

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

In the Matter of)	Case No.:	EEE-24-0009
)		
Ningbo Xingtai Technology Co., Ltd.)		
)		
Filing Date: January 31, 2024)		
_____)		

Issued: April 11, 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 31, 2024, against Ningbo Xingtai Technology Co., Ltd. (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 six models of large diameter ceiling fans,¹ in commerce in the United States without submitting a report to DOE certifying that the fans complied with the applicable DOE energy conservation standards, as required by and 10 C.F.R. § 429.102(a)(1).² In this Decision, I grant both motions.

I. BACKGROUND

¹ A “[c]overed product” is defined to include ceiling fans. 42 U.S.C. §§ 6291(2), 6292(a)(20); 10 C.F.R. § 430.2.

² Section 429.102(a)(1) of 10 C.F.R. provides that, among the listed prohibited activities is:

(1) 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 429.66.

On or about October 16, 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 \$296,745 as an alternative to the then maximum allowed civil penalty of \$1,186,980. MFD Exhibit (Ex.) 1 at 1 (Notice of Proposed Civil Penalty (NPCP)). The Respondent failed to respond to the NPCP. MFD at 2. On January 31, 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. Ex. 3 at 7. 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 March 1, 2024. AAPCA at § 8(a). The Respondent has failed to file any response to the Complaint. MFD at 2.

On March 4, 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). The MFD further requested that I issue a decision pursuant to AAPCA at § 18(f)(5) based upon those deemed admissions, finding that Respondent violated 10 C.F.R. § 429.102(a)(1). *Id.* at 5–6. The MFD asks that I recommend that Respondent pay a civil penalty in the amount of \$296,745. *Id.* The Respondent’s deadline to reply to the MFD was April 3, 2024. AAPCA at § 8(a). The Respondent has not filed any response to the MFD.

II. FINDINGS OF FACT AND ANALYSIS

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 used the email address listed on the Respondent’s website to serve the Complaint and MFD. MFD at 2; MFD at Ex. 2 (email transmitting Complaint to Respondent); March 4, 2024 E-mail from Pejumae Guscott, OGCE, to OHA and Respondent (transmitting MFD to Respondent and OHA) (March 4 Email); MFD at Ex. 5 (copy of Respondent’s web page containing email address for Respondent).³ Given these facts, I find that OGCE used a verified email address to serve the Respondent and that Respondent has not answered the Complaint or MFD. *See* AAPCA at § 2 (stating, “If 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, I find that OGCE has made an adequate service of its pleadings in this matter.

In light of the Respondent’s failure to adequately answer the Complaint, pursuant to AAPCA § 8(d), I will grant OGCE’s Motion to Deem the Allegations of the Complaint Admitted against the

³ The Respondent’s website provided one contact email address, sales@stservo.com. MFD at Ex. 5 at 1.

Respondent. Accordingly, I make the following findings of fact based upon the allegations made in the Complaint:

1. At all times relevant herein, Respondent was both a manufacturer of consumer products, including covered products such as large-diameter ceiling fans, and a person under 10 C.F.R. § 430.2.
2. Thus, Respondent was and is 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. Respondent manufactured ceiling fans identified as HVLS-FD1A 14', HVLS-FD1A 16', HVLS-FD1A 18', HVLS-FD1A 20' (HVLS-FD1A61), HVLS-FD1A 20' (HVLS-FD1A61-2), and HVLS-FD1A 24' (the "subject models").
4. Respondent has made the subject models available for sale in the United States, via the website www.cnxttech.com, for at least 365 days.
5. The subject models are large-diameter ceiling fans subject to the energy conservation standards at 42 U.S.C. § 6295(ff) and 10 C.F.R. § 430.32(s).
6. Before making the subject models available for sale in the United States, Respondent did not submit to DOE certification reports certifying that the basic models containing the subject models comply with the applicable energy conservation standards.
7. Respondent distributed the subject models in commerce for at least 365 days by making them available for sale in the United States via the www.cnxttech.com website.
8. Respondent failed to submit to DOE the certification reports required under 10 C.F.R. § 429.12(a), certifying that the basic models containing the subject models meet the applicable energy conservation standards, before Respondent distributed the subject models 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 reports.
10. Accordingly, Respondent knowingly violated 10 C.F.R. § 429.102(a)(1) by failing to certify a covered product properly.

MFD at 4-5; Complaint at ¶¶ 19–28.

As indicated above, I find that the Respondent has admitted to knowingly failing to submit to DOE the required certification as required by 10 C.F.R. § 429.12(a). Additionally, the Respondent's failure to file the required certification reports is a violation of 10 C.F.R. § 429.102(a)(1).

Regarding OGCE's Motion for Decision, section 18(f)(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.*

As discussed above, by its failure to adequately respond to the Complaint, the Respondent is deemed to have admitted that it knowingly violated 10 C.F.R. § 429.12(a) by failing to submit the required certification reports for its ceiling fans. The Respondent's failure to file a certification report also violates 10 C.F.R. § 429.102(a)(1). This failure, pursuant to 10 C.F.R. § 429.120,⁴ subjects the Respondent to a daily civil penalty for each its subject model's violations of section 429.102(a)(1). In the present case, the Respondent has been deemed to admit that it failed to submit the required report for a period of at least 365 days for the ceiling fan models it placed into commerce. Consequently, because I find that there is no genuine issue of material fact in this matter and that OGCE would be entitled to impose a civil penalty as a matter of law, I will grant OGCE's Motion for Decision.

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 civil penalty for the violations at issue in this case is \$560 per model, per day, resulting in a maximum allowable penalty of \$1,226,400 (\$560 daily penalty x 365 days x 6 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 \$296,745, which is less than the maximum penalty allowed in this matter. Accordingly, I find that OGCE is entitled to request a civil penalty of \$296,745.

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.

IV. RECOMMENDATION AND ORDER

For the forgoing reasons, it is my recommendation that the Respondent, Ningbo Xingtai Technology Co., Ltd. be assessed a civil penalty of \$296,745.

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 March 4, 2024, is granted;
- (2) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on March 4, 2024, is granted;
- (3) The recommended civil penalty that Ningbo Xingtai Technology Co., Ltd. be assessed is \$296,745.
- (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