BEFORE THE
U.S. DEPARTMENT OF ENERGY
Washington, DC 20585

In the Matter of:	)	
Kenneth Grill (Showerheads)	)	Case Number: 2011-SW-2902

SUBPOENA FOR INFORMATION AND PRODUCTION OF DOCUMENTS

Issued: January 25, 2011

The U.S. Department of Energy (DOE) issues this Subpoena for Information and Production of Documents to Kenneth Grill pursuant to 42 U.S.C. § 6299 and 10 C.F.R. § 430.72.

Pursuant to 42 U.S.C. § 6295(j), DOE has established water conservation standards applicable to showerheads. *See* 10 C.F.R. § 430.32(p). Manufacturers and private labelers are prohibited from distributing in commerce any product that fails to comply with these standards. 42 U.S.C. § 6302(a)(5); 10 C.F.R. § 430.61(4).

The conservation standard for showerheads requires that the maximum water use allowed for any showerhead is 2.5 gallons per minute measured at a flowing water pressure of 80 pounds per square inch. DOE has information suggesting that Mr. Grill's "ShowerHeadPower," marketed under the name of "Kenny G.," does not comply with the conservation standards for showerheads set forth in 42 U.S.C. § 6295(j) and 10 C.F.R. § 430.32(p). DOE has initiated an inquiry into the compliance of this product and requires certain information and documents to continue its examination. To this end, and in accordance with its authority under 42 U.S.C. § 6299, DOE is issuing this subpoena to Kenneth Grill.

In addition to the information and documents requested below, DOE directs Mr. Grill to preserve and to retain possession of any documents, communications, electronic data, or information of any kind relating to the sale of showerheads by Mr. Grill or any entity identified in response to the Request for Information below.

Failure to provide information or otherwise comply with this subpoena violates 42 U.S.C. § 6302 and DOE's accompanying regulations (10 C.F.R. § 430.61) and may result in civil penalties.

Mr. Grill's responses to the following Request for Information and Production of Documents must be received by DOE no later than 30 days after the date of this subpoena. Mr. Grill's responses to this subpoena must be made in accordance with the accompanying Definitions (Attachment A) and Instructions for Responding to this Subpoena (Attachment B), which are incorporated herein by reference.

REQUEST FOR INFORMATION

(1) **Persons Involved.** Name all persons, including Kenneth Grill, that are now or have in the past been involved in the sale of any showerheads that are now or have at any time in the past been marketed under the name of "Kenny G.," "ShowerHeadPower," or "Double KickA$$." Person is defined in Attachment A to include any form of business entity, including corporations, partnerships, limited liability companies, etc. For each person involved:

(a) Provide such person's name, street address, mailing address, e-mail address, and telephone number;

(b) Describe such person's involvement in the sale of showerheads.

For each person involved that is a business entity, state:

(c) The date such entity was created;

(d) The state in which such entity was created and any state(s) in which it is presently registered to do business;

(e) The ownership of such entity, including each owner's identity and percentage owned;

(f) All products sold or services performed by such entity;

(g) The names of all employees of such entity; and

(h) The relationship, if any, of each such entity to Kenneth Grill.

(2) **Models in Distribution.** List all basic models of showerhead that Mr. Grill or any person listed in response to Question 1 currently has in commerce in the United States and identify for each model:

(a) The model number;

(b) The water use, expressed in gallons per minute, when measured at a flowing pressure of 80 pounds per square inch gage (552 kilopascals);

(c) The person(s) responsible for each model's importation into the United States (usually the importer of record), or, if manufactured in the United States, each model's manufacturer;

(d) Any person responsible for altering or in any way adjusting the model in a manner that affects its water use, including a description of such alteration or adjustment;

(e) The mailing address and main telephone number for any person(s) listed in response to items (c) and (d);

(f) A description of all brands or trademarks that appear on the product; and

(g) A description of all brands or trademarks that appear on the product's label, container or other packaging.

(3) **Model Information.** For any model listed in response to Question 2 further identify:

(a) The number of units sold in the United States;

(b) The number of units in stock and being offered for sale in the United States;

(c) The names and URL addresses of all websites through which such model has been sold, and the names and locations of any stores, trade shows or other in-person venues through which such model has been sold;

(d) The number of units imported into the United States, if any; and

(e) The entity or entities from whom such model was obtained.

(4) **Compliance Statement and Certification Report.** For each basic model listed in response to Question 2, state whether (a) Kenneth Grill or any entity described in response to Question 1 submitted a compliance statement or certification report to DOE pursuant to 10 C.F.R. § 430.62, and if so, state the date and manner in which each document was first submitted, or (b) whether Mr. Grill has knowledge that another entity has submitted a compliance statement and certification report for such model.

REQUEST FOR DOCUMENTS

(1) **Certification Requirements.** Provide all certification reports and compliance statements filed with DOE for each basic model identified in Question 2 of the Request for Information.

(2) **Model Information.** For all models addressed in Question 2 of the Request for Information above, provide documents or records sufficient to show:

(a) The number of units sold in the United States;

(b) The number of units in stock and being offered for sale in the United States; and

(c) The number of units imported into the United States.

In addition, for each such model, provide a copy of all packaging, labels, manuals, warranty documents, and any other material customarily received by the purchaser of such model.

(3) **Testing.** Provide all records and other documents pertaining to laboratory testing for any showerhead put into commerce by Kenneth Grill or any entity named in response to Question 1 of the Request for Information.

Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement

ATTACHMENT A

DEFINITIONS[1]

Basic model means all units of a given type of showerhead (or class thereof) that are manufactured by one manufacturer and that have the identical flow control mechanism attached to or installed within the fixture fittings, or the identical water-passage design features that use the same path of water in the highest-flow mode.

Manufacture means to manufacture, produce, assemble, or import.

Manufacturer means any person who manufactures a consumer product.

Person includes any individual, corporation, company, association, firm, partnership, society, trust, joint venture or joint stock company, the government, and any agency of the United States or any State or political subdivision thereof.

Private labeler means an owner of a brand or trademark on the label of a consumer product that bears a private label. A consumer product bears a private label if:

(1) Such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product;

(2) The person with whose brand or trademark such product (or container) is labeled has authorized or caused such product to be so labeled; and

(3) The brand or trademark of a manufacturer of such product does not appear on such label.

Showerhead means any showerhead (including a hand held showerhead), except a safety shower showerhead.

Water use means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under Appendices S and T of subpart B of Part 430 of Title 10 of the Code of Federal Regulations.

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[1] For other applicable definitions, *see* 10 C.F.R. § 430.2.

ATTACHMENT B

INSTRUCTIONS FOR RESPONDING TO THIS SUBPOENA

- Kenneth Grill's response must be dated, signed, and notarized with the following statement:

  > "I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]."

- Responses must be numbered to correspond to the numbered questions.

- The singular includes the plural; the plural includes the singular. "And" as well as "or" shall be construed either disjunctively or conjunctively, to bring within the scope of this subpoena all responses that might otherwise be construed to be outside its scope. "Each" shall be construed to include "every" and "every" shall be construed to include "each." "Any" shall be construed to include "all" and "all" shall be construed to include "any."

- 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 provide one complete and full copy and one copy with the confidential information deleted and submit supporting information together with the materials that are the subject of the confidentiality request. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

- The information to be provided in response to this subpoena includes any and all information, from whatever source derived, which is known to, or in the possession, custody, or control of Kenneth Grill or any entity named in response to Question 1 of the above Request for Information.

- If any information is submitted electronically, the information should be submitted on a CD-ROM that is labeled with the subject matter ("Kenneth Grill – Showerheads") and the date of its submission to DOE. If Kenneth Grill seeks confidential treatment on the basis of Exemption 4 of the Freedom of Information Act for any material submitted, Mr. Grill must provide one complete and full copy and one copy with the confidential information deleted.

- Kenneth Grill's response to this subpoena, together with any confidentiality request, must be sent by FedEx or other private interstate commercial carrier and addressed to:

  Samuel Walsh
  Office of the General Counsel
  United States Department of Energy
  Room 6A-245
  1000 Independence Ave., SW
  Washington, DC 20585-0121

- Failure to provide an accurate and full response to this subpoena could subject Kenneth Grill to penalties under 42 U.S.C. § 6303. Knowing and materially false statements to DOE are subject to criminal prosecution under 18 U.S.C. § 1001.