

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

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

**NOTICE OF PROPOSED CIVIL PENALTY**

Date issued: May 10, 2012

Number of alleged violations: 63  
Maximum possible assessment: \$12,600  
Proposed civil penalty: \$12,600

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that Watermark Designs, Ltd. (“Watermark”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and 10 C.F.R. Parts 429 and 430.

Specifically, DOE alleges:

1. Watermark’s showerhead basic model SH-FAL90 is a “covered product” as defined in 42 U.S.C. §§ 6291(2), 6292(a)(15) and 10 C.F.R. § 430.2.
2. DOE purchased and tested four units of basic model SH-FAL90 in accordance with DOE test procedures (10 C.F.R. Part 430, Subpart B, Appendix S).
3. DOE’s testing demonstrated that each of the four units of basic model SH-FAL90 consumed water at the rate of 10.5 gallons per minute (gpm).
4. Pursuant to 42 U.S.C. § 6595(j) and 10 C.F.R. § 430.32(p), the maximum water use, in gallons per minute, of a showerhead may not exceed 2.5 when measured at a flowing pressure of 80 pounds per square inch.
5. Watermark showerhead basic model SH-FAL90 is not in conformity with the applicable water conservation standard established under the Act.
6. Watermark certified basic model SH-FAL90 as a new product that it distributed in commerce as of February 2010.

7. In an April 2010 Compromise Agreement, Watermark acknowledged manufacturing and distributing basic model SH-FAL90 at least since January 25, 2009.
8. As Watermark acknowledged in materials sent on October 26, 2011, Watermark has distributed in commerce in the United States 63 units of basic model SH-FAL90.

**The following information is provided in question and answer format to help explain Watermark's legal obligations and options.**

*What do I do now?*

DOE is offering a settlement of \$4,200 if you submit the signed Compromise Agreement and pay the fine within thirty (30) days of the date of an Adopting Order adopting the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law. You have other options as described below.

*What are my other options?*

If you do *not* agree to DOE's settlement offer, then you must select Option 1 or Option 2 below within thirty (30) calendar days of the date of this Notice.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge ("ALJ") for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

*When must I respond?*

You must submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the settlement amount of \$4,200. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

*How should I submit my response?*

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: christina.studt@hq.doe.gov

By fax to: (202) 586-3274

By mail to: Christina Studt  
U.S. Department of Energy  
Office of the General Counsel (GC-32)  
1000 Independence Ave., SW  
Washington, DC 20585

*What happens if I fail to respond?*

If you fail to respond within thirty (30) calendar days of the date of this Notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

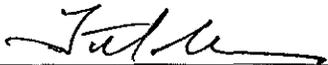
*What should I include in my response?*

- 1) If you wish to accept DOE's settlement offer, you should submit the signed Compromise Agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act ("DCIA") requires all federal agencies to obtain the TIN in any case that may give rise to a debt to the government.

*How did DOE calculate the maximum possible assessment?*

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. In the maximum penalty calculation in this Notice, DOE is alleging, based on Watermark's response to the September 26, 2011 Notice of Noncompliance Determination, that Watermark has distributed 63 units of basic model SH-FAL90 in the United States since 2010. This number would be adjusted based on any additional information obtained if the case goes to hearing. The maximum penalty is \$200 per unit. 10 C.F.R. § 429.120.

Issued by:



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Timothy G. Lynch  
Deputy General Counsel for  
Litigation and Enforcement