



Department of Energy
Washington, DC 20585

United States Department of Energy
Office of Hearings and Appeals

In the Matter of)
)
Advanced Insulation Concepts, Inc.)
)
Filing Date: February 15, 2023)
_____)

Case No.: EEE-23-0005

Issued: July 14, 2023

Decision on Order to Show Cause
Motion for Decision
Initial Decision

Richard A. Cronin, Jr., Administrative Law Judge

This Decision concerns a Motion for Decision (MFD) filed by the Department of Energy's (DOE) Office of the Assistant General Counsel for Enforcement (OGCE) against Advanced Insulation Concepts, Inc. (Respondent) and an Order to Show Cause issued to OGCE. Both concern a complaint (the Complaint) filed by OGCE on February 15, 2023, under the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (the EPCA), DOE's implementing regulations codified at 10 C.F.R. Parts 429 and 430, and the DOE's Procedures for Administrative Adjudication of Civil Penalty Actions (hereinafter referred to as the AAPCA). The Complaint alleges that the Respondent violated the provisions of the EPCA and its implementing regulations by distributing covered industrial products, specifically doors for coolers and walk-in freezers, in commerce in the United States without submitting a report to DOE certifying that the doors complied with the applicable DOE energy conservation standard, as required by 10 C.F.R. § 429.12(a)—(d); 10 C.F.R. § 102(a)(1). In this Decision, I find that OGCE properly served Respondent and I grant the MFD.

I. BACKGROUND

On or around January 3, 2023, OGCE issued a Notice of Proposed Civil Penalty (NPCP) to the Respondent, which offered a settlement of \$137,696 as an alternative to the maximum allowed civil penalty of \$550,785. Complaint at 6; MFD Exhibit (Ex.) 1 at 1, 5. The Respondent failed to respond to the NPCP. Complaint at 6. On February 15, 2023, OGCE filed the Complaint with DOE's Office of Hearings and Appeals (OHA) and served the Respondent with a copy of the Complaint via email to info@aicinsulate.com (the Email Address), which is listed on the Respondent's website on the "Contact Us" page. Under the AAPCA, a respondent is required to

either file a written answer to the Complaint, or a motion pursuant to § 18(f)(1)–(2) “not later than 30 days after service of the Complaint.” AAPCA at § 8(a). The Respondent has failed to file any response to the Complaint.

On February 16, 2023, I issued an acknowledgement letter to the Respondent, via the Email Address, and OGCE, in which I stated: “All parties must respond to this letter, via email, with the proper point of contact(s) for service and other communications.” February 16, 2023, letter from Richard A. Cronin, Jr., Administrative Law Judge to Respondent and OGCE at 1. The Respondent failed to respond to my letter.

On March 28, 2023, eleven days after the Respondent’s answer or motion pursuant to § 18(f)(1)–(2) was due, OGCE filed the MFD seeking a ruling deeming each of the allegations set forth in the Complaint as admitted, citing the AAPCA, which provides: “A person’s failure to timely file an answer without good cause, as determined by the ALJ, will be deemed an admission of the truth of each allegation contained in the complaint.” AAPCA at § 8(d). The MFD further requested that I issue a decision pursuant to AAPCA § 18(f)(5) based upon those deemed admissions, finding that Respondent violated 10 C.F.R. § 429.102(a)(1) and recommending that Respondent pay a civil penalty in the amount of \$137,696. On April 6, 2023, I issued an Order to Show Cause (OSC) ordering OGCE to submit arguments and evidence showing that the Complaint had been properly served on the Respondent using a verified email address, as defined in the AAPCA.

On April 27, 2023, OGCE submitted its response to the OSC. In its response, OGCE argued that the Email Address, info@aicinsulate.com, is a verified email address because it is listed on Respondent’s website’s “Contact Us” page and has been shown to be a working email by an online email verification service. OGCE Response to OSC at 3. OGCE also argued that its emails to that address had not been returned as undeliverable and an employee of Respondent confirmed via telephone that the Email Address is valid and monitored. *Id.* at 3–4.

II. ORDER TO SHOW CAUSE

The AAPCA provides: “[a]bsent exceptional circumstances, as determined by the ALJ, service of documents must be made electronically, by verified email.” AAPCA at § 5(b). The AAPCA further provides: “*Verified email* is the email address provided by the party. If a party does not provide an email address, then a verified email is an email account that has been shown to the satisfaction of the ALJ to be active and belonging to the recipient of an email.” AAPCA at § 2 (emphasis in the original). The Respondent’s repeated failure to respond to correspondence addressed to the Email Address raised a question as to whether the Email Address is not active or does not reach an employee or third party who can receive service. However, OGCE’s response to the OSC settles that question to my satisfaction, because it contains an affidavit attesting that Respondent’s employee confirmed to OGCE that info@aicinsulate.com is a valid, monitored email address. Response to OSC at 4, Exhibit 8 (Sworn Statement of Pejume Guscott, DOE Trial Attorney). The AAPCA’s simplest definition of a *verified email* requires only that the email address be provided by the party. I find that Respondent provided info@aicinsulate.com to OGCE when Respondent’s employee confirmed that the email address is valid and is monitored. Furthermore, that confirmation shows to my satisfaction that the Email Address is active and

belongs to Respondent. Accordingly, I find that OGCE has provided sufficient evidence for me to conclude that it properly served all pleadings in this matter on the Respondent.

III. MOTION FOR DECISION

A. Findings of Fact

Having found that OGCE properly served the Complaint on Respondent, I turn to the Motion for Decision. Respondent has not responded to the Complaint or any of the documents or motions served upon it during this proceeding. Pursuant to the AAPCA § 8(d), I deem admitted all the Complaint's allegations due to Respondent's failure, without good cause, to file an answer, or motion in lieu of an answer, by the 30th day after being served with the Complaint. Accordingly, I make the following findings of fact as alleged in the MFD and the Complaint:

1. Respondent was subject to the requirements of 10 C.F.R. parts 429 and 431 and the remedies of 10 C.F.R. part 429, Subpart C.
2. Respondent manufactured at least three basic models of components for walk-in coolers and/or walk-in freezers (the "subject models").
3. The subject models are doors for walk-in coolers and/or walk-in freezers that are subject to the energy conservation standards at 10 C.F.R. § 431.306.
4. Respondent made the subject models available for sale in the United States, via Respondent's website, for at least 365 days prior to January 3, 2023.
5. Before manufacturing and making the subject models available for sale in the United States, Respondent did not submit to DOE a certification report pursuant to 10 C.F.R. § 429.12(a) certifying that each of the subject models complied with the applicable energy conservation standard.
6. To date, Respondent still has not submitted to DOE a certification report for the subject models.
7. Respondent knowingly failed to make required reports, by not submitting to DOE the certification report required under 10 C.F.R. § 429.12(a) before Respondent distributed the subject models in commerce in the United States by making them available for sale in the United States.
8. Respondent knew or should have known that Respondent had not submitted to DOE a certification report certifying that each of the subject models met the applicable energy conservation standards before Respondent distributed the subject models in commerce in the United States.

MFD at 3-5.

B. Analysis

Section 18(b)(5) of the AAPCA provides that a party may move for decision, regarding all or any part of the proceedings, at any time before the ALJ has issued an initial decision in the proceedings. A party may include with a motion for decision affidavits as well as any other evidence in support of the motion. AAPCA § 18(f)(5). This section also mandates that I must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, affidavits, matters that the ALJ has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. *Id.*

By its failure to respond to the Complaint, Respondents are deemed to have admitted to three knowing violations of 10 C.F.R. § 429.102(a)(1), which subjects them to a civil penalty for each violation, every day for at least 365 days. It follows, therefore, the allegations made in the Complaint are supported by more than a preponderance of the evidence. Accordingly, OGCE is entitled to seek a civil penalty from Respondent.

Section 429.120 of the relevant regulations specified, at the time the violations occurred, that the maximum civil penalty for § 429.102(a)(1) violations was \$503 per model per day. 10 C.F.R. § 429.120; 87 Fed. Reg. 1061, 1061 (Jan. 10, 2022). Accordingly, three violations per day for 365 days at a rate of \$503 per violation results in a maximum allowable civil penalty of \$550,785.

In the Complaint and in the NPCP, OGCE proposed a civil penalty of \$137,696 using the formula (3 models X 365 days X \$503 per day X 25%). This is below the maximum penalty of \$550,785 permitted under the relevant statute and there is no evidence in the record that supports a reduction in the proposed civil penalty. MFD Ex. 1 at 1. Accordingly, I find that OGCE is entitled to seek a civil penalty of \$137,696.

IV. RECOMMENDATION AND ORDER

For the forgoing reasons it is my recommendation that the Respondent, Advanced Insulation Concepts, Inc., be assessed a civil penalty of \$137,696.

It Is Therefore Ordered That:

- (1) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on March 28, 2023, is granted;
- (2) The recommended civil penalty that Respondent be assessed is \$137,696.

- (3) This Initial Decision shall become the Final Decision of the Department of Energy if not appealed pursuant to § 32 of DOE's Procedures for Administrative Adjudication of Civil Penalty Actions within 10 days after service upon the parties.

A handwritten signature in blue ink, reading "Richard A. Cronin Jr." with a stylized flourish at the end.

Richard A. Cronin, Jr.
Administrative Law Judge
Office of Hearings and Appeals
United States Department of Energy