

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

In the Matter of:)

Dan Patterson)
(showerheads))

Case Number: 2011-SW-2911

Issued: July 12, 2013

NOTICE OF NONCOMPLIANCE DETERMINATION

Showerheads are covered products subject to federal water conservation standards as described in 42 U.S.C. § 6295(j) and 10 C.F.R. § 430.32(p). Manufacturers (including importers) and private labelers are prohibited from distributing covered products in the United States that do not comply with applicable federal water conservation standards. 10 C.F.R. § 429.102(a)(6); 42 U.S.C. § 6302(a)(5).

TESTING

On July 19, 2011, DOE tested one unit of the “ThunderHead” showerhead basic model (“the basic model”), manufactured by ET Industries, Inc. (“ET Industries”) and imported by Dan Patterson (“Patterson”). On October 27, 2011, DOE completed testing of three additional units of the basic model, also imported into the United States by Patterson. All four tests were conducted in accordance with the applicable DOE test procedure. See 10 C.F.R. Part 430, Subpart B, Appendix S.

DOE’s testing demonstrated that the basic model is not in compliance with the applicable federal water conservation regulations. First, the maximum water use for any showerhead is 2.5 gallons per minute (gpm) when measured at a flowing pressure of 80 pounds per square inch gage. 10 C.F.R. § 430.32(p). The four units that DOE tested consumed water at the rates of 7.4, 8.2, 8.0, and 8.2 gpm, respectively. On average, the units consumed water at a rate 220 percent above the federal limit.

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 installed at the point of manufacture. See 10 C.F.R. § 430.32(p). The units obtained by DOE did not include installed flow control inserts.

FINDING

Based on the facts stated above, DOE has determined, after applying the calculations set forth in 10 C.F.R. Part 429, Subpart C, Appendix A, that the basic model does not comply with the applicable federal water conservation standards.

MANDATORY ACTIONS BY PATTERSON

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

- (1) Immediately cease distribution in commerce in the United States of all units of the basic model;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the United States to whom Patterson has distributed units of the 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 Patterson notified; and
- (4) Provide to DOE within 30 calendar days of the date of this Notice all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of units of the basic model in the United States in the past three years, in addition to a summary page listing the total number of units Patterson distributed in commerce in the U.S. in the past three years.¹

The responses required by paragraphs (3) and (4) must be dated and signed and must include a declaration that the contents of the responses are true. 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 C.F.R. § 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 Patterson must complete, Patterson may elect to modify the basic model to bring it into compliance with the applicable standard. A 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. In addition to satisfying all requirements

¹ Please note that “[t]he terms ‘to distribute in commerce’ and ‘distribution in commerce’ mean to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce.” 42 U.S.C. § 6291(16). Thus, the summary sheet must include all units that Patterson has imported into the U.S., as well as any other units that otherwise meet the definition in 42 U.S.C. § 6291(16).

of this part, any models within the basic model must be assigned new model numbers and Patterson must also maintain, and provide upon request to DOE, records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce. Prior to distribution in commerce in the United States, Patterson must provide to DOE test data demonstrating that the modified basic model complies with the applicable standards. All units must be tested in accordance with DOE regulations, and Patterson 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 Patterson to resume the distribution of the modified basic model in the United States. Until DOE determines that the modified basic model complies with the applicable standard, no units may be sold or otherwise distributed by Patterson in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

If Patterson fails to cease immediately the distribution in the United States of all units of the basic model, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Patterson provides DOE with a satisfactory statement within that 30-day period detailing the steps that Patterson will take to ensure that units of the noncompliant basic model will no longer be distributed in commerce in the United States, 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.

/s/

Laura L. Barhydt
Assistant General Counsel
for Enforcement