

PROCEDURAL HISTORY

CalRecycle mailed, by certified mail, to the address previously provided by Respondent, an Accusation along with required documents notifying Respondent of their procedural rights, and Request for Hearing form, to Water Pik on or about May 1, 2023, giving Respondent 15 (fifteen) days from the date of service to file the Request for Hearing.

As of June 14, 2023, Respondent did not file a "Notice of Defense/Request for Hearing" with CalRecycle. The matter shall be determined as a default pursuant to CCR section 17949 and Government Code section 11520. CalRecycle takes action against Respondent based upon evidence and affidavits that may be used without any notice to Respondent.

FACTUAL FINDINGS

1. During the relevant RPPC Compliance Certification measurement period, from calendar year January 1, 2020, through December 31, 2020, Water Pik was a product manufacturer who was selling products packaged within RPPCs in California.
 - i. CalRecycle verified that Water Pik's product(s) were being sold and/or offered for sale in RPPCs in California. In October 2020, staff verified household showerheads, in RPPCs, offered for sale at Target in Sacramento including:
 1. Water Pik Rainfall
 2. Water Pik PowerSpray (9 sprays)
 3. Water Pik PowerSpray (4 sprays)
2. Water Pik's 2020 Compliance Certification was received via email on March 31, 2021, before the April 1, 2021 due date. Water Pik elected to use the

CalRecycle Source Reduction (Reduced Container Weight) and Postconsumer Material Content model templates, and submitted a signed signatory page and two product and container data tables, as well as 17 Container Manufacturer certifications.

3. After reviewing the submission, CalRecycle staff contacted Water Pik by phone to discuss the Source Reduction by Reduced Container Weight reported in the 2020 Compliance Certification. Staff asked for clarification regarding the sales data for products in RPPCs that were reportedly source reduced during the measurement period.
4. After discussing the submission with CalRecycle staff, Water Pik resubmitted the 2020 Compliance Certification on May 25, 2021. The May 25, 2021 submission included the CalRecycle Source Reduction (Reduced Container Weight) and Postconsumer Material Content model templates, with signed signatory page and two product and container data tables, as well as an additional container manufacturer certification.
5. Upon review of the resubmission, CalRecycle staff found that one container manufacturer reported one hundred percent (100%) postconsumer material content (i.e. the weights of the RPPCs were the same as the weights of postconsumer material in the RPPCs) using PVC or PETG resin types for 105 product lines. Staff contacted Water Pik by phone to discuss the reported Postconsumer Material Content compliance. Staff asked Water Pik if the container manufacturer understood the definition of postconsumer material. Staff also requested the calculated compliance rate for the reported containers.
6. After discussing the resubmission with CalRecycle staff, Water Pik resubmitted the 2020 Compliance Certification again on July 15, 2021. The July 15, 2021 submission included the CalRecycle Source Reduction (Reduced Container Weight) and Postconsumer Material Content model

templates, with signed signatory page and two product and container data tables, as well as a corrected container manufacturer certification.

7. After reviewing the final submission, CalRecycle staff determined that Water Pik failed to submit an accurate 2020 Compliance Certification. This determination accounts for the inaccuracies in the original March 31, 2021 submission and the recognition that Water Pik removed inaccurate container compliance in subsequent submissions. Specifically, in the original submission, Water Pik reported use of postconsumer material in 105 product lines, and in the July 15, 2021 resubmission, reported zero postconsumer material content in those 105 product lines. Additionally, in the original submission, Water Pik claimed Source Reduction by Reduced Container Weight for 11 product lines, and in the final submission, reported no source reduction.
8. Based on email communications, verbal communications, and self-certified data from Water Pik, the majority of Water Pik's RPPCs did not meet any compliance options for the 2020 Compliance Certification measurement period. There were also discrepancies between what Water Pik submitted and what one of the container manufacturers submitted. The law states that the product manufacturer is responsible for ensuring that its certification is consistent with any container manufacturer certifications obtained.

LEGAL FINDINGS

9. The information set forth in paragraphs 1 through 8 are incorporated by reference as if fully set forth here.

Violation 1: Incomplete and/or Inaccurate Compliance Certification Submission

10. As previously noted, Respondent's Compliance Certification submittal was incomplete and/or inaccurate in violation of CCR sections 17945.2(e) and 17945.3.

11. Water Pik's March 31, 2021 Compliance Certification submittal was incomplete and inaccurate due to the following:
 - a. The March 31, 2021 submission did not provide calculated compliance values for most of the RPPCs reported.
 - b. The March 31, 2021 submission reported use of postconsumer material for 105 products, and the July 15, 2021 resubmission reported zero postconsumer material content in those 105 products.
 - c. The March 31, 2021 submission claimed Source Reduction by Reduced Container Weight for 11 products. The final submission reported no source reduction.
 - d. There were discrepancies between what Water Pik submitted and what one of the container manufacturers submitted.
12. Water Pik's incomplete and inaccurate 2020 Compliance Certification submittal significantly delayed CalRecycle's ability to determine compliance with RPPC laws and was assigned a "major" significance factor. The degree of inaccuracy was assigned as "major" because the original submission reported postconsumer material content in 105 product lines, which were later reported to contain no postconsumer material.
13. Based on major significance and major degree of inaccuracy, the penalty table in CCR section 17949(g), assigned a penalty of \$50,000.

Violation 2: Container Noncompliance

14. Based on the submitted 2020 Compliance Certification and the additional documentation submitted on May 25, 2021 and July 15, 2021, Water Pik achieved full or partial compliance for only 8 reported products in RPPCs using the Postconsumer Material Content compliance option. The remaining 280 reported products in RPPCs did not achieve compliance using any compliance option (CCR section 17945.3(d)).

15. In order to calculate a penalty, staff used the Postconsumer Material Content Compliance option formula and the Postconsumer Material Content Compliance Penalty formula. The resulting penalty calculated per that formula was \$48,820.78.

Penalty Factors Considered

16. Pursuant to PRC section 42322 and CCR section 17949(h) “An Administrative Law Judge or the Department may consider factors in modifying or reducing penalties for violations.” CalRecycle has taken all the penalty factors into consideration, taking note of the following:

e. Impact on diversion or sustainable markets in California:

CalRecycle staff does not have evidence that Water Pik attempted to come into compliance or attempted to make any packaging modifications or reductions during the 2020 Compliance Certification measurement period. Since Water Pik’s final July 15, 2020 submission, staff do not have information or confirmation that Water Pik made any packaging modifications to comply with the law after the measurement period.

f. Size of the product manufacturer:

Water Pik employs 350 employees and has estimated annual sales of \$68.8 million. Water Pik operates as a subsidiary under Church & Dwight Co., Inc., which has \$51.9 billion in annual sales.

g. Technological feasibility of compliance:

Water Pik has not reported, and CalRecycle staff are not aware, of any technological barriers preventing Water Pik from complying with the law.

h. Good faith efforts to comply with this Article, including compliance history:

Based on the 2020 Compliance Certification submission, Water Pik did not comply with the RPPC law and did not meet the container requirements per the law. Staff does not have evidence that Water Pik attempted to make any packaging modifications or reductions in order to comply during the 2020 measurement period. Water Pik was also found to be non-compliant with the RPPC law during the 2016 measurement period. Staff found that Water Pik reported a non-compliant product in the 2016 Compliance Certification, that was again reported as non-compliant in the 2020 Compliance Certification.

- i. The economic advantage of not complying with this Article:
Water Pik did not have to perform research and development, and avoided costs associated with updating their containers.

ORDER

Pursuant to PRC section 42322 and Government Code (GC) section 11520, THE FOLLOWING ORDER is hereby made:

Respondent, Water Pik, Inc. is ordered to pay a penalty of \$98,820.78 to the Department of Resources Recycling and Recovery within 30 days of the date of this decision.

RESPONDENTS' RIGHT TO FILE WRITTEN MOTION

Pursuant to GC section 11520(c):

“Within seven days after service on the Respondent of a decision based on the

Respondent's default, the Respondent may serve a written motion requesting that the decision be vacated and stating the grounds relied on. The agency in its discretion

may vacate the decision and grant a hearing on a showing of good cause. As used in this subdivision, good cause includes, but is not limited to, any of the following:

- (1) Failure of the person to receive notice served pursuant to Section 11505.
- (2) Mistake, inadvertence, surprise, or excusable neglect.”

This decision shall become effective on the date signed below.

Dated this ____ day of June 2023.

Rachel Machi Wagoner
Director
Department of Resources Recycling and
Recovery