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Via Email

Department of Toxic Substances Control
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Response to Statement of Violation on Behalf of Lux Products Corporation

Lux Products Corporation (“Lux”) notes the Department of Toxic Substances Control’s (“DTSC”) Summary of Violations letter (“SOV”) to Lux dated July 3, 2014 and responds as follows:

- Lux did not receive the July 3rd SOV until September 5, 2014. Lux learned of the SOV in a July 29th email from Mark Tibbetts of Thermostat Recycling Corporation (“TRC”) alerting TRC members to a conference call to be held the next day between DTSC and manufacturers. Lux participated in the July 30th conference call but did not receive a copy of its SOV until September 5, 2014.
- Lux understands that the California collection program operated by TRC did not meet the 2013 collection rate performance requirement set forth in subdivision (a) of section 66274.5 of the California Code of Regulations. Lux disagrees with any interpretation of the said regulations that would attribute individual liability to Lux or hold the manufacturers as a group jointly and severally liable for failure to meet the collection rate performance requirement.



- Lux notes DTSC's press release of July 10, 2014 announcing delivery of the SOV to thermostat manufacturers.¹ The press release indicates that DTSC has formulated and will share with manufacturers the collection program modifications DTSC believes are needed to improve collection rates. Lux welcomes DTSC's suggestions regarding modifications and urges DTSC to work proactively to engage other trade and industry groups, local governments, utilities, the California legislature and other California state government departments to improve collection rates, particularly from households.
- As presciently argued by several commenters during the public comment period, the unachievable collection requirements in the regulations have forced manufacturers into an enforcement context after only one year. During the comment period, industry commenters uniformly expressed support for the pressing public need to collect and properly recycle thermostats containing mercury while simultaneously warning DTSC that the proposed collection requirements could not be met. Lux believes that an iron-fisted enforcement approach by DTSC in this instance will lessen the chances for a desirable outcome and could lead some manufacturers to consider litigation to obtain long-term relief from infeasible collection requirements. Forcing manufacturers into an adversarial approach to obtain relief from unattainable standards is poor public policy and not in the best interests of California, its residents or the success of the recycling program.
- Lux believes that the methodology of the SERA report was flawed and its conclusions therefore inaccurate and misleading. Lux is willing to consider supporting any manufacturer-led initiative to submit additional data to establish feasible and achievable collection targets for thermostats containing mercury in California.

Please contact the undersigned to coordinate any future discussions.

Yours very truly,

DAMRON LAW GROUP P.C.

Loretta A. Damron, Esq.

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cc: Lux Products Corporation

¹ Available at http://www.dtsc.ca.gov/HazardousWaste/upload/Mercury_Thermostats_Statement.pdf