



Department of Energy
Washington, DC 20585

United States Department of Energy
Office of Hearings and Appeals

In the Matter of)
Kale Environmental Technology)
(Shanghai) Corporation)

Filing Date: November 22, 2023)
_____)

Case No.: EEE-24-0003

Issued: February 13, 2024

Initial Decision
Motion for Decision

Steven L. Fine, Administrative Law Judge:

This Initial Decision considers a Motion for Decision (MFD) filed on January 10, 2024, by the Department of Energy’s (DOE) Office of the Assistant General Counsel for Enforcement (OGCE) concerning an amended complaint (Amended Complaint) filed by OGCE on November 22, 2023, against Kale Environmental Technology (Shanghai) Corporation (Respondent).¹ The Amended 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).² The Amended Complaint alleges that Respondent violated the provisions of the EPCA and its implementing regulations by distributing three basic models of large-diameter ceiling fans³ (the LD Ceiling Fans), in commerce in the United States without first submitting a report to DOE certifying that the LD Ceiling Fans 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

¹ OGCE had filed the original complaint on November 21, 2023. OGCE filed the present Amended Complaint “to correct the length of noncompliance and penalty amounts previously alleged.” Amended Complaint at 1.

² The AACPA may be viewed at: <https://www.energy.gov/gc/doe-procedures-administrative-adjudication-civil-penalty-actions>.

³ DOE’s implementing regulations define a “ceiling fan” as “a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades.” 10 C.F.R. § 430.2(s). A “large-diameter ceiling fan” is “a ceiling fan that is greater than seven feet in diameter.” 10 C.F.R. Part 430, Subpart B, Appendix U.

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 \$1,780,470. For the reasons set forth below, I am granting OGCE's motion.

I. Background

On August 23, 2023, OGCE issued a Notice of Proposed Civil Penalty (NPCP) to Respondent, pursuant to 10 C.F.R. § 429.122. MFD Ex. 1 at 1. The NPCP alleged that Respondent had manufactured and distributed the LD Ceiling Fans⁴ in commerce in the United States after it had knowingly failed to submit mandatory certification reports to DOE certifying that the LD Ceiling Fans met the applicable energy conservation standards set forth at 10 C.F.R. § 430.32(s) and 42 U.S.C. §§ 6292(a)(20), 6295(ff).⁵ MFD Ex. 1 at 1. The NPCP proposed a civil penalty of \$1,780,470. MFD Ex. 1 at 1. The Amended Complaint alleges that Respondent failed to respond to the NPCP. Amended Complaint at 6.

On November 21, 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.⁶ MFD Ex. 2 at 7. I was appointed as the ALJ on that day and the case was assigned OHA Case Number EEE-24-0003. On November 22, 2023, OGCE filed an Amended Complaint with OHA and served the Respondent with a copy of the Amended Complaint. The Amended Complaint alleges 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 LD Ceiling Fans met the applicable energy conservation standard, set forth at 10 C.F.R. § 430.32(s) and 42 U.S.C. §§ 6292(a)(20), 6295(ff), prior to manufacturing and distributing the LD Ceiling Fans in commerce in the United States by making them available for sale in the United States on the www.kalefans.net website for at least 1,095 days. Amended Complaint at 4.

On December 6, 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 November 21, 2023, under § 8(a) of the AACPA. December 6, 2023, letter from Steven L. Fine, Administrative Law Judge, to Respondent and OGCE at 1. Respondent failed to file any response to the complaints. On January 10, 2024, well after Respondent's answer or motion pursuant to AACPA § 18(f)(1)–(2) was due, OGCE filed the present MFD. The deadline

⁴ The NPCP identified the three LD Ceiling Fans as "basic models D6BAA73, D8BAA73, and SHVLS-D8BAA24." MFD Ex. 1 at 2. The Amended Complaint did not provide the specific model numbers of the three LD Ceiling Fans, identifying them only as "three large-diameter ceiling fan basic models" "made available for sale in the United States via the website www.kalefans.net." Amended Complaint at 4.

⁵ 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 . . . for a covered product." 42 U.S.C. § 6291(6)(A).

⁶ 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."

for Respondent's response to the MFD elapsed on February 5, 2024, without any further response from Respondent. *See* AACPA at § 18(d) (providing 25 days to respond to a motion).

II. Analysis

Under the AACPA, a respondent is required to file either a written answer to the Amended Complaint, or a motion pursuant to § 18(f)(1)–(2), “not later than 30 days after service of the [amended] 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 [amended] complaint.” AACPA at § 8(d).

The MFD requests that I invoke § 8(d) and consider Respondent’s failure to file either a written answer to the Amended Complaint, or a motion pursuant to § 18(f)(1)–(2), an admission of the truth of each allegation contained in the Amended 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 \$1,780,470. 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;⁷
2. The LD Ceiling Fans are “covered products” pursuant to 42 U.S.C. § 6292(a)(20) subject to the energy conservation standards set forth at 10 C.F.R § 430.2(s) and 42 U.S.C. § 6295(ff);
3. Respondent “manufactured, produced, assembled, or imported” the three LD Ceiling Fans, and was therefore the “manufacturer” of the LD Ceiling Fans. 42 U.S.C. §§ 6291(10) and 6291(12); 10 C.F.R. § 430.2;

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).

4. For at least 1,095 days, Respondent knowingly distributed the three LD Ceiling Fans in commerce in the United States by making them available for sale in the United States on the www.kalefans.net website;
5. Pursuant to 10 C.F.R. § 429.12(a), Respondent was required to submit a certification report to DOE certifying that each of the three LD Ceiling Fan Models complied with the applicable DOE energy standards, both before distributing the three LD Ceiling Fans, and annually thereafter;
6. Respondent has never submitted a certification report certifying that any of the three basic models containing the LD Ceiling Fans complied with the relevant energy conservation standard to DOE;
7. 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;
8. Respondent knew or should have known that it had not submitted a certification report to DOE certifying that the three LD Ceiling Fans met the applicable energy conservation standards before Respondent distributed the three LD Ceiling Fans in commerce in the United States;
9. Respondent violated 10 C.F.R. § 429.102(a)(1) by knowingly distributing the three LD Ceiling Fans in commerce in the United States for at least 1,095 days without submitting to DOE the certification reports required under 10 C.F.R. § 429.12(a) certifying that the basic models containing the three LD Ceiling Fans met the applicable energy conservation standards;
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 model not certified according to DOE regulations;
12. Respondent has committed 3,285 knowing violations of 10 C.F.R. § 429.102(a)(1) (three products multiplied by 1095 days);
13. 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; and
14. A maximum civil penalty in the amount of \$1,780,470 (three products multiplied by 1,095 days multiplied by a penalty of \$542 per violation) would be allowed under the regulations

and statutes. Based on the facts and circumstances of this case, a civil penalty of \$1,780,470 is 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.

For These Reasons:

- (1) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on January 10, 2024, in Case No. EEE-24-0003, is granted;
- (2) I recommend that Kale Environmental Technology (Shanghai) Corporation be assessed a civil penalty of \$1,780,470, 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.

It is So Ordered.



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