



In the Matter of shenzhenshi xialan)
keji Youxiangongsi)
)
Filing Date: February 9, 2023) Case No.: EEE-23-0002
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)

Initial Decision
Motion for Decision

This Initial Decision considers a Motion for Decision (MFD) filed by the Department of Energy's (DOE) Office of the Assistant General Counsel for Enforcement (OGCE) concerning a complaint (the Complaint) filed by OGCE on February 9, 2023, against a respondent it has identified as shenzhenshi xialan keji Youxiangongsi (Respondent). The Complaint was filed under the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (the EPCA), DOE's implementing regulations codified at 10 C.F.R. Parts 429 and 430, and DOE's Procedures for Administrative Adjudication of Civil Penalty Actions (hereinafter referred to as the AACPA).¹ The Complaint alleges that the Respondent violated the provisions of the EPCA and its implementing regulations by distributing a covered product, specifically a lavatory faucet, in commerce in the United States without first submitting a report to DOE certifying that the faucet complied with the applicable DOE energy conservation standard, as required by 10 C.F.R. § 429.12(a)–(d); 10 C.F.R. § 429.102(a)(1). The MFD requests that I issue a decision: (1) finding that the Respondent violated the EPCA and its implementing regulations and (2) recommending that the Respondent pay a civil penalty of \$106,636. For the reasons set forth below, I am granting OGCE's motion.

On or about January 10, 2022, the Respondent offered for sale a lavatory faucet titled “ARRISEA Brushed Gold 3 Hole Bathroom Faucets for Sink, 2 Handle 8 Inch Widespread Bathroom Sink

¹ The AACPA may be viewed at: <https://www.energy.gov/gc/doe-procedures-administrative-adjudication-civil-penalty-actions>.

Faucet with Pop Up Drain, Brushed Gold Vanity Sink Faucet” (the Product) on the Amazon.com e-commerce platform. MFD Exhibit (Ex.) 6. On or about August 10, 2022, OGCE issued a Notice of Proposed Civil Penalty (NPCP) to the Respondent alleging that Respondent knowingly failed to submit a certification report to DOE certifying that the Product met the applicable energy conservation standard pursuant to 10 C.F.R. § 429.12(a) and proposing a civil penalty of \$106,636. Complaint at 5. The Respondent failed to respond to the NPCP. MFD at 2. On February 9, 2023, OGCE filed the Complaint with DOE’s Office of Hearings and Appeals (OHA) and served Respondent with a copy of the Complaint.² I was appointed as the Administrative Law Judge (ALJ) on that day. The Respondent, however, failed to file any response to the Complaint. On March 21, 2023, eight days after the Respondent’s answer or motion pursuant to AACPA § 18(f)(1)–(2) was due, OGCE filed the present motion. The deadline for Respondent’s response to the MFD elapsed on April 17, 2023, without any response from Respondent. *See* AACPA at § 18(d) (providing 25 days for a response to a motion filed under § 18 of the AACPA).

II. Analysis

Under the AACPA, a respondent is required to file either a written answer to the Complaint, or a motion pursuant to § 18(f)(1)–(2) “not later than 30 days after service of the Complaint.” AACPA at § 8(a). The AACPA further provides that “[a] person’s failure to timely file an answer . . . will be deemed an admission of the truth of each allegation contained in the complaint.” AACPA at § 8(d).

The MFD requests that I invoke § 8(d) and consider the Respondent’s failure to respond to the Complaint an admission of the truth of each allegation contained in the Complaint. The MFD further requests, that on the basis of those admissions, I issue a recommended decision: (1) finding that the Respondent violated the EPCA and its implementing regulations, and (2) recommending that the Respondent pay a civil penalty of \$106,636. To this end, OGCE asserts that since each of the allegations set forth in the Complaint has been admitted, there remains no genuine issue of material fact and therefore the OGCE is entitled to a decision in its favor as a matter of law. In support of this contention, OGCE cites the AACPA, which provides that an ALJ must grant an MFD if the moving party “show[s] that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law.” AACPA at § 18(f)(5).

² The Respondent was served with the Complaint when OGCE sent a copy of the Complaint to the email address used by the Respondent on Amazon.com (the Email Address) as required by the AACPA, which provides that: “. . . service of documents must be made electronically, by verified email.” AACPA at § 5(b). The AACPA further provides: “*Verified email* is the email address provided by the party. If a party does not provide an email address, then a verified email is an email account that has been shown to the satisfaction of the ALJ to be active and belonging to the recipient of an email.” *Id.* at § 2 (emphasis in the original).

Because of my concern that the Email Address might not be active or belong to the Respondent, on March 27, 2023, I issued an Interlocutory Order to Show Cause (Show Cause Order) directing OGCE to submit any arguments and evidence, on or before April 10, 2023, establishing that it served the Complaint on Respondent via verified email. On April 10, 2023, OGCE submitted a response to the Show Cause Order (Show Cause Response) in which it provided copies of its communications with representatives of Amazon.com explaining how OGCE obtained the Email Address it used to serve the Complaint. The Show Cause Response has satisfied me that the Email Address is verified, and I therefore find that OGCE served the Complaint on Respondent via a verified email address.

Under the AACPA, the Respondent's failure to file a timely response to the Complaint serves as an admission that each of the Complaint's allegations are true, unless good cause is shown for the failure to respond. AACPA at § 8(d). The Respondent has not contended good cause exists for its failure to respond, and the existing record does not support such a conclusion. Accordingly, I find that each of the allegations set forth in the Complaint are admitted to be true.

Therefore, I have made the following findings of fact and conclusions of law:

1. Respondent was a "person" under 10 C.F.R. § 430.2;
2. The Product was a "covered product," and therefore subject to the energy conservation standards at 10 C.F.R. § 430.32(o) and 42 U.S.C. § 6295(j);
3. Respondent was a "manufacturer" of the Product;
4. Respondent was subject to the requirements of 10 C.F.R. parts 429 and 430 and the remedies of 10 C.F.R. part 429, Subpart C;
5. On or about January 10, 2022, Respondent began distributing the Product in commerce in the United States by making it available for sale in the United States;
6. Respondent did not submit a certification to DOE prior to January 10, 2022, certifying that the Product met the applicable energy conservation standard under the EPCA;
7. Respondent did not submit a certification to DOE subsequent to January 10, 2022, certifying that the Product met the applicable energy conservation standard under the EPCA;
8. Respondent knew or should have known that it had not submitted a certification report to DOE certifying that the basic model containing the Product met the applicable energy conservation standard before Respondent distributed the Product in commerce in the United States;
9. Respondent violated 10 C.F.R. § 429.102(a)(1) by knowingly distributing the Product in commerce in the United States for at least 212 days, starting on January 10, 2022, and continuing through August 10, 2022, without submitting to DOE the certification report required under 10 C.F.R. § 429.12(a);
10. Pursuant to 10 C.F.R. § 429.120, Respondent is subject to a civil penalty for each knowing violation of 10 C.F.R. § 429.102(a)(1);
11. Under 10 C.F.R. § 429.120, each day of noncompliance with 10 C.F.R. § 429.102(a)(1) constitutes a separate violation for each basic model not certified according to DOE regulations;

12. Pursuant to Inflation Adjustment of Civil Monetary Penalties, 87 FR 1061 (Jan. 10, 2022); 10 C.F.R. § 429.120; 28 U.S.C. § 2461 (amended 2015), beginning on January 10, 2022, and continuing through January 12, 2023, any manufacturer who knowingly failed to certify a covered product properly is subject to a civil penalty of up to \$503 per basic model per day;
13. On or about August 10, 2022, OGCE issued a NPCP to the Respondent;
14. 212 days elapsed between January 10, 2022, and August 10, 2022; and
15. A civil penalty in the amount of \$106,636 (212 days multiplied by \$503 per day) is therefore appropriate.

Based on the existing record, OGCE has shown there is no genuine issue of material fact and it is entitled to a decision as a matter of law. Accordingly, OGCE's Motion for Decision is granted. I recommend an assessment of a civil penalty in the amount of \$106,636 against the Respondent.

For These Reasons:

- (1) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on March 21, 2023, is granted;
- (2) I find that shenzhenshi xialan keji Youxiangongsi knowingly distributed the ARRISEA Brushed Gold 3 Hole Bathroom Faucets for Sink, 2 Handle 8 Inch Widespread Bathroom Sink Faucet with Pop Up Drain, Brushed Gold Vanity Sink Faucet in commerce in the United States for at least 212 days without first certifying that it met the applicable energy conservation standard, in violation of 10 C.F.R. § 429.102(a)(1) as alleged in the Complaint;
- (3) I recommend that shenzhenshi xialan keji Youxiangongsi be assessed a civil penalty of \$106,636, as requested by the Office of the Assistant General Counsel for Enforcement; and
- (4) This Initial Decision shall become the Final Decision of the Department of Energy if not appealed pursuant to § 32 of DOE's Procedures for Administrative Adjudication of Civil Penalty Actions within 10 days after service upon the parties.



Steven L. Fine
Administrative Law Judge
Office of Hearings and Appeals
United States Department of Energy