

Respondent knowingly failed to submit a verification report to the DOE certifying that the Products met the applicable energy conservation standard pursuant to 10 C.F.R. § 429.12(a) and proposing a total civil penalty of \$137,696. Complaint at 5–6. The Respondent failed to respond to the NPCP within the required thirty days. MFD at 2. On February 13, 2023, OGCE filed the Complaint with the DOE’s Office of Hearings and Appeals (OHA) and served the Respondent with a copy of the Complaint.³ I was appointed as the Administrative Law Judge (ALJ) on that day.

On February 14, 2023, I issued an acknowledgement letter to the Respondent, in which I reminded the Parties that, under AACPA § 8(a), the Respondent’s answer, or motion filed pursuant to § 18(f)(1)–(2) of the AACPA, was due by the 30th day after February 13, 2023. February 14, 2023, letter from Steven L. Fine, Administrative Law Judge, to Respondent and OGCE at 1.

The Respondent, however, failed to file any response to the Complaint. On March 30, 2023, fifteen 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 24, 2023, without any response from the Respondent. *See* AACPA at § 18(d) (providing 25 days for a response to a motion filed under § 18 of the AACPA).

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 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 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 \$137,696. To this end, OGCE asserts that since each of the allegations set forth in the Complaint have 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).

³ The Respondent was served with the Complaint when OGCE sent a copy of the Complaint to the email address used by the Respondent on their website, info@globalinsulateddoors.com, as required by the ACCPA. Pursuant to the APCCA, “. . . service of documents must be made electronically, by verified email.” AACPA at § 5(b). The AACPA further provides: “*Verified email* is the email address provided by the party. If a party does not provide an email address, then a verified email is an email account that has been shown to the satisfaction of the ALJ to be active and belonging to the recipient of an email.” *Id.* at § 2 (emphasis in the original). Based on an examination of the Respondent’s website and the information provided therein, I am satisfied that the Respondent’s email address is verified, and I therefore find that OGCE served the Complaint on the Respondent via a verified email address.

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 are admitted to be true.

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

1. Respondent was a "person" under 10 C.F.R. § 430.2;
2. Respondent manufactured the three Subject Models, and distributed them in commerce in the United States for at least 365 days;
3. The three Subject Models are doors for walk-in freezers and refrigerators;
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 each of the three Subject Models complied with the applicable DOE energy standard, 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 any 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 each of the three 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 three 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 standard;
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 basic model not certified according to DOE regulations;
12. The Respondent has committed 1,095 knowing violations of 10 C.F.R. § 429.102(a)(1) (three 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 \$593,490 (three products multiplied by 365 days multiplied by a penalty of \$542 per violation) would be allowed under the regulations and statutes;⁴

⁴ The Complaint calculated the maximum allowable civil penalty as \$550,785. 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

15. The OGCE exercised its discretion to seek a smaller civil penalty in the amount of \$137,696; and
16. A civil penalty in the amount of \$137,696 is therefore appropriate.

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 Motion for Decision is granted. I recommend an assessment of a civil penalty in the amount of \$137,696 against the Respondent.

For These Reasons:

- (1) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on March 30, 2023, is granted;
- (2) I recommend that Global Insulated Doors be assessed a civil penalty of \$137,696 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

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."