

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

In the Matter of:)
)
Zoe Industries, Inc.) Case Number: 2011-SW-2912
(Showerheads))
)
)

Issued: September 28, 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 20, 2011, DOE tested four units of the Giessdorf eight-jet basic model showerhead, SKU 150043 (“Giessdorf 150043”), manufactured by Giessdorf Plumbing, Inc. (“Giessdorf”), and imported by Zoe Industries, Inc. (“Zoe”), in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix S).

DOE’s testing demonstrated that the Giessdorf 150043 model 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). The Giessdorf 150043 model consumed 9.4 gpm when tested without a flow control insert installed. 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, the insert must be “mechanically retained” at the point of manufacture; for an insert to be “mechanically retained,” a pushing or pulling force of 36 N (8 lbf) or more must be required to remove the insert.¹ See 10 C.F.R. § 430.32(p). The units obtained by DOE arrived with flow restrictors loosely inserted and not mechanically retained.

FINDING

Based on the facts stated above, DOE has determined that the Giessdorf 150043 model does not comply with the applicable Federal water conservation standards.

MANDATORY ACTIONS BY ZOE

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

¹ This requirement is subject to an exception not relevant here.

- (1) Immediately cease distribution in commerce in the United States of all units of the Giessdorf 150043 basic model, including ceasing all importation of the Giessdorf 150043 basic model into the United States;
- (2) Provide immediate written notification of this noncompliance determination to all persons to whom Zoe has distributed units of the Giessdorf 150043 basic model;
- (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 Zoe 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 the Giessdorf 150043 basic model in the United States.

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 notice 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

In addition to the mandatory steps listed above that Zoe must complete, Zoe may take actions to modify the Giessdorf 150043 basic model to bring it into compliance with the applicable standard and to ensure that units are compliant when imported. 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, Zoe 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 Zoe 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 Zoe 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 Zoe in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Zoe fail to cease immediately the distribution of all units of the Giessdorf 150043 basic model, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Zoe provides DOE with a satisfactory statement within that 30-day period detailing the steps that Zoe 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 testing by Zoe 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
Deputy General Counsel for
Litigation and Enforcement