

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

In the Matter of:)	
)	
The Solaray Corporation)	Case Number: 2016-CE-16031
(central air conditioners and heat pumps))	
)	

NOTICE OF PROPOSED CIVIL PENALTY

Date issued:	September 6, 2016
Number of alleged violations:	1095 (three basic models, 365 days total)
Maximum possible assessment:	\$ 474,135
Proposed civil penalty:	\$ 118,533

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that the Solaray Corporation (“Solaray”) (d/b/a Inter-Island Solar Supply) 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 429.

Legal Requirements

Central air conditioners are covered products subject to energy conservation standards set forth at 10 C.F.R. § 430.32(c). *See* 42 U.S.C. § 6292(a)(3).

Before distributing in commerce any basic model of a covered product subject to an applicable energy conservation standard, and annually thereafter, each manufacturer shall submit a certification report to DOE certifying that each basic model meets the applicable energy conservation standard(s). 10 C.F.R. § 429.12(a).

Failure to submit a certification report for each basic model of a covered product as required by 10 C.F.R. Part 429 is a prohibited act pursuant to 10 C.F.R. § 429.102(a)(1) and subject to civil penalty as described in 10 C.F.R. § 429.120.

Allegations

DOE alleges:

1. Solaray manufactures¹ (i.e., imports) central air conditioners and heat pumps, including but not limited to Solair brand basic models SW-HYBRID-12, SW-HYBRID-18, and SWWR-35IM, which appear to be built by Solair World International Pte., Ltd outside the U.S.
2. Solaray has distributed basic models SW-HYBRID-12, SW-HYBRID-18, and SWWR-35IM in commerce in the U.S. for at least 365 days prior to September 6, 2016.
3. Solaray failed to submit a certification report for basic models SW-HYBRID-12, SW-HYBRID-18, and SWWR-35IM before distributing these basic models in commerce in the U.S.

The following information is provided in question and answer format to help explain Solaray's legal obligations and options.

What do I do now?

DOE is offering to settle this enforcement action. To accept this settlement offer, you must submit the signed Compromise Agreement and then pay the fine within thirty (30) days of the date of an Adopting Order adopting the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law. 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 a signed compromise agreement within thirty (30) calendar days of the date of this notice to pay the amount indicated in the Compromise Agreement. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE within thirty

¹ "Manufacture" means to manufacture, produce, assemble, or import. 42 U.S.C. § 6291(10).

(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: ronald.colwell@hq.doe.gov

By fax to: (202) 586-3274

By mail to: Ronald J. Colwell
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 (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 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 day you fail to submit to DOE the required information for a covered product. By regulation, you must submit a certification report for each basic model. Therefore, your maximum penalty is calculated based on each day you distributed each basic model in commerce in the U.S. without having submitted a valid certification report. The maximum penalty is \$433 per basic model per day. 10 C.F.R. § 429.120.

If you have any questions, please contact R.J. Colwell by email at Ronald.Colwell@hq.doe.gov.

Issued by:

/S/

Laura L. Barhydt
Assistant General Counsel for
Enforcement