

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

In the Matter of:

Kenneth Grill
(Showerheads)

)
)
) Case Number: 2011-SW-2902
)

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: June 10, 2011

Number of alleged violations: Over 5,000

Maximum possible assessment¹: \$1,000,000

Proposed civil penalty: \$500,000

The Office of the General Counsel of the U.S. Department of Energy (DOE) alleges that Kenneth Grill violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, 10 C.F.R. Part 430, or both.

Specifically, DOE alleges:

1. Kenneth Grill has sold over 5,000 showerheads within the United States.
2. Mr. Grill manufactured the showerheads by altering them to consume more than the 2.5 gallons per minute permitted under 42 U.S.C. § 6295(j) and 10 C.F.R. § 430.32(p).
3. These 5,000 or more units were manufactured and distributed in the United States during the period between June 3, 2006, and February 7, 2011.
4. The showerheads referenced in paragraph 1 are “covered products” as defined by 42 U.S.C. § 6291 and 10 C.F.R. § 430.2.

The following information is provided in question and answer format to help explain your legal obligations and options.

What do I do now?

DOE is offering a settlement of \$10,000 if you submit the signed compromise agreement, pay the fine within 30 days of the date of this notice, and cease all sales of unlawful showerheads.

¹ The maximum possible assessment assumes that 5,000 units were distributed.

You may settle the case for \$20,000 if you submit the signed compromise agreement and pay the fine between 31 and 60 days after the date of this notice, and cease all sales of unlawful showerheads.

If you do not choose to settle the case, DOE may seek the maximum penalty authorized by law. You have other options as described below.

What are my other options?

Within thirty (30) calendar days, you must select Option 1 or Option 2 below if you do **not** agree to DOE's settlement offer.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within 30 calendar days of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge (ALJ) for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

When must I respond?

You must submit a signed compromise agreement within 30 calendar days of the date of this notice to pay the lowest fine. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE within thirty (30) calendar days of the date you received this notice of your selection of Option 1. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

How should I submit my response?

To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By Email to: Laura.Barhydt@hq.doe.gov

By Fax to: (202) 586-3437

By Mail to: Laura Barhydt
U.S. Department of Energy
Office of the General Counsel, GC-32
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days after receiving this notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing.

What should I include in my response?

1) If you wish to accept DOE's settlement offer, you should submit the signed compromise agreement. If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.

2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act (DCIA) requires all Federal agencies to obtain the TIN in any case which may give rise to a debt to the government.

3) ****To avoid additional liability, you should immediately cease distribution of any covered products that do not meet the applicable water conservation standard at 10 C.F.R. § 430.32.****

How did you calculate the maximum possible assessment?

Federal law sets a maximum civil penalty for each unit of a covered product that does not meet an applicable energy or water conservation standard that you have manufactured and distributed in commerce in the U.S. In the maximum penalty calculation in this notice, DOE has estimated that you have distributed at least 6,000 units in the U.S. over the last five (5) years. This number would be adjusted based on any additional information obtained if the case goes to hearing.

The maximum penalty is \$200 per unit. *See* 74 Federal Register 66029 (Dec. 14, 2009).

Issued by:



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement