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

In the Matter of:	)	
Hansgrohe, Inc.	)	Case Number: 2021-SW-29002
(showerheads)	)	

### NOTICE OF PROPOSED CIVIL PENALTY

Date issued: November 10, 2021

Number of alleged violations: 38,951

Maximum possible assessment: \$18,462,774

Proposed civil penalty: \$18,462,774

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, alleges that Hansgrohe, Inc. ("Hansgrohe") 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.

#### **Legal Requirements**

Showerheads are covered products subject to federal energy conservation standards set forth at 10 C.F.R. § 430.32(a). *See* 42 U.S.C. §§ 6292(a)(1), 6295(b).

For showerheads manufactured<sup>1</sup> on or after January 1, 1994, the maximum water use allowed is 2.5 gallons per minute when measured at a flowing pressure of 80 pounds per square inch gage. When used as a component of any such showerhead, the flow-restricting insert shall be mechanically retained at the point of manufacture such that a force of 8.0 pounds force or more is required to remove the flow-restricting insert. 10 C.F.R. § 430.32(p).

Distribution in commerce<sup>2</sup> by a manufacturer or private labeler of any new covered product that is not in compliance with an applicable energy conservation standard constitutes a prohibited act. 10 C.F.R. § 429.102(a)(6). Each unit of the covered product distributed in the United States

<sup>&</sup>lt;sup>1</sup> "Manufacture" means to manufacture, produce, a ssemble, or import. 42 U.S.C. § 6291(10).

<sup>&</sup>lt;sup>2</sup> "Distribute in Commerce" or "Distribution in Commerce" means 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).

constitutes a separate violation, and each such knowing violation currently is subject to a maximum penalty of \$474. 42 U.S.C. § 6303; 10 C.F.R. § 429.120.

#### **Allegations**

#### DOE alleges:

- 1. Hansgrohe has manufactured showerhead basic models 28496XX1, 2738XX1, and 16320XXX (together, the "subject models").
- 2. The subject models are showerheads manufactured on or after January 1, 1994.
- 3. Based on information provided by Hansgrohe in a self-report, the models 28496XX1 and 2738XX1 do not comply with the maximum permissible rate of water use set forth at 10 C.F.R. § 430.32(p).
- 4. Based on information provided by Hansgrohe in a self-report, models 28496XX1 and 16320XXX to not comply with the minimum flow restrictor retention force requirement set forth at 10 C.F.R. § 430.32(p).
- 5. Hansgrohe has distributed in commerce in the United States at least 38,951 units of the subject models.
- 6. The subject models were not in conformity with an applicable water conservation standard.

# The following information is provided in question and answer format to help explain your legal obligations and options.

What do I do now?

DOE is offering a settlement if you submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice. As part of that settlement, you must fulfill all obligations of the Compromise Agreement, including payment of the fine within thirty (30) calendar days after DOE issues an order adopting the Agreement ("Adopting Order"). If you do not choose to settle the case, DOE may seek as much as the maximum penalty (\$18,462,774) 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 notify DOE whether you 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 a signed compromise agreement within thirty (30) calendar days of the date of this notice to pay the lowest fine. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE in writing within thirty (30) calendar days of the date you received this notice of your selection of Option 1. Otherwise, if you do not settle the case, DOE will refer to 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: david.case@hq.doe.gov

By fax to: (202) 586-3274 By mail to: David W. Case

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 after receiving 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, submit the signed compromise agreement. If you do not wish to accept DOE's settlement offer, notify DOE in writing 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 requires all Federal agencies to obtain the TIN in any case which 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 or equipment that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. 10 C.F.R. § 429.102(a)(6). In the maximum penalty calculation in this notice, DOE has calculated a maximum penalty of \$474 per unit for 38,951 units distributed in commerce in the U.S. in the last five years. This number may be adjusted to include any additional information obtained and any increase in the maximum penalty per violation. The maximum penalty increases each year and is determined based on the date of any final order assessing a penalty.

phone at (202) 287-6998.		
Issued by:		
/S/		
Stephen C. Skubel Acting Assistant General Counsel for Enforcement		

If you have any questions, please contact David Case by email at <a href="mailto:david.case@hq.doe.gov">david.case@hq.doe.gov</a> or by

## **Certificate of Service**

This is to certify that on November 10, 2021, the undersigned served the designated copies of the Notice of Proposed Civil Penalty issued in DOE Case Number 2021-SW-29002 on the party listed below in the manner indicated.

## NOTICE OF PROPOSED CIVIL PENALTY

Matthew B. Welling Crowell & Moring LLP Counsel for Hansgrohe, Inc.	By email
mwelling@crowell.com	
David W. Case	