

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

In the Matter of:)
)
ELCO Lighting) Case Number: 2014-SE-54005
(metal halide lamp fixtures))
)
)

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: June 30, 2015

Number of alleged violations: 6,225 (Failure to provide data: 2 basic models; 375 days
Failure to certify: 15 basic models; 365 days)

Maximum possible assessment: **\$1,245,000**

Proposed civil penalty: **\$311,250**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that ELCO Lighting, Inc. (“ELCO”) 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. § 429.12.

Specifically, DOE alleges:

1. ELCO has manufactured¹ a variety of metal halide lamp fixtures, including models “E8RM series,” “E10M series,” “E8S series,” “E8M series,” EMH175, EMH250, and EMH400.
2. ELCO has manufactured a variety of illuminated exit signs, including models EE71RD, EE72GD, EE73RD, EE74GD, EDGREC1R, EDGREC1G, EDGREC2R, EDGREC2G, EDGLIT1G, EDGLIT1R, EDGLIT2G, and EDGLIT2R.
3. ELCO has distributed for at least 365 days, and continues to distribute, models “E8RM series,” “E10M series,” “E8S series,” “E8M series,” EMH175, EMH250, EMH400, EE71RD, EE72GD, EE73RD, EE74GD, EDGREC1R, EDGREC1G, EDGREC2R, EDGREC2G, EDGLIT1G, EDGLIT1R, EDGLIT2G, and EDGLIT2R in commerce in the U.S.
4. Models “E8RM series,” “E10M series,” “E8S series,” “E8M series,” EMH175, EMH250, EMH400, EE71RD, EE72GD, EE73RD, EE74GD, EDGREC1R, EDGREC1G,

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

EDGREC2R, EDGREC2G, EDGLIT1G, EDGLIT1R, EDGLIT2G, and EDGLIT2R are “covered products.” 42 U.S.C. § 6292(a)(19); *see* §§ 6291(37), 6295(a), (w).

5. DOE issued a Warning Notice on May 21, 2014, noting that ELCO’s submission at CCMS #44348 failed to specify individual model numbers in the column labeled “Individual Model Number Covered by Basic Model” for the basic models identified as “E8RM series,” “E10M series,” “E8S series,” “E8M series,” as required by 10 C.F.R. § 429.12. ELCO took no action in response to the Warning Notice.
6. ELCO failed to submit a certification report for models EMH175, EMH250, EMH400, EE71RD, EE72GD, EE73RD, EE74GD, EDGREC1R, EDGREC1G, EDGREC2R, EDGREC2G, EDGLIT1G, EDGLIT1R, EDGLIT2G, and EDGLIT2R before distributing them in commerce in the U.S., as required by 10 C.F.R. §§ 429.12 and 429.48.
7. DOE issued a Request for Data on May 21, 2014, for basic models “E8RM series” and “E10M series”.
8. ELCO failed to provide test data in response to DOE’s May 21, 2014 Request for Data.
9. Each failure of a manufacturer to provide required records, such as test data, and each failure to submit a certification report 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.

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

What do I do now?

DOE is offering a settlement of **\$14,000** if you submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice. As part of that settlement, you must pay the fine within thirty (30) calendar days of the date of issuance of an order adopting the Agreement (“Adopting Order”) and within sixty (60) calendar days of the date of the Adopting Order properly certify all models that you manufacture and distribute in commerce in the U.S. If you do not submit the required certification documents within sixty (60) calendar days of the date of the Adopting Order, you will be subject to the maximum penalty of \$200 per day per basic model for every day you do not certify each basic model.

You may settle the case for **\$28,000** if you submit the signed compromise agreement between 31 and 60 calendar days after the date of this notice. As part of that settlement, you must pay the fine within thirty (30) calendar days of the date of the Adopting Order and within sixty (60) calendar days of the date of the Adopting Order properly certify all models available for sale in the United States. If you do not submit the required certification documents within 60 calendar days of settlement, you will be subject to the maximum penalty of \$200 per day per basic model for every day you do not certify each basic model.

If you do not choose to settle the case, DOE may seek the **maximum penalty** (currently \$1,245,000) 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, you must select Option 1 or Option 2, below, within thirty (30) calendar days.

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 date 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 the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the **lowest fine (\$14,000)**. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer 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: christina.studt@hq.doe.gov

By fax to: (202) 586-3274. For this option, please first call (202) 586-0389.

By private carrier to: Christina Studt
Trial Attorney (GC-32)
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days of the date of 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 (which is enclosed). 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 (“DCIA”) requires all federal agencies to obtain the TIN in any case that 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 statute and regulation, you must provide records and other information to DOE at DOE’s request. 42 U.S.C. § 6302(a)(3); 10 C.F.R.

§§ 429.102(a)(1), 429.71; *see also* § 429.106(b). 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. In the maximum penalty calculation in this Notice, DOE assumes that each basic model has been in distribution in the United States for at least 365 days. DOE is not pursuing violations more than one (1) year old at this time. The maximum penalty is \$200 per basic model per day. 10 C.F.R. § 429.120.

If you have any questions, please contact Christina Studt by email at christina.studt@hq.doe.gov or by phone at (202) 586-0389.

Issued by:

_____/S/_____

Laura Barhydt
Assistant General Counsel for
Enforcement