

C.F.R. § 429.102(a)(1). MFD Ex. 3 (NPCP) at 1. OGCE transmitted the NPCP to the email address listed on ELT's webpage, sales@walkincoolerdoor.com. MFD at 1; MFD Ex. 3, 5. Subsequently, on January 2, 2023, an ELT representative, Mr. Ozzie Haidar called Mr. Dion Casey (Casey), an OGCE attorney, concerning the NPCP. MFD at 2. Later that day, Mr. Casey emailed Mr. Haidar at the sales@walkincoolerdoor.com email address. MFD at 2. On March 2, 2023, Mr. Haidar sent an email, using the sales@walkincoolerdoor.com address, to Mr. Casey requesting that ELT be given more time to certify that ELT's doors met DOE's energy efficiency standards. MFD at 2. Mr. Casey responded to ELT's request via email at sales@walkincoolerdoor.com to ask how much more time ELT was requesting. MFD at 2. That same day, Mr. Haidar responded using another email address sales@eltcustomcoolers.com, informing Mr. Casey that ELT was requesting an additional 45 days to comply with the certification requirement.² MFD at 2.

On March 2, 2023, OGCE granted ELT an additional 45 days, until April 17, 2023, to certify that its doors met the applicable energy efficiency standards. MFD at 2. Shortly before the deadline expired, Mr. Casey called Mr. Haidar on April 14, 2023. MFD at 2. Mr. Haidar indicated that ELT had not finished the required testing needed for the certification of ELT's doors. MFD at 2. During this conversation Mr. Casey inquired about ELT's plans regarding the NPCP. MFD at 2. Mr. Haidar indicated that he would have his attorney contact Mr. Casey regarding that issue. MFD at 2. Pursuant to Mr. Haidar's request, Mr. Casey sent a link regarding DOE's required test procedures for certification to Mr. Haidar and ELT using the sales@eltcustomcoolers.com email address. MFD at 2-3; MFD Ex. 4.

As of June 3, 2023, OGCE had not received any communication from Haidar or any other ELT representative. MFD at 3. OGCE then filed the Complaint against ELT and requested that an OHA Administrative Law Judge be assigned for a hearing regarding ELT's alleged violation and the proposed civil penalty specified in the NPCP, \$137,696. MFD at 3; MFD Ex. 5. OGCE sent the Complaint to the three email addresses provided in its communications with ELT, sales@walkincoolerdoor.com, sales@eltcustomcoolers.com, and ozzie@eltcustomcoolers.com. MFD at 3; MFD Ex. 6. With the filing of the Complaint, ELT was required to file an answer to the Complaint or submit a responsive motion no later than July 3, 2023. MFD at 3; AACPA at § 18. Neither OGCE nor OHA received any further communication or filing from ELT. On September 20, 2023, OGCE filed the present Motion for Decision and Motion to Deem the Allegations of the Complaint Admitted regarding its Complaint against ELT.

II. Analysis

A. Motion to Deem the Allegations of the Complaint Admitted and Findings of Fact

² Mr. Haidar's email also contained a second email address in Mr. Haidar's signature block, ozzie@eltcustomcoolers.com. MFD Ex. 3.

The MCA seeks a ruling deeming each of the allegations set forth in the Complaint as admitted, citing the AAPCA, which provides: “failure to file an answer without good cause, as determined by the ALJ, will be deemed an admission of the truth of each allegation contained in the complaint.” MFD at 3; AAPCA at § 8(d). The AACPA requires an answer to the complaint, or a motion made pursuant to section 18 of the AAPCA to be filed no later than 30 days after service of the complaint. AAPCA at § 8(a).

As an initial matter, I find that ELT received adequate notice of the NPCP, the Complaint, and the present motions. The AAPCA generally requires service of documents to be made by verified email. AAPCA § 5(b). Given the documentation provided by OGCE of its two-way email communications with ELT and its service of the pleadings using three separate email addresses, I find that the NPCP, the Complaint, the MCA, and the MFD were served on ELT by a verified email address, and thus, ELT had adequate notice of OGCE’s pleadings.

In the MCA, OGCE requests that I deem the allegations in the Complaint as admitted in light of ELT’s failure to respond. MFD at 6; AAPCA at § 8(d). Given ELT’s failure to timely respond³ to any of the pleadings in this matter and AAPCA section § 8(d), I make the following findings of fact:

- (1) ELT was a person under 10 C.F.R. § 430.2 and manufacturer of industrial equipment, including covered equipment such as doors for walk-in coolers and walk-in freezers.
- (2) ELT 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.
- (3) ELT manufactured at least three basic models (the “subject models”), each of which is a door for walk-in coolers and/or walk-in freezers.
- (4) ELT’s subject models were subject to the energy conservation standards at 10 C.F.R. § 431.306.
- (5) ELT made the subject models available for sale in the United States, via Respondent’s website, for at least 365 days.

³ On October 16, 2023, the date that an answer to OGCE’s Motion to Deem the Allegations of the Complaint Admitted and its Motion for Decision was due, ELT contacted me to request help in complying with the testing requirements to test the products at issue in this case so that ELT could submit the required reports under the regulations. In a conference on October 17, 2023, OGCE supplied ELT with additional information but declined to agree to an extension of the deadline to respond to its Motions. Memorandum of Microsoft Teams Meeting with ELT and OGCE (October 17, 2023). ELT’s representative claimed that health concerns prevented him from timely compliance. At this conference, I found that given the fact that OGCE had already given ELT a 45-day extension to comply with the certification requirements, ELT had not demonstrated good cause to justify an extension in the deadline to respond to OGCE’s Motions. *See* AAPCA section § 11; Memorandum of Microsoft Teams Meeting with ELT and OGCE (October 17, 2023).

(6) ELT distributed the subject models in commerce in the United States for at least 365 days.

(7) Before manufacturing and distributing the subject models in commerce in the United States, ELT did not submit to DOE a certification report certifying that the subject models complied with the applicable energy conservation standards.

Complaint at 4-5; MFD at 5.

B. Motion for Decision

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 at § 18(f)(5). As discussed above, because ELT has not responded to any of the pleadings, I find that OGCE’s allegations in the Complaint are admitted as a matter of law and that there is no genuine issue of material fact. AAPCA at § 8(d). As such, I find that the door models ELT made and knowingly distributed in the United States were covered industrial equipment as defined by 42 U.S.C. §§ 6311(1)(g), (20) and 10 C.F.R. § 431.2 and subject to the energy conservation standards at 10 C.F.R. § 431.306 and 42 U.S.C. § 6313(f). Further, ELT failed to submit the required reports under 10 C.F.R. § 429.12(a) and (b)(6), certifying that the covered models met the applicable energy conservation standards.

Under the provisions of 10 C.F.R. § 429.12(a) and (b)(6), a manufacturer of covered industrial products must submit a report that certifies that its products comply with the applicable energy conservation standards as defined in 42 U.S.C. § 6313(f) and 10 C.F.R. § 431.306. Because ELT did not submit the required reports for its covered models of cooler and refrigerator doors, it violated 10 C.F.R. § 429.102(a)(1) by knowingly distributing the covered doors in commerce in the United States without submitting to DOE the reports required under 10 C.F.R. § 429.12(a) and (b)(6).

Under Part 429, ELT is thus subject to a civil penalty for its distribution of non-certified cooler and refrigerator doors. 10 C.F.R. § 429.120. Pursuant to 10 C.F.R. § 429.120, each day of non-compliance with the report requirement of 10 C.F.R. § 102(a)(1) constitutes a separate violation of the DOE regulations. OGCE alleges that ELT distributed the covered models during the period December 19, 2021, through December 19, 2022. OGCE seeks to impose a fine of a fine of \$503 per day upon ELT.⁴ MFD at 6. As I have found above, ELT distributed its covered products in commerce in the United States for at least 365 days. In the MFD, OGCE requests that ELT be assessed a total civil fine of \$137,696 (\$503 per day x 365 days). MFD at 6. There is no evidence in the record that would mitigate the amount of the proposed fine, and as such, I will recommend that a fine of \$137,696 be imposed upon ELT.

⁴ The current civil penalty for the violations at issue in this case is \$542 per model, per day increased from the prior penalty of \$503 per day. 10 C.F.R. § 429.120; Inflation Adjustment of Civil Monetary Penalties, 88 Fed. Reg. 2190 (January 12, 2023).

III. RECOMMENDATION AND ORDER

For the forgoing reasons, I find that E.L.T. Custom Coolers, LLC should be assessed a civil penalty of \$137,696.

It Is Therefore Ordered That:

- (1) The Motion to Deem the Allegations of the Complaint Admitted and the Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on September 20, 2023, regarding its Complaint against E.L.T. Custom Coolers, LLC, are granted.
- (2) It is recommended that E.L.T. Custom Coolers, LLC be assessed a civil penalty of \$137,696.

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