

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

In the Matter of:)
)
ET Industries, Inc.) Case Number: 2012-SE-2902
(showerheads))
)

Issued: May 24, 2013

AMENDED NOTICE OF NONCOMPLIANCE DETERMINATION¹

Manufacturers (including importers) are prohibited from distributing covered products in the United States that do not comply with applicable federal water conservation standards. *See* 10 C.F.R. §§ 429.5, 429.102; 42 U.S.C. §§ 6291(10), 6302.

On April 3, 2012, DOE tested one unit of the “ThunderHead” showerhead basic model (“basic model TH-1”²), which ET Industries, Inc. (“ET”) imported into the United States. On April 24, 2012, DOE completed testing of three additional units of basic model TH-1, also imported into the United States by ET Industries. All four tests were conducted in accordance with the applicable DOE test procedure. *See* 10 C.F.R. Part 430, Subpart B, Appendix S.

DOE’s testing demonstrated that basic model TH-1 is not in compliance with the applicable federal water conservation regulations. First, the maximum water use for any showerhead is 2.5 gallons per minute (gpm) when measured at a flowing pressure of 80 pounds per square inch gage. 10 C.F.R. § 430.32(p). One of the units that DOE tested consumed water at a rate of 9.1 gpm; the other three units consumed water at a rate of 8.8 gpm. On average, the units consumed water at a rate 255 percent above the federal limit.

Second, federal water conservation standards require that a showerhead must comply with ASME/ANSI Standard A112.18.1M-1996, 7.4.4(a), which requires that, if a flow control insert is used as a component part of a showerhead, the insert must be installed at the point of manufacture. *See* 10 C.F.R. § 430.32(p). The units obtained by DOE did not include installed flow control inserts.

FINDING

Based on the facts stated above, DOE has determined, after applying the calculations set forth in

¹ This Amended Notice of Noncompliance Determination supersedes the February 28, 2013 Notice of Noncompliance Determination that DOE issued under the same case number (2012-SE-2902). The earlier Notice listed incorrect DOE test results and dates of testing; this Amended Notice corrects those issues.

² This Notice uses “TH-1” to distinguish the original basic model of “ThunderHead” showerhead from the modified basic model of “ThunderHead” showerhead, which ET certified through DOE’s Compliance Certification Management System as “basic model TH2.5” in their submission at CCMS # 26776.

10 C.F.R. Part 429, Subpart C, Appendix A, that basic model TH-1 does not comply with the applicable federal water conservation standards.

MANDATORY ACTIONS BY ET

On February 28, 2013, DOE issued a Notice of Noncompliance Determination (“initial Notice”) in this case requiring ET to take certain steps in accordance with 10 C.F.R. § 429.114(a). As of the date of this Amended Notice, ET has taken the following steps:

- (1) Immediately ceased distribution in commerce in the United States of all units of basic model TH-1;
- (2) Provided immediate written notification of DOE’s noncompliance determination to all persons in the United States to whom ET has distributed units of basic model TH-1 in the past three years;
- (3) Provided to DOE, within 15 calendar days of the date of the initial Notice, a copy of the written notification required by paragraph (2) of the initial Notice and a list of the parties ET notified; and
- (4) Provided to DOE all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of units of basic model TH-1 in the United States in the past three years, in addition to a summary page listing the total number of units ET distributed in commerce in the U.S. in the past three years.

OPTIONAL ACTIONS BY ET

In the initial Notice, DOE explained that ET could modify basic model TH-1 to bring it into compliance with the applicable standard. Since they received the initial notice, ET has taken steps to modify the basic model. On April 17, 2013, DOE issued a Notice of Allowance to Resume Distribution, allowing ET to distribute the modified basic model in commerce in the U.S. following certification of the modified basic model’s compliance with the applicable federal water conservation standards through DOE’s Compliance Certification Management System (“CCMS”). On April 24, 2013, ET certified the modified basic model as “basic model TH2.5” in their submission at CCMS # 26776.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

The distribution of any units of a noncompliant basic model, including during any manufacturer-initiated testing, may result in DOE seeking all appropriate legal remedies available under federal law, including injunctive relief and civil penalties with respect to each unit of the basic model distributed in violation of federal law.

_____/S/ Doug Rawald, for

Laura L. Barhydt
Assistant General Counsel
for Enforcement