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In the Matter of:	)	
	)	
<b>Empire Comfort Systems</b>	)	Case Number: 2016-SE-22002
(direct heating equipment)	)	
	)	

<sup>1</sup> “Manufacture” means to manufacture, produce, assemble or import. 42 U.S.C. § 6291(10).

HWDV081BN, HWDV081BP, HWDV150BN, HWDV150BP, 3588, 5088, 7088, and MV130 (collectively, the “subject basic models”).

2. As DOE found in a Notice of Noncompliance Determination issued on July 20, 2016, the subject basic models do not comply with the applicable energy conservation standard.
3. Empire has distributed in commerce in the United States at least 23,008 units of the subject basic models manufactured on or after April 16, 2013.

**The following information is provided in question and answer format to help explain Empire’s legal obligations and options.**

*What do I do now?*

DOE is offering to settle this enforcement action if you submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice and then fulfill all obligations of the Compromise Agreement, which includes paying the fine within thirty (30) calendar days of the date of an Order adopting the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law (currently \$9,962,464). You have other options as described below.

*What are my other options?*

If you do **not** agree to DOE’s settlement offer, then you must select Option 1 or Option 2 below within thirty (30) calendar days of the date of this Notice.

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*.

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 the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the lowest penalty. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer 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). You may respond by any of the following methods:

By email to: david.case@hq.doe.gov  
By fax to: (202) 586-3274  
By private carrier to: David Case  
Trial Attorney (GC-32)  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

*What happens if I fail to respond?*

If you fail to respond within thirty (30) calendar days of the date of 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 (Option 2, above).

*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 that may give rise to a debt to the government.

*How did DOE 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. The maximum penalty is \$433 per unit. 10 C.F.R. § 429.120. DOE has calculated a maximum penalty of \$433 per unit for 23,008 units distributed in commerce in the United States. If the case goes to hearing, this number would be adjusted to include any additional information obtained.

If you have any questions, please contact David Case by email at david.case@hq.doe.gov or phone at (202) 287-6998.

Issued by:

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Laura L. Barhydt  
Assistant General Counsel for  
Enforcement