

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

In the Matter of:)
)
Watermark Designs, Ltd.) Case Number: 2011-SW-2908
(Showerheads))
)
)

Issued: September 26, 2011

NOTICE OF NONCOMPLIANCE DETERMINATION

Manufacturers and private labelers are prohibited from distributing covered products that do not comply with applicable Federal water conservation standards. 10 C.F.R. § 429.102; 42 U.S.C. § 6302.

On July 25, 2011, DOE tested four units of Watermark brand showerhead model SH-FAL-90 manufactured by Watermark Designs, Ltd. (Watermark) in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix S).

DOE's testing demonstrated that Watermark showerhead model number SH-FAL-90 is not in compliance with Federal law. First, Federal water conservation standards require that the water flow for a showerhead may not exceed 2.5 gallons of water per minute (gpm). Watermark showerhead model number SH-FAL-90 consumed 10.5 gpm. Second, Federal water conservation standards require that a showerhead must comply with ASME/ANSI Standard A112.18.1M-1996, 7.4.4(a), which requires that, if a flow control insert is used as a component part of a showerhead, then the showerhead must be manufactured such that a pushing or pulling force of 36 Newtons (8 lbf) or more is required to remove the insert. See 10 C.F.R. § 430.32(p). The units obtained by DOE had no flow control insert installed.

FINDING

Based on the facts stated above, DOE has determined that Watermark basic model SH-FAL-90 does not comply with the applicable Federal water conservation standards.

MANDATORY ACTIONS BY WATERMARK

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

- (1) Immediately cease distribution in commerce of all units of basic model SH-FAL-90;
- (2) Provide immediate written notification of this noncompliance determination to all persons to whom Watermark has distributed units of basic model SH-FAL-90;

(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 Watermark notified; and

(4) Provide to DOE within 30 calendar days of the date of this Notice any and all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of units of basic model SH-FAL-90.

The responses required by paragraphs (3) and (4) must be dated, signed, and notarized, and must include a declaration under penalty of perjury that the contents of the responses are 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 subpoena 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 WATERMARK

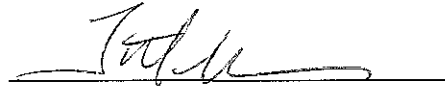
In addition to the mandatory steps listed above that Watermark must complete, Watermark may elect to modify basic model SH-FAL-90 to bring it into compliance with the applicable standard. The modified basic model shall be treated as a new basic model under the regulations and must be certified in accordance with the provisions of 10 C.F.R. Part 429. Prior to distribution in commerce, Watermark 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 Watermark shall bear the costs of all such testing that is conducted.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE shall issue a notice of allowance to permit Watermark to resume the distribution of the modified basic model. Until DOE determines that the modified basic model complies with the applicable standard, no units of the basic model may be sold or otherwise distributed by Watermark in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Watermark fail to cease immediately the distribution of all units of basic model SH-FAL-90, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Watermark provides DOE with a satisfactory statement within that 30-day period detailing the steps that Watermark will take to ensure that units of the noncompliant basic model will no longer be distributed in commerce, 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, including during any manufacturer-initiated testing as described above, 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.



Timothy G. Lynch
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Litigation and Enforcement