September 29, 1995

Daniel H. Margolis, Esquire
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D.C. 20037

Re: Halon Recycling Corporation's Request for Expedited Business Review Clearance

Dear Mr. Margolis:

This letter responds to your request of July 27, 1995, for a statement by the Department of Justice ("the Department") of its current enforcement intentions regarding a proposal by the Halon Recycling Corporation ("HRC") to add a second halon product, Halon-1211, to the information exchange and marketing system for Halon-1301 that was the subject of a favorable business review letter by the Department on August 6, 1993. HRC is a non-profit corporation founded by members of the Halon Alternatives Research Corporation ("HARC").[1] Because of the adverse effect that halon products[2] have on the ozone layer, the Clean Air Act Amendments of 1990, and the Montreal Protocol on Substances that Deplete the Ozone Layer prohibit the production of new halon as of January 1, 1994. Since effective substitutes are not yet available for certain critical uses, the recycling and transfer of certain halon products for critical uses is permitted. In 1993, HRC was founded to facilitate the sale or transfer of one type of recycled halon, Halon-1301, to buyers who had a critical need for that product. It now seeks to add Halon-1211 to its program. The United States Environmental Protection Agency ("EPA") has actively encouraged the development of your proposal and its expansion to include Halon-1211 so that domestic needs for critical applications of Halon-1211 can be met.

We understand that HRC uses a two-tier classification system under which buyers can be identified as either registered or certified. To be registered, a buyer will self-certify that it has a critical use for Halon-1211, to be certified, a buyer will submit information to an independent review

---

We understand that HARC was founded in 1989 to promote research and development of alternative fire and explosion suppression products. The United States and approximately one hundred other countries have agreed to phase out production of halon to protect the ozone layer.

Halon-1301 is a low-toxicity, chemically stable, gaseous compound used in fire protection systems and devices to suppress fires and explosions primarily in industrial and military uses. Halon-1211 is primarily used in portable fire extinguishers.

committee[3] that it has a critical need for Halon-1211 in accordance with the United Nations Environment Programme Halons Technical Options Committee.

While HRC will receive a brokerage fee if a sale is transacted; an advertising or listing fee from participating sellers when the seller is selling, as opposed to donating, its Halon-1211; and a registration fee from both registered and certified buyers, you have represented that HRC will have no role in establishing price or terms of sale, and HRC will not establish any such pricing guidelines or formulae. HRC's sole role will be to put buyers and sellers in touch with one another and to certify, when requested to do so, that a prospective buyer's need for Halon-1211 satisfies the critical use criteria set forth by the United Nations Environment Programme Halons Technical Options Committee.

You further represent that no potential buyer or seller will be required to use your system when making sales or purchases of Halon-1211. Participation in HRC will be open to all industry participants. HRC will receive a small brokerage fee for its role in facilitating a transaction, but that fee will be dependent on the volume sold, which will be unknown to HRC until the sale is finalized, rather than on price level.

Based upon the information you have provided and your representations, the Department has no current intention to challenge the addition of Halon-1211 to HRC's existing information exchange and marketing system. The Department would be concerned about the creation or implementation of an information exchange if it would likely facilitate collusion or otherwise reduce competition among market participants in the purchase or sale of their products.

Based upon your representations, however, adding Halon-1211 to the HRC's existing information exchange and marketing system appears unlikely to reduce competition by facilitating collusion among potential buyers and sellers. Nothing in HRC's proposal requires any potential buyer or seller of Halon-1211 to use HRC's services or prohibits the formation of another similar enterprise. In addition, HRC has implemented a number of procedural and operational safeguards to protect against possible collusion, including the following: (1) all negotiations with regard to a potential purchase and sale of Halon-1211 will be confidential between the buyer and seller, HRC will not be involved in selecting which buyer should negotiate with which seller, nor will it suggest any price levels as desirable or appropriate; (2) the total volume of Halon-1211 required by any particular buyer will not be revealed by that buyer to any other potential buyer; and (3) profits or profit margins, market shares, bids or intent to bid, sales or refusals to sell with respect to any buyer or seller will not be discussed or disclosed between or among HRC members.

This independent review committee will be comprised of eleven members designated by HRC's Board of Directors. Three members will be paid consultants, recognized experts in fire protection; four members will be industry representatives who are members of HARC; two members will be from non-governmental environmental organizations; and two members will be from the EPA.

Moreover, there appears to be a procompetitive justification for this proposal. Your proposal could establish or enlarge the market for recycled Halon-1211 and, presumably, facilitate its efficient allocation to the most critical uses.

For the foregoing reasons, the Department, based on your assurances as to the manner in which HRC is, and will be, operated, has no current intention to challenge the conduct described in your proposal. This letter only expresses the Department's current enforcement intentions. In accordance with our normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of HRC's information exchange and marketing system proves anticompetitive in purpose or effect.

This statement is made in accordance with the Department's business review procedure, 28 CFR § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available within thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with paragraph 10(c) of the Business Review Procedure.

Sincerely,

/S/

Anne K. Bingaman
Assistant Attorney General