

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

In the Matter of:)
)
)
Quietside) Case Number: 2015-SE-16011
(central air conditioners and heat pumps))
)

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: March 25, 2016

Number of alleged violations: 1,236

Maximum possible assessment: **\$247,200**

Proposed civil penalty: **\$247,200**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges Quietside 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 430.

Legal Requirements

Central air conditioners and heat pumps are covered products subject to energy conservation standards set forth in 42 U.S.C. § 6295(d). 42 U.S.C. §§ 6291(21), 6292(a)(3), 6291(21); 10 C.F.R. § 430.32(c).

Effective January 23, 2006, split-system central air conditioning heat pumps that are manufactured and distributed in commerce in the United States must operate at a minimum seasonal energy efficiency ratio (“SEER”) of 13 and a minimum heating seasonal performance factor (“HSPF”) of 7.7. 10 C.F.R. § 430.32(c)(1).

Manufacturers and private labelers are prohibited from distributing in commerce any product that fails to comply with these standards. 42 U.S.C. § 6302(a)(5); 10 C.F.R. § 429.102(a)(6).

Allegations

DOE alleges:

1. Quietside has manufactured¹ and distributed in commerce in the United States the split-system central air conditioning heat pump basic model consisting of outdoor model QSHC-093 and indoor model QSHE-093 (the “subject basic model”).
2. As DOE found in a Notice of Noncompliance Determination issued on October 5, 2015 (“the NND”), the subject basic model does not comply with the applicable energy conservation standard.
3. According to Quietside’s response to the NND, beginning January 28, 2013, Quietside manufactured and distributed in commerce in the United States at least 1,236 units of outdoor model QSHC-093 and 1,248 units of indoor model QSHE-093, which do not meet the applicable energy conservation standard.

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

What do I do now?

DOE is offering to settle this enforcement action if you submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice and then fulfill all obligations of the Compromise Agreement, which includes paying the fine within thirty (30) calendar days of the date of an Order adopting the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law (currently \$247,200). 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 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.

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

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 penalty. 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, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). You may respond by any of the following methods:

By email to: david.case@hq.doe.gov

By fax to: (202) 586-3274

By private carrier to: David W. Case
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. 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 DOE calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. The maximum penalty is \$200 per unit. 10 C.F.R. § 429.120. DOE has calculated a maximum penalty of \$200 per unit for the 1,236 units of outdoor model QSHC-093 and paired with indoor model QSHE-093, which were manufactured and distributed in commerce in the United States. If the case goes to hearing, this number would be adjusted to include any additional information obtained.

If you have any questions, please contact David Case by email at david.case@hq.doe.gov or by phone at (202) 287-6998.

Issued by:

 /S/

Laura L. Barhydt
Assistant General Counsel for
Enforcement