

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

In the Matter of:)
)
ET Industries, Inc.) Case Number: 2012-SE-2902
(showerheads))
)

NOTICE OF PROPOSED CIVIL PENALTY

Date issued: May 24, 2013

Number of alleged violations: 974
Maximum possible assessment: \$194,800
Proposed civil penalty: \$194,800

The U.S. Department of Energy (“DOE”) Office of the General Counsel, Office of Enforcement, alleges that ET Industries Inc. (“ET”) has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* (“the Act”), and 10 C.F.R. Parts 429 and 430.

Specifically, DOE alleges:

1. Since March 1, 2010, ET has distributed in commerce in the United States 974 units of the “ThunderHead” showerhead (“basic model TH-1”¹).
2. Basic model TH-1 is a “covered product” as defined in 42 U.S.C. § 6292(a)(15) and 10 C.F.R. § 430.2.
3. DOE’s testing of four units of basic model TH-1, conducted in accordance with DOE test procedures (*see* 10 C.F.R. Part 430, Subpart B, Appendix S), demonstrated that basic model TH-1 is not in compliance with federal law.
 - a. Federal water conservation standards require that the water flow for a showerhead not exceed 2.5 gallons of water per minute (gpm). *See* 10 C.F.R. § 430.32(p). Three of the units that DOE tested consumed water at the rate 8.8 gpm, and the fourth consumed water at the rate of 9.1 gpm, for an average of 255 percent over the federal limit.

¹ This Notice uses “TH-1” to distinguish the original basic model of “ThunderHead” showerhead from the modified basic model of “ThunderHead” showerhead, which ET certified through DOE’s Compliance Certification Management System as “basic model TH2.5” in their submission at CCMS # 26776.

- b. Federal water conservation standards also require showerhead basic models to comply with ASME/ANSI Standard A112.18.1M-1996, 7.4.4(a), which requires that, if a flow control insert is used as a component part of a showerhead, the insert must be “mechanically retained” at the point of manufacture. The units that DOE obtained did not include installed flow control inserts.

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

What do I do now?

DOE is offering a settlement of \$39,000 if you submit the signed Compromise Agreement and pay the fine within thirty (30) calendar days of the date of an Adopting Order adopting the Compromise Agreement.

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?

If you do *not* agree to DOE’s settlement offer, then you must select Option 1 or Option 2 below within thirty (30) calendar days of the date of this Notice.

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

When must I respond?

You must submit the signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the settlement amount of \$39,000. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. 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: abigail.chingos@hq.doe.gov

By fax to: (202) 586-3274

By private carrier to: Abigail Chingos
Trial Attorney (GC-32)
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20585

What happens if I fail to respond?

If you fail to respond within thirty (30) calendar days of the date of 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 (Option 2, above).

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 that may give rise to a debt to the government.

How did DOE 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 is distributed in commerce in the U.S. The maximum penalty is \$200 per unit. 10 C.F.R. § 429.120. DOE has calculated a maximum penalty of \$200 per unit for 974 units distributed in commerce in the United States beginning in March 2010. DOE is not pursuing potential violations from before March 2010 at this time. If the case goes to hearing, this number may be adjusted to account for violations before March 2010 and any additional information obtained.

If you have any questions, please contact Abigail Burger Chingos via phone at (202) 586-5060 or email at abigail.chingos@hq.doe.gov.

Issued by:

/s/ Doug Rawald, for

Laura L. Barhydt
Assistant General Counsel for
Enforcement