

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of MYRA Custom Coolers)
A Division of Refrigeration Gaskets of Texas, Inc.)
)
Filing Date: February 17, 2023)
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_____)

Case No.: EEE-23-0006

Issued: August 3, 2023

**Initial Decision
Motion for Decision**

Steven L. Fine, Administrative Law Judge:

This Initial Decision considers a Motion for Decision (MFD) filed on March 27, 2023, by the Department of Energy’s (DOE) Office of the Assistant General Counsel for Enforcement (OGCE) concerning a complaint (the Complaint) filed by OGCE on February 17, 2023, against MYRA Custom Coolers, A Division of Refrigeration Gaskets of Texas, Inc. (Respondent). The Complaint was filed 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 431, and DOE’s Procedures for Administrative Adjudication of Civil Penalty Actions (hereinafter referred to as the AACPA).¹ The Complaint alleges that the Respondent violated the provisions of the EPCA and its implementing regulations by distributing covered industrial equipment, specifically two basic models of doors for walk-in coolers or walk-in freezers, in commerce in the United States without first submitting a report to DOE certifying that both basic models of the equipment (the Subject Models) complied with the applicable DOE energy conservation standard, as required by 10 C.F.R. § 429.12(a)–(d); 10 C.F.R. § 429.102(a)(1).² The MFD requests that I issue a decision: (1) finding that the Respondent violated the EPCA and its implementing regulations and (2) recommending that the Respondent pay a civil penalty of \$91,798. For the reasons set forth below, I am granting OGCE’s motion.

I. Background

On or about December 19, 2022, OGCE issued a Notice of Proposed Civil Penalty (NPCP) to the Respondent alleging that Respondent had manufactured and distributed the Subject Models in

¹ The AACPA may be viewed at: <https://www.energy.gov/gc/doe-procedures-administrative-adjudication-civil-penalty-actions>.

² The Complaint identifies the doors for walk-in coolers or walk-in freezers as model numbers “RGTD4-0200” and “RGTD1-0300.”

commerce in the United States after it had knowingly failed to submit certification reports to DOE certifying that both Subject Models met the applicable energy conservation standard set forth at 10 C.F.R. § 431.306 and proposed a civil penalty of \$91,798. The Respondent failed to respond to the NPCP.

On February 17, 2023, OGCE filed the Complaint with DOE's Office of Hearings and Appeals (OHA) and served Respondent with a copy of the Complaint. I was appointed as the Administrative Law Judge (ALJ) on that day. The Complaint alleges that Respondent manufactured the Subject Models and violated 10 C.F.R. § 429.102(a)(1), when it knowingly failed to submit, to the DOE, the certification reports required under 10 C.F.R. § 429.12(a) certifying that each of the Subject Models met the applicable energy conservation standard, set forth at 10 C.F.R. § 431.306, before Respondent distributed the Subject Models in commerce in the United States by making them available for sale in the United States on its website.

On February 17, 2023, I issued an acknowledgement letter to the Respondent, in which I reminded the parties that the Respondent's answer, or motion filed pursuant to § 18(f)(1)–(2) of the AACPA, was due by the 30th day after February 17, 2023, under § 8(a) of the AACPA. February 17, 2023, letter from Steven L. Fine, Administrative Law Judge, to Respondent and OGCE at 1. On February 20, 2023, the Respondent responded to this letter with two email messages. The first of these messages states: "Send us the office address and we shall come in person to have a better understanding[.]" First February 20, 2023, email message from counter_refrigerationgaskets.com to OHA.filings@hq.doe.gov. The second email message states: "Send us the office address and we shall come in person to have a better understanding or send us the mail notice. This is not our formal means of communication."³ Second February 20, 2023, email message from counter_refrigerationgaskets.com to OHA.filings@hq.doe.gov. The Respondent failed to file any further response to the Complaint. On March 27, 2023, seven days after the Respondent's answer or motion pursuant to AACPA § 18(f)(1)–(2) was due, OGCE filed the present motion.

The deadline for Respondent's response to the MFD elapsed on April 17, 2023, without any further response from Respondent. *See* AACPA at § 18(d) (providing 25 days for a response to a motion filed under § 18 of the AACPA).

³ Because these emails did not indicate that they were shared with the OGCE, I forwarded both to David W. Case, Esq., the OGCE's Counsel. February 21, 2023, email from Steven L. Fine, Administrative Law Judge, to David W. Case, Trial Attorney, OGCE. Mr. Case replied stating that he had received the same emails from the Respondent, and that he was drafting a response to the Respondent. February 21, 2023, email from David W. Case, Trial Attorney, OGCE to Steven L. Fine, Administrative Law Judge. On March 1, 2023, I wrote Mr. Case, asking him if he still anticipated filing a response to the Respondent's emails. March 1, 2023, email from Steven L. Fine, Administrative Law Judge to David W. Case, Trial Attorney, OGCE. On March 1, 2023, Mr. Case replied indicating that he had sent Respondent an email message expressing his willingness to discuss the case and inquiring whether it was represented by counsel. March 1, 2023, email from David W. Case, Trial Attorney, OGCE to Steven L. Fine, Administrative Law Judge. Mr. Case subsequently emailed me on March 1, 2023, indicating that he "had a phone conversation with an employee of [the Respondent] and am waiting for the company's attorney to reach out to me directly after having a chance to review the relevant documents." March 1, 2023, email from David W. Case, Trial Attorney, OGCE to Steven L. Fine, Administrative Law Judge, and Respondent. The record does not contain any further correspondence from the Respondent.

II. Analysis

Under the AACPA, a respondent is required to file either 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.” AACPA at § 8(a). The Respondent failed to comply with this requirement, since its February 20, 2023, emails constitute neither an “answer” under the AACPA, nor a motion under § 18(f)(1)–(2).⁴ The AACPA further provides that “[a] person’s failure to timely file an answer . . . will be deemed an admission of the truth of each allegation contained in the complaint.” AACPA at § 8(d).

The MFD requests that I invoke § 8(d) and consider the Respondent’s failure to file either a written answer to the Complaint, or a motion pursuant to § 18(f)(1)–(2) an admission of the truth of each allegation contained in the Complaint. The MFD further requests that on the basis of those admissions, I issue a decision: (1) finding that the Respondent violated the EPCA and its implementing regulations, and (2) recommending that the Respondent pay a civil penalty of \$91,798. To this end, OGCE asserts that since each of the allegations set forth in the Complaint has been admitted, there remains no genuine issue of material fact and therefore the OGCE is entitled to a decision in its favor as a matter of law. In support of this contention, OGCE cites the AACPA, which provides that an ALJ must grant an MFD if the moving party “show[s] 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.” AACPA at § 18(f)(5).

Under the AACPA, the Respondent’s failure to file a timely response to the Complaint serves as an admission that each of the Complaint’s allegations are true, unless good cause is shown for the failure to respond. AACPA at § 8(d). The Respondent has not contended good cause exists for its failure to respond, and the existing record does not support such a conclusion. Accordingly, I find that each of the allegations set forth in the Complaint is admitted to be true.

Therefore, I have made the following findings of fact and conclusions of law:

1. Respondent is a “person” under 10 C.F.R. § 430.2;
2. From December 20, 2021, to December 19, 2022, Respondent manufactured the Subject Models, and distributed them in commerce in the United States;
3. The two Subject Models are doors for walk-in freezers or refrigerators;

⁴ Under the AAPCA:

A person filing an answer must admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied or noted as without sufficient knowledge or information to admit or deny in the answer may be deemed an admission of the truth of that allegation. A general denial of the complaint is deemed a failure to file an answer.

AAPCA at § 8(c). An answer must also “be dated and signed by the person responding to the complaint.” AAPCA at § 8(a). The emails did not identify their author, or admit, deny, or state that the person is without sufficient knowledge or information to admit or deny any paragraphs of the Complaint. *See* February 20, 2023, email messages from counter_refrigerationgaskets.com to OHA.filings@hq.doe.gov.

4. Doors for walk-in freezers and walk-in refrigerators, manufactured after June 5, 2017, are subject to the energy conservation standards set forth at 10 C.F.R. § 431.306 (c) and (d);
5. Respondent was required to submit a report to DOE certifying that both of the two Subject Models complied with the applicable DOE energy standards, both before distributing the Subject Models, and annually thereafter, 10 C.F.R. § 429.12(a);
6. Respondent has never submitted a report to the DOE certifying that either of the Subject Models complied with the applicable DOE energy standard;
7. 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;
8. Respondent knew or should have known that it had not submitted a certification report to DOE certifying that the two Subject Models met the applicable energy conservation standards before Respondent distributed the Subject Models in commerce in the United States;
9. Respondent violated 10 C.F.R. § 429.102(a)(1) by knowingly distributing the two Subject Models in commerce in the United States for at least 365 days without submitting to DOE the certification reports required under 10 C.F.R. § 429.12(a), certifying that the basic models containing the Subject Models met the applicable energy conservation standards;
10. Pursuant to 10 C.F.R. § 429.120, Respondent is subject to a civil penalty for each knowing violation of 10 C.F.R. § 429.102(a)(1);
11. Under 10 C.F.R. § 429.120, each day of noncompliance with 10 C.F.R. § 429.102(a)(1) constitutes a separate violation for each model not certified according to DOE regulations;
12. The Respondent has committed 730 knowing violations of 10 C.F.R. § 429.102(a)(1) (two products multiplied by 365 days).
13. Pursuant to Inflation Adjustment of Civil Monetary Penalties (the IACMP), 88 Fed. Reg. 2193 (Jan. 13, 2023); 10 C.F.R. § 429.120 (2023); and 28 U.S.C. § 2461 (amended 2015) the Respondent is subject to a civil penalty of up to \$542 per basic model per day for each violation accessed after January 13, 2023;
14. A maximum civil penalty in the amount of \$395,660 (two products multiplied by 365 days multiplied by a penalty of \$542 per violation) would be allowed under the regulations and statutes;⁵ and
15. The OGCE exercised its discretion to seek a smaller civil penalty in the amount of \$91,798;

Based on the existing record, OGCE has shown there is no genuine issue of material fact and it is entitled to a decision as a matter of law. Accordingly, OGCE's MFD is granted. I recommend an assessment of a civil penalty in the amount of \$91,798 against the Respondent.

For These Reasons:

⁵ The Complaint calculated the maximum allowable civil penalty as \$367,190. However, that calculation reflected OGCE's use of the maximum allowable daily civil penalty for each violation under IACMP at the time that the NPCP was issued (\$503 per day per product). 87 Fed. Reg. 1063 (Jan. 10, 2022). On January 13, 2023, the maximum allowable daily civil penalty was increased to \$544. IACMP, 88 Fed. Reg. 2193 (January 13, 2023); 10 C.F.R. § 429.120 (2023). 28 U.S.C. § 2461, at Note 6, provides that "Any increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect."

- (1) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on March 27, 2023, is granted;
- (2) I recommend that MYRA Custom Coolers, A Division of Refrigeration Gaskets of Texas, Inc. be assessed a civil penalty of \$91,798, as requested by the Office of the Assistant General Counsel for Enforcement; and
- (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.

Steven L. Fine
Administrative Law Judge
Office of Hearings and Appeals
United States Department of Energy