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July 31, 2014

**Via: Certified Mail**

Ms. Pauline Batarseh  
Chief  
Policy Implementation and Support Branch  
Policy and Program Support Division  
Hazardous Waste Management Program  
California Department of Toxic Substances Control  
1001 I Street  
P.O. Box 806  
Sacramento, California 95812-0806

Re: Response to Summary of Violations – Empire Comfort Systems, Inc.

Dear Ms. Batarseh:

I write as counsel for Empire Comfort Systems, Inc. (“Empire”).

This letter constitutes Empire’s response to the Department of Toxic Substances Control’s (“DTSC”) Summary of Violations letter dated July 3, 2014 issued to Empire (“SOV”). The SOV requests a written response within 30 days addressing any dispute Empire regarding DTSC’s determinations therein.

Initially, as noted by DTSC in the SOV, Empire, as a member of Thermostat Recycling Corporation (“TRC”), acknowledges that collections of mercury thermostats by TRC in 2013 did not meet the 2013 collection rate performance requirements established under subdivision (a) of section 66274.5 of California Code of Regulations (“CCR”), Title 22. However, Empire would note that the collections by TRC apparently do not comprise all collections of mercury thermostats within the state of California in 2013. Consequently by considering only TRC’s collections in the alleged failure to meet the regulation goal DTSC’s asserted violation by Empire (through TRC’s collection totals) may be in error.

Assuming arguendo that collections by TRC constitute the only mercury thermostats collected in California in 2013, Empire would acknowledge that, as a member of TRC, Empire failed to meet the established collection rate performance requirements for 2013. However, Empire would further note its effort to comply with the collection rate requirements under the regulations. Considering the limited resources available to Empire and its small share of the California

mercury thermostat market, Empire believed that engaging TRC to represent Empire's collection efforts would be the most effective use of Empire's resources. TRC specializes in efforts of this nature throughout the United States. Empire exerted a good faith effort to comply with the collection requirements by devoting resources to TRC to engage in thermostat collection on Empire's behalf. Further, in conjunction with other TRC members, Empire continues to actively seek solutions to achieve compliance with DTSC's regulations. Empire understands that DTSC has discretion in imposing penalties on companies determined to be in violation. However, because Empire applied its best efforts to comply with the regulations through its membership in TRC, Empire respectfully requests that DTSC not impose penalties on Empire for failing to meet the 2013 collection rate performance requirements, if it is determined that the total collections in 2013 fell short of that requirement.

In the SOV, DTSC further determined that TRC's proposed collection program enhancements are insufficient to meet the collection rate performance requirement for 2014. During the July 30, 2014 conference call with DTSC and manufacturer representatives, DTSC representatives acknowledged that the Department has not yet provided a report to manufacturers detailing its determination regarding the 2014 program. DTSC representatives also stated their appreciation that without the Department's rationale, it would be impossible for companies to substantively dispute DTSC's determination. Therefore, DTSC representatives stated that a report would be forthcoming, and verbally extended the 30 day deadline for companies to respond to DTSC's Summary of Violations Letters. Empire has not yet received written confirmation of the extension at this time and is consequently submitting this response within the 30 day response period. Empire anticipates supplementing this response upon receipt of DTSC's detailed evaluation of TRC's proposed 2014 enhancement program.

In this initial response without having had the opportunity to review the basis of DTSC's determinations regarding TRC's 2014 program enhancements, Empire acknowledges that TRC's program may fall short of the collection requirements for 2014, as currently established. However, as noted above, DTSC is apparently not considering the collections by other parties in evaluating the 2014 collection rate performance criteria and this issue may be further addressed following review of the DTSC detailed report. Further, Empire proposes to work with both TRC and DTSC to establish guidelines and requirements that are feasible for Empire and TRC to accomplish 2014 collection goals as well as for future years.

Again, in light of Empire's good faith efforts to comply in 2013 and to work with TRC and DTSC going forward, Empire requests that no sanctions be placed on Empire regarding the 2014 program.

As noted by the DTSC representatives during the July 30 conference call, it is understood that nothing in this letter will constitute a waiver of Empire's rights to dispute any portion of DTSC's SOV.

It is Empire's understanding that the conference call of July 30, 2014 constituted the initial meeting within 45 days as requested in the SOV. At this point Empire anticipates working in collaboration with other representative members of TRC in discussions with DTSC regarding the

issues raised in the SOV. A hearing on this matter is requested, if the SOV is unresolved through such informal or pre-hearing discussions.

Very truly yours,

**MATHIS, MARIFIAN & RICHTER, LTD.**

A handwritten signature in black ink, appearing to read 'Patrick Mathis', with a long, sweeping underline that extends to the right.

By: Patrick Mathis  
pmathis@mmrltd.com

cc: Mr. Donn Diebert  
Mr. Donald Rigney  
Mr. Kenneth Belding