

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

In the Matter of: )  
 )  
**Memowell Corp.** ) Case Number: 2014-SW-29006  
(showerheads) )  
 )

**NOTICE OF PROPOSED CIVIL PENALTY**

Date issued: October 14, 2015

Number of alleged violations: 12,158  
Maximum possible assessment: **\$2,431,600**  
Proposed civil penalty: **\$2,431,600**

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges Memowell Corporation (“Memowell”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and 10 C.F.R. Parts 429 and 430.

**Legal Requirements**

Showerheads are covered products subject to water conservation standards set forth in 42 U.S.C. § 6295(j) and 10 C.F.R. § 430.32(p). 42 U.S.C. §§ 6292(a)(15), 6291(31)(D).

Effective January 1, 1994, showerheads that are manufactured and distributed in commerce in the United States must use no more than 2.5 gallons per minute of water. 10 C.F.R. § 430.32(p).

Manufacturers and private labelers are prohibited from distributing in commerce any product that fails to comply with these standards. 42 U.S.C. § 6302(a)(5); 10 C.F.R. § 429.102(a)(6).

## **Allegations**

DOE alleges:

1. Memowell has manufactured<sup>1</sup> and distributed in commerce in the United States the showerhead basic model that includes individual model SH1014 (“the subject model”).
2. The subject model contains individual models SH1010, SH1011, SH1012, SH1013, SH1014, SH1015, SH1016, SH1022, SH1025, SH1026, SH1030, and SH1040, each in various finishes.
3. Beginning January 1, 2011, Memowell distributed in commerce in the United States at least 12,158 units of the subject model.
4. DOE’s testing of four units of this basic model, conducted in accordance with the DOE test procedure for showerheads (10 C.F.R., Part 430, Subpart B, Appendix S), yielded tested water use of 3.2, 3.0, 2.6, and 3.1 gallons/minute.
5. When evaluated in accordance with 10 C.F.R. § 429.110(e) and 10 C.F.R. Part 429, Subpart C, Appendix A, the subject model did not comply with the maximum permissible rate of water consumption set forth at 10 C.F.R. § 430.32(p), as DOE found in a Notice of Noncompliance Determination issued on October 15, 2014.

**The following information is provided in question and answer format to help explain Memowell’s legal obligations and options.**

*What do I do now?*

DOE is offering to settle this enforcement action if you submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice and then fulfill all obligations of the Compromise Agreement, which includes paying the fine within thirty (30) calendar days of the date of an Order adopting the Compromise Agreement.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law (currently \$2,431,600). You have other options as described below.

*What are my other options?*

If you do **not** agree to DOE’s settlement offer, then you must select Option 1 or Option 2 below within thirty (30) calendar days of the date of this Notice.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge (“ALJ”) for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an

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<sup>1</sup> “Manufacture” means to manufacture, produce, assemble or import. 42 U.S.C. § 6291(10).

order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

*When must I respond?*

You must submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the lowest penalty. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

*How should I submit my response?*

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). You may respond by any of the following methods:

By email to: christina.studt@hq.doe.gov  
By fax to: (202) 586-3274  
By private carrier to: Christina Studt  
Trial Attorney (GC-32)  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

*What happens if I fail to respond?*

If you fail to respond within thirty (30) calendar days of the date of this Notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

*What should I include in my response?*

- 1) If you wish to accept DOE's settlement offer, you should submit the signed Compromise Agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act ("DCIA") requires all federal agencies to obtain the TIN in any case that may give rise to a debt to the government.

*How did DOE calculate the maximum possible assessment?*

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that is distributed in commerce in the U.S. The maximum penalty is \$200 per unit. 10 C.F.R. § 429.120. DOE has calculated a maximum penalty of \$200 per unit for 12,158 units distributed in commerce in the United States. If the case goes to hearing, this number would be adjusted to include any additional information obtained.

If you have any questions, please contact Christina Studt by email at [christina.studt@hq.doe.gov](mailto:christina.studt@hq.doe.gov) or phone at (202) 586-0389.

Issued by:

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Enforcement