

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

In the Matter of: )  
 )  
**Zurn Industries, LLC** ) Case Number: 2016-SW-30003  
(water closets) )  
 )

Date issued: January 19, 2017

**NOTICE OF NONCOMPLIANCE DETERMINATION**

Water closets are covered products subject to federal water conservation standards found at 10 C.F.R. § 430.32(q). Manufacturers and private labelers are prohibited from distributing water closets that do not comply with an applicable conservation standard. *See* 10 C.F.R. § 429.102(a)(6); 42 U.S.C. § 6302(a)(5). Specifically, gravity tank-type water closets manufactured on or after January 1, 1994, and distributed in commerce in the United States must consume no more water than 1.6 gallons per flush (gpf). 10 C.F.R. § 430.32(q).

On September 30, 2016, Zurn Industries, LLC (“Zurn”) voluntarily notified the U.S. Department of Energy (“DOE”) that it had distributed in U.S. commerce water closet models that do not comply with this standard. On October 12, 2016, DOE issued a Request for Data to Zurn in accordance with 10 C.F.R. § 429.106, seeking additional information about these water closets. On October 19, 2016, Zurn submitted its response. Again on October 21, DOE requested additional information about these water closets. At DOE’s request, on October 21, Zurn provided an initial verbal response, supplemented in writing on October 27, 2016.

According to the information provided by Zurn, on or after January 1, 1994, Zurn manufactured<sup>1</sup> and distributed in commerce in the U.S. the water closet basic model containing individual models Z5540-\* and Z5530-\*, which consumes more than 1.6 gpf (“the Zurn Basic Model”). Specifically, Zurn’s test data showed average total rounded water uses of 1.70, 1.69, 1.71, 1.70, 1.72, 1.78, 1.75, 1.79, 1.74, and 1.72 gpf.

**FINDINGS**

Based on the information submitted by Zurn, DOE has determined that the Zurn Basic Model, including each individual model within the basic model, does not comply with the applicable federal water conservation standard.

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<sup>1</sup> “Manufacture” means to manufacture, produce, assemble or import. 42 U.S.C. § 6291(10).

## MANDATORY ACTIONS BY ZURN

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

- (1) Immediately cease distribution in commerce in the U.S. of all units of the Zurn Basic Model;
- (2) Provide immediate written notification of this noncompliance determination to all persons in the U.S. to whom Zurn has distributed units of the Zurn 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 Zurn notified; and
- (4) Provide to DOE within 30 calendar days of this Notice any and all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of units of the Zurn Basic Model on or after April 1, 2012. Although Zurn has already provided to DOE certain information regarding the distribution in commerce in the U.S. of the Zurn Basic Model, within 30 days of this Notice, Zurn must provide a tally listing the total number per year of units Zurn distributed in commerce in the U.S. on or after April 1, 2012.<sup>2</sup>

Zurn must date, sign, and notarize the responses required by paragraphs (3) and (4), with the following statement:

“I declare under penalty of perjury that the foregoing is true, correct, and complete. Executed on [date].”

## OPTIONAL ACTIONS BY ZURN

In addition to the mandatory steps listed above that Zurn must complete, Zurn may elect to modify the Zurn Basic Model to make it comply with the applicable standard. A modified basic model shall then be treated as a new basic model and must be certified in accordance with the provisions of 10 C.F.R. Part 429. In addition to satisfying all requirements of 10 C.F.R. Part 429, any individual models within the basic model must be assigned new model numbers. Zurn 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(s) prior to distribution in commerce in the U.S.

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<sup>2</sup> 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 tally must include all units that Zurn has imported into the U.S., as well as any other units that otherwise meet the definition in 42 U.S.C. § 6291(16).

Prior to distribution in commerce in the U.S., Zurn must also provide to DOE test data demonstrating that the modified basic model complies with the applicable standard.<sup>3</sup> All units must be tested in accordance with DOE regulations, and Zurn must bear the costs of all such testing.

If, after this testing, DOE determines that the modified basic model complies with the applicable standard, DOE will issue a notice of allowance to permit Zurn to resume the distribution of the modified basic model in the U.S. Until DOE determines that the modified basic model complies with the applicable standard, Zurn is prohibited from selling or otherwise distributing in commerce any units in the U.S.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

If Zurn fails to take the required step described above, this letter serves as notice that DOE may seek civil penalties as authorized under 10 C.F.R. § 429.114(c). The distribution of any units of a noncompliant basic model 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.

If you have any questions, you may contact Christina Studt by phone at (202) 586-0389 or email at christina.studt@hq.doe.gov.

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Smitha Vemuri /S/ for \_\_\_\_\_  
Laura L. Barhydt  
Assistant General Counsel for  
Enforcement

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<sup>3</sup> DOE may require that this testing be performed at an independent, third-party testing facility.