

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

In the Matter of:)

Bigwall Enterprises, Inc.)
(room air conditioners))

Case Number: 2014-SE-15006)

Issued: February 11, 2014

NOTICE OF NONCOMPLIANCE DETERMINATION

Room air conditioners are covered products subject to federal energy conservation standards. 42 U.S.C. §§ 6292(a)(2), 6295(c), and 10 C.F.R. § 430.32(b). Manufacturers and private labelers are prohibited from distributing covered products in the United States that do not comply with applicable federal energy conservation standards. 10 C.F.R. § 429.102(a)(6); 42 U.S.C. § 6302(a)(5). Importers of covered products are considered manufacturers for purposes of compliance with energy conservation standards. 10 C.F.R. § 430.2.

TESTING

The U.S. Department of Energy (“DOE”) tested four units of _____ room air conditioner basic model number _____ (“the basic model”), _____ . The basic model is distributed in the United States by Bigwall Enterprises, Inc. (“Bigwall”), an importer and private labeler of the basic model, as PerfectAire brand model PACH8000 (“Bigwall model PACH8000”).

DOE’s testing in accordance with DOE test procedures (Appendix F to Subpart B of 10 C.F.R. Part 430) demonstrated that the basic model was not in compliance with the applicable energy conservation standard. Bigwall model PACH8000 is certified as product class 3, which indicates a room air conditioner without reverse cycle, with louvered sides, and a capacity of 8,000 to 13,999 Btu/h. 10 C.F.R. § 430.32(b). The minimum permissible EER for this product class is 9.7. The four units that DOE tested performed at 9.4, 9.2, 9.3, and 9.4 EER, respectively.

FINDINGS

Based on the facts stated above, DOE has determined, after applying the calculations set forth in Appendix A to Subpart C of 10 C.F.R. Part 429, that the basic model, including Bigwall model

PACH8000 and all other models within the basic model, does not comply with the applicable energy conservation standard.

MANDATORY ACTIONS BY BIGWALL

In light of the above findings, Bigwall must take the following steps in accordance with 10 C.F.R. § 429.114(a):

- (1) Immediately cease distribution in commerce in the United States of all units within the basic model, including Bigwall model PACH8000;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Bigwall has distributed units of any model within the basic model, including Bigwall model PACH8000; and
- (3) Provide to DOE within 15 calendar days of the date of this Notice a copy of the written notification required by paragraph (2) and a list of the parties that Bigwall notified.
- (4) DOE regulations require Bigwall to provide to DOE within 30 calendar days of the date of this Notice all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of units of the basic model in the United States in the past three years. At this time, however, Bigwall should only provide a summary page separately listing the total number of units Bigwall (a) imported and (b) sold in the U.S. in the past three years. DOE may request additional documentation at a later date.

The response required by paragraph (4) must be dated, signed, and notarized, and must include a declaration under penalty of perjury that the contents of the response is true. Specifically, the person signing the response must attest the following: “I declare under penalty of perjury that the statements contained in this response are true, correct, and complete.”

If you claim that any of the information sought by this Notice constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must (1) provide one complete and full copy and one copy with the confidential information deleted and (2) submit supporting information together with the materials that are the subject of the confidentiality request. *See* 10 CFR § 429.7. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

OPTIONAL ACTIONS BY BIGWALL

In addition to the mandatory steps listed above that Bigwall must complete, Bigwall may elect to modify a basic model to bring it into compliance with the applicable standard. A modified basic model shall be treated as a new basic model under the regulations and must be certified in

accordance with the provisions of 10 C.F.R. Part 429. In addition to satisfying all requirements of this part, any models within the basic model must be assigned new model numbers and Bigwall must also maintain, and provide upon request to DOE, records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce. Prior to distribution of the modified basic model in commerce in the United States, Bigwall must provide to DOE test data demonstrating that the modified basic model complies with the applicable standard. All units must be tested in accordance with DOE regulations, and Bigwall shall bear the costs of all such testing.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE will issue a Notice of Allowance to permit Bigwall to resume the distribution of the modified basic model in the United States. Until DOE determines that the modified basic model complies with the applicable standard, Bigwall is prohibited from selling or otherwise distributing units in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Bigwall fail to cease immediately the distribution in the United States of all units of models within the basic model, including Bigwall model PACH8000, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Bigwall provides DOE with a satisfactory statement within that 30-day period detailing the steps that Bigwall will take to ensure that units of the noncompliant basic model will no longer be distributed in commerce in the United States, DOE may elect to defer seeking such an order until a more appropriate time, if needed.

The distribution of any units of a noncompliant basic model may result in DOE seeking all appropriate legal remedies available under federal law, including injunctive relief and civil penalties with respect to each unit of the basic model distributed in violation of federal law.

/S/

Laura L. Barhydt
Assistant General Counsel
for Enforcement