# CALIFORNIA ENVIRONMENTAL QUALITY ACT
# NOTICE OF EXEMPTION

To: Office of Planning and Research
State Clearinghouse
P.O. Box 3044, 1400 Tenth Street, Room 212
Sacramento, CA 95812-3044

From: Department of Toxic Substances Control
Office of Pollution Prevention and Green Technology
1001 I Street
Sacramento, CA 95814

Project Title: Mercury Thermostat Collections and Performance Requirements Regulations

Project Location: Statewide

County: This rulemaking affects all counties in California.

Project Description: The proposed regulation will implement California Health and Safety Code section 25214.8.17, subsection (b)(1) and (b)(2), of the Mercury Thermostat Collection Act of 2008 (Article10.2.2, of chapter 6.5 of the Health and Safety Code). The proposed regulation includes, but is not limited to:

1. Providing performance requirements for a manufacturer or group of manufacturers[1] (manufacturer) that specify collection rates expressed as a percentage of out-of-service mercury-added thermostats becoming waste annually.

2. Establishing a methodology for the calculation of the number of out-of-service mercury-added thermostats becoming waste annually.

3. Requiring licensed heating, ventilation, and air-conditioning and demolition persons handling out-of-service mercury-added thermostats to provide the business operating the collection location with their contractor's Contractors State Licensing Board Identification Number.

4. Requiring manufacturers to submit additional data to DTSC regarding their collection of out-of-service mercury-added thermostats, as part their statutory reporting requirements, pursuant to California Health and Safety Code section 25214.8.13, subsection (i), of the Mercury Thermostat Collection Act of 2008.

The management of waste mercury-containing thermostats is already regulated by an existing regulation, California Code Regulations, Title 22 (Cal.Code Regs., tit. 22) Division 4.5, Chapter 23. This proposed regulation does not impose any new physical handling requirements or management standards. Additionally, the proposed regulation does not change requirements for universal waste transporters and destination facilities.

Background: On January 1, 2006, the State of California banned the sale of mercury-containing thermostats. California Health and Safety Code section 25214.8.10 through 25214.8.20 of the Mercury Thermostat Collection Act of 2008 (Act), requires a manufacturer that owns or owned a name brand of mercury-added thermostats sold in California prior to January 1, 2006, to establish and maintain a collection, transportation, recycling, and disposal program for out-of-service mercury-added thermostats. In this way those responsible for placing a product in the stream of commerce assume responsibility for management at the end of the product's useful life. The Act required these manufacturers to provide a methodology to determine the number of out-of-service mercury-added thermostats becoming waste annually. Accordingly, the manufacturers' representative organization—the Thermostat Recycling Corporation (TRC) contracted with Skumatz Economic Research Associates (SERA) of Boulder, Colorado, to prepare a report titled, *Study to Meet Requirements for State of California Thermostat Recycling Legislation. Mercury-Containing Thermostats: Estimating Inventory and Flow from Existing Residential & Commercial Buildings* (SERA Report). DTSC used the SERA Report as the basis for establishing the methodology in the proposed regulation to calculate the number of out-of-service mercury-added thermostats becoming waste annually.

Pursuant to Health and Safety Code section 25214.8.17, DTSC is required to develop performance requirements, expressed as a percentage, of out-of-service mercury-added thermostat becoming waste annually. The performance requirements specify the annual collection rates that a manufacturer-operated thermostat collection program must meet. The proposed regulation specifies performance requirements incrementally for the five years: 2013 through 2017. The performance requirements for subsequent years through 2022 are set at a rate of 75 percent. Performance requirements beyond 2022 will be established in a future rulemaking and will be determined based on the manufacturers' success in meeting the first ten years' requirements.

[1] California Health and Safety Code section 25212.8.11.(a): "Manufacturer" means a business concern that owns or owned a name brand of mercury-added thermostats sold in the state before January 1, 2006.

Name of Public Agency Approving Project: California Environmental Protection Agency-Department of Toxic Substances Control.

Name of Person or Agency Carrying Out Project: Department of Toxic Substances Control.

Exemption Status: (check one)

- ☐ Ministerial [PRC, Sec. 21080(b)(1); CCR, Sec. 15268]
- ☐ Declared Emergency [PRC, Sec. 21080(b)(3); CCR, Sec.15269(a)]
- ☐ Emergency Project [PRC, Sec. 21080(b)(4); CCR, Sec.15269(b)(c)]
- ☒ Categorical Exemption: [Cal Code Regs, title 14, section 15308]
- ☐ Statutory Exemptions: [State code section number]
- ☐ General Rule [CCR, Sec. 15061(b)(3)]

Exemption Title: Actions by Regulatory Agencies for Protection of the Environment.

Reasons Why Project is Exempt: The methodology for determining the mercury-added thermostats that become annual waste and the establishment of annual performance requirement for the collection of out-of-service mercury-added thermostats would not result in a "substantial or potentially substantial, adverse change within the area affected by the proposed regulation (statewide). The proposed regulation will not create a physical impact to the environment because the requirements are primarily administrative in nature and establish performance requirements for thermostat collection activities that are already occurring. An analysis of the project activities, based upon existing environmental conditions, indicates that there are existing controls previously established in universal waste regulation and the statute for handling and managing mercury-added thermostats that become waste. For the establishment of these performance requirements, for the number of mercury-added thermostats to be collected annually, the Department has determined that implementation of the regulation will have a less than significant effect on the environment, including impacts from greenhouse gases.

Evidence to support the above reasons is documented as a part of this rulemaking file, R-2010-3 and is available for inspection at:

Department of Toxic Substances Control-Office of Policy
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