

October 10, 2014

Pauline Batarseh, Chief
Policy Implementation Branch
Policy and Program Support Division
Hazardous Waste Management Program
California Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95812-0806

Re: Summary of Violations – Nordyne dated July 3, 2014

Dear Ms. Batarseh:

This acknowledges receipt of the July 3, 2014 Department of Toxic Substance Control (“DTSC”) letter entitled “Summary of Violations - Nordyne” (“SOV”). At the outset, Nordyne, as a member of Thermostat Recycling Corporation (“TRC”), wishes to express its intention to cooperate fully with the DTSC’s efforts to improve the effectiveness of programs to collect and recycle out-of-service mercury-added thermostats (“Mercury-Added Thermostats”). Nordyne looks forward to a constructive dialogue towards that goal.

Prior to addressing the SOV, I would like to provide a brief background of Nordyne, its involvement with TRC and Nordyne’s potential contribution to the population of Mercury-Added Thermostats in the State of California: Nordyne is a manufacturer of manufactured housing, residential, light commercial and commercial HVAC products. Nordyne sells to distributors, who in turn sell to contractor/dealers, who in turn sell to consumers. At no time in Nordyne’s history has it been standard practice to sell directly to dealers or consumers in CA. Although Nordyne manufactures HVAC equipment, Nordyne has never manufactured thermostats of any kind, and more specifically, Nordyne has never manufactured mercury-added thermostats. Nordyne has sold thermostats (including mercury-added thermostats) made by other companies as accessories to the HVAC products manufactured by Nordyne. These thermostats were sold under the original manufacturer’s brand names and in some cases they were relabeled and sold under a brand name owned or licensed by Nordyne. Nordyne recently acquired the Reznor business from Thomas & Betts (but not Thomas & Betts’ EK Campbell or International Energy Saver brands.)

With respect to TRC, Nordyne joined TRC in 2007 and Nordyne was one of the first resellers of thermostats (as opposed to a thermostat manufacturer) to join TRC. Nordyne chose to participate in TRC because it was (and remains) quite obvious that participation in an industry group was the only feasible option. Today, Nordyne remains committed to and fully supports the efforts of TRC.

With respect to Nordyne’s sale, if any, of mercury-added thermostats in the state of CA Nordyne offers the following information:

- Unfortunately at the present time Nordyne is not able to provide significant detail regarding Nordyne's distribution of mercury-added thermostats in CA. The fact is that prior to the issuance of the SOV there has not been a need to quantify the sale, if any, of mercury-added thermostats in a particular state. Regardless, Nordyne participates in collection of Mercury-Added Thermostats nationwide as a TRC member irrespective of whether Nordyne sold thermostats in a particular state. Historically, Nordyne's sales in the west, including California, have been small with respect to the rest of the country. A review of TRC's 2013 data for collections in CA attribute only 13 (roughly 0.0625%) and one (roughly 0.005%) Mercury-Added Thermostats to Nordyne and Thomas & Betts respectively. (Note that the single Mercury-Added Thermostat attributed to Thomas & Betts may not necessarily be attributable to the Reznor name which was acquired by Nordyne.) We do not know if TRC correctly attributed those few thermostats to Nordyne and Reznor, but even if it did, the data creates serious doubts about whether either brand of thermostats was ever sold in the state of California. With such low collection numbers, it is entirely conceivable that the Mercury-Added Thermostats were sold elsewhere and somehow imported to CA. Accordingly, Nordyne would like to reserve the right, with respect to both Nordyne and Reznor, to research and supplement information regarding sale of mercury-added thermostats in the State of CA.

With the above commentary as background Nordyne would like to address the SOV. First, Nordyne must note that transmission of a document entitled "Summary of Violations" raises questions about whether the DTSC is invoking particular legal procedures delineated in statutes or regulations. Importantly, without guidance from the DTSC's own policies, regulations or statutes, it is unclear whether and to what extent Nordyne is legally required to respond to the assertions in the SOV. To the extent that a response is required, neither the DTSC's regulations nor any statute with which we are familiar informs us what information must be presented in the response. Furthermore, Nordyne reserves the right to assert any and all factual and legal defenses in the event that the DTSC should later commence enforcement proceedings, whether or not such factual and legal defenses are contained in this response. To the extent that this response fails to address an allegation or area of interest, please advise us and we will attempt to supplement the response. With that said and in the spirit of cooperation, Nordyne responds to the "Summary of Violations" as follows:

It is Nordyne's understanding that the SOV alleges that Nordyne, as a member of TRC, violated subdivision (a) of section 66274.5 of California Code of Regulations (CRC), Title 22 by failing to meet the collection rate performance for 2013. Additionally, the SOV stated that DTSC determined that the program enhancements proposed by TRC for 2014 will not result in sufficient additional Mercury-Added Thermostat collections to meet the 2014 goal established by DTSC. The SOV requested from Nordyne a) written response from Nordyne within 30 days if Nordyne disputes DTSC's findings and b) a meeting with Nordyne within 45 days to discuss next steps to discuss modifications to the program.

Subsequent to the issuance of the SOV, DTSC provided several extensions for the 30 day written response extending the deadline to October 10, 2014. Please accept this letter as Nordyne's timely

written response to the SOV. Please also accept Nordyne's participation in the July 30, 2014 conference call between DTSC and TRC members as satisfying the request for a meeting within 45 days.

Nordyne must respectfully disagree with DTSC's finding that Nordyne, individually, is in violation of the 2013 collection goal. Nordyne acknowledges that the overall collection goal for TRC set forth in the DTSC's regulation was not met. However, Nordyne believes that the language of the statute and DTSC's decision to issue SOV's to individual companies is flawed for reasons including, but not limited to:

- There is no consideration of relevant facts such as the number of mercury-added thermostats actually sold in CA or the number of Mercury-Added Thermostats collected for a particular TRC member.
- Mercury-Added Thermostats collected through other channels are not accounted for by brand and, consequently, such collections are not credited to an individual TRC member company. In fact, to our knowledge, there is no accounting for Mercury-Added Thermostats by brand performed by any entity other than TRC.
- The statute was intended to provide for the collection and recycling of the maximum feasible number of Mercury-Added Thermostats. The collection goals set by the DTSC for industry were unrealistic, unachievable and therefore not feasible. Nordyne understands that the DTSC was advised by TRC prior to enactment of 22 Code Cal. Regs. 66274.5 that the collection goals the DTSC was considering were unrealistic, unachievable and, therefore, not feasible, but the DTSC apparently proceeded notwithstanding substantial evidence that the targets could, in fact, not be achieved.
- It is Nordyne's opinion that the issuance of SOVs to individual TRC members is generally in conflict with the spirit of cooperation that TRC and its members have attempted to establish with the state of CA.

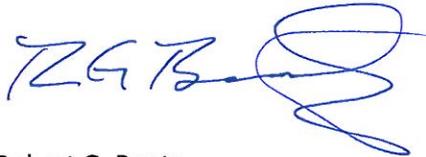
Further, Nordyne questions the very legality of DTSC attempting to hold Nordyne, Reznor, or any other TRC member company individually responsible for the failure of an entire industry group to meet a collective goal.

Nordyne understands that one or more large manufacturers plan to submit comprehensive and detailed responses to the DTSC's comments regarding the TRC plan. Rather than duplicating efforts, Nordyne limits its response concerning the DTSC's comments to the following: Nordyne disagrees with DTSC's finding that TRC's proposed modifications to the program are incapable of achieving the 2014 goal. Any discussion regarding of the TRC program's ability to achieve the collection goal must necessarily include evaluation of whether the goal itself is realistically achievable. In Nordyne's opinion, as noted above, the goal is not realistic or achievable. Regardless, Nordyne recognizes that the CA statute allows for DTSC to review and order changes to the plan if collection goals are not achieved. In this instance, TRC has submitted a plan in good faith for increasing collections in CA and it has been rejected by DTSC. By way of a general observation, there appears to be a common theme to DTSC's criticisms that TRC's proposed modifications are not properly supported by analysis of data. Nordyne offers that DTSC's criticisms are similarly lacking support that the proposed modifications won't result in increased collections. Further, DTSC offers no clear insight as to what modifications would be acceptable to DTSC. It is apparent to Nordyne that a cooperative and collaborative dialog between TRC members and DTSC is the solution to

achieving the shared objective of increasing collection and recycling results. Nordyne is ready and willing to actively participate, both individually and through TRC in such discussions. Note that as previously stated it is unclear to what extent Nordyne is legally obligated to respond to the SOV. Accordingly Nordyne has not attempted to provide an exhaustive list of factual and legal defenses to the SOV in this communication and requests that if DTSC clarifies what was expected in Nordyne response, Nordyne will supplement its response.

Going forward, Nordyne intends to fully support and participate in the efforts of TRC as Nordyne has done in the past. Nordyne welcomes the opportunity both individually and through TRC to engage in meaningful, collaborative and cooperative discussions with DTSC regarding collection and disposal of Mercury-Added Thermostats in CA.

Sincerely,



Robert G. Bentz
Risk Manager
Nordyne LLC