

DOCKETED

Docket Number:	16-ENFORCE-03
Project Title:	Settlement Agreements
TN #:	237864
Document Title:	Newly Enterprize, LLC Settlement Agreement and Release
Description:	N/A
Filer:	Amanda Harris
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	5/19/2021 3:37:58 PM
Docketed Date:	5/19/2021

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (Agreement) is entered into between the California Energy Commission (CEC), with its principal office at 1516 Ninth Street, Sacramento, California 95814, and Newly Enterprize, LLC (Newly Enterprize), with a place of business at 1603 Capitol Avenue, Suite 310 A162, Cheyenne, Wyoming 82001-4561, collectively referred to as the Parties.

I. RECITALS

(1) CEC's Appliance Efficiency Regulations at California Code of Regulations, Title 20, Article 4, sections 1601-1609 (Appliance Efficiency Regulations),¹ set forth the requirements to sell or offer for sale regulated appliances in California. The pertinent requirements include:

- Testing: The appliance is tested as required in section 1603, using the applicable test method set forth in section 1604.
- Efficiency: The appliance meets the required efficiency standards set forth in sections 1605.2 or 1605.3.
- Marking: The appliance is correctly marked and labeled as required under section 1607.
- Certification: The appliance is certified to CEC and appears in CEC's most recent Modernized Appliance Efficiency Database System (MAEDbS) as required under section 1606.

(2) CEC's enforcement authority includes the removal of non-complying appliances from MAEDbS, as set forth in section 1608, and the issuance of administrative civil penalties under section 1609.

(3) Newly Enterprize manufactures several models of HammerHead Showers brand plumbing fittings that it sells or offers for sale, either directly or through retailers or distributors, which were able to be purchased by consumers in California.

(4) CEC contends that HammerHead Showers brand plumbing fittings are subject to the testing, efficiency, marking, and certification requirements for this appliance class as described in paragraph I(1) above.

(5) From July 2015 to October 2020, CEC contends that Newly Enterprize sold or offered for sale in California through retailers or distributors showerheads, that were not listed in MAEDbS as required in section 1606, did not meet the efficiency standards set forth in section 1605.3(h)(5) when tested using the appropriate test method as described in section 1604(h)(2), and were not marked as required in section 1607.

¹ All references are to California Code of Regulations, Title 20, Article 4, unless otherwise specified.

(6) Based on the above Recitals, CEC, through administrative adjudication, could seek to impose penalties for each violation alleged, obtain injunctive relief to prohibit Newly Enterprize from continuing to sell or offer for sale, non-compliant plumbing fittings in California, and take any other enforcement action as allowed by law.

(7) Section 1609(b)(3) and California Public Resources Code section 25402.11(a)(2) identify the following factors CEC shall consider when determining the amount of an administrative civil penalty:

- The nature and seriousness of the violation.
- The persistence of the violation, meaning a responsible person's history of past violations of the Appliance Efficiency Regulations over the previous seven years.
- The number of violations arising from the course of conduct that is subject of the enforcement proceeding.
- The length of time over which the violation occurred.
- The willfulness of the persons responsible for the violation.
- The harm to consumers and to the state that resulted from the amount of energy wasted due to the violation.
- The number of persons responsible for the violation.
- The efforts of the persons responsible for the violation to correct the violation prior to initiation of an enforcement action by CEC.
- The cooperation, by the persons responsible for the violation, with CEC during its investigation.
- The assets, liabilities, and net worth of the persons responsible for the violation. This information will be considered to reduce the administrative civil penalty amount, should a responsible person or persons elect to provide asset, liability, and net worth documentation to the Executive Director to demonstrate that a reduction in a penalty amount is necessary to avoid an undue burden.

(8) Penalties must be set at levels sufficient to deter violations. In developing this Agreement, CEC considered the facts of the case and applied the above factors to determine an appropriate settlement. Further, in this case Newly Enterprize cooperated with CEC in the investigation by redesigning their products; promptly testing, certifying, and marking the units; notifying retailers and removing the allegedly non-compliant units from the California market; and providing to CEC sales data of non-compliant units. The efforts by Newly Enterprize saved CEC time and resources in investigating the violations and minimized the impacts on the competitive business environment, energy consumption, and the environment in California, from the allegedly non-compliant units. Also, Newly Enterprize demonstrated by providing financial information, that a higher penalty would cause it financial hardship. This documentation is confidential and CEC does not retain it in the regular course of business.

(9) Newly Enterprize is willing to enter into this Agreement solely for the purpose of settlement and resolution of this matter with CEC. CEC accepts this Agreement in termination of this matter. Accordingly, the Parties agree to resolve this matter completely by means of this Agreement, without the need for administrative adjudication. Nothing in this Agreement may be deemed to constitute an admission of liability with respect to the underlying subject matter.

II. TERMS AND RELEASE

In consideration of the Recitals listed above which are incorporated into this section by reference, and the mutual agreements set forth below, CEC and Newly Enterprize agree as follows:

(1) This Agreement covers the following HammerHead Showers brand showerhead models: 1F-HHS-CH-2.5, 1F-HHS-BN-2.5, 1F-HHS-ORB-2.5, 1F-HHS-PB-2.5, 1F-HHS-MB-2.5, 1F-DUAL-CH, 1F-DUAL-BN, 1F-DUAL-ORB, 3F-HHS-CH-2.5, 8-RAIN-CH-2.5, 8-RAIN-BN-2.5, 8-RAIN-ORB-2.5, 1F-HHO-CH, 1F-HHO-BN, 1F-HHO-ORB, 4-FIX-CH-1.75, 4-FIX-BN-1.75, 4-FIX-ORB-1.75, and 12-RAIN-CH-2.5.

(2) For selling or offering for sale in California, the plumbing fittings identified in paragraph I(5), whose model numbers are identified in paragraph II(1), that CEC contends did not meet the energy efficiency standards prescribed by section 1605.3, were not certified to MAEDbS as required by section 1606, and were not marked per section 1607, and, in consideration of the factors listed in paragraph I(7) and I(8) above, Newly Enterprize shall pay as an administrative civil penalty the total sum of \$20,000.00 by electronic transfer to CEC by June 1, 2021. Banking information and instructions necessary to complete the electronic transfer shall be provided by CEC.


(3) Newly Enterprize also agrees to take each of the following actions for any and all regulated appliances it will sell or offer for sale in California:

- a. Test all basic models, utilizing the applicable test method, to ensure conformance with the Appliance Efficiency Regulations.
- b. Certify all basic models in MAEDbS, and ensure listings are kept current and up to date.
- c. Add the required marking to the unit.


(4) This Agreement shall apply to and be binding upon Newly Enterprize and its principals, officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and upon CEC and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.

- (5) In consideration of the payment specified above, CEC hereby releases Newly Enterprize and its parent corporation, principals, directors, officers, agents, employees, shareholders, subsidiaries, predecessors, and successors from any and all claims for violations of section 1608 (efficiency, marking, certification), relating to the time period and appliances identified in paragraph I(5), whose model numbers are identified in paragraph II(1).
- (6) This Agreement constitutes the entire agreement and understanding between CEC and Newly Enterprize concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreement of any kind or nature, whether written or oral, between CEC and Newly Enterprize concerning these claims.
- (7) No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all Parties to this Agreement.
- (8) Newly Enterprize further agrees that if the subject matter of this Agreement comes before CEC in an administrative adjudication, neither any member of CEC, nor the Executive Director, shall be disqualified because of prior consideration of this Agreement.
- (9) Each Party to this Agreement has reviewed the Agreement independently, has had the opportunity to consult counsel, is fully informed of the terms and effect of this Agreement, and has not relied in any way on any inducement, representation, or advice of any other Party in deciding to enter into this Agreement.
- (10) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules. Any litigation arising out of or related to this Agreement shall be filed in the Superior Court of California, County of Sacramento.
- (11) Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement remains in full force and effect.
- (12) The failure of any Party to enforce any provision of this Agreement shall not be construed as a waiver of any such provision, nor prevent such Party thereafter from enforcing such provision or any other provision of this Agreement.
- (13) This Agreement is deemed to have been drafted equally by the Parties; it will not be interpreted for or against either Party on the ground that said Party drafted it.
- (14) This Agreement is effective upon signature by a representative of Newly Enterprize with authority to bind the company, and signature by the Executive Director of CEC. The Parties agree that fax or scanned signatures and multiple signature pages are acceptable for purposes of executing this Agreement, which may be signed in counterparts.

California Energy Commission

By: 
Name: Drew Bohan
Title: Executive Director
Date: 5/12/2021

Newly Enterprize, LLC

By: 
Name: Ernest Justin Ball
Title: Owner
Date: 5/5/2021