

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

In the Matter of:

Mueller Streamline Co.
(Faucets)

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) Case Number: 2011-SW-2802
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Issued: July 19, 2011

NOTICE OF NONCOMPLIANCE DETERMINATION

The Department of Energy (DOE or the Department) requested test data from Mueller Streamline Co. (Mueller) on May 17, 2011, demonstrating that faucet model 120-003NL meets the applicable federal water conservation standards. On June 24, 2011, Mueller provided to DOE a test report and letter acknowledging that faucet model 120-003NL fails to meet the applicable Federal water conservation standards.

FINDINGS

Based on the facts stated above, DOE has determined that the faucet listed above fails to meet the applicable federal water conservation standards.

MANDATORY ACTIONS BY MUELLER

In light of the above findings, with respect to faucet model 120-003NL, Mueller must take the following steps in accordance with 10 C.F.R. § 429.114(a):

- (1) Immediately cease distribution in commerce of model 120-003NL faucets;
- (2) Provide immediate written notification to all persons to whom Mueller has distributed model 120-003NL faucets that the faucets do not meet the applicable standard;
- (3) Provide within 15 calendar days of the date of this Notice a copy of the written notification required by paragraph (2) and a list of the parties Mueller notified; and
- (4) Provide within 30 calendar days of the date of this Notice any and all records, reports, and other documentation pertaining to the acquisition, ordering, storage, shipment, or sale of the unit combinations listed above.

OPTIONAL ACTIONS BY MUELLER

In addition to the mandatory steps listed above that Mueller must complete, Mueller may elect to modify the model 120-003NL faucet to bring it into compliance with the applicable standard.

The modified faucet shall be treated as a new basic model under the regulations and must be certified in accordance with the provisions of 10 C.F.R. Part 429, Subpart B.¹ Prior to distribution in commerce, Mueller must provide to DOE test data demonstrating the modified faucet complies with the applicable standard. All faucets must be tested in accordance with DOE regulations, and Mueller shall bear the costs of all testing that is conducted.

If, after this testing, DOE determines that the model 120-003NL faucet complies with the applicable standard, DOE shall issue a notice of allowance to permit Mueller to resume the distribution of the modified faucet. Until DOE determines that the modified faucet complies with the applicable standard, no model 120-003NL faucets may be sold or otherwise distributed by Mueller in the United States.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THIS NOTICE

Should Mueller fail to cease immediately the distribution of all model 120-003NL faucets, this letter serves as notice that DOE will seek a judicial order within 30 calendar days to restrain further distribution. If, however, Mueller provides DOE with a satisfactory statement within that 30-day period detailing the steps that Mueller will take to ensure that units of the noncompliant model 120-003NL faucets will no longer be distributed in commerce, DOE may elect to defer seeking such an order until a more appropriate time, if needed.

The distribution of any non-compliant faucet, including during any manufacturer initiated testing as described above, may result in DOE seeking all appropriate legal remedies available under Federal law, including injunctive relief and civil penalties with respect to each unit of the faucet distributed in violation of Federal law.



Timothy G. Lynch
Deputy General Counsel for
Litigation and Enforcement

¹ Effective July 5, 2011, the certification provisions at 10 C.F.R. § 430.62 were replaced by certification provisions under new 10 C.F.R. Part 429, Subpart B, entitled "Certification."