**Matthew Rodriquez**
*Secretary for*
*Environmental Protection*

# Department of Toxic Substances Control

Barbara A. Lee, Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806

**Edmund G. Brown Jr.**
*Governor*

January 30, 2015

Certified Mail No.: **7003 3110 0003 0768 1035**

Mr. James Cauley
The Marley-Wylain Company
400 South Prairie Avenue
Waukesha, Wisconsin 53186

SETTLEMENT OF THE SUMMARY OF VIOLATIONS

Dear Mr. Cauley:

Thank you for your response to the Department of Toxic Substances Control's (DTSC) July 3, 2014 Summary of Violation (SOV) letter and for participating in the follow up conference calls and meetings. Although the responses to the SOV from the thermostat manufacturers took a variety of positions on the alleged violation, nearly all of the manufacturers expressed a desire to continue to work with DTSC to discuss ways to improve the collection program and its performance and to resolve DTSC's concerns.

DTSC would like to continue the dialogue begun in the conference calls and meetings and work with you to reach an amicable resolution to the SOV. To facilitate discussions, DTSC has enclosed an outline of key elements that it believes are necessary to improve program performance. The outline includes a list of the modifications or enhancements to the collection program; many of which were offered by manufacturers' representatives in their meetings with DTSC, as well as other collection program related items that DTSC would like to discuss in its upcoming meetings with manufacturers.

DTSC will schedule a meeting on or before February 27, 2015 to begin the negotiations process using the attached outline as an agenda to help guide discussions. Any agreed upon collection program enhancements or modifications would be incorporated into a Consent Order that will serve to both resolve the cited violation and memorialize the commitment on changes that manufacturers agree to make to their collection program. It is DTSC's desire to reach agreement and sign a Consent Order with each manufacturer no later than April 30, 2015.

As you know, DTSC issued a SOV to each manufacturer, and must resolve those SOVs individually. DTSC recognizes that the manufacturers have all chosen to comply with California law collectively, and participate in a common collection program being operated on all of their behalf. The changes DTSC seeks to negotiate pertain to the common collection program and its operation. DTSC does not envision needing to negotiate changes to the common collection

program with each individual manufacturer. DTSC believes it will be more efficient and effective to negotiate the collection program changes with a subset of manufacturers, if all manufacturers are in agreement that a subset may negotiate program modifications on their behalf.

Please respond within 10 days of receipt of this letter regarding DTSC's proposed approach. If you are not amenable to the proposed approach, please provide DTSC with a written explanation and with your explanation, your alternative proposal to resolve the outstanding violation. Failure to respond may result in DTSC issuing a Unilateral Enforcement Order that includes a compliance schedule and penalty assessment for the 2013 violation.

The issuance of this letter does not preclude DTSC from taking administrative, civil, or criminal action including penalties as a result of the violation noted.

If you have any questions, please contact Mr. Donn Diebert of my staff at (916) 322-2505 or via Donn.Diebert@dtsc.ca.gov.

Sincerely,

Pauline Batarseh

Pauline Batarseh, Chief
Policy Implementation and Support Branch
Hazardous Waste Management Program

Enclosure

cc: Mr. Mark Tibbetts
Executive Director
Thermostat Recycling Corporation
1300 North 17th Street, Suite 1752
Rosslyn, Virginia 22209

Mr. Donn Diebert, P.E., Chief
Program Implementation Unit
Policy Implementation and Support Branch
Policy and Program Support Division
Hazardous Waste Management Program
Department of Toxic Substances Control
1001 I Street, 11th Floor
P.O. Box 806
Sacramento, California 95812-0806

**Outline of Key Program Improvements / Enhancements**
**for the Thermostat Collection Program**

The thermostat collection program being operated on behalf of the thermostat manufacturers (Respondents) shall be modified to include or incorporate the below elements. Specific deliverables, performance metrics, and time schedules will be incorporated into the final version of the negotiated Consent Order.

- **California Presence**: Establish a program office in California and hire program staff dedicated to operating the collection program in California.
- **Metrics**: Develop metrics and collect data that measures the performance/effectiveness of each program element being implemented or proposed (including the existing internet and print media efforts).
- **Program Participation**: Solicit program participation from the following generators/handlers of mercury containing thermostats beyond wholesalers.
    1. Household Hazardous Waste Collection Facilities
    2. HVAC contractors
    3. Demolition contractors
    4. General contractors
    5. Local building departments
    6. Utility companies
    7. School districts
    8. Property managers (Multi-family housing and commercial/industrial)
    9. Hotel/motel managers
    10. Consumers
- **Incentive Pilots**: Establish pilot programs to determine the effectiveness of incentives on program performance: Include both monetary and non-monetary incentives. Measure the effectiveness of each pilot project including whether the approach is more effective on different program participants.
- **Return Packaging Pilots**: Establish a pilot for thermostat units sold to consumers at retail stores that utilizes product packaging that can be used to return thermostats being taken out of service.
- **"Collect them All, Sort them Later" Pilot:** Establish a pilot that targets the collection of *all* thermostats taken out of service in the pilot area (both mercury containing and non-mercury containing). From the total collected, the program accounts for the mercury containing thermostats that can be attributed to the annual performance goal.
- **Report improvements**: Improve the content and increase the frequency of reporting (more frequent than annually) to allow mid-year program adjustments and corrections.
- **Collection Source Data**: For all mercury containing thermostats being collected, report the source of each thermostat by program participant.
- **Penalties**: Establish a penalty schedule that assesses penalties on the manufacturers for failure to carry out agreed upon program improvements and/or failure to achieve the annual performance goal.
- **Public Process**: Solicit public feedback/comments on proposed program improvements to incorporate into final consent order as necessary.