

Rule 210.75(a), to determine whether a violation of the consent order issued in the original investigation has occurred and to determine what, if any, enforcement measures are appropriate. 86 FR 10335 (Feb. 19, 2021). The respondents named in the enforcement proceeding are the same as the respondents named in the original investigation, *i.e.*, East West Manufacturing, LLC of Atlanta, Georgia, and East West Industries of Binh Duong, Vietnam. *Id.* OUII was named as a party in the enforcement proceeding. *Id.*

On March 1, 2021, East West filed a motion for monetary and other sanctions alleging that Regal and its attorneys tampered with and misrepresented the accused redesigned blower in the enforcement complaint. Regal and OUII filed responses thereto on March 11, 2021, and March 18, 2021, respectively. Regal opposed the motion and asked for monetary sanctions in its response. The presiding Administrative Law Judge (“ALJ”) further permitted the private parties to file replies and surreplies to the sanctions briefing. EID at 16.

On June 29, 2021, the ALJ issued a *Markman* Order (Order No. 22), styled “*Markman* Claim Constructions With Abbreviated Rationales” (*Markman* Order I). On July 13, 2021, the ALJ issued Order No. 23, clarifying Order No. 22.

The ALJ held an evidentiary hearing from July 20–23, 2021 and received post-hearing briefs thereafter. On September 22, 2021, the ALJ held a supplemental hearing on the sanctions motion. EID at 18.

On October 29, 2021, the ALJ issued Order No. 32 (*Markman* Order II), providing extensive explanations as to the adopted constructions in Order No. 22.

On December 14, 2021, the ALJ issued the subject EID finding no violation of the Consent Order. The EID found that the parties do not contest personal jurisdiction, and that the Commission has *in rem* jurisdiction over the accused products. EID at 19–20. The EID noted that the private parties filed a “Joint Stipulation on Importation and Sales,” describing “the number of units of the Accused or Redesigned Blower that East West imported and sold.” *Id.* at 20. The EID found that Regal failed to show that East West’s redesigned blower infringes asserted claims 1, 2, 7–10, and 15 of the ’834 patent, and thus failed to show a violation of the consent order. *See id.* at 9–10. The EID stated that “in the event the Commission were to find to the contrary, an imposed civil penalty should be *de minimis* and not the maximum civil penalty that Regal has

proposed.” *Id.* at 10. Specifically, the EID recommended that “East West disgorge its profits plus an additional one-half of its profits from any sales that violated the Consent Order.” *Id.* at 10–11.

On December 14, 2021, the ALJ also issued Order No. 36 denying East West’s motion for monetary sanctions. The ALJ issued a public warning to Regal, citing the Commission’s sanctions authority under Commission Rule 210.4(c) and (d), 19 CFR 210.4(c), (d), and ordered Regal to correct potentially misleading portions of the enforcement complaint.

On January 4, 2022, Regal filed a petition for review of the EID, and Respondents filed a contingent petition for review of the EID and a petition for review of Order No. 36. On January 10, 2022, the parties replied to the petitions for review.

On February 11, 2022, the Commission determined to review the EID and Order No. 36. 87 FR 9085–86 (Feb. 17, 2022).

Pursuant to 19 CFR 210.25, the Commission has determined to bifurcate its review of Order No. 36 from its review of the EID. Upon review of the parties’ submissions, the EID, and the evidence of record, the Commission has determined to affirm the EID’s finding that Regal failed to show that East West violated the Consent Order with the modifications set forth in the accompanying Commission opinion. The enforcement proceeding is terminated. The Commission has determined to remand Order No. 36 to the ALJ for a revised order regarding sanctions as set forth in the Commission remand order. The Commission will consider Order No. 36 in the separate sanctions proceeding.

The Commission’s vote on this determination took place on March 14, 2022.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR 210).

By order of the Commission.

Issued: March 14, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

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## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On March 15, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Louisiana in the lawsuit entitled *United States of America v. Power Performance Enterprises Inc. and Kory Blaine Willis*, Civil Action No. 22–cv–00693.

In this action, the United States, on behalf of the U.S. Environmental Protection Agency, filed a Complaint alleging that between August 15, 2013 and June 4, 2018, Defendants PPEI and its owner, Mr. Willis, manufactured, sold, or offered to sell aftermarket automotive products that have a principal effect of bypassing, defeating, or rendering inoperative the emission controls on diesel cars and trucks in violation of Section 203(a)(3)(B) of the CAA, 42 U.S.C. 7522(a)(3)(B). The Complaint further alleges that, absent an injunction, Defendants may resume the manufacture or sales of such products. The proposed Complaint seeks appropriate civil penalties and injunctive relief to prohibit Defendants from continuing to manufacture and sell these unlawful products.

Under the proposed settlement, the Defendants agree to pay a civil penalty (based on a finding of limited ability to pay) of \$1,550,000 in three installment payments over 2 years. In addition, the settlement imposes various restrictions designed to ensure that Defendants operate in compliance with the law.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America v. Power Performance Enterprises Inc. and Kory Blaine Willis*, D.J. Ref. No. 90–5–2–1–11865. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be

examined and downloaded at this Justice Department website: <http://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$17.00 (25 cents per page reproduction cost) payable to the United States Treasury.

**Thomas Carroll,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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## NUCLEAR REGULATORY COMMISSION

[NRC-2022-0039]

### Dedication of Commercial-Grade Digital Instrumentation and Control Items for Use in Nuclear Power Plants

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Draft regulatory guide; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG-1402, "Dedication of Commercial-Grade Digital Instrumentation and Control Items for Use in Nuclear Power Plants." This DG is a proposed new regulatory guide for the dedication of commercial-grade digital instrumentation and control (I&C) items for use in nuclear power plant safety applications.

**DATES:** Submit comments by April 18, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0039. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto:Stacy.Schumann@nrc.gov). For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301-415-3104, email: [Michael.Eudy@nrc.gov](mailto:Michael.Eudy@nrc.gov) and Dinesh Taneja, Office of Nuclear Reactor Regulation, telephone: 301-415-0011, email: [Dinesh.Taneja@nrc.gov](mailto:Dinesh.Taneja@nrc.gov). Both are staff members of the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

##### I. Obtaining Information and Submitting Comments

###### A. Obtaining Information

Please refer to Docket ID NRC 2022-0039 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC 2022-0039.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

##### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC 2022-0039 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

##### II. Additional Information

The NRC is issuing for public comment a DG in the NRC's "Regulatory Guide" series. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

The DG, entitled "Dedication of Commercial-Grade Digital Instrumentation and Control Items for Use in Nuclear Power Plants," is temporarily identified by its task number, DG-1402 (ADAMS Accession No. ML22003A180).

The staff is also issuing for public comment a draft regulatory analysis (ADAMS Accession No. ML22003A181) for DG-1402. The staff developed the regulatory analysis to assess the value of issuing DG-1402 as well as alternative courses of action.

The draft guide is a proposed new regulatory guide for the dedication of commercial-grade digital I&C items for use in nuclear power plant safety applications. It endorses, with clarifications, Nuclear Energy Institute 17-06, "Guidance on Using IEC 61508 SIL Certification to Support the Acceptance of Commercial Grade Digital