

October 10, 2014

Pauline Batarseh, Chief
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Policy and Program Support Division
Hazardous Waste Management Program
Department of Toxic Substance Control
101 "I" Street
Sacramento, California 95812-0806

Subject: DTSC July 3, 2014 Summary of Violation Letter

Dear Mrs. Batarseh,

We received your letter of September 4, 2014. The following letter constitutes Chromalox's initial written response to the Summary of Violation issued by the Department of Toxic Substance Control ("DTSC") to Chromalox on July 3, 2014, and the DTSC's August 25, 2014 Review of Thermostat Recycling Corporation's 2013 Annual Report for California ("2013 Review"). Chromalox understands that by the Thermostat Recycling Corporation ("TRC") and/or one or more TRC members will be submitting comprehensive comments relating to DTSC's comments concerning TRC's plan. Rather than duplicating those responses, Chromalox focuses its response on issues unique to it, and not on issues that affect the industry as a whole or issues specific to thermostat manufacturers. Nonetheless, Chromalox does not intend to waive any issues or defenses that it may ultimately choose to present in this proceeding.

As an initial matter, your letter notes that the DTSC "did not receive a response from Chromalox concerning the SOV letter[.]" Chromalox, along with the majority of the TRC's members, participated in conference call with DTSC representatives on July 31, at which time the TRC members were informed that the time for providing a written response to the July 3 letter was extended until the DTSC was able to provide a more detailed summary of its assessment of the industry's collection efforts. Accordingly, it was at the DTSC's direction that Chromalox did not previously provide a written response; thus, this response is timely.

Chromalox is a manufacturer of industrial electric heaters and electronic controls that do not contain mercury. It does not manufacture mercury thermostats, and the vast majority of its products does not contain and are not sold with mercury thermostats. However, for very limited number of product lines, in order to provide its end users with a full product, Chromalox purchases mercury thermostats manufactured by White Rodgers, bundles the mercury thermostats with its electric heaters and electric controls, and distributes the bundled product. These products bundled with mercury thermostats comprise less than 0.002% of Chromalox's total product sales. In 2013 Chromalox sold only 48 mercury thermostats worldwide.

Chromalox takes its environmental responsibilities very seriously, and makes every effort to comply with all applicable state and federal laws. Although Chromalox does not manufacture

the mercury thermostats it bundles with its products, it understands that the DTSC's regulations define Chromalox as a manufacturer responsible for complying with the DTSC's Mercury Containing Thermostat Collection Program (the "Program"), and for the program collection goals established therein, and that it is subject to the same penalties for noncompliance as the large thermostat manufacturers. Although Chromalox is not at this time challenging the DTSC's definition of manufacturer, or the fact that the regulations treat all "manufacturers" the same although many defined manufacturers are not similarly situated, it reserves its rights to do so in the future.

Because Chromalox is a small manufacturer, it is not economically feasible for it to run its own mercury recycling program. Thus, it has chosen to undertake its obligations under the Program through participation in TRC, and it relies on TRC to recover any mercury thermostats that Chromalox has distributed. Chromalox, through the TRC, objected to the Program at the time it was enacted, on the basis that the collection requirements set out in the Program are unrealistic and unattainable and were determined without rational basis, and that the penalties for noncompliance are excessively punitive. Chromalox also reserves its right to argue that the statutory scheme is unconstitutionally punitive, burdensome, ambiguous and vague.

With respect to the findings in the 2013 Review specific to Chromalox:

1. The DTSC found that the TRC's collection efforts and its plans to improve those efforts were insufficient because the TRC's efforts were focused on collections from wholesale distributors. Chromalox does not make direct sales to the end customer; it markets its products through factory sales representatives and wholesale distributors. Therefore, the TRC's focus on collections from wholesale distributors fully captures the market segment through which Chromalox's products are sold and disposed, and requiring the TRC to expand into additional sectors would be unlikely to increase the collection of Chromalox products bundled with mercury thermostats.
2. The 2013 Review also found that the TRC's 2013 collection efforts were insufficient and fell short of the regulations, and that only two Chromalox branded thermostats were recovered for the 2013 calendar year. This recovery data is not reflective of insufficient collection efforts by the TRC, but is instead reflective of the low volume of Chromalox products bundled with mercury thermostats sold by Chromalox in California. Chromalox's annual worldwide sales of products bundled with mercury thermostats are only \$3888. Based on these sales figures Chromalox believes that TRC's collections are capturing the majority of the Chromalox products bundled with a mercury thermostat that were disposed of in California. This conclusion is further supported by comparing the California figures to other state collection figures: only two Chromalox products bundled with mercury thermostats were recovered in each of the other eight states with mercury thermostat recovery requirements.
3. Chromalox objects to the DTSC's finding that the TRC's collections fell short of the Program's collections. The collection figures proscribed by the Program are

arbitrary and capricious, and lack a rational basis. Additionally, because the DTSC's regulations define both Chromalox and White Rodgers—the manufacturer of the thermostats bundled with Chromalox's products—as “manufacturers,” the collection goals set by the DTSC are duplicative.

As stated above, Chromalox believes that the collection performance requirements set out in the Program are unrealistic and unattainable. Under the circumstances, Chromalox believes TRC has worked to aggressively collect mercury thermostats, that its collections as to Chromalox have effectively captured the disposed products, and that the improvements it has outlined demonstrate that it will continue to improve industry-wide collections going forward. The TRC's program is working for the benefit of the citizens of California and Chromalox asks for the DTSC's cooperation in working with the TRC to improve the state-wide collection efforts rather than punishing the TRC and its members for their good faith efforts to comply with the Program.

Sincerely,



Gary Cook
Product Safety Engineer

