United States Department of Energy
Office of Hearings and Appeals

In the Matter of GuangZhouShiBaiYiGouBaiHuoYouXianGongSi.	)	
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Filing Date: August 3, 2023	)	Case No.: EEE-23-0009
	)	
	)	

Issued: October 30, 2023

Initial Decision
Motion for Decision

Steven L. Fine, Administrative Law Judge:

This Initial Decision considers a Motion for Decision (MFD) filed on September 20, 2023, 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 August 3, 2023, against GuangZhouShiBaiYiGouBaiHuoYouXianGongSi (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 431, and DOE's Procedures for Administrative Adjudication of Civil Penalty Actions (hereinafter referred to as the AACPA).[1] The Complaint alleges that Respondent violated the provisions of the EPCA and its implementing regulations by distributing a covered product, specifically a basic model of a showerhead[2] (the Showerhead), in commerce in the United States without first submitting a report to DOE certifying that the Showerhead 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).[3] The MFD requests that I issue a decision: (1) finding that Respondent violated the EPCA and its implementing regulations and (2) recommending that Respondent pay a civil penalty in the amount of $153,415. For the reasons set forth below, I am granting OGCE's motion.

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

[2] DOE's implementing regulations define a showerhead as "a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads." 10 C.F.R § 430.2. A "[s]afety shower showerhead" is further defined as "a showerhead designed to meet the requirements of ISEA Z358.1." 10 C.F.R § 430.2.

[3] The Complaint identifies the showerhead as "a SHUWND brand 'High Pressure Shower Head, Detachable Shower Head, 360° Rotating Vortex Shower Head with Upgrade Switch Button, Handheld Shower Heads with 59' Stainless Hose, 2 Filters, Shower Head Holder." Complaint at 4.

I. Background

On August 8, 2022, OGCE issued an Amended Notice of Proposed Civil Penalty (NPCP) to Respondent, pursuant to 10 C.F.R. § 429.122. MFD Ex. B1 at 4; MFD Ex. B2. The NPCP alleged that Respondent had manufactured and distributed the Showerhead in commerce in the United States after it had knowingly failed to submit mandatory certification reports to DOE certifying that the Showerhead met the applicable energy conservation standards set forth at 10 C.F.R. § 430.32(p) and 42 U.S.C. § 6295(j).[4] MFD Ex. B1 at 1–2. The NPCP proposed a civil penalty of $153,415. Respondent failed to respond to the NPCP.

On August 3, 2023, pursuant to 10 C.F.R. § 429.124(c), OGCE referred this case to an Administrative Law Judge (ALJ) by filing a Complaint with DOE's Office of Hearings and Appeals (OHA) and serving Respondent with a copy of the Complaint.[5] MFD Ex. D. I was appointed as the ALJ on that day. The Complaint alleged that Respondent violated 10 C.F.R. § 429.102(a)(1), when it knowingly failed to submit the certification reports required under 10 C.F.R. § 429.12(a) to the DOE certifying that the Showerhead met the applicable energy conservation standard, set forth at 10 C.F.R. § 430.32(p) and 42 U.S.C. § 6295(j), prior to manufacturing and distributing the Showerhead in commerce in the United States by making it available for sale in the United States on amazon.com. Complaint at 5.

On August 4, 2023, I issued an acknowledgement letter in which I reminded the parties that Respondent's answer, or motion filed pursuant to § 18(f)(1)–(2) of the AACPA, was due by the 30th day after August 3, 2023, under § 8(a) of the AACPA. August 4, 2023, letter from Steven L. Fine, Administrative Law Judge, to Respondent and OGCE at 1. Respondent failed to file any response to the Complaint. On September 20, 2023, fifteen days after Respondent's answer or motion pursuant to AACPA § 18(f)(1)–(2) was due, OGCE filed the present MFD. The deadline for Respondent's response to the MFD elapsed on October 16, 2023, without any further 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). Respondent failed to comply with this requirement. 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 Respondent's failure to file either a written

[4] The EPCA defines "[e]nergy conservation standard" as "a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product." 42 U.S.C. § 6291(6)(A).

[5] 10 C.F.R. § 429.124(c) provides "if the respondent fails to respond to a notice issued under § 10 C.F.R. 429.120 or otherwise fails to indicate its election of procedures, DOE shall refer the civil penalty action to an ALJ for a hearing under § 429.126."

answer to the Complaint, or a motion pursuant to § 18(f)(1)–(2), 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 decision: (1) finding that Respondent violated the EPCA and its implementing regulations, and (2) recommending that Respondent pay a civil penalty of $153,415. 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 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).

Under the AACPA, 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). 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 is admitted to be true.

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

1. Respondent is a "person" under 10 C.F.R. § 430.2;[6]

2. The Showerhead is a "showerhead" as defined by 10 C.F.R § 430.2;

3. Showerheads are "covered products." 42 U.S.C. § 6292(a)(15);

4. The Showerhead is therefore subject to the conservation standards set forth at 10 C.F.R. §430.32(p) and 42 U.S.C. § 6295(j);

5. Respondent "manufactured, produced, assembled, or imported" the Showerhead, and was therefore the "manufacturer" of the Showerhead. 42 U.S.C. §§ 6291(10) and 6291(12); 10 C.F.R. § 430.2;

6. For at least 305 days, starting on October 6, 2022, Respondent knowingly distributed the Showerhead in commerce in the United States by making it available for sale in the United States on amazon.com;

7. Pursuant to 10 C.F.R. § 429.12(a), Respondent was required to submit a certification report to DOE certifying that the Showerhead complied with the applicable DOE energy standards, both before distributing the Showerhead, and annually thereafter;

[6] A "person" is "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." 10 C.F.R. § 430.2; *accord* 42 U.S.C. § 6202(2).

8. Respondent has never submitted a certification report certifying that the basic model containing the Showerhead complied with the relevant energy conservation standard to DOE;

9. Respondent has been, at all times relevant to the present proceeding, 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;

10. Respondent knew or should have known that it had not submitted a certification report to DOE certifying that the Showerhead met the applicable energy conservation standards before Respondent distributed the Showerhead in commerce in the United States;

11. Respondent violated 10 C.F.R. § 429.102(a)(1) by knowingly distributing the Showerhead in commerce in the United States for at least 305 days without submitting to DOE the certification reports required under 10 C.F.R. § 429.12(a) certifying that the basic model containing the Showerhead met the applicable energy conservation standards;

12. 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);

13. 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 model not certified according to DOE regulations;

14. Respondent has committed 305 knowing violations of 10 C.F.R. § 429.102(a)(1) (one product multiplied by 305 days);

15. Pursuant to Inflation Adjustment of Civil Monetary Penalties (the IACMP), 88 Fed. Reg. 2193 (Jan. 13, 2023); 10 C.F.R. § 429.120 (2023); and 28 U.S.C. § 2461 (amended 2015) Respondent is subject to a civil penalty of up to $542 per basic model per day for each violation accessed after January 13, 2023;

16. A maximum civil penalty in the amount of $165,310, (One product multiplied by 305 days multiplied by a penalty of $542 per violation) would be allowed under the regulations and statutes;[7] and

[7] The Complaint calculated the civil penalty as $153,415. However, that calculation reflected OGCE's use of the maximum allowable daily civil penalty for each violation under IACMP at the time that the NPCP was issued ($503 per day per product). 87 Fed. Reg. 1063 (Jan. 10, 2022). On January 13, 2023, the maximum allowable daily civil penalty was increased to $542. IACMP, 88 Fed. Reg. 2193 (January 13, 2023); 10 C.F.R. § 429.120 (2023). 28 U.S.C. § 2461, at Note 6, provides that "[a]ny increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect." Under the DOE's regulations, civil penalty monetary penalties are assessed when the General Counsel issues a final order. 10 C.F.R. §§ 429.126(c) and 429.128.

17. The OGCE exercised its discretion to seek a smaller civil penalty in the amount of $153,415.

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 MFD is granted. I recommend an assessment of a civil penalty in the amount of $153,415 against Respondent.

For These Reasons:

(1) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on September 20, 2023, is granted;

(2) I recommend that GuangZhouShiBaiYiGouBaiHuoYouXianGongSi be accessed a civil penalty of $153,415, as requested by the Office of the Assistant General Counsel for Enforcement; and

(3) 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