

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

In the Matter of:)
)
Leer, Inc.) Case Number: 2016-SE-53003
(panels for walk-in coolers and freezers))
)

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: August 29, 2018
Number of alleged violations: 365 (1 basic model, 365 days)
Maximum possible assessment: **\$ 163,885**
Proposed civil penalty: **\$ 40,880**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Leer, Inc. (“Leer”) 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 431.

Legal Requirements

Walk-in coolers and freezers are covered equipment subject to federal energy conservation standards set forth in 10 C.F.R. § 431.66. 42 U.S.C. §§ 6311(1)(E), 6313(c). A manufacturer of walk-in cooler panels must submit a certification report to DOE for each basic model of walk-in cooler panel prior to distributing that basic model in commerce in the U.S. 10 C.F.R. §§ 429.12, 429.53. Failure to test and properly certify a basic model as required by 10 C.F.R. Part 429 is a prohibited act pursuant to 10 C.F.R. §§ 429.102(a)(1) and (a)(2), and subject to civil penalty as described in 10 C.F.R. § 429.120. A certification report must include a compliance statement which must include, inter alia, a certification by the manufacturer that “all required testing has been conducted in conformance with the applicable test requirements prescribed in Parts 429, 430, and 431, as appropriate...”. 10 C.F.R. §§ 429.12(b) and (c).

Allegations

DOE alleges:

1. Leer has manufactured¹ panels for walk-in coolers and freezers including basic model C/3.5.
2. On July 14, 2014, and July 10, 2015, Leer submitted certifications of compliance to DOE for basic model C/3.5 in CCMS #s 47771 and 68133, respectively, certifying that basic model C/3.5 is a wall or ceiling panel for walk-in coolers with a thermal resistance value of 25.57.
3. Leer distributed basic model C/3.5 in commerce in the U.S. for at least 365 days between July 14, 2014, and January 17, 2017.
4. Prior to submitting its certifications to DOE in July 2014 and July 2015, Leer did not test at least two units of basic model C/3.5 in accordance with 10 C.F.R. Sections 429.11 and 429.53 and Part 431, Subpart R.
5. Leer failed to properly certify basic model C/3.5 prior to distribution in commerce due to a lack of sufficient test data. *See* 10 C.F.R. § 429.12(c)(2).

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

What do I do now?

DOE is offering a settlement 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 fulfill all obligations of the Compromise Agreement, including payment of the fine within thirty (30) calendar days after DOE issues an order adopting the Agreement (“Adopting Order”).

If you do not choose to settle the case, DOE may seek as much as the maximum penalty (\$163,885) 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

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

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. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE in writing within thirty (30) calendar days of the date you received this Notice of your selection of Option 1. 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: lucy.lee@hq.doe.gov

By fax to: (202) 586-3274

By private carrier to: Lucy Lee
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 you calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each day you fail to submit to DOE required information. By regulation, you must submit a certification report for each basic model in accordance with 10 C.F.R. Part 429. Therefore, the maximum penalty may be 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 calculated the maximum penalty based on one basic model being distributed in commerce for 365 days. The maximum penalty is \$449 per basic model per day. 10 C.F.R. § 429.120. If the case goes to hearing, this number would be adjusted to reflect any additional violations, including additional days the basic model was distributed in commerce. The number would also be adjusted to account for any additional information obtained and any increase in the maximum penalty per violation.

If you have any questions, please contact Lucy Lee by phone at (202) 287-6395 or email at lucy.lee@hq.doe.gov.

Issued by:

_____/S/_____
Laura L. Barhydt
Assistant General Counsel for Enforcement

Certificate of Service

I certify that on August 29, 2018, I served the designated copies of the Notice of Proposed Civil Penalty in case number 2016-SE-53003 on the parties listed below in the manner indicated.

Leer, Inc. c/o Thomas McCann Mullooly Foley & Lardner LLP 777 East Wisconsin Avenue Milwaukee, WI 53202 TMullooly@foley.com	PDF by Email
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Lucy Lee
Trial Attorney