

3.0. RESPONDENTS' PLAN FOR COMPLIANCE.

Respondents shall conduct each of the following actions in accordance with the schedule set forth in this Section:

3.1. TRC staff designation.

3.1.1. Within sixty (60) days of the Effective Date of this Order, Respondents shall designate a position within TRC to oversee its California operations and Respondents' compliance with this Order.

3.1.2. Within five (5) days after the position has been filled, Respondents shall provide the Department with the name and contact information for the individual hired by TRC to perform this function, in accordance with the Notice provisions in Paragraph 4.1.

3.2. Consultants.

3.2.1. Within thirty (30) days of the Effective Date of this Order, Respondents shall secure consultative services to, at a minimum, develop the draft Outreach Plan defined in Section 3.3.1, the draft Pilot Project Plan described in Paragraph 3.4.1, and the draft Program Modification Plan described in Paragraph 3.5.1.

3.2.2. Within five (5) days of securing the consultant, Respondents shall provide the Department with the name of the consultant and contact information for the consultant, in accordance with the Notice provisions in Paragraph 4.1..

3.3. Outreach Plan.

3.3.1. Within sixty (60) days of the Effective Date of this Order, Respondents shall develop and submit to the Department for its review and approval a draft Outreach Plan. The goal of the plan is for the Respondents to make contact with persons, entities or businesses that may generate or collect mercury containing thermostats (at a minimum, the list in Exhibit B) for purposes of increasing Program participation so that the number of collected thermostats increases. The activities in the Outreach Plan shall be designed to engage the potential Program participant groups listed in Exhibit B in a meaningful way. The draft Outreach Plan shall include a proposed implementation schedule which shall begin no later than thirty (30) days after submittal of the draft plan to the Department.

3.3.2. No later than thirty (30) days after submittal of the draft Outreach Plan to the Department, or upon approval of the plan by the Department, whichever occurs first, unless directed otherwise by the Department, the Respondents shall implement the plan in accordance with the provisions and schedule specified therein. Respondents may terminate outreach efforts with any potential Program participant group identified in the approved Outreach Plan upon providing an explanation satisfactory to the Department for doing so. The Department's decision approving or disapproving the requested termination of outreach efforts shall be communicated to Respondents in writing and shall set forth the reasons therefor. Any other proposed modifications to the approved Outreach Plan shall be submitted to DTSC in writing for its consideration and approval.

3.4. Pilot Project Plan.

3.4.1. Within ninety (90) of the Effective Date of the Order, Respondents shall develop a Pilot Project Plan that includes a sufficient variety and number of pilot projects designed to assess the effectiveness of the use of incentives to increase Program participation and the number of Thermostats collected. The Pilot Project Plan shall be informed by the results of Respondents' implementation of its Outreach Plan to the extent practicable and shall include a reasonable assortment of pilot projects that assess the use of monetary incentives of different values with different participants, the use of nonmonetary incentives of different values with different participants, and the timing of the receipt of the incentive (immediate versus delayed). The Pilot Project Plan shall also include a proposed schedule for implementation of the pilot projects described therein which shall begin no later than thirty (30) days after submittal of the draft plan to the Department.

3.4.2. No later than thirty (30) days after submittal of the draft Pilot Project Plan to the Department, or upon approval of the plan by the Department, whichever occurs first, unless directed otherwise by the Department, Respondents shall implement the Pilot Project Plan in accordance with its provisions and schedule. Within ninety (90) days of the completion of all activities described in the approved Pilot Project Plan, the Respondents shall submit a report describing the results of each of the pilot projects undertaken pursuant to the Pilot Project Plan

and indicating which, if any, of the pilot projects will be incorporated into the Program Modification Plan described in Paragraph 3.5. The Department acknowledges that some or all of the pilot projects may still be ongoing at the time Respondents are required to submit the draft Program Modification Plan to the Department. †

3.5. Program Modification Plan.

3.5.1. Within two hundred and forty (240) days of the Effective Date of the Order, Respondents shall develop and submit to the Department for its review and approval a draft Program Modification Plan that includes specific proposals to modify the Program, taking into consideration information and data gathered as a result of implementation of the Pilot Project Plan and the Outreach Plan, to the extent such data are available. For each proposed modification, the Respondents shall include in the draft Program Modification Plan the specific data or information the proposed modification is based on, as well as the anticipated impact on Thermostat collections. For any element of the Respondents' existing Program that is proposed to remain unchanged, the Respondents shall include in the draft Program Modification Plan the specific data or information that supports the continuation of the Program element without change. The draft Program Modification Plan shall also identify the data and information that the Respondents will collect to assess the effectiveness of each Program modification in yielding increased Program participation and thermostat collections. The draft Program Modification Plan shall include a proposed schedule for the Respondents to implement the identified modifications which shall begin no later than thirty (30) days after submittal of the draft pan to the Department.

3.5.2. No later than thirty (30) days after submittal of the draft Program Modification Plan to the Department, or upon approval of the plan by the Department, whichever occurs first, unless directed otherwise by the Department, Respondents shall commence implementation of the Program Modification Plan in accordance with its provisions. Respondents shall ensure that adequate resources are available to implement the approved Plan. The Respondents shall submit quarterly reports detailing their progress in implementing the Plan.

3.5.3. After the Program Modification Plan has remained in effect for at least one full calendar year, Respondents and the Department shall meet and review the effectiveness of the

Plan in meeting the current collection requirements established by the Regulations.

3.5.4. Respondents shall amend the Program Modification Plan from time to time as necessary to incorporate program enhancements that are informed by data collected pursuant to this Order and any other pertinent data, including the results of pilot projects that were determined to contribute cost-effectively and meaningfully to the collection of Thermostats in California. Any proposed modifications to the approved Program Modification Plan shall be submitted to DTSC in writing for its consideration and approval.

3.5.5 Nothing in this Order prevents or precludes any or all of the Respondents from submitting data at any time, including any data collected in carrying out the requirements of this Order and any other pertinent data, to the Department pursuant to California Code of Regulations, title 22, section 66274.4(b) requesting a modification of the performance requirements and/or the estimated number of thermostats becoming waste annually, which request shall be timely considered by the Department.

3.6. Public Input.

Nothing in this Order prevents or precludes the Department from making the draft Plans submitted by Respondents pursuant to this Order, available to the public, or from incorporating any comments or feedback it receives from the public regarding the draft Plans into its review and approval process for the Plans in accordance with Paragraph 4.3 of this Order. Nothing in this paragraph prevents or precludes Respondents from invoking the dispute resolution provisions of Paragraph 16 if the Department requires incorporation of any such comments over Respondents' objection.

3.7. Non-Program Collections.

For purposes of counting the Thermostats that are attributed to the Respondents towards the regulatory collection requirement, the Respondents may request the Department to allow inclusion of Thermostats that were that were not collected by TRC or other entities that are direct Program participants. Any such request by Respondents shall include the rationale for giving credit to Respondents for these Thermostats collected by third parties. The Department shall evaluate any such request made by the Respondents and shall communicate its decision in

writing to the Respondents within thirty (30) days of such request unless the Department notifies the Respondents that additional time is required for its response. The Department shall explain the basis for its decision in the written communication with the Respondents.

3.8. California Expenditures.

In addition to expenditures reported to the Department in accordance with California Health and Safety Code section 25214.8.13, subdivision (i), Respondents shall in the annual report account for and report on the total amount of expenditures that were made in connection with the Program in California for the year covered by the report, including those expenditures in developing and implementing the Outreach Plan, the Pilot Project Plan and the Program Modification Plan. The expenditures included in the annual report and attributed to California's collection program may include a portion of the costs incurred by TRC on a national basis so long as the amount is a reasonable estimate of the portion of the national costs that are attributable to implementation of the national collection program in California. The annual report may include expenditures by TRC as well as those made individually by the Respondents.

3.9. Early Actions and Additional Activities.

Upon the Effective Date of the Order and continuing at least through the date upon which implementation of the Program Modification Plan is scheduled to commence, the TRC Project Manager designated pursuant to Paragraph 3.1.1, and/or the consultant retained in accordance with Paragraph 3.2, shall meet with the Department at least once monthly, or such alternate period as the Department and the TRC Project Manager may agree, to report on the progress of implementation of the Outreach Plan and Pilot Project Plan, and to discuss information that Respondents have gathered in the course of implementation of these plans that would support potential modifications or enhancements to the collection program. The monthly meetings with the Department shall also include discussion of possible modifications to the program that could be implemented prior to the development of the Program Modification Plan required pursuant to Paragraph 3.5. Respondents agree to implement at the earliest practicable time any such "early actions" that are determined by the Department, in consultation with Respondents and the TRC Project Manager, to be likely to result in increased collections. Any proposed modifications to the

approved plans shall also be submitted to the Department in writing for its consideration and approval. Nothing herein shall preclude Respondents from conducting additional activities not otherwise specified in the approved Program Modification Plan during the 2015 and 2016 calendar years or thereafter to contribute to achievement of the performance requirements identified in California Code of Regulations, title 22, section 66274.5..

3.10. DTSC Cost Reimbursement.

Within forty five (45) days of the Effective Date of the Order, Respondents shall enter into a Cost Reimbursement Agreement with the Department pursuant to which Respondents agree to reimburse the Department for its costs incurred in overseeing the implementation of this Order and for conducting certain activities on behalf of the Program that are conducted solely for the purpose of increasing Program participation and Thermostat collections, as specified in a Scope of Work that shall be included as an exhibit to the Cost Reimbursement Agreement. The Department's level of effort in performing this oversight function, and Respondent's obligation to reimburse the Department, shall correspond to the cost of one full-time equivalent employee (1.0 FTE), at the Environmental Scientist level, for the duration of the period the Cost Reimbursement Agreement is in effect. At any time during the period the Cost Reimbursement Agreement is in effect, Respondents may request a review and modification of the Department's level of effort and the identified Scope of Work in accordance with the provisions of the Cost Reimbursement Agreement. The types of costs that shall be reimbursable include, but are not limited to: (a) the cost of reviewing and approving the deliverables specified in this Order; (b) the Department's costs (travel costs, per diem costs and time) in assisting the Respondents in interacting with Program participants and potential Program participants; (c) the Department's costs (travel costs, per diem costs and time) in interacting directly with Program participants and potential Program participants; and (d) participating with and providing feedback to the Respondents in the meetings that are to be scheduled in accordance with the terms of this Order ("Department's Oversight Costs"). The Department shall keep accurate books and accounts of the Department's Oversight Costs, and such books and accounts may be audited by Respondents upon written request. The Department shall semi-annually submit to Respondents an invoice for the

Department's Oversight Costs. If the Department's actual costs are less than the cost of the FTE positions described above, the Department shall only invoice Respondents for the actual costs. If Respondents disagree with an invoice, or a specific line item on an invoice, they may invoke the dispute resolution provisions in Paragraph 16.0 of the Order. Respondents shall, within thirty (30) calendar days of the invoice date, unless the Respondents have invoked Paragraph 16 (Dispute Resolution) before this thirty (30) day period has passed, remit a check for the full invoiced amount made payable to the Department of Toxics Substance Control. The remitted check shall also reference the Docket Number of this Order.

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