Before the
U.S. Department of Energy
Washington, D.C. 20585

In the Matter of:	)	Case Number: 2010-CW-1404
Watermark Designs Holdings, Ltd.	)	
d/b/a Watermark Designs, Ltd.	)	

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: January 25, 2010

To: Avi Abel
Watermark Designs Holdings, Ltd.
491 Wortman Avenue
Brooklyn, New York 11208

Number of alleged violations: 37

Maximum possible assessment: $110 per day per violation prior to January 13, 2010. $200 per day per violation beginning January 13, 2010. Note: Failure to submit a certification report is a separate violation for each basic model.

Proposed civil penalty: $1,080,480

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

Specifically, DOE alleges:

1. Manufacturer sells and/or distributes a variety of showerheads in commerce in the United States of America including, but not limited to, models: SH-403, SH-503, SH-603, SH-DLX, SH-FAL50, SH-FAL70, SH-FAL90, SH-FRS20, SH-FRS30, SH-FRS50, SH-LFT30, SH-LFT50, SH-OCT50, SH-POR50, SH-POR70, SH-PRE50, SH-PRE75, SH-RH070, SH-RMN30, SH-RMN50, SH-S1000, SH-S140, SH-S150, SH-S525, SH-S625, SH-SQ050, SH-SQ075, SH-TIT30, SH-TIT50, SH-URB30, SH-URB50, SS-RH075, SS-RH080, SS-RH400, SS-RH500, SS-RH600, and SS-RH700.
2. These models have been in distribution in the U.S. for at least 365 days.

3. The showerheads referenced in paragraph 1 are "covered products" as defined by 42 U.S.C. 6291 and 10 C.F.R. § 430.2.
4. Manufacturer failed to submit a certification report to the DOE for each basic model of covered product(s) as required by 10 C.F.R. § 430.62.
5. Manufacturer submitted a compliance statement to the DOE that failed to meet the requirements of 10 C.F.R. § 430.62.

When must I respond?

You must respond within thirty (30) calendar days after the receipt of this notice if you wish to choose Option 1, as described below. You may make a written request for an extension, and DOE will notify you if your request has been granted or not. Due to security concerns, mail delivery to DOE from the U.S. Postal Service (USPS) is experiencing significant delays. As a result, you should allow at least 72 hours for delivery for USPS overnight service. To assure timely receipt, DOE strongly encourages you to submit your response by e-mail, fax, or an express delivery service.

What are my options?

Within thirty (30) calendar days, you must select Option 1 or Option 2 below. At any time, you may choose Option 3 to enter into an agreement with the DOE to resolve this matter.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within 60 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.

Option 3: Regardless of whether you choose Option 1 or 2, at any time you may also seek a compromise agreement from the DOE. A proposed agreement and order is attached to this notice.

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 the extension granted by DOE, DOE will refer the case to an ALJ for a full hearing. However, you may at any time contact DOE to seek a settlement.

What should I include in my response?

1) You should indicate whether you are interested in pursuing a compromise agreement.

2) You must specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2.

3) You should include any information that would show that the proposed penalty exceeds the statutory maximum civil penalty. For example, you should submit any evidence that shows that a particular product has been distributed in the U.S. for less than 365 days or that two or more of the models identified are the same basic model.

4) You should include any information that would show that the proposed penalty would affect your ability to continue in business or that you are unable to pay the proposed penalty. You should also include any information that would establish that you are considered a small business by the Small Business Administration (see 13 C.F.R. Part 121).

5) 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.

6) **To avoid additional liability, you should also immediately submit the required compliance statement and certification report for all basic models of covered products as required by 10 C.F.R. 430.62.**

What is the maximum penalty DOE can assess?

Federal law sets a maximum civil penalty for each day you fail to submit to DOE the required information for a covered product. By regulation, you must submit a certification report for each basic model and a compliance statement. Therefore, your maximum penalty is calculated based on each day you distributed each basic model in commerce in the U.S. without having submitted a certification report and an additional penalty calculated per day for failure to submit a compliance statement. In the maximum penalty calculation in this notice, DOE assumes that each basic model has been in distribution in the U.S. for at least 365 days. DOE is not pursuing violations more than 1 year old at this time. DOE may pursue violations up to five (5) years if the case goes to hearing.

The maximum penalty is $110 per day through January 12, 2010. Effective January 13, 2010, the maximum penalty is $200 per day. *See* 74 Federal Register 66029 (Dec. 14, 2009).

Issued By: Scott Harris

Scott Blake Harris
General Counsel

cc: Avi Abel
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Brooklyn, New York 11207