

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

In the Matter of:

Diversity Industries d/b/a KWIKOOL
(Respondent)

Case Number: 2022-CE-43006

REVISED ORDER

For the U.S. Department of Energy (“DOE”):

On December 23, 2022, under the above-listed case number, DOE initiated a case against Diversity Industries d/b/a KWIKOOL (“Respondent”) to pursue a civil penalty for knowingly distributing in commerce in the United States basic models of covered commercial HVAC equipment without submitting to DOE a certification report certifying that those basic models complied with the applicable energy conservation standards.

1. Commercial package air conditioners and heat pumps are covered equipment, as defined by 42 U.S.C. § 6311(B)-(D) and 10 C.F.R. §§ 431.2 and 431.92.
2. Pursuant to 10 C.F.R. § 429.12, manufacturers are required to submit to DOE a certification report certifying that each basic model meets the applicable energy conservation standard, before distributing each basic model in commerce in the United States and annually thereafter.
3. Failure to submit a certification report for covered equipment in accordance with 10 C.F.R. § 429.12 is a prohibited act pursuant to 10 C.F.R. § 429.102(a)(1) and subject to civil penalties as described in 10 C.F.R. § 429.120.
4. Pursuant to 10 C.F.R. § 429.120, each day that a manufacturer fails to submit a certification report for a basic model is a separate violation.
5. Respondent admitted the following:
 - a. Respondent has manufactured¹ commercial air conditioners, including, but not limited to, KCA Series and KCW series units (altogether, the “the subject models”).

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

- b. Respondent has distributed in commerce² in the United States for at least 1,825 days, and continues to distribute, the basic models.
 - c. Respondent knowingly failed to submit a certification report for the basic models before distributing those models in commerce in the United States, and annually thereafter, in violation of 10 C.F.R. § 429.12.
6. Based on the information above, I find that Respondent knowingly committed Prohibited Acts by manufacturing and distributing in commerce basic models of covered equipment without submitting to DOE a certification report certifying that those basic models complied with the applicable energy conservation standards. *See* 42 U.S.C. § 6302; 10 C.F.R. §§ 429.102(a)(1).
7. Accordingly, pursuant to 10 C.F.R. § 429.120 and 42 U.S.C. §§ 6303 and 6316, I **HEREBY ASSESS** a civil penalty of \$40,000 **AND ORDER** that the Settlement Agreement attached to this Order is adopted.

Alexandra Klass
Deputy General Counsel for
Energy Efficiency and Clean Energy Demonstrations

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).