

Generac to Pay \$15.8 Million Civil Penalty for Failure to Immediately Report Portable Generator Hazards

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On May 3, 2023, the U.S. Consumer Product Safety Commission (CPSC) issued a [provisional order](#) with a \$15.8 million civil penalty against Wisconsin-based Generac Power Systems, Inc. (Generac) over charges that for more than two years, Generac failed to report serious hazards caused by some of its portable generators. According to the CPSC, from October 2018 to 2020, Generac was aware of defects in 32 models of its portable generators. During that time and prior to Generac reporting to the CPSC in 2020, five consumers reported suffering finger amputations caused by unlocked handles on the generators. On July 29, 2021, a [recall](#) of the portable generators was jointly announced by the company and CPSC.

Section 15(b) of the Consumer Product Safety Act (CSPA) requires manufacturers of consumer products to report to the CPSC defects that could create a substantial product hazard. Section 19 of CSPA makes it illegal to delay such reporting, and companies who fail to comply can be liable for both civil and criminal penalties. In addition to the fine, the settlement agreement requires Generac to implement and maintain a detailed compliance program and system of internal controls to ensure compliance with CSPA. Generac must report to CPSC annually for three years on the actions the company has taken to ensure compliance and must retain CPSC compliance-related records for at least five years. The Commission vote to approve the provisional settlement agreement was 4-0, despite disagreement among commissioners over the penalty amount.

[Commissioner Richard Trumka](#) warned that “this Commission will use every tool at its disposal to stop bad actors from harming consumers, including maximum civil penalties and, where warranted, criminal referrals.” He was joined in his support for the penalty amount by [Chair Alexander Hoehn-Saric](#) and [Commissioner Mary Boyle](#). [Commissioner Peter Feldman](#), while also voting to approve the settlement, disagreed with the amount of the penalty, which was close to the maximum statutory amount (\$120,000 for each violation, and \$17,150,000 for any related series of violations). He suggested that imposing the maximum fine in failure-to-report cases should be reserved for cases “where a product hazard results in death, poses a significant risk of death from incidents such as fires, or where there are aggravating factors such as a history of misconduct by the company’s

senior management.” Commissioner Feldman also voiced concern about what he considers is a lack of consistency in CPSC’s civil penalty structure. He noted that the case did not involve fatalities, and Generac was a first-time offender. He wrote, “A reasonable reading of the evidence in this case could support a conclusion that the initial reporting delay was born out of a failure to appreciate the nature of the hazard rather than a concealment of the problem from CPSC.”

Indeed, CPSC’s penalty calculus has remained somewhat of a mystery in recent failure-to-report cases. For example, on January 25, 2022, [CPSC issued a provisional order fining fitness equipment manufacturer Core \\$6.5 million](#) for failing to immediately disclose 55 incidents tied to defects in Core’s cable crossover machines between 2012 and 2017. While 11 of those injuries involved head lacerations, none resulted in death. More than five months later, on July 5, 2022, the [CPSC issued a provisional order fining portable fan and heater maker Vornado \\$7.5 million](#) – less than half of Generac’s civil penalty – after Vornado did not immediately notify the CPSC of multiple consumer reports of overheating and fire involving their VH101 Personal Vortex electric space heater, including one fire that allegedly resulted in the death of a 90-year-old man.

One possible explanation for CPSC’s decision to seek a much higher (and near maximum) penalty in the Generac matter is that the Commission is making good on Chair Hoehn-Saric’s [warning](#) following the Vornado settlement that “while the penalty announced today is significant, companies should be on notice that the agency will be even more aggressive in the future.” Facts, of course, do vary, and there is considerable subjectivity in decisions about whether a product has a “defect” that could create a potential safety risk. The stakes involved in these decisions, however, appear to be increasing.

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