena for Information and Production of Documents to Aspen Manufacturing (Aspen) pursuant to 42 U.S.C. § 6299 of the Energy Policy and Conservation Act and the regulations promulgated thereunder. 10 CFR § 430.72.

Failure to provide information and documents violates 42 U.S.C § 6302 and DOE's accompanying regulations. 10 CFR § 430.61. Failure to obey this subpoena may result in penalties imposed by a court of law.

Aspen is required by law to maintain records of underlying test data for all certification testing and to organize and index such documentation to ensure that they are readily accessible for review by DOE upon request. Such records include supporting test data on any tested units and must be retained by Aspen for two years following the date production of the model has ceased. 10 CFR § 430.62.

Aspen's responses to the request for information and documents must be received by DOE no later than 30 days after the date of this subpoena.

Scott Blake Harris
General Counsel

QUESTIONS

1) **Model Information**. For each basic model listed in the Notice of Noncompliance Determination, identify:

   a) the product type (example: residential central air-conditioner and heat pump), product class (example: through-the-wall heat pumps-single package), the model number(s) of indoor and/or outdoor units[1];
   b) the cooling capacity;
   c) the heating capacity, if applicable;
   d) the date production began for any units in commerce in the United States;
   e) the first date placed in commerce in the United States;
   f) the dates of manufacture; and
   g) if applicable, the date the product was no longer offered for introduction into commerce in the United States.

2) **Units in Distribution.** Identify for each basic model of heat pump coil and air conditioning coil subject to the Notice of Noncompliance Determination:

   a) the number of units sold;
   b) the number of units in stock and being offered for sale;
   c) the number of units imported into the United States, if any;
   d) the recipients of each unit listed in response to Question 2a and the number of units of that basic model that were distributed to each recipient.

3) **Discontinued Products – Notice.** For each basic model listed in the Notice of Noncompliance Determination, state whether Aspen notified DOE that the model was discontinued and provide the date and manner by which Aspen notified DOE.

4) **Alternative Rating Method (ARM).** For all basic models Aspen currently sells for which Aspen used an alternative rating method referred to in 10 CFR § 430.24(m)(5) in lieu of the uniform method in part 430, subpart B, appendix M, to certify for compliance: identify each and every product by type, class and model number(s); specify when it was done, and by whom (name, address and phone); and provide the date of the ARM approval. For each approved ARM, indicate whether Aspen has made any adjustments to the ARM since approval.

5) **Uniform Testing.** For all basic models Aspen currently sells or has sold for which an ARM was not relied on for compliance certification purposes, state whether Aspen followed the procedure set out in Appendix M to Subpart B of Part 430 and if Aspen deviated from it, state how.

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[1] Use the definitions provided on page 5 and those contained in the regulations (10 CFR § 430.2) to specify the type of product.

6) **Testing.** For each basic model listed in Question 1, state the dates Aspen conducted testing pursuant to Appendix M to Subpart B of Part 430 (other than ARM rating) to determine whether the model meets the SEER (and HSPF for heat pumps) required by 10 CFR § 430.32(b) and (c), the place of testing (i.e., name and address of the test laboratory), the number of units tested for each basic model, and who conducted the testing (name, address and phone).

REQUEST FOR DOCUMENTS

1) **Testing.** All records and other documentation pertaining to the laboratory testing for SEER and HSPF, including routine testing to verify an ARM continues to produce representative energy consumption, for each basic model identified in the Notice of Noncompliance Determination, including any verification test reports.

2) **ARM rating.** All records and other documentation representing alternative rating methods, or computer simulation, used to determine SEER and HSPF, including but not limited to computer code, if computer simulation is performed, for each basic model identified in the Notice of Noncompliance Determination. If the document itself does not so indicate, specify the date it was performed.

3) **Technical documents.** All detailed technical specifications and documents related to each basic model identified in the Notice of Noncompliance Determination, including each basic model's:

   a) service and owner's manuals;
   b) operating instructions;
   c) electrical ratings;
   d) schematics; and
   e) descriptions and specifications for each component.

4) **Other documents**. All documents, not otherwise specifically requested, based on which Aspen concluded that each basic model identified in the Notice of Noncompliance Determination meets the energy efficiency standards in 10 CFR § 430.32. This may include ARM verification test data.