

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

In the Matter of)
)
TrendzPeak,)
)
Filing Date: July 31, 2023)
_____)

Case No.: EEE-23-0008

**INITIAL DECISION
MOTION FOR DECISION**

Steven L. Fine, Administrative Law Judge:

This Initial Decision considers a combined Renewed Motion to Deem the Allegations of the Complaint Admitted and Renewed Motion for Decision (collectively referred to as RMFD) filed on June 11, 2024, by the Department of Energy’s (DOE) Office of the Assistant General Counsel for Enforcement (OGCE) concerning a complaint (Complaint) filed by OGCE on July 31, 2023, against TrendzPeak (Respondent). The Complaint was filed under the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (the 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 AACPA).¹ The Complaint alleges that Respondent violated the provisions of the EPCA and its implementing regulations by distributing a covered product, specifically a showerhead² (the Showerhead), in commerce in the United States without first submitting a report to DOE certifying that the Showerhead complied with the applicable DOE energy conservation standard, as required by 10 C.F.R. § 429.12(a)–(d) and 10 C.F.R. § 429.102(a)(1).³ The RMFD requests that I issue a decision: (1) deeming the allegations set forth in the Complaint as admitted, since Respondent has failed to timely file an answer, (2) finding that Respondent violated the EPCA and its implementing regulations, and (3) recommending that

¹ The AACPA may be viewed at: <https://www.energy.gov/gc/doe-procedures-administrative-adjudication-civil-penalty-actions>.

² DOE’s implementing regulations define a showerhead as “a component or set of components distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, excluding safety shower showerheads.” 10 C.F.R § 430.2. A “[s]afety shower showerhead” is further defined as “a showerhead designed to meet the requirements of ISEA Z358.1.” 10 C.F.R. § 430.2.

³ The Complaint identifies the Showerhead as the “Vortex™ High pressure spinning Massaging Water Saving Shower Head.” RMFD Exhibit (Ex. 4) at 4.

Respondent pay a civil penalty in the amount of \$183,595. For the reasons set forth below, I am granting OGCE's RMFD.

I. BACKGROUND

A. The DOE's Certification, Compliance, and Enforcement Program for Consumer Products and Commercial and Industrial Equipment

In order to ensure that products subject to the EPCA's energy conservation standards comply with those standards when distributed in commerce in the United States, the implementing regulations require their manufacturer to submit a certification report to DOE for each basic model of a covered product certifying that it meets the applicable energy conservation standard. 10 C.F.R. § 429.12(a). The manufacturer must submit this certification report before distributing a basic model of a covered product in commerce and annually thereafter. 10 C.F.R. Part 430; 10 C.F.R. § 429.12(a).

B. The DOE's Procedures for Administrative Adjudication of Civil Penalty Actions (AACPA)

Under the AACPA, Respondents are 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. AACPA § 8(a). The AACPA further provides that “[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.” AACPA § 8(d).

C. Factual and Procedural History

On August 5, 2022, OGCE issued a Notice of Proposed Civil Penalty (NPCP) to Respondent, pursuant to 10 C.F.R. § 429.122. RMFD Exhibit (Ex.) 1 at 1. The NPCP alleged that Respondent had manufactured and distributed the Showerhead in commerce in the United States after it had knowingly failed to submit mandatory certification reports to DOE certifying that the Showerhead met the applicable energy conservation standards set forth at 10 C.F.R. § 430.32(p) and 42 U.S.C. § 6295(j).⁴ Ex. 1 at 2. The NPCP proposed a civil penalty of \$183,595. Ex. 1 at 1. Respondent's only response to the NPCP was an August 6, 2022, email in which it stated: “[W]e are not even located in the USA you idiots, this is a business based in [C]hina, it's a drop shipping business.” Ex. 5 at 1.

On July 31, 2023, OGCE referred the civil penalty action to an Administrative Law Judge (ALJ) for a hearing by filing the Complaint with DOE's Office of Hearings and Appeals (OHA) and serving Respondent with a copy of the Complaint.⁵ Ex. 4 at 7. Respondent did not file an answer

⁴ The EPCA defines “[e]nergy conservation standard” as “a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use, or, in the case of showerheads, faucets, water closets, and urinals, water use, for a covered product.” 42 U.S.C. § 6291(6)(A).

⁵ 10 C.F.R. § 429.122(b)(3) provides that a NPCP must inform its recipient of the opportunity to either elect to have the DOE's General Counsel issue an order assessing the civil penalty proposed in the NPCP or to request an

to the Complaint, but rather responded by submitting two emails on July 31, 2023, and August 2, 2024, asserting that DOE does not have jurisdiction over it because it is a “company with no physical presence in the U.S” and because the Showerhead “was manufactured by a third-party vendor in China.” Ex. 7 at 1; Ex. 9 at 1.

On January 26, 2024, OGCE filed a combined Motion to Deem the Allegations of the Complaint Admitted and Motion for Decision (collectively referred to as the MFD) contending that Respondent’s two email replies were not a legally adequate answer to the Complaint under AACPA § 8 and, citing § 8(d), sought a ruling deeming each of the allegations set forth in the Complaint as admitted. MFD at 3–4. The MFD further requested that I issue a decision pursuant to AACPA § 18(f)(5) based upon those deemed admissions, (1) finding that Respondent violated 10 C.F.R. § 429.102(a)(1); and (2) recommending that Respondent pay a civil penalty in the amount of \$183,595. MFD at 7. Respondent did not file a response to the MFD.

On May 16, 2024, I issued an interlocutory decision finding the two emails to be Motions to Dismiss. *TrendzPeak*, OHA Case No. EEE-23-0008 (May 16, 2024). However, I further found that the arguments set forth in Respondent’s Motions to Dismiss were clearly without merit and denied Respondent’s Motions to Dismiss. Turning to the OGCE’s motions, I found that since Respondent had filed timely Motions to Dismiss, the sanction set forth in AACPA § 8(d) could not be invoked since the AACPA allows a respondent to file a motion pursuant to § 18 instead of filing an answer. AACPA § 8(a). *TrendzPeak* at 4. Accordingly, I denied OGCE’s MFD. *TrendzPeak* at 4. Once I denied Respondent’s Motions to Dismiss, AACPA § 18(f) required Respondent to “file an answer not later than 20 days after service of the ALJ’s denial of the motion.” Respondent has not filed an answer.

On June 11, 2024, OGCE filed the present RMFD requesting that, in light of Respondent’s failure to timely file an answer, I: (1) invoke AACPA § 8(d) to deem each of the Complaint’s allegations to be admitted as true, (2) find, based on these admitted allegations, that Respondent violated the EPCA and its implementing regulations, and (3) recommend that Respondent pay a civil penalty in the amount of \$183,595.

II. ANALYSIS

A. Renewed Motion to Deem the Allegations of the Complaint Admitted

Under the AACPA, a respondent is required to file either a written answer to the complaint, or a motion pursuant to § 18(f)(1)–(2), “not later than 30 days after service of the complaint.” AACPA § 8(a). Respondent initially complied with this requirement, by filing its Motions to Dismiss. However, once I denied those Motions to Dismiss, the AACPA required Respondent to file an answer “not later than 20 days after service of the ALJ’s ruling or order on the motion to dismiss.” AACPA § 18(f)(2)(i). Over 20 days passed after I issued my decision denying Respondent’s Motions to Dismiss without Respondent having filed an answer.

administrative hearing before an ALJ. 10 C.F.R. § 429.124(a)(1). If the NPCP recipient fails to respond within thirty days, the regulations instruct DOE to refer the civil penalty action to an ALJ for a hearing. 10 C.F.R. § 429.124(c).

OGCE's RMFD requests that I invoke § 8(d) and deem Respondent's failure to file an answer to the Complaint an admission of the truth of each allegation contained in the Complaint. Respondent has not contended good cause exists for its failure to respond, and the existing record does not support such a conclusion. Accordingly, I deem each of the allegations set forth in the Complaint to be admitted by Respondent.

B. Renewed Motion for Decision

The RMFD further contends that the existing record, which includes these deemed admissions, establishes, without any genuine issue of material fact, that Respondent performed a prohibited act under the EPCA and its implementing regulations for which the assessment of a civil penalty is warranted. Accordingly, the RMFD requests that I issue a decision: (1) finding that Respondent violated the EPCA and its implementing regulations, and (2) recommending that Respondent pay a civil penalty of \$ 183,595. To this end, OGCE cites the AACPA, which provides that an ALJ must grant a motion for decision if the moving party "show[s] 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." AACPA § 18(f)(5). For the reasons set forth below in Section III of this decision, the record shows that no genuine issue of material facts exists and that the assessment of a civil penalty in the amount of \$183,595 against Respondent is warranted, as a matter of law.

III. FINDINGS OF FACT AND LAW

Having deemed each allegation contained in the Complaint to be admitted, I have made the following findings of fact and conclusions of law:

1. Respondent is a "person" under 10 C.F.R. § 430.2;⁶
2. The Showerhead is a "showerhead" as defined by 10 C.F.R § 430.2;
3. Showerheads are "covered products." 42 U.S.C. § 6292(a)(15);
4. The Showerhead is therefore subject to the conservation standards set forth at 10 C.F.R. § 430.32(p) and 42 U.S.C. § 6295(j);
5. Respondent "manufactured, produced, assembled, or imported" the Showerhead, and was therefore the "manufacturer" of the Showerhead. 42 U.S.C. § 6291(10) and 6291(12); 10 C.F.R. § 430.2;
6. For at least 365 days, Respondent knowingly distributed the Showerhead in commerce in the United States by making the Showerhead available for sale in the United States on its website, <https://trendzpeak.com>;

⁶ A "person" is "any individual, corporation, company, association, firm, partnership, society, trust, joint venture or joint stock company, the government, and any agency of the United States or any State or political subdivision thereof." 10 C.F.R. § 430.2; *accord* 42 U.S.C. § 6202(2).

7. Pursuant to 10 C.F.R. § 429.12(a), Respondent was required to submit a certification report to DOE certifying that the Showerhead complied with the applicable DOE energy conservation standards, both before distributing the Showerhead, and annually thereafter;
8. To this date, Respondent has not filed a certification report certifying that the basic model containing the Showerhead complied with the relevant energy conservation standard to DOE;⁷
9. Respondent has been, at all times relevant to the present proceeding, 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;
10. Respondent knew or should have known that it had not submitted any certification reports to DOE certifying that the Showerhead met the applicable energy conservation standards before Respondent distributed the Showerhead in commerce in the United States;
11. Respondent violated 10 C.F.R. § 429.102(a)(1) by knowingly distributing the Showerhead in commerce in the United States for at least 365 days without submitting the certification reports required under 10 C.F.R. § 429.12(a) to DOE certifying that the basic model containing the Showerhead met the applicable energy conservation standards;
12. Pursuant to 10 C.F.R. § 429.120, Respondent is subject to a civil penalty for each knowing violation of 10 C.F.R. § 429.102(a)(1);
13. Under 10 C.F.R. § 429.120, each day of noncompliance with 10 C.F.R. § 429.102(a)(1) constitutes a separate violation for each model not certified according to DOE regulations;
14. Respondent has therefore committed 365 knowing violations of 10 C.F.R. § 429.102(a)(1) (one product multiplied by 365 days);
15. From January 10, 2022, through January 12, 2023, any manufacturer who knowingly failed to certify a covered product properly in violation of 10 C.F.R. § 429.102(a)(1) is subject to a civil penalty of up to \$503 per basic model per day. Inflation Adjustment of Civil Monetary Penalties (the IACMP), 87 Fed. Reg. 1061 (Jan. 10, 2022); 10 C.F.R. § 429.120 (2023); and 28 U.S.C. § 2461 (amended 2015);

⁷ The regulations define “basic model” as “all units of a given type of covered product (or class thereof) manufactured by one manufacturer; having the same primary energy source; and, which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency”; . . . and “[w]ith respect to faucets and showerheads: 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.” 10 C.F.R. § 430.2.

16. A maximum civil penalty in the amount of \$183,595 (one product multiplied by 365 days multiplied by a penalty of \$503 per violation) would be allowed under the regulations and statutes; and
17. A civil penalty in the amount of \$183,595 is therefore appropriate.

IV. CONCLUSION

Based on the existing record, OGCE has shown there is no genuine issue of material fact and it is entitled to a decision as a matter of law. Accordingly, OGCE's Renewed Motion to Deem the Allegations of the Complaint Admitted and Renewed Motion for Decision are granted. I recommend an assessment of a civil penalty in the amount of \$183,595 against Respondent.

V. ORDER AND RECOMMENDATION

For These Reasons:

- (1) The Renewed Motion to Deem the Allegations of the Complaint Admitted filed by the Office of the Assistant General Counsel for Enforcement on June 11, 2024, is **GRANTED**;
- (2) The Renewed Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on June 11, 2024, is **GRANTED**;
- (3) I recommend that TrendzPeak be assessed a civil penalty of \$183,595, as requested by the Office of the Assistant General Counsel for Enforcement; and
- (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.

Steven L. Fine

Administrative Law Judge
Office of Hearings and Appeals
United States Department of Energy