

Michael J. Geiger
Assistant General Counsel

Thomas & Betts

A Member of the ABB Group

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October 8, 2014

Via Fed Ex

Pauline Batarseh, Chief
Policy Implementation Branch
Policy and Program Support Division
Hazardous Waste Management Program
1001 "I" Street
Post Office Box 806
Sacramento, California 95812-0806

**Re: Thermostat Collection Program via
Thermostat Recycling Corporation ("TRC")
TRC Member: Thomas & Betts Corporation**

Dear Ms. Batarseh:

Thomas & Betts Corporation acknowledges the communications and notice issued by the Department of Toxic Substances Control ("DTSC") regarding the 2013 Mercury Containing Thermostat Collection Program. While DTSC and members of Thermostat Recycling Corporation ("TRC") have been working together to address the numbers of thermostats recovered and future steps, DTSC requested formal response from TRC members by September 10, 2014. DTSC extended the response date through October 10, 2014. Please accept this response by Thomas & Betts.

As an initial administrative matter, kindly replace Om Chopra as the contact for Thomas & Betts. I will serve as the contact, with my information below:

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Please accept advice of changes in our business structure. Thomas & Betts recently divested its entire HVAC business, including the Reznor Group. For purposes of TRC membership and these current claims of DTSC, Thomas & Betts operated as Reznor. In addition to the Reznor brand name, Thomas & Betts listed E.K. Campbell and International Energy Saver as legacy brand names. However, Thomas & Betts does not believe that it sold any mercury containing thermostats under the E.K. Campbell and International Energy Saver brand names.

Nortek, Inc. acquired this HVAC business, including Reznor. Nortek, Inc. can be reached through its General Counsel:

Kevin Donnelly
General Counsel
Nortek, Inc.
500 Exchange Street
Providence, Rhode Island 02903
Email: Kevin.donnelly@nortekinc.com

DTSC Claims and Procedural Status

DTSC alleged that Thomas & Betts failed to meet the established collection rate performance requirement for 2013 based on review of TRC's 2013 Annual Report. DTSC further concluded that TRC's proposed enhancements to the recycling program would be insufficient to meet the established collection rate for 2014.

DTSC demanded a meeting within forty-five (45) days of July 3, 2014 to discuss these issues and objections to DTSC's positions within thirty (30) days of July 3, 2014. The TRC members, including Thomas & Betts, fulfilled the requirement to meet with DTSC through participation in the July 30, 2014 conference call. DTSC extended the date to respond to the Summary of Violations ("SOV") until October 10, 2014.

On October 2, 2014, DTSC, Thomas & Betts and Nortek participated in a conference call to discuss DTSC claims, Thomas & Betts' positions, and developments with other TRC members similarly situated to Thomas & Betts. In accordance with DTSC's schedule, Thomas & Betts submits this position statement.

Thomas & Betts' Industry Position

As noted, Thomas & Betts divested its HVAC business. That corporate transaction included divestiture of all products or product lines which could have incorporated mercury containing thermostats. Thomas & Betts' core business remains the manufacture of electrical connectors.

For purposes of a path forward, please appreciate that Thomas & Betts is simply not part of the HVAC industry. Thomas & Betts neither manufactures nor sells HVAC equipment including the subject thermostats. Thomas & Betts does not belong to, or participate in, HVAC industry trade groups. At present, Thomas & Betts remains a member of TRC but only in a capacity to address these legacy issues.

Thomas & Betts itself has not manufactured mercury containing thermostats. Any thermostats included as necessary components with Reznor HVAC equipment were manufactured by third parties. Thomas & Betts is unaware of thermostats having been offered as stand-alone products.

At this stage, Thomas & Betts cannot identify those products or product lines which included a thermostat with the Reznor name. Thomas & Betts acknowledges that the TRC 2013 Annual Report includes reference to two "Reznor" thermostats. Longer term Reznor employees could not recall the specifics of use of any thermostat under the "Reznor" name. Thomas & Betts believes the use of third party, private label thermostats with the "Reznor" name to be an exceptional circumstance and clearly not its regular practice.

Accordingly, the number of subject thermostats bearing the Reznor brand name should be expected to be modest, at best.

Reznor heaters target the commercial and industrial markets. These products are not intended for use in residential settings.

Reznor's market share for commercial and industrial application historically remained low. This fact must be considered in light of the fact that use of a "Reznor" branded thermostat would be an exceptional situation. Reznor sells through a distribution network and, as such, sales into California cannot clearly be tracked. Regardless, under these circumstances of combining low market share and few "Reznor" branded thermostats, the potential of significant sales in the California market could be remote, at best. There simply remain, few, if any Reznor mercury containing thermostats bearing the Reznor brand name.

2013 Thermostat Recovery Program

As DTSC is aware, TRC reported on efforts to recover mercury containing thermostats in its 2013 Annual Report. DTSC publishes TRC's annual reports at <https://dtsc.ca.gov/HazardousWaste/Mercury/ThermInfo.cfm>. This response of Thomas & Betts incorporates the 2013 TRC Annual Report.

The 2013 TRC Annual Report summarizes on-going efforts and activities of TRC to recover mercury containing thermostats. DTSC is cognizant of these efforts as identified in DTSC's July 30, 2014 Conference Call Summary memorandum and

August 25, 2014 Review of Thermostat Recycling Corporation's 2013 Annual Report for California.

Independent of numbers of thermostats recovered in 2013, the TRC 2013 Annual Report and DTSC's review confirm that a viable and multifaceted structure remains in place designed to comply with California regulatory mandates. The 2013 TRC program through which members participate included the following elements:

- Education of HVAC contractors (mailings, advertisements, trade show attendance, media coverage in trade journals, etc.);
- Incentives for program participants;
- Targeted efforts to raise industry awareness of recycling program;
- Outreach for residential owners;
- Training videos for HVAC contractors and distributors;
- Partnerships with unions; and
- Enhanced use of evolving social media.

In addition, the 2013 TRC Annual Report candidly admitted that more can be accomplished. This 2013 report identifies and describes a number of changes and enhancements for the 2014 recycling program. DTSC fairly summarizes these modifications in its August 25, 2014 review. TRC and its members recognize that this recovery and recycling program cannot remain static. With each year of program operations, TRC better appreciates the efforts which result in greater program participation while identifying those groups who could benefit with more targeted efforts. The program evolves with a healthy dose of self-critical evaluation by TRC and its members.

DTSC's August 25, 2014 review of the TRC proposals notes recycling program enhancements and requests support for certain positions. In sum, DTSC instructs that TRC must gather verifiable data and present metrics to better allow assessment of the efforts to facilitate the thermostat recycling program. While TRC and DTSC continue the dialog regarding the scope and direction of the program, DTSC should be mindful of the robust nature of the recycling and recovery programs already in place and which remain flexible to allow modifications.

During our October 2 conference call, we discussed frankly the dynamics of TRC membership with the role of Thomas & Betts as a participating, yet small, player in TRC decisions. Since that conference call and upon the suggestion of DTSC, Thomas & Betts

has initiated steps to solicit joint participation of similarly situation TRC members (i.e., other “small” players). One goal of the forming such a group will be to better ensure careful and meaningful consideration of DTSC’s criticism and recommendations regarding the mercury thermostat recycling program. Thomas & Betts will propose a formation of a committee within TRC dedicated exclusively to address these issues. Such a committee could possibly liaison between TRC as a whole and DTSC regulators to better ensure input, as programs evolve.

Penalties for Past Performance

DTSC advised on July 30, 2014 that no decision had been reached regarding the potential levy of fines for the failure of any manufacturer to achieve performance objectives. Thomas & Betts believes that DTSC should carefully consider the noted efforts of TRC members to create and enhance a mercury thermostat recycling program. As reflected in all the TRC Annual Reports (available on the referenced DTSC web site), this recycling program has continued and progressed over time. The TRC members have demonstrated their dedication with continued participation over a number of years.

The TRC recycling programs have remained flexible and responsive. DTSC notes in the August 25 review that TRC itself proposed modifications and enhancements to the existing programs. While DTSC may critique certain of these efforts, it remains plain that the TRC members strive to improve upon the program features. TRC members seek to tap into technological advances (e.g., use of social media, video training, etc.) and take steps to better reach contractors, distributors and even homeowners.

After DTSC issued SOVs to TRC members, a collective and collaborative process has been followed to work toward a solution. DTSC and the TRC members have engaged each other to seek to develop an improved recycling program. While there ultimately may be disagreement between the agency and TRC members, the parties proceed in a fairly cooperative, and not adversarial, relationship.

DTSC must conclude that Thomas & Betts and the TRC members have proceeded in good faith. These compliance efforts have continued over years and not merely after issuance of demand by DTSC. Part of the good faith approach has been to evaluate and improve upon the recycling program. TRC members demonstrated commitment to future program improvements and modifications in the 2013 Annual Report.

The TRC members have demonstrated financial commitment to these recycling programs with the establishment and funding of the TRC itself. Thomas & Betts joined TRC at a cost of \$10,000 in an effort to recover legacy mercury containing thermostats. In 2013, TRC’s programs resulted in the collection of two (2) Reznor brand thermostats. For Thomas & Betts, these per unit costs are monumental, establishing serious commitment to the program.

Further, as noted, the Reznor equipment was marketed and sold to the commercial and industrial markets. While residential application is a possibility, Reznor constitutes 0% of the residential market. Many concerns raised by DTSC focus on improvements of the recycling program dedicated to residential settings. T&B did not sell to such markets. T&B did not gain financially from such markets. T&B is not expected to have any mercury containing thermostats in such markets. Consideration of penalties for failure to adequately address the residential market is simply not a factor properly applied to T&B.

Under these circumstances, imposition of fines would constitute purely punitive measures. As the commitments are in place to modify elements of the existing recycling program, fines would not function to encourage compliant behavior. The TRC members already seek to implement robust programs to comply with the spirit and letter of the regulatory mandates.

Resources should be utilized to enhance the TRC projects to the fullest extent rather than be diverted to satisfy civil penalties. The organization remains in place. The programs remain in place. TRC members proved a willingness to modify or add new elements to programs. This situation presents a tremendous opportunity for private action proceeding with the close guidance of an agency. Issuance of fines would undermine that structure and create adversity where cooperation currently resides.

It is respectfully requested that no fines issue to Thomas & Betts in light of these good faith efforts.

Thomas & Betts, an admittedly "small player" on these thermostat issues, strives toward a workable solution to better reach the goals expressed by DTSC. The points discussed during our October 2 conference call assisted our understanding of DTSC's concerns. We have sought to incorporate consideration of, and act on, these points. Thomas & Betts further appreciates the opportunity to present this response and objections to any fine. We are prepared to provide any additional information or otherwise assist DTSC in these processes. Thank you for your consideration.

Very truly yours,



Michael J. Geiger

MJG/dlb

cc: Kevin Donnelly (Nortek, Inc.)