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July 31, 2014

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

Re: Initial Response to July 3, 2014 Summary of Violations relating to
2013 Annual Report for the California Thermostat Program

Dear Ms. Batarseh:

We have been retained by White-Rodgers to represent it in connection with the Summary of Violations (“SOV”) issued by the Department of Toxic Substances Control on July 3, 2014 regarding the collection and recycling program for out-of-service mercury-added thermostats conducted by the Thermostat Recycling Corporation (“TRC”). White-Rodgers is a division of Emerson Electric Co., and a member of TRC.

As an initial matter, we note that White-Rodgers did not receive proper notice of the SOV. The SOV was sent to Mr. John Sperino, who is not a White-Rodgers employee and is not authorized to act as White-Rodgers’ agent. Mr. Sperino is an in-house attorney employed by Climate Technologies, Inc., an Emerson company located in Sidney, Ohio. White-Rodgers is located in St. Louis, Missouri, and has no business operations at the Sidney facility. Please direct all future correspondence relating to this matter to: President, White-Rodgers, 8100 West Florissant Avenue, P.O. Box 36922, St. Louis, MO 63136-9022, with a copy to me.

According to the SOV, the Department has determined that White-Rodgers, as a member of TRC, has violated section 66274.5(a) of the Title 22 regulations, by failing to meet the established collection rate performance requirement for calendar year 2013. No further explanation of the alleged violation is provided in the SOV. White-Rodgers acknowledges that the number of out-of-service mercury-added thermostats

collected by TRC in the latter six months of 2013 was less than the collection target specified in the regulations, and is respectful of the Department's need to exercise appropriate oversight of the collection program. Further, White-Rodgers is an active participant in collection programs being carried out across the country. However, based on the erroneous nature of the collection rate performance requirements specified in the Title 22 regulations, White-Rodgers maintains that it cannot be found in violation of the Act or the implementing regulations.

Consistent with comments submitted by TRC, Honeywell, and other industry representatives during the rulemaking process, the collection rate performance requirements in the regulations are based on a fundamentally and severely flawed assessment of the number of thermostats that are expected to be discarded, and thus available for collection, in California on an annual basis. Accordingly, we believe the performance requirements in the regulations are unenforceable and cannot serve as the basis for imposition of financial penalties or other sanctions.

Notwithstanding the foregoing, White-Rodgers wishes to emphasize that it intends to work cooperatively with the Department and other industry representatives to modify the collection and recycling program so that it is based on realistic and achievable collection goals. This is in the best interests of all stakeholders, and will contribute more than any other measure to the long-term success of the program. As with any human endeavor, it is important to establish goals that motivate, rather than discourage, people. If the goals are set so high that they can never be achieved despite the exercise of reasonable efforts, the program is doomed to failure, legislative or regulatory "mandates" notwithstanding.

White-Rodgers would be happy to meet with the Department at its earliest convenience, either individually or as part of a larger industry coalition, to discuss how the collection and recycling program can be improved. Our goal is to ensure that the program is effective and aligned with the ultimate objectives of the Mercury Thermostat Collection Act. We believe this can be accomplished without the need for enforcement action or the imposition of prohibitions on thermostat sales in California.

We understand that the Department will be sending a notice to all SOV recipients extending the 30-day period for response and providing the minutes of a July 30 conference call between the Department and certain industry representatives (White-Rodgers was unable to participate in that call). We welcome this additional information and believe that an open dialogue with Department staff is very important. White-Rodgers is submitting its initial response to the SOV within the original 30-day window so that its objections are clearly on record, and may submit additional information, as appropriate, within the period of any extension granted by the Department. We also understand that the Department's written assessment of the

program enhancements outlined in the 2013 TRC Annual Report will be provided for TRC members' review in the near future. White-Rodgers looks forward to the receipt of that assessment and to an opportunity to comment on and discuss the Department's findings.

Thank you for your consideration. We look forward to working with the Department to resolve this matter to the benefit of all program participants and the public.

Very truly yours,

A handwritten signature in cursive script that reads "Meg Rosegay".

Margaret Rosegay

Cc: Donn Diebert, DTSC
John Sartain
John Sperino, Esq.
Victor Lazzaretti, Esq.