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

In the Matter of:	)	
	)	
Lennox Industries, Inc.	)	Case Number: 2020-SE-43005
(commercial package air conditioners and heat pumps)	)	
	)	
	)	

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: April 6, 2022

Number of alleged violations: 1,824

Maximum possible assessment: **$**917,472

Proposed civil penalty: **$917,472**

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of the Assistant General Counsel for Enforcement, alleges that Lennox Industries, Inc. ("Lennox") 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. Parts 429 and 431.

Legal Requirements

Commercial package air conditioners and heat pumps are covered equipment subject to federal energy efficiency standards set forth in 10 C.F.R. § 431.97. See 42 U.S.C. §§ 6311(1)(B), 6313(a).

Small commercial package air conditioners with a cooling capacity greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h, air cooled, with electrical resistance heating or no heating, and manufactured[1] on or after January 1, 2018, and before January 1, 2023, must have an integrated energy efficiency ratio ("IEER") performance of not less than 12.9. 10 C.F.R. § 431.97(b).

Distribution in commerce[2] by a manufacturer or private labeler of any new covered equipment that is not in compliance with an applicable energy conservation standard constitutes a prohibited

[1] "Manufacture" means to manufacture, produce, assemble, or import. 42 U.S.C. § 6291(10).
[2] "Distribute in Commerce" or "Distribution in Commerce" means to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce. 42 U.S.C. § 6291(16).

act. 10 C.F.R. § 429.102(a)(6). Each unit of the covered equipment distributed in the United States constitutes a separate violation, and each such knowing violation currently is subject to a maximum penalty of $503. 42 U.S.C. §§ 6316, 6303; 10 C.F.R. § 429.120.

Allegations

DOE alleges:

1. Lennox has manufactured small commercial package air conditioner basic model KCB092S4B**Y,G,J (the "subject model").
2. The subject model is a small commercial package air conditioner with a cooling capacity greater than or equal to 65,000 Btu/h and less than 135,000 Btu/h, air-cooled, with electrical resistance heating or no heating, and manufactured on or after January 1, 2018, and before January 1, 2023.
3. DOE's testing of one unit of the subject model, conducted in accordance with the DOE test procedure for small commercial package air conditioners and heat pumps (10 C.F.R. § 431.96), yielded an IEER result of 11.48.
4. The tested unit of the subject model has a tested cooling capacity between 65,000 Btu/h and 135,000 Btu/h.
5. Given the tested unit's cooling capacity, the minimum permissible IEER for the subject model is 12.9.
6. As DOE found in a Notice of Noncompliance Determination issued on December 29, 2021, and as admitted by Lennox to DOE, the subject model does not comply with the minimum permissible IEER set forth at 10 C.F.R. § 431.97(b).
7. Lennox has distributed in commerce in the United States at least 1,824 units of the subject model.
8. Lennox knowingly distributed in commerce 1,824 units of new covered equipment which were not in conformity with an applicable energy conservation standard.

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

What do I do now?

DOE is offering a settlement if you submit the signed Compromise Agreement by April 15, 2022. As part of that settlement, you must fulfill all obligations of the Compromise Agreement, including payment of the fine within thirty (30) calendar days after DOE issues an order adopting the Agreement ("Adopting Order"). If you do not choose to settle the case, DOE may seek as much as the maximum penalty ($917,472) 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 notify DOE whether you 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?

If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE in writing within thirty (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. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: smitha.vemuri@hq.doe.gov

By mail to: Smitha Vemuri
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, submit the signed compromise agreement. If you do not wish to accept DOE's settlement offer, notify DOE in writing 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 DOE calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each unit of a covered product or equipment that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. 10 C.F.R. § 429.102(a)(6). In the maximum penalty calculation in this notice, DOE has calculated a maximum penalty of $503 per unit for the 1,824 units distributed in commerce in the U.S. in the last five years. This number may be adjusted to include any additional information obtained and any increase in the maximum penalty per violation. The maximum penalty increases each year and is determined based on the date of any final order assessing a penalty.

If you have any questions, please contact Smitha Vemuri by email at smitha.vemuri@hq.doe.gov or by phone at (202) 586-3421.

Issued by:

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