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Via Email

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Ms. Pauline Batarseh
Dept of Toxic Substance
Control – Policy
Implementation Branch
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Sacramento, CA 95812

October 10, 2014

Dear Ms. Batarseh:

This correspondence shall serve as Uponor Inc.’s (Uponor) response to the Department of Toxic Substances Control’s (DTSC) summary of violations (SOV). In sum, we disagree with DTSC’s assessment and interpretation of 22 CCR §66274.5 as it relates to the collection requirements for mercury thermostats. We further dispute the data set forth in the December 28, 2009 SERA report and the legislature’s use of this report to set the required collection rates. Nevertheless, Uponor remains committed to achieving California’s goal of increasing the collection rates for mercury-containing thermostats and is actively pursuing alternative solutions to meet this objective.

By way of background, Uponor previously purchased a relatively small quantity of mercury-containing thermostats from Honeywell and resold those thermostats under the Wirsbo brand. Uponor stopped selling the subject thermostats approximately 15 years ago. Uponor subsequently sold an even smaller quantity of these thermostats to various distributors located within the state of California. As a products’ supplier, Uponor was not privy to the ultimate end users’ location and has no way of knowing how many of these thermostats were installed in California. However, as these thermostats were sold as an accessory to Uponor’s radiant heating system, it is indisputable that only a very small number of thermostats were actually installed in homes located within California as the demand for Uponor’s radiant heating system in this state is very low due to the temperate climate. Uponor has not sold any thermostats into the state of California since 2006.

As you are aware, on October 6, 2014, Dale Stroud, Uponor’s Senior Director of Marketing & Offering, and Uponor’s outside counsel participated in a teleconference with representatives and counsel from DTSC. During the call, Uponor emphasized that it has sold very few mercury-containing thermostats relative to many other manufacturers. Uponor further expressed its concern that it is essentially responsible for collecting as many thermostats as much larger manufacturers such as Honeywell and General Electric which is contrary to the plain language of 22 CCR §66274.5 (b) stating, [i]f more than one manufacturer or group of manufacturers operates a program in a given calendar year...the department shall assign a pro rata proportion of TT to **each manufacturer** or group of manufacturers operating a program.” Despite these trepidations, both Uponor and DTSC representatives agreed that collaboration amongst members of TRC is vital to improving efforts to meeting the overall collection goal for 2014 and beyond.



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Since the October 6th call with DTSC, Uponor has contacted representatives and counsel representing at least a dozen TRC members in order to discuss how TRC may increase its collection rates. Additionally, on October 9, 2014, counsel for Uponor participated in a telephone conference with representatives and counsel from at least 15 members of TRC to brainstorm the most pragmatic course of action. Specifically, all participants on this call agreed that the data set forth in the SERA report is grossly inaccurate. Thus, these members recommended retaining an alternate expert to perform a peer reviewed study setting forth more precise data that will ultimately lead to more obtainable collection parameters.

It is our understanding that both Honeywell and Johnson Controls have retained experts to review the SERA report and are willing to share their findings with TRC members. Upon information and belief, counsel for Honeywell is submitting an extensive response to the SOV by the close of business today. It is believed this response will set forth newly obtained data in addition to a proposed action plan to facilitate the recycling of mercury containing thermostats. As Honeywell is one of the key players in the thermostat market, Uponor anticipates it will adopt most of these recommendations.

At this time, members of TRC, including Uponor, plan to set up a teleconference with representatives from Honeywell and Johnson Controls within the next 30 days to discuss the most effective way to further the goal of collecting mercury containing thermostats installed in California. We further recommend a follow up call between certain representatives from TRC and DTSC in order to continue the dialogue regarding suggested improvements to the current collection methods. It is the general consensus that cooperation between TRC members and DTSC will result in obtaining accurate data to implement a successful recycling program.

We of course welcome an additional conversation between DTSC and Uponor representatives to discuss the foregoing. Should you wish to schedule such a call, please let me know.

Very truly yours,

Lindsay E. Dansdill

cc: Dale Stroud
Brad Beckman