Department of Energy
Washington, DC 20585

United States Department of Energy
Office of Hearings and Appeals

In the Matter of	)	
	)	
Chigo Electrical Appliances (USA), Inc. and	)	
Guangdong Chigo Air Conditioning Co., Ltd.	)	Case No.: EEE-23-0001
	)	
Filing Date: December 12, 2022	)	
	)	

Issued: August 8, 2023

Motion for Decision
Initial Decision

Richard A. Cronin, Jr., Administrative Law Judge:

This Decision concerns a Motion for Decision (MFD) filed by the Department of Energy's (DOE) Office of the Assistant General Counsel for Enforcement (OGCE) with this office against Chigo Electrical Appliances (USA), Inc. (Chigo) and Guangdong Chigo Air Conditioning Co., Ltd. (Guangdong) under the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (the EPCA), DOE's implementing regulations codified at 10 C.F.R. § 429.126, and DOE's Procedures for Administrative Adjudication of Civil Penalty Actions (hereinafter referred to as the AAPCA). The MFD alleges that the Respondents violated the provisions of the EPCA and its implementing regulations by distributing a covered product, specifically dehumidifiers, in commerce in the United States that failed to meet the regulatory energy efficiency standard as well as other regulatory requirements, as mandated in 10 C.F.R. Parts 429 and 430. The MFD requests that I issue a decision: (1) finding that the Respondents violated the EPCA and its implementing regulations and (2) recommending that the Respondents pay a civil penalty of $3,092,580. Pursuant to the AAPCA, I find that Chigo and Guangdong should jointly and severally be assessed a civil penalty of $3,092,580.[1]

I. Factual Background

On or about August 7, 2019, OGCE issued a Notice of Proposed Civil Penalty (NPCP) to Chigo and affected service by certified mail to the corporate agent of Chigo. MFD at 1, 13. On December 2, 2022, OGCE filed a complaint with OHA (Original Complaint) naming Chigo as the respondent

[1] The original complaint filed by OGCE which initiated this process, discussed *infra*, on December 12, 2022, only named Chigo as the respondent. We will refer to Chigo and Guangdong collectively as "Respondents" since in this Initial Decision, I find that Guangdong is also jointly and severally liable for the imposed civil penalty. *See infra*.

and sent copies of this complaint via email to all the Chigo email addresses it had previously used in its prior communications with Chigo. Under the AAPCA, a respondent is required to file either a written answer to a complaint, or a motion pursuant to § 18(f)(1)–(2), "not later than 30 days after service of the Complaint." AAPCA at § 8(a). On December 9, 2022, I issued an acknowledgement letter to OGCE and Chigo using the email addresses that had been used by OGCE to send the Original Complaint to Chigo. In my acknowledgment letter, I stated: "All parties must respond to this letter, via email, with the proper point of contact(s) for service and other communications." December 9, 2022, Letter from Richard A. Cronin, Jr., Administrative Law Judge, to Chigo and OGCE at 1. Chigo failed to respond to my letter. On February 16, 2023, the attorney previously listed as Chigo's counsel stated via email that he no longer represented Chigo and had been unable to contact them for approximately one year. Email from Alan Chen, Esq., to Richard A. Cronin, Jr., Administrative Law Judge, and OHA Filings (Feb. 16, 2023).

On February 27, 2023, OGCE filed an amended complaint (Amended Complaint) in which it added Guangdong as an additional Respondent. In the Amended Complaint, OGCE alleges that after it issued the NPCP to Chigo, Chigo was dissolved by its foreign parent corporation, Guangdong, on May 23, 2022, to avoid liability under the EPCA and that Guangdong should be jointly liable for any violations.[2] *See* Amended Complaint Ex. 1 at 1. OGCE sent copies of the Amended Complaint via email to Chigo, Chigo's former counsel, and Guangdong. On February 27, 2023, Chigo's former counsel again stated via email that he no longer represented Chigo and had been unable to contact them recently. Email from Alan Chen, Esq., to OHA Filings (Feb. 27, 2023). I sent an acknowledgement letter via email regarding the MFD to the Respondents and OGCE on March 14, 2023. The Respondents have failed to file any response to the Original Complaint, Amended Complaint, or the MFD.

II. Motion for Decision

On April 13, 2023, 15 days after the Respondents' answer to the Amended Complaint was due, OGCE filed the MFD seeking a ruling deeming each of the allegations set forth in the MFD as admitted, citing the AAPCA, which provides: "failure to file an answer without good cause, as determined by the Administrative Law Judge (ALJ), will be deemed an admission of the truth of each allegation contained in the complaint." AAPCA at § 8(d). The MFD further requests that I issue a decision pursuant to AAPCA § 18(f)(5) based upon those deemed admissions, finding that:

> (1) In 2017, Respondents imported into the U.S. consumer products identified by model numbers DME-95IP-01 ("Model DME") and DS1-95IP-01 ("Model DS1").
>
> (2) Each of these models (collectively, the "Chigo dehumidifiers") is a self-contained, electrically operated, and mechanically encased assembly consisting of (A) a refrigerated surface (evaporator) that condenses moisture from the atmosphere; (B) a refrigerating system, including an electric motor; (C) an air-circulating fan; and (D) means for collecting or disposing of the condensate.

[2] According to the allegations made in the MFD, Guangdong was the sole shareholder in Chigo, a corporation incorporated in California. MFD Ex. 1.

(3) Each of the Chigo dehumidifiers is a dehumidifier subject to the energy conservation standards at 10 C.F.R. § 430.32(v)(1) and 42 U.S.C. § 6295(cc)(2).

(4) Each of the Chigo dehumidifiers has a capacity of greater than 75.00 pints per day; thus, pursuant to the energy conservation standards, each is required to have to an energy factor of at least 2.5 L/kWh.[3]

(5) Respondents did not, before distributing in commerce either Model DME or Model DS1, submit to DOE any required certification report certifying that either model complied with the relevant energy standard.

(6) Respondents have not submitted to DOE any certification report, as required by the regulations, for either model of the Chigo dehumidifiers.

(7) On or about October 3 and 10, 2018, Respondents submitted to DOE testing records for Model DME.

(8) On or about September 25, 2019, Respondents submitted to DOE a subset of those testing records and represented that it reflected testing for both Model DME and Model DS1.

(9) These submissions included test data sheets demonstrating that at most Respondents tested two units of Model DME, but the testing did not comply with the DOE test procedure in 10 C.F.R. Part 430, Subpart B, Appendix X.

(10) Based on Respondents' test records, DOE concluded that Respondents did not test any units or provide test data of Model DS1.

(11) On or about June 1, 2016, DOE tested one unit of Model DME in accordance with the applicable test procedure under 10 C.F.R. Part 430, Subpart B, Appendix X, for compliance with the minimum 2.5 L/kWh energy conservation standard set forth in 10 C.F.R. § 430.32(v)(1).

(12) The test result of 88.96 pints per day indicated that the Model DME unit had a capacity greater than 75.00 pints per day.

(13) The test result of 2.41 L/kWh indicated that Model DME had an energy factor less than 2.5 L/kWh.

[3] The Energy Factor is a measure of energy efficiency of a dehumidifier that expresses the number of pints of water the dehumidifier can remove with a given energy input under test conditions (as based on procedures specified under 10 CFR Part 430, Subpart B, Appendix X1), reported in liters of water removed per kilowatt hour (L/kWh). For dehumidifier units that can remove over 75 pints of water from the surrounding atmosphere, they must have a minimum energy factor of 2.5 L (of removed water) for every kilowatt (kWh) of energy expended. See Appendix X1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dehumidifiers.

(14) On or about September 5, 2017, DOE issued to Respondents a Test Notice, attached as Exhibit 6, requiring Respondents to provide three additional units of Model DME to DOE for testing.

(15) Respondents subsequently provided three units it had imported, which DOE tested pursuant to the applicable test procedure under 10 C.F.R. Part 430, Subpart B, Appendix X.

(16) The test results of 88.96, 96.49, 90.60, and 90.83 pints per day showed that the average capacity of the four Model DME units that DOE tested beginning on or about June 1, 2016, was greater than 75.00 pints per day.

(17) As a result, Model DME was required to have to an energy factor that meets or exceeds the minimum of 2.5 L/kWh.

(18) DOE then applied the calculations in 10 C.F.R. Part 429, Subpart C, Appendix A, to the four Model DME energy factor test results of 2.41, 2.48, 2.36, and 2.35 L/kWh.

(19) When DOE applied those calculations to the four units' energy factors, the result was noncompliance with the energy conservation standard of at least 2.5 L/kWh.

(20) On or about September 10, 2018, DOE issued to Respondents a Notice of Noncompliance Determination, declaring Model DME to be out of compliance with the applicable federal energy conservation standard of no less than 2.5 L/kWh.

(21) The Notice required Respondents to provide to DOE records sufficient to show the number of units of Model DME that Respondents had distributed in commerce in the United States during the prior five years.

(22) Respondents responded by stating that Respondents had imported into the United States approximately 6,337 units of Model DME beginning in approximately January 2017 and stopped importing the model and no longer carried inventory of that model by August 2017.

(23) Each of these units was a "new covered product" as defined in 42 U.S.C. § 6302(b) when distributed by Respondents.

(24) On or about September 14–17, 2018, DOE tested one unit of Model DS1.

(25) The test result of 80.69 pints per day indicated that the Model DS1 unit also had a capacity greater than 75.00 pints per day.

(26) The Model DS1 test unit had a test result of 2.13 L/kWh indicating that Model

DS1 also had an energy factor less than 2.5 L/kWh.

(27) On or about December 4, 2018, DOE issued to Respondents a Test Notice, attached as Exhibit 8, requiring Respondents to provide three additional units of Model DS1 to DOE for testing.

(28) Respondents subsequently provided three units it had imported, which DOE tested pursuant to the applicable test procedures under 10 C.F.R. Part 430, Subpart B, Appendix X.

(29) The test results of 80.69, 81.91, 84.06, and 84.06 pints per day showed that the average capacity of the four Model DS1 units that DOE tested beginning on or about September 14, 2018, was greater than 75.00 pints per day

(30). Thus, pursuant to the regulations, Model DS1 was required to have to an energy factor that meets or exceeds the minimum of 2.5 L/kWh.

(31) DOE then applied the calculations in 10 C.F.R. Part 429, Subpart C, Appendix A, to the four Model DS1 energy factor test results of 2.13, 2.27, 2.30, and 2.27 L/kWh.

(32) When DOE applied those calculations to the four Model DS1 units' energy factors, the result was noncompliance with the energy conservation standard of at least 2.5 L/kWh.

(33) On or about April 4, 2019, DOE issued to Respondents a Notice of Noncompliance Determination, attached as Exhibit 9, declaring Model DS1 to be out of compliance with the applicable federal energy conservation standard of no less than 2.5 L/kWh.

(34) The 2019 Notice of Noncompliance Determination required Respondents to provide to DOE records sufficient to show the number of units of Model DS1 that Respondents had distributed in commerce in the United States during the prior five years.

(35) DOE received a response to the 2019 Notice of Noncompliance Determination stating that Respondents had imported and sold in the United States approximately 386 units of Model DS1 beginning in approximately March 2017 and stopped importing the model and no longer carried inventory of that model by June 2019, at the latest.

(36) In September 2019, Respondents informed DOE that Respondents imported Model DS1 no later than September 9, 2018.

(37) Each unit of the Chigo dehumidifiers Respondents imported was a "new covered product" as defined in 42 U.S.C. § 6302(b) when distributed by

Respondents.

Amended Complaint at 6–11.

III. Analysis

A. Respondents' Liability for Civil Penalty

An ALJ must grant a motion for decision "if the pleadings, depositions, answers to interrogatories, admissions, affidavits, matters that the ALJ has officially noticed, or evidence introduced during the hearing show 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." AAPCA § 18(f)(5). Because the Respondents have not responded to any of the pleadings, I find that the OGCE's allegations referenced in the Amended Complaint and the MFD are admitted as a matter of law. AAPCA § 8(d). Accordingly, I find that the Respondents distributed 6,723 non-compliant dehumidifier units (6,337 Model DME units and 386 Model DS1 units) into the United States without testing the units for compliance with the energy efficiency as required under 10 C.F.R § 429.102(a)(2) or without the units meeting the required energy efficiency standards. As such, the Respondents are liable for a civil penalty.

In 2015, Congress amended 28 U.S.C. § 2461 to state that increases in civil monetary penalties apply to penalties assessed after the increase takes effect, including penalties that are assessed after an increase takes effect whose associated violation predated the increase. *See* 28 U.S.C. § 2461, note Sec. 6 ("Any increase under [the Federal Civil Penalties Inflation Adjustment Act of 1990] 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."). The current civil penalty for the violations at issue in this case is $542 per non-complying model sold, which would allow for a maximum civil penalty of $3,643,866. 10 C.F.R. § 429.120; Inflation Adjustment of Civil Monetary Penalties, 88 Fed. Reg. 2190 (January 12, 2023). However, OGCE has requested a civil penalty of $3,092,580 based upon the Respondents' distribution of 6,723 non-compliant dehumidifiers multiplied by a penalty of $460 per unit. There is nothing in the record that would merit reducing this penalty. Accordingly, I recommend that a civil penalty of $3,092,580 be assessed against the Respondents.

B. Liability of Guangdong for the Recommended Civil Penalty

In the MFD, OGCE seeks to impose liability for Chigo's proposed civil penalty to its parent Guangdong. Specifically, OGCE alleges:

> 1. Guangdong, a foreign manufacturer and wholesaler of climate control products, owned 100% of the shares of Chigo including 100% of the voting shares.
>
> 2. Guangdong Chigo Air Conditioning Co., Ltd.'s website provides that Chigo is a "branch" of Guangdong Chigo Air Conditioning Co., Ltd.
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> 3. Guangdong Chigo Air Conditioning Co., Ltd. directly responded to DOE regarding a 2019 Notice of Noncompliance Determination and the covered products,

> demonstrating its direct involvement and control over Chigo and the distribution of covered products in the US.
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> 4. Chigo had no separate income or assets aside from sales of the products provided by Guangdong Chigo Air Conditioning Co., Ltd.
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> 5. Guangdong Chigo Air Conditioning Co., Ltd. directed the dissolution of Chigo.
>
> 6. Guangdong Chigo Air Conditioning Co., Ltd. was the sole decisionmaker in charge of Chigo's finances, operations, and business practices—including operations relating to covered products and the termination decision.
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> 7. Guangdong terminated Chigo after receiving the DOE notice of civil penalty.

MFD at 6.

As referenced above, Chigo's and Guangdong's failure to file an answer without good cause, as determined by the ALJ, will be deemed an admission of the truth of each allegation. Neither Chigo or Guangdong has responded to any of the pleadings submitted by OGCE in this case, and as such I will deem these allegations to be admitted by Chigo and Guangdong. However, given the fact that the dehumidifiers were distributed in commerce in the United States by Chigo, I must determine whether it is appropriate to "pierce the corporate veil" to impose liability on Guangdong for any civil penalties associated with the distribution of the Chigo dehumidifiers.

The test that courts have used in assessing the appropriateness of piercing the corporate veil of a subsidiary to impose liability to a parent corporation is as follows:

> (1) Is there a unity of interest and ownership between the entities such that their separate corporate personalities no longer exist?; and
>
> (2) If the acts are treated as only one entity's, will an inequitable result occur?

IMark Mktg. Servs., LLC v. Geoplast S.p.A., 753 F. Supp. 2d 141, 149-50 (D.D.C. 2010) (*citing Labadie Coal Co. v. Black*, 672 F.2d 92, 96 (D.C. Cir. 1982)). The D.C. Circuit has instructed courts to consider the following factors: (1) the nature of the corporate ownership and control; (2) failure to maintain corporate minutes or adequate records; (3) failure to maintain the corporate formalities; (4) a commingling of funds and other assets; (5) diversion of corporate funds or assets to other uses; and (6) use of the same office or business location. *Id.* at 150.

In the present case, there are sufficient admissions that lead me to conclude that the relationship of corporate ownership and control between Guangdong with Chigo was such that piercing the corporate veil between these two corporations is appropriate. Guangdong owned 100 percent of Chigo's corporate stock, and it was Guangdong, not Chigo, who directly responded to DOE regarding the 2019 Notice of Noncompliance Determination for Chigo. I find that Guangdong's assuming control over the initial response to the 2019 Notice of Noncompliance Determination is a significant act demonstrating Guangdong's control over Chigo. Further, Chigo marketed only

Guangdong products. These facts demonstrate a unity of interest and ownership between Chigo and Guangdong. Further still, in light of that unity of interest, I do not find that that inequitable result would occur if Chigo and Guangdong are treated as one entity. Consequently, I find that both entities should be held jointly and severally liable for the civil penalty recommended in this Initial Decision.

IV. RECOMMENDATION AND ORDER

For the forgoing reasons, I find that the Respondents, Chigo Electrical Appliances, Inc. and Guangdong Chigo Air Conditioning Co., Ltd. should be assessed jointly and severally a civil penalty of $3,092,580.

It Is Therefore Ordered That:

(1) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on February 27, 2023, is granted.

(2) It is recommended that Respondents be jointly and severally assessed a civil penalty of $3,092,580.

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.

Richard A. Cronin, Jr.
Administrative Law Judge
Office of Hearings and Appeals
United States Department of Energy