



Department of Energy
Washington, DC 20585

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of:)

CBHS,)

Filing Date: September 6, 2023)

Case No.: EEE-23-0010)

Issued: March 18, 2024

**Initial Decision
Motion for Decision**

Steven L. Fine, Administrative Law Judge:

This Initial Decision considers a Motion for Decision (MFD) filed on January 19, 2024, by the Department of Energy's (DOE) Office of the Assistant General Counsel for Enforcement (OGCE) concerning a complaint (Complaint) filed by OGCE on September 6, 2023, against a respondent identified as CBHS (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 Respondent violated the provisions of the EPCA and its implementing regulations by distributing three covered products, specifically three models of showerheads² (the Showerheads), in commerce in the United States without first submitting reports to DOE certifying that each of the Showerheads complied with the applicable DOE energy conservation standard, as required by 10 C.F.R. § 429.12(a)–(d) and 10 C.F.R. § 429.102(a)(1).³ The MFD requests that I issue a decision: (1) finding that

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 Showerheads as (1) "Cobbe Led Lights Shower Head 3 Color Changing Zenbody Handheld Shower Head," (2) "Cobbe 48-Setting High Pressure 3-Way Shower Head Combo, Hand Held Shower & Rain Shower Separately or Together, 4.7" Dual 2 in 1 Showerhead with Stainless Steel Hose - U.S. Invention Patents,"

Respondent violated the EPCA and its implementing regulations and (2) recommending that Respondent pay a civil penalty in the amount of \$148,372. For the reasons set forth below, I am granting OGCE's motion.

I. Background

On May 26, 2023, OGCE issued a Notice of Proposed Civil Penalty (NPCP) to Respondent, pursuant to 10 C.F.R. § 429.122. MFD Exhibit (Ex.) 1 at 1. The NPCP alleged that Respondent had manufactured and distributed the Showerheads in commerce in the United States after it had knowingly failed to submit mandatory certification reports to DOE certifying that the Showerheads 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. 1 at 1–2. The NPCP proposed a civil penalty of \$148,372. MFD Ex. 1 at 1. Respondent failed to respond to the NPCP.

On September 6, 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 Complaint at 7. 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 Showerheads 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 Showerheads in commerce in the United States by making them available for sale in the United States on its website "cobbe.com."⁶ Complaint at 4–6.

On September 8, 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 September 6, 2023, under § 8(a) of the AACPA. September 8, 2023, Letter from Steven L. Fine, Administrative Law Judge, to Respondent and OGCE at 2. Respondent failed to file any response to the Complaint. On January 19, 2024, after Respondent's answer or motion pursuant to AACPA § 18(f)(1)–(2) was due, OGCE filed the present MFD. MFD at 8. The deadline for Respondent's response to the MFD elapsed on February 14, 2024, 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).

and (3) "Cobbe Filtered Shower Head, High Pressure 7 Spray Modes Shower Head with Filters, 16 Stage Shower Head Filter for Hard Water for Remove Chlorine and Harmful Substances." Complaint at 4.

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."

⁶ In the MFD, OGCE further claimed that Respondent also distributed the Showerheads in commerce in the United States by making them available for sale in the United States on "amazon.com." MFD at 3.

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).

OGCE requests that I invoke § 8(d) and consider Respondent’s failure to file either a written 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 \$148,372. 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 have made the following findings of fact and conclusions of law:

1. Respondent is a “person” under 10 C.F.R. § 430.2;⁷
2. Each of the Showerheads is a “showerhead” as defined by 10 C.F.R § 430.2;
3. Each of the Showerheads is a “covered product.” 42 U.S.C. § 6292(a)(15);
4. The Showerheads are therefore subject to the conservation standards set forth at 10 C.F.R. § 430.32(p) and 42 U.S.C. § 6295(j);

⁷ 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).

5. Respondent “manufactured, produced, assembled, or imported” the Showerheads, and was therefore the “manufacturer” of the Showerheads. 42 U.S.C. § 6291(10) and 6291(12); 10 C.F.R. § 430.2;
6. For at least 365 days, Respondent knowingly distributed the Showerheads in commerce in the United States by making the Showerheads available for sale in the United States on cobbe.com;
7. Pursuant to 10 C.F.R. § 429.12(a), Respondent was required to submit a certification report to DOE certifying that each of the Showerheads complied with the applicable DOE energy conservation standards, both before distributing the Showerheads, and annually thereafter;
8. Respondent has never submitted any certification reports certifying that the basic models containing the Showerheads complied with the relevant energy conservation standard to DOE;⁸
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 any certification reports to DOE certifying that each of the Showerheads met the applicable energy conservation standards before Respondent distributed the Showerheads in commerce in the United States;
11. Respondent violated 10 C.F.R. § 429.102(a)(1) by knowingly distributing the Showerheads in commerce in the United States for at least 365 days without submitting the certification reports required under 10 C.F.R. § 429.12(a) to DOE certifying that the basic models containing the Showerheads 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 1,095 knowing violations of 10 C.F.R. § 429.102(a)(1) (three products multiplied by 365 days);

⁸ The regulations define “basic model” as “all units of a given type of covered product (or class thereof) manufactured by one manufacturer; having the same primary energy source; and, which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency . . . and [w]ith respect to faucets and showerheads: 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.” 10 C.F.R. § 430.2.

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 assessed after January 13, 2023;
16. A maximum civil penalty in the amount of \$593,490 (three products multiplied by 365 days multiplied by a penalty of \$542 per violation) would be allowed under the regulations and statutes;
17. The OGCE exercised its discretion to seek a smaller civil penalty in the amount of \$148,372; and
18. A civil penalty in the amount of \$148,372 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 MFD is granted. I recommend an assessment of a civil penalty in the amount of \$148,372 against Respondent.

For These Reasons:

- (1) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on January 19, 2024, is granted;
- (2) I recommend that CBHS be assessed a civil penalty of \$148,372, 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