

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

In the Matter of:)	
)	
Saniborain LLC)	
)	
Filing Date: March 26, 2024)	Case No.: EEE-24-0012
)	
_____)	

**Initial Decision
Motion for Decision**

Steven L. Fine, Administrative Law Judge:

This Initial Decision considers a combined Motion to Deem the Allegations of the Complaint Admitted and a Motion for Decision (collectively referred to as MFD) filed on May 7, 2024, by the Department of Energy’s (DOE) Office of the Assistant General Counsel for Enforcement (OGCE). The MFD concerns a complaint (Complaint) filed by OGCE on March 26, 2024, against Saniborain LLC (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 committed a prohibited act under the EPCA and its implementing regulations by failing to respond, as required by 10 C.F.R. § 429.102(a)(1), to two Requests for Test Data (TDRs) issued to it by the DOE on November 15, 2023. The MFD 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 in the amount of \$70,560. For the reasons set forth below, I am granting OGCE’s motions.

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

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). DOE may, at any time, "request any information relevant to determining compliance with any requirement . . . including the data underlying certification of a basic model." 10 C.F.R. § 429.106(b). Any "failure of a manufacturer to provide, maintain, permit access to, or copying of records required to be supplied under the [EPCA] and this part or failure to make reports or provide other information required to be supplied under the [EPCA] and this part . . ." constitutes a "prohibited act" under DOE's regulations. 10 C.F.R. § 429.102(a)(1). When a manufacturer has committed a prohibited act, DOE may assess "a civil penalty for knowing violations." 10 C.F.R. § 429.106(b)(4).

B. Factual and Procedural History

The Complaint alleges that Respondent manufactured and distributed in commerce two covered products: showerheads identified as "Venus" and "SO-24" (Showerheads).² MFD Exhibit (Ex.) G at 4. DOE further alleges that a third party submitted certification reports for both Showerheads to DOE in July 2023 on behalf of Respondent. MFD Ex. G at 4. On November 15, 2023, DOE issued TDRs to Respondent for both Showerheads, pursuant to 10 C.F.R. § 429.106, requiring that Respondent submit all test data, including complete test reports, underlying its certification of both Showerheads, by December 6, 2023. MFD Ex. O at 1; MFD Ex. P at 1. Respondent failed to respond to either TDR.

On February 8, 2024, OGCE issued a Notice of Proposed Civil Penalty (NPCP) to Respondent, pursuant to 10 C.F.R. § 429.122. MFD Ex. A at 1. The NPCP alleged that Respondent had failed to provide the information required by the November 15, 2023, TDRs and proposed assessing Respondent with a civil penalty of \$70,560. MFD Ex. A at 1. Respondent failed to respond to the NPCP.

On March 26, 2023, pursuant to 10 C.F.R. § 429.124(c), OGCE referred this case to an Administrative Law Judge (ALJ) by filing a Complaint with DOE's Office of Hearings and

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.

Appeals (OHA) and serving Respondent with a copy of the Complaint.³ MFD Ex. D. I was appointed as the ALJ on that day. The Complaint alleged that Respondent violated 10 C.F.R. § 429.102(a)(1) and § 429.106(b), when it knowingly failed to submit the information requested by the November 15, 2023, TDRs. MFD Ex. G at 5.

On March 28, 2024, I issued an acknowledgement letter in which I reminded the parties that Respondent's answer to the Complaint, or a motion filed pursuant to § 18(f)(1)–(2) of the AACPA, was due by the 30th day after March 26, 2024, under § 8(a) of the AACPA.⁴ MFD Ex. N at 1. Respondent failed to file any response to the Complaint. On May 7, 2024, after Respondent's answer or motion pursuant to AACPA § 18(f)(1)–(2) was due, OGCE filed the present MFD. The deadline for Respondent's response to the MFD elapsed on June 3, 2024, without any further response from Respondent. *See* AACPA at § 18(d) (providing 25 days for a response to a motion filed under § 18 of the AACPA).

II. ANALYSIS

A. 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 at § 8(a). Respondent failed to comply with this requirement. The AACPA further provides that “[a] person’s failure to timely file an answer . . . will be deemed an admission of the truth of each allegation contained in the complaint.” AACPA at § 8(d).

OGCE’s MFD requests that I invoke § 8(d) and deem Respondent’s failure to file either a written answer to the Complaint, or a motion pursuant to § 18(f)(1)–(2), 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. Motion for Decision

The MFD 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 the regulations for which the assessment of a civil penalty is warranted. Accordingly, the MFD 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 \$ 70,560. To this end, OGCE cites the AACPA, which provides that an ALJ must grant an MFD 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 at § 18(f)(5). For the reasons set forth below in Section III of this decision, the record shows that no genuine issue

³ 10 C.F.R. § 429.124(c) provides “if the respondent fails to respond to a notice issued under § 10 C.F.R. 429.120 or otherwise fails to indicate its election of procedures, DOE shall refer the civil penalty action to an ALJ for a hearing under § 429.126.”

⁴ Under the AACPA, a respondent can file a written motion in lieu of a filing an answer. AACPA § 8(a).

of material facts exists and that the assessment of a civil penalty in the amount of \$70,560 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;⁵
2. Both of the Showerheads are “showerheads” as defined by 10 C.F.R § 430.2;
3. Both of the Showerheads are “covered products.” 42 U.S.C. § 6292(a)(15);
4. The Showerheads are 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 Showerheads, and was therefore the “manufacturer” of the Showerheads. 42 U.S.C. § 6291(10) and 6291(12); 10 C.F.R. § 430.2;
6. Respondent knowingly distributed the Showerheads in commerce in the United States by making the Showerheads available for sale in the United States via the internet on amazon.com;
7. 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;
8. On November 15, 2023, pursuant to 10 C.F.R. § 429.106, DOE issued to Respondent two TDRs requesting that Respondent submit all test data, including complete test reports, underlying its certification of the Showerheads’ basic models;
9. Respondent has failed to provide the requested test data to DOE;
10. Respondent knew, or should have known, that it had not submitted the information requested in the TDRs for basic models Venus and SO-24 underlying its certification of both Showerheads, as requested by the DOE on November 15, 2023;

⁵ 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).

11. Respondent violated 10 C.F.R. § 429.102(a)(1), for at least 63 days, by knowingly failing to submit to DOE the test data required under 10 C.F.R. §§ 430.23(t) and 429.71 for both of the Showerheads requested under 10 C.F.R. § 429.106;
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;
14. Respondent has therefore committed 126 knowing violations of 10 C.F.R. § 429.102(a)(1) (two products multiplied by 63 days);
15. Pursuant to Inflation Adjustment of Civil Monetary Penalties (the IACMP), 89 Fed. Reg. 1025 (Jan. 9, 2024); 10 C.F.R. § 429.120 (2023); and 28 U.S.C. § 2461 (amended 2015) Respondent is subject to a civil penalty of up to \$560 per basic model per day for each violation assessed after January 9, 2024;
16. Therefore, a maximum civil penalty in the amount of \$70,560 (two products multiplied by 63 days multiplied by a penalty of \$560 per violation) would be allowed under the regulations and statutes; and
17. A civil penalty in the amount of \$70,560 is therefore appropriate.

IV. CONCLUSION

Based on the existing record, OGCE has shown there is no genuine issue of material fact and that it is entitled to a decision as a matter of law. Accordingly, OGCE's Motion for Decision is granted. I recommend an assessment of a civil penalty in the amount of \$70,560 against Respondent.

V. ORDER AND RECOMMENDATION

For These Reasons:

- (1) The Motion to Deem the Allegations of the Complaint Admitted filed by the Office of the Assistant General Counsel for Enforcement on May 7, 2024, is **GRANTED**;
- (2) The Motion for Decision filed by the Office of the Assistant General Counsel for Enforcement on May 7, 2024, is **GRANTED**;
- (3) I recommend that Saniborain LLC be assessed a civil penalty of \$70,560, 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