

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

In the Matter of:)	
)	
)	
Danco, Inc.)	Case Number: 2017-SW-29002
(showerheads))	
)	

Issued: April 26, 2018

AMENDED NOTICE OF NONCOMPLIANCE DETERMINATION

Showerheads are covered products subject to federal water conservation standards set forth in 10 C.F.R. § 430.32(p). Manufacturers and private labelers are prohibited from distributing covered products that do not comply with any applicable conservation standard. 10 C.F.R. § 429.102(a)(6). Specifically, showerheads manufactured after January 1, 1994, must not exceed the maximum water use of 2.5 gallons per minute (gpm). 10 C.F.R. § 430.32(p).

FACTS

In response to a request from the U.S. Department of Energy (“DOE”), Danco, Inc. (“Danco”) provided test data demonstrating the units Danco tested of showerhead individual models 80490 and 89077, manufactured¹ by Danco, perform as follows:

Model	Test Results (gallons per minute, gpm)
80490	3.93, 3.68, and 4.20
89077	2.55, 2.56, and 2.54

FINDINGS

Based on the facts stated above, DOE finds, after applying the calculations in 10 C.F.R. Part 429, Subpart C, Appendix A, that the showerhead basic model² that includes individual model 80490 and the basic model that includes individual model 89077 (collectively, “the basic models”) do not comply with the applicable federal water conservation standard of no more than 2.5 gpm.

¹ The term “manufacture” means to manufacture, produce, assemble or import. 42 U.S.C. § 6291(10).

² For the purposes of this determination, the “basic model” is all units manufactured by Danco that have essentially identical physical and functional (or hydraulic) characteristics that affect water consumption or water efficiency and 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. At a minimum, the basic model includes all models that differ only in finish.

MANDATORY ACTION BY DANCO

On August 30, 2017, Danco informed DOE that it has ceased distributing the basic model that includes individual model 80490 and the basic model that includes individual model 89077. In light of the above findings, Danco must take the following step in accordance with 10 C.F.R. § 429.114(a):

Provide to DOE within 30 calendar days of the date of this Notice records sufficient to show the number of units of the basic models Danco distributed in commerce in the United States, including all units imported into the United States, in the past five years.

If you claim that any of the information sought by this Notice constitutes confidential commercial material within the meaning of 5 U.S.C. § 552(b)(4), or is protected from disclosure pursuant to 18 U.S.C. § 1905, you must (1) provide one complete and full copy and one copy with the confidential information deleted and (2) submit supporting information together with the materials that are the subject of the confidentiality request. *See* 10 C.F.R. § 429.7. Failure to adhere to these procedures will result in a rejection of your request for confidential treatment.

OPTIONAL ACTIONS BY DANCO

In addition to the mandatory step listed above that Danco must complete, Danco may elect to modify a basic model to bring it into compliance with the applicable standards. A modified basic model shall be treated as a new basic model under the regulations and must be certified in accordance with the provisions of 10 C.F.R. Part 429. In addition to satisfying all requirements of part 429, any individual models within the basic model must be assigned new model numbers and Danco must also maintain, and provide upon request to DOE, records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce. Prior to distribution in commerce in the United States, Danco must provide to DOE test data demonstrating that the modified basic model complies with the applicable standards.³ All units must be tested in accordance with DOE regulations, and Danco shall bear the costs of all such testing that is conducted.

If, after this testing, DOE determines that the modified basic model complies with the applicable standards, DOE shall issue a Notice of Allowance to permit Danco to resume the distribution of the modified basic model in the United States. Until DOE determines that the modified basic model complies with the applicable standard, Danco is prohibited from selling or otherwise distributing units of the basic models in commerce in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Danco fail to cease immediately the distribution in the United States of all units of the basic models, this letter serves as notice that DOE may seek a judicial order within 30 calendar days to restrain further distribution. If, however, Danco provides DOE with a satisfactory

³ DOE may require that an independent, third-party testing facility perform this testing.

statement within that 30-day period detailing the steps that Danco will take to ensure that units of the noncompliant model will no longer be distributed in commerce in the United States, DOE may elect to defer seeking such an order until a more appropriate time, if needed.

The distribution of any units of a noncompliant basic model 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/_____
Laura L. Barhydt
Assistant General Counsel
for Enforcement