



U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 27, 1993

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

Re: Halon Recycling Corporation

Dear Mr. Margolis:

This letter responds to your request of April 19, 1993, for a statement by the Department of Justice ("the Department") of its current enforcement intentions regarding an information exchange and marketing system proposed by the Halon Recycling Corporation ("HRC"). HRC, a non-profit corporation founded by members of the Halon Alternatives Research Corporation ("HARC"),¹ proposes to develop and establish a system to facilitate and encourage the recovery, recycling and transfer of halon-1301² from sellers willing to sell or donate their stock of halon-1301 to buyers who have a critical use requirement for halon-1301. HRC states its proposal will develop a market for the purchase and sale of recycled halon-1301. You have represented that the United States Environmental Protection Agency ("EPA") has actively encouraged the development of your proposal so that domestic needs for critical applications of halon-1301 can be met after the phase-out of its production.

¹ We understand that HARC was founded in 1989 to promote research and development of alternative fire and explosion suppression products.

² Halon-1301 is a low-toxicity, chemically stable, gaseous compound used in fire protection systems and devices to suppress fires and explosions. The United States and approximately one hundred other countries have agreed to phase out production of halon-1301 to protect the ozone layer.

We understand that HRC proposes to establish 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-1301; to be certified, a buyer will submit information to an independent review committee³ that it has a critical need for halon-1301 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-1301, 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. There are currently no guidelines or formulae for determining the price to be paid for the recycled halon-1301 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-1301 satisfies the critical use criteria set forth by the United Nations Environment Programme Halons Technical Options Committee.

You further represent that no member or non-member of HRC will be required to use your system when making sales or purchases of halon-1301. Membership will be open to all industry participants, although currently HRC has only a small number of members. HRC will receive a small brokering 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 information exchange and marketing system proposed by HRC. 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

³ 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.

of their products. This is a potential concern where, as in your proposal, HRC members seeking to purchase or to sell recycled halon-1301 are horizontal competitors in this newly emerging market. Although the creation and implementation of HRC's information exchange is not inherently anticompetitive, such activity could be used as a vehicle by which the members could agree to restrict access to certain stores of halon-1301 and/or to fix or raise prices.

Based upon your representations, the HRC information exchange and marketing system appears unlikely to reduce competition by facilitating collusion among HRC members. Nothing in HRC's proposal requires any potential buyer or seller of halon-1301 to use HRC's services or prohibits the formation of another similar enterprise. In addition, HRC will implement 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-1301 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-1301 required by any particular buyer will not be revealed by that buyer to any member of HRC; 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.

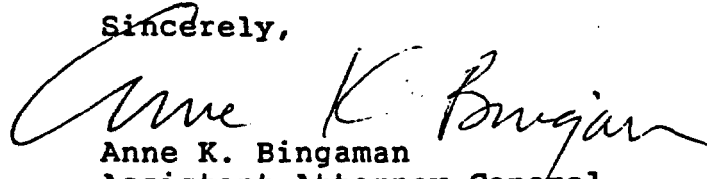
Moreover, there appears to be a procompetitive justification for this proposal. The information that you have supplied indicates that currently no market exists for recycled halon-1301. Your proposal would establish a market for recycled halon-1301, and, presumably, facilitate its efficient allocation to the most critical uses.

For the foregoing reasons, the Department, therefore, has no current intention to challenge the conduct described in your proposal. This letter expresses the Department's current enforcement intentions only. 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,

A handwritten signature in cursive script, reading "Anne K. Bingaman". The signature is written in dark ink and is positioned above the printed name and title.

Anne K. Bingaman
Assistant Attorney General
Antitrust Division



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CORRECTED COPY

Office of the Assistant Attorney General

Washington, D.C. 20530

AUG 6 1993

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 April 19, 1993, for a statement by the Department of Justice ("the Department") of its current enforcement intentions regarding an information exchange and marketing system proposed by the Halon Recycling Corporation ("HRC"). HRC, a non-profit corporation founded by members of the Halon Alternatives Research Corporation ("HARC"),^{1/} proposes to develop and establish a system to facilitate and encourage the recovery, recycling and transfer of halon-1301^{2/} from sellers willing to sell or donate their stock of halon-1301 to buyers who have a critical use requirement for halon-1301. HRC states its proposal will develop a market for the purchase and sale of recycled halon-1301. You have represented that the United States Environmental Protection Agency ("EPA") has actively encouraged the development of your proposal so that domestic needs for critical applications of halon-1301 can be met after the phase-out of its production.

^{1/} We understand that HARC was founded in 1989 to promote research and development of alternative fire and explosion suppression products.

^{2/} Halon-1301 is a low-toxicity, chemically stable, gaseous compound used in fire protection systems and devices to suppress fires and explosions. The United States and approximately one hundred other countries have agreed to phase out production of halon-1301 to protect the ozone layer.

We understand that HRC proposes to establish 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-1301; to be certified, a buyer will submit information to an independent review committee^{3/} that it has a critical need for halon-1301 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-1301; 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. There are currently no guidelines or formulae for determining the price to be paid for the recycled halon-1301 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-1301 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-1301. 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 information exchange and marketing system proposed by HRC. The Department would be concerned about the creation or implementation of an information exchange if it would likely facilitate collusion or otherwise reduce

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competition among market participants in the purchase or sale of their products. This is a potential concern where, as in your proposal, potential buyers and sellers seeking to purchase or to sell recycled halon-1301 through HRC are horizontal competitors in this newly emerging market. Although the creation and implementation of HRC's information exchange is not inherently anticompetitive, such activity could be used as a vehicle by which potential buyers and sellers could agree to restrict access to certain stores of halon-1301 and/or to fix or raise prices.

Based upon your representations, the HRC 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-1301 to use HRC's services or prohibits the formation of another similar enterprise. In addition, HRC will implement 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-1301 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-1301 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.

Moreover, there appears to be a procompetitive justification for this proposal. The information that you have supplied indicates that currently no market exists for recycled halon-1301. Your proposal would establish a market for recycled halon-1301, and, presumably, facilitate its efficient allocation to the most critical uses.

For the foregoing reasons, the Department, therefore, has no current intention to challenge the conduct described in your proposal. This letter expresses the Department's current enforcement intentions only. 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,

A handwritten signature in cursive script, appearing to read "Anne K. Bingaman". The signature is fluid and extends to the right.

Anne K. Bingaman
Assistant Attorney General