

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

In the Matter of)
)
LiWei-shop)
)
Filing Date: January 17, 2024)
_____)

Case No.: EEE-24-0005

Issued: March 18, 2024

**Motion to Deem the Allegations of the Complaint Admitted
Motion for Decision
Initial Decision**

Richard A. Cronin, Jr., Administrative Law Judge

This Initial Decision concerns a combined Motion to Deem the Allegations of the Complaint Admitted and a Motion for Decision (collectively referred to as MFD) filed by the Department of Energy’s (DOE) Office of the Assistant General Counsel for Enforcement (OGCE) regarding a complaint (Complaint) it filed on January 3, 2024, against LiWei-shop (Respondent). The Complaint was filed pursuant to the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (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 AAPCA). The Complaint alleges that the Respondent violated the provisions of the EPCA and its implementing regulations by distributing two types of showerheads (Showerheads)¹ into commerce in the United States without submitting a report to DOE certifying that the Showerheads complied with the applicable DOE energy conservation standards, as required by 10 C.F.R. § 429.12(a) and 10 C.F.R. § 429.102(a)(1).² In this Decision, I grant both motions.

¹ The Respondent’s Showerheads are defined as covered products pursuant to the energy conservation standards at 10 C.F.R. § 430.32(p) and 42 U.S.C. § 6295(j).

² Section 429.12(a) of 10 C.F.R. states:

(a) **Certification.** Each manufacturer, before distributing in commerce any basic model of a covered product or covered equipment subject to an applicable energy conservation standard set forth in parts 430 or 431, and annually thereafter on or before the dates provided in paragraph (d) of this section, shall submit a certification report to DOE certifying that each basic model meets the applicable energy conservation standard(s). The certification report(s) must be submitted to DOE in accordance with the submission procedures of paragraph (h) of this section.

I. BACKGROUND

On or about November 11, 2023, OGCE issued a Notice of Proposed Civil Penalty (NPCP) to the Respondent, which included an offer to settle the alleged regulatory violations if the Respondent would pay a proposed penalty of \$395,660. MFD Exhibit (Ex.) 1 at 1 (NPCP). The Respondent failed to respond to the NPCP. MFD at 2. On January 3, 2024, OGCE filed the Complaint with DOE's Office of Hearings and Appeals (OHA) and served the Respondent with a copy of the Complaint via email. *Id.* Under the AAPCA, a respondent is required to file a written answer to the Complaint—or a motion pursuant to § 18(f)(1)–(2)—by the 30th day after service of the Complaint, which in this case was February 2, 2024. AAPCA at § 8(a). The Respondent has failed to file any response to the Complaint. MFD at 2.

On February 12, 2024, OGCE filed the MFD seeking a ruling deeming each of the allegations set forth in the Complaint as admitted, citing the AAPCA, which provides: “A person’s failure to timely file an answer without good cause, as determined by the ALJ, will be deemed an admission of the truth of each allegation contained in the complaint.” MFD at 3–4; AAPCA at § 8(d). Pursuant to the AAPCA, the Respondent had 25 days to respond to the MFD but has failed to do so. AAPCA § 18 (d) (25-day deadline for responding to written motions). The Respondent has not supplied any response to the MFD. The MFD further requested that I issue a decision pursuant to AAPCA at § 18(f)(5) based upon those deemed admissions, finding that the Respondent violated 10 C.F.R. §§ 429.12(a), (b)(6)³ and 429.102(a)(1). The MFD asked that I recommend that the Respondent pay a civil penalty in the amount of \$395,660. *Id.* at 6.

II. ANALYSIS

1. Motion to Deem the Allegations of the Complaint Admitted

Under the AAPCA, a respondent is required to file a written answer to the Complaint—or a motion pursuant to § 18(f)(1)–(2)—by the 30th day after service of the Complaint. AAPCA at § 8(a). The Respondent has failed to file any response to the Complaint. MFD at 2.

In light of the Respondent’s failure to respond to the Complaint, or MFD, I must review the adequacy of service made to the Respondent. In the MFD, OGCE has provided evidence that it

Section 429.102(a)(1) of 10 C.F.R. provides that, among the listed prohibited actions, is:

Failure of a manufacturer to provide, maintain, permit access to, or copying of records required to be supplied under the Act and this part or failure to make reports or provide other information required to be supplied under the Act and this part, including but not limited to failure to properly certify covered products and covered equipment in accordance with § 429.12 and §§ 429.14 through 429.62.

³ Section 429.12(b)(6) states that an energy compliance report must list “the basic model number and the manufacturer’s individual model number(s) in that basic model” 10 C.F.R. § 429.12(b)(6).

used the email address associated with the Respondent's Amazon Standard Identification Number (ASIN) to serve the Complaint and MFD. MFD at 2; MFD Ex. 2 (Respondent's listed ASIN and associated email address, k1plvz@sina.com); MFD Ex. 4 (January 3, 2024 email transmitting Complaint to Respondents); February 12, 2024 E-mail from Lucy Lee, OGCE, to OHA and Respondent (transmitting MFD to Respondent and OHA) (February 26 Email). Given these facts, I find that OGCE used a verified email address to serve the Respondent and that the Respondent has not answered the Complaint or MFD. *See* AAPCA at § 2 (stating that “[i]f a party does not provide an email address, then a verified email is an email account that has been shown to the satisfaction of the ALJ to be active and belonging to the recipient of an email”).

Consequently, pursuant to AAPCA at section 8(d), I will grant OGCE's Motion to Deem the Allegations of the Complaint Admitted against the Respondent. As such, I make the following findings of fact:

1. At all times relevant, the Respondent was both a manufacturer of consumer products, including covered products such as showerheads, and a person under 10 C.F.R. § 430.2.
2. The Respondent was 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.
3. For at least 365 days, the Respondent has made available for sale in the United States, through amazon.com, products identified as “High Pressure Shower Head 3 Inches Anti-clog Anti-leak Fixed Showerhead Chrome with Adjustable Swivel Brass Ball Joint for Relaxing and Comfortable Shower Experience Aisoso” and “Shower Head High Pressure Rain Fixed Showerhead 5-Setting with Adjustable Metal Swivel Ball Joint - Relaxed Shower Experience Even at Low Water Flow & Pressure Aisoso” (the Showerheads).
4. Each of the Respondent's specifically identified products is a showerhead.
5. Thus, each of the Showerheads is a covered product subject to the energy conservation standards at 10 C.F.R. § 430.32(p) and 42 U.S.C. § 6295(j).
6. Before making each of the Showerheads available for sale in the United States through amazon.com, Respondent did not submit to DOE a certification report certifying that the Showerheads comply with the relevant energy conservation standard.
7. Respondent distributed the Showerheads in commerce for at least 365 days by making them available for sale in the United States on amazon.com.
8. Respondent failed to submit to DOE the certification report required under 10 C.F.R. § 429.12(a) for the Showerheads, certifying that the Showerheads comply

with the applicable energy conservation standard before Respondent distributed each of the Showerheads in commerce.

9. Respondent knew or should have known, through the exercise of due care under the circumstances, that Respondent had not submitted to DOE the required certification report.

10. Accordingly, Respondent knowingly violated 10 C.F.R. § 429.102(a)(1) by failing to certify covered products properly.

MFD at 4–5; Complaint at ¶¶ 19–28.

2. Motion for Decision

Section 18(b)(5) of the AAPCA provides that a party may move for decision, regarding all or any part of the proceedings, at any time before the ALJ has issued an initial decision in the proceedings. A party may include with a motion for decision affidavits as well as any other evidence in support of the motion. AAPCA at § 18(f)(5). This section also mandates that I must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, affidavits, matters that the ALJ has officially noticed, or evidence introduced during the hearing, show 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. *Id.* Given the Respondent's failure to respond to the Complaint and the factual findings described above, there is no genuine issue of material fact in this matter, and I will grant the Motion for Decision.

By its failure to respond to the Complaint, the Respondent is deemed to have admitted to knowingly violating 10 C.F.R. § 429.12(a) on the basis that the Respondent failed to submit the required certification. The Respondent is also deemed to have violated 10 C.F.R. § 429.102(a)(1) by its failure to file the required certification reports. This failure subjects the Respondent to a daily civil penalty under 10 C.F.R. § 429.120 for each of its violations of section 429.102(a)(1), with respect to each of its subject models.⁴ In the present case, the Respondent has been also deemed to have admitted that it failed to submit reports for period of at least 365 days for each of the two models of Showerheads it placed into commerce. It follows, therefore, that the allegations made in the Complaint are supported by more than a preponderance of the evidence. Accordingly,

⁴ Section 429.120 of 10 C.F.R. provides:

Any person who knowingly violates any provision of § 429.102(a) may be subject to assessment of a civil penalty As to § 429.102(a)(1) with respect to failure to certify, and as to § 429.102(a)(2), (5) through (9), each unit of a covered product or covered equipment distributed in violation of such paragraph shall constitute a separate violation. For violations of § 429.102(a)(1), (3), and (4), each day of noncompliance shall constitute a separate violation for each basic model at issue.

10 C.F.R. § 429.120.

OGCE is entitled to seek a civil penalty from the Respondent. In the MFD, OGCE has requested that a civil penalty of \$395,660 be imposed.

In 2015, Congress amended 28 U.S.C. § 2461 to state that increases in civil monetary penalties apply to penalties assessed after the increase takes effect, including penalties that are assessed after an increase takes effect whose associated violation predated the increase. *See* 28 U.S.C. § 2461, note Sec. 6 (“Any increase under [the Federal Civil Penalties Inflation Adjustment Act of 1990] in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.”). The current maximum civil penalty for the violations at issue in this case is \$560 per model, per day, resulting in a maximum allowable penalty of \$408,800 (\$560 daily penalty x 365 days x 2 models). 10 C.F.R. § 429.120; Inflation Adjustment of Civil Monetary Penalties, 89 Fed. Reg. 1025 (January 9, 2024). In the MFD, OGCE has requested a civil penalty of \$395,660, which is less than the maximum penalty allowed in this matter. I find nothing in the record that would merit reducing the penalty requested by OGCE. Accordingly, I find that OGCE is entitled to assess a civil penalty of \$395,660.

IV. RECOMMENDATION AND ORDER

For the forgoing reasons, it is my recommendation that the Respondent, LiWei-shop, be assessed a civil penalty of \$395,660.

It Is Therefore Ordered That:

- (1) The Motion to Deem the Allegations of the Complaint Admitted filed by the Office of the Assistant General Counsel for Enforcement on February 12, 2024, is granted;
 - (2) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on February 12, 2024, is granted;
 - (3) The recommended civil penalty that LiWei-shop be assessed is \$395,660.
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- (4) 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.

Richard A. Cronin, Jr.
Administrative Law Judge
Office of Hearings and Appeals
United States Department of Energy