

Public Comment on Respondents Plan for Compliance

As of October 20, 2015

Comment 1

**From:** [Kohorst, Mark](#)  
**To:** [Thermostats@DTSC](mailto:Thermostats@DTSC)  
**Subject:** NEMA Comments on Mercury Thermostat Collection Program Improvements  
**Date:** Monday, October 19, 2015 7:33:04 AM  
**Attachments:** [CA -NEMA Comments on TRC Proposal Oct 2015.pdf](#)

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Dear Ms. Avila,

NEMA respectfully offers the attached comments on the Thermostat Recycling Corporation's "Respondents' Plan for Compliance," which has been proposed for inclusion in a Consent Order being negotiated between DTSC and the manufacturers of thermostats containing mercury.

If you have questions or comments concerning this submittal, please do not hesitate to contact me directly.

Thank you for your assistance,

Sincerely,

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National Electrical Manufacturers Association  
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**KYLE PITSOR**

Vice President, Government Relations

October 19, 2015

Renee Avila  
Regulations Section  
Department of Toxic Substances Control  
P.O. Box 806  
Sacramento, CA 95812-0806

**RE: NEMA Comments on: Mercury Thermostat Collection Program - Manufacturers' Plan for Program Improvements**

Dear Ms. Avila:

The National Electrical Manufacturers Association (NEMA) is the principal trade association representing the US electrical products industry, including manufacturers of residential climate control devices. In 1998, three NEMA member companies – Honeywell, White-Rodgers, and GE – launched the Thermostat Recycling Corporation (TRC), a non-profit enterprise designed to facilitate recycling of mercury-added thermostats. The TRC now has 30 corporate members and is the only national program of its kind in the US (see [www.thermostat-recycle.org](http://www.thermostat-recycle.org)).

On behalf of NEMA member companies that founded the TRC, we are pleased to offer comment on TRC's proposal for program improvements developed as part of Consent Order negotiations between thermostat manufacturers and the California Department of Toxic Substances Control (DTSC). The TRC was conceptualized and founded within NEMA and we draw now on almost two decades of experience to evaluate the potential impact of policy and operational changes on its performance in a particular state, or time period.

The principal "take-away" from observing the program over time is the critical importance of **shared responsibility** in establishing the program in a state and obtaining maximum participation and awareness within key distribution channels. NEMA has supported state legislation that complements and strengthens the TRC's efforts by incorporating this principle into the statute. California's Mercury Thermostat Collection Act of 2008 appeared to be consistent with this approach in that it imposed clear obligations on thermostat wholesalers and HVAC and demolition contractors. It was unfortunate that the law included a very limited mandate on DTSC for supporting education and promotion activities, but the state's more important role should be enforcement on all obligated parties - not just manufacturers.

Generally speaking, the proposed program enhancements do reflect an effort to increase awareness of and participation in mercury thermostat recycling within a wide range of sectors – as per Exhibit B. NEMA agrees that the TRC should "cast a wide net" in its efforts to grow collections and the expanded outreach described here seems appropriate in that regard.

With regard to the “Pilot Project” described in element 3.4., NEMA recognizes the state’s interest in incentives and notes that TRC already employs various types of incentives to stimulate contractor performance in other states. We urge the department to take care in evaluating the findings from these trials as they invariably involve complex behavior patterns that are difficult to model or alter. Prior experience has informed us that certain types of incentives have marginal or no return on investment that enhance achievement of goals, and these kinds of mistakes must be avoided.

Finally, when implementing the “Program Modification Plan” under element 3.5, we remind the department of the reality that thermostat manufacturers are **several steps removed** from the decision by homeowners, contractors, property managers, and other waste generators to recycle. Manufacturers have no direct control or authority over that behavior. Incentives may be effective in some circumstances but the most important inducements are internal “top down” pressure within organizations to treat thermostat recycling as a priority and active enforcement by state regulatory authorities.

### **Summary**

NEMA appreciates the opportunity to present these comments. We continue to hold the position that DTSC’s regulatory performance standards for the TRC are unrealistic and do not serve as a roadmap for a successful program in the state. It is possible that the program enhancements contemplated for the Consent Decree will increase awareness in previously unexplored sectors, but we caution against the expectation of a substantial rise in collections. This is particularly true for California, which effectively banned the installation of mercury-switch thermostats through the California Building Standards Code (Title 24) in the mid-1990s, long before most other states began doing so.

Sincerely,



Kyle Pitsor  
Vice-President, Government Relations

### **Contact**

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Comment 2

**From:** [Lennett, David](#)  
**To:** [Thermostats@DTSC](mailto:Thermostats@DTSC); [Brusch, Rick@DTSC](mailto:Brusch, Rick@DTSC)  
**Cc:** [aventura@cleanwater.org](mailto:aventura@cleanwater.org)  
**Subject:** Comments on Draft Agreement to Enforce Mercury Thermostat Collection Requirements  
**Date:** Monday, October 19, 2015 7:09:21 AM  
**Attachments:** [CA - Proposed Thermostat Draft Agreement - Final Comments.pdf](#)  
**Importance:** High

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Please find attached the comments of California environmental and public health groups on the draft agreement.

Please feel free to contact us if you have need additional information.

Best,

David Lennett

**DAVID LENNETT**  
*Senior Attorney*

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## COMMENTS OF CALIFORNIA ENVIRONMENTAL AND PUBLIC HEALTH ORGANIZATIONS ON THE DRAFT AGREEMENT TO ENFORCE CALIFORNIA'S MERCURY THERMOSTAT COLLECTION REQUIREMENTS

The undersigned environmental and public health organizations respectfully submit these comments on the draft agreement, as announced on October 5, 2015.<sup>1</sup> These organizations include the key stakeholders involved in the passage of California's Mercury Thermostat Collection Act of 2008, and active participants in the rulemaking leading to the collection requirements enforced under the draft agreement. Several of the organizations also participate in the national Mercury Products Campaign, and closely monitor mercury thermostat collection program developments in other states. We respectfully submit these comments to the Department on behalf of our tens of thousands of California members. The comments are based upon our expertise and experience regarding mercury thermostat collection, both in California and elsewhere in the country.

First, as a process matter, only a small, selected portion of the draft agreement was released by the Department. The Department's failure to make the entire draft agreement publicly available is frustrating, both because it impaired our ability to comment on the draft agreement, and because the Department lacks any reasonable basis for censoring the public document in this manner. There are repeated linkages

<sup>1</sup> [http://www.dtsc.ca.gov/HazardousWaste/upload/Merc-Therm-Act\\_PN.pdf](http://www.dtsc.ca.gov/HazardousWaste/upload/Merc-Therm-Act_PN.pdf).

between the public and non-public portions of the draft agreement, which could not be fully understood because of the omitted text. To the extent that some of the non-public text is standard boilerplate, the Department should have no concern with making public language already available in other contexts and enforcement instruments.

On a substantive level, we find the draft agreement even more problematic in key areas. The thermostat manufacturers have been in violation of the performance requirements for a lengthy period of time. Nevertheless, the draft agreement simply promises more process because it is completely devoid of required program revisions, progress milestones, or any details which will lead to on the ground improvements. After more than a year of negotiations, the Department proposes to enter into an agreement which simply leads to more negotiations.

And the architecture of the draft agreement could facilitate continued manufacturer recalcitrance by giving the Department only 30 days to review and revise what should be lengthy and detailed outreach and incentive plans targeting at least 11 different classes of potential program participants. We believe that, based upon our experience in other states, the Department will receive significantly deficient plans from the manufacturers due to the lack of specificity in the draft agreement on what the plans should contain, and thus the Department is setting itself up for failure.

We note, for example, that program revisions in Illinois to increase thermostat collection by only about 2,500 thermostats required almost three months to finalize, from March 28, 2014 when the manufacturer proposed program changes were first submitted, until June 26, 2014, when Illinois EPA issued the required program changes. We further note IEPA had to significantly modify the manufacturers' proposal, even to achieve this modest program improvement. The improvement needed in California is 100,000 thermostats or more annually before the end of 2016.

We further note that the consultant to be hired by the thermostat manufacturers under the draft agreement may be in place only 30 days or less when the draft outreach plan must be submitted. Therefore, consultant input into the preparation of this draft plan may be quite limited.

Accordingly, in Attachment A, we propose specific revisions to the draft agreement intended to remedy these deficiencies. Attachment A includes both proposed revised wording of the draft agreement itself, and accompanying explanations for the revisions. Due to the limited time provided for comment, we targeted only the most significant changes required.

We remain committed to the success of the Mercury Thermostat Collection Act of 2008, and are available to the Department for further consultations on this matter.

Respectfully, submitted,

David J. Lennett, Senior Attorney  
Natural Resources Defense Council

Andria Ventura, Toxics Program Manager  
Clean Water Action

Heidi Sanborn, Executive Director  
California Product Stewardship Council

Sherri Norris, Executive Director  
California Indian Environmental Alliance

Bill Allayaud, California Director of Government Affairs  
Environmental Working Group

Stiv J. Wilson, Campaigns Director  
The Story Of Stuff Project

Sejal Choksi-Chugh, Executive Director & Baykeeper  
San Francisco Baykeeper

Susan JunFish, Director  
Parents for a Safer Environment

Nick Lapis, Legislative Coordinator  
Californians Against Waste

Michael Green, Executive Director  
Center for Environmental Health

Rachel L. Gibson, Director, Safer Chemicals  
Health Care Without Harm, US and Canada

Katherine O'Dea, Executive Director  
Save Our Shores

Tom Lent , Policy Director  
Healthy Building Network

Leslie Tamminen, Director of Ocean Policy  
Seventh Generation Advisors

## Attachment A

### 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 located in California 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 revised plans~~ described in Paragraph 3.5.1, and the Program Modification Plan described in Paragraph 3.5.4.

**Comment: The proposed changes clarify that the consultant shall be located in California. See below for the revisions associated with Paragraphs 3.5.1 and 3.5.4.**

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 The draft Outreach Plan shall ensure that respondents' outreach provides both meaningful education about the respondents' collection program and an opportunity for a full consideration of how to engage each of the potential program participants identified in this agreement. To ensure that both will be accomplished, the draft outreach plan shall, at a minimum, specify the entities or organizations, and the persons within such entities or organizations, -the respondents will be contacting, the materials and program engagement tools they will be developing and providing to each of the potential program participants, and the outreach timelines for each of the potential participant groups. Among the entities, organizations, and persons targeted in the draft plan, respondents shall include:

- Managers of all household hazardous waste facilities in California as identified in state lists of such facilities;
- Key local governments and non-profit energy auditors in each California county;
- The State Contractors Licensing Board to establish training and licensing programs for general, HVAC, and demolition contractors on how to identify mercury containing thermostats and proper recycling through the respondents' collection program;
- Hotel/motel industry association(s), as well as California-based management of major chains;
- HVAC contractor companies with seven or more technicians; and
- Thermostat retailers, including retailer associations, California-based management of major hardware and building material retail chains, and franchise owners.

The draft plan shall also include the development of tools each of the potential program participants indicate they require to participate and engage in respondents' collection program, and an insert in new thermostat packaging providing information on the collection program to consumers.

Comments: While we recognize DTSC's desire to avoid limiting innovative programs by being overly prescriptive, simply requiring "outreach" programs without any minimum guidance or specific requirements does little beyond the original regulations and affords no assurance that the consent order will lead to improvements in the dismal collection performance the program has experienced. Given the lackluster outreach efforts to date, it is appropriate to establish at least a *minimum* number of elements that an outreach plan must include to optimize performance. While the specific actions listed above are by no means to be construed as the only outreach elements respondents must implement, they will ensure at least a more robust initial effort, establishing relationships and partnerships with some of the most important sources of mercury thermostats.

The consent agreement must make it clear that the objective of outreach must be meaningful. Education for education's sake is of limited value. Outreach efforts must prompt active engagement by generators or handlers of thermostats, and other parties who may help in outreach and education – moving them from being "potential" participants to being "actual" participants. To that end, we recommend adding five other potential program participants to Exhibit B. We added local environmental agencies and energy auditors to existing participant categories, and propose three additional categories:

12. Retailers (hardware and building materials)
13. Labor Unions representing electricians, maintenance workers, construction workers, and state and municipal building staff, and utility workers.
14. Non-government organizations working on mercury contamination, water quality, public health, waste issues, building standards, or other related issues.

Retailers and unions can play a role in both training of those removing thermostats or handling them, as well as education of the general public. NGOs may be willing to share information with their constituents about proper mercury thermostat management and local recycling programs.

Finally, mere adherence to these minimum requirements does not constitute full compliance with annual collection goals established by the Department in its original regulations. Respondents remain responsible to meet regulatory collection requirements through these and other incentives and outreach efforts.

3.3.23. 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 therefore. Any other proposed modifications to the approved Outreach Plan shall be submitted to DTSC in writing for its consideration and approval.

3.4. Incentive Pilot Project Plan.

3.4.1. Within ninety (90) of the Effective Date of the Order, Respondents shall develop an Incentive Pilot Project Plan that includes a sufficient variety and number of pilot projects designed to assess the effectiveness of the use of financial and other 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. The Plan -and- shall include a reasonable assortment of pilot projects that assess the use of monetary incentives of different values with different participants, including but not limited to: (a) For large HVAC contractors eligible to receive a TRC collection box (have seven or more technicians<sup>2</sup>), a financial incentive timely provided equivalent to ten or more dollars per thermostat collected in the form of cash or discount on the purchase of any new thermostats; (b) for consumers at participating retailers, an immediate discount of ten or more dollars per thermostat returned on any item purchased at the retail location, reimbursed by the manufacturers within 30 days; and (c) for household hazardous waste collection facilities, a ten dollar payment for each thermostat returned provided immediately upon the return of the thermostat, to be reimbursed by the manufacturers. The Plan may include the use of nonmonetary incentives of different values with different~~other~~ program participants, and may differentiate 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. The pilots specified in this subsection shall continue for a minimum of one year, to take into account any seasonal changes associated with thermostat replacements.

**Comment:** The lack of any specification or detail in the required incentive plan will likely result in a wholly inadequate submission, given the respondent's long-standing opposition to incentives, particularly meaningful monetary incentives. We are very concerned the Department will be unable to fully review and revise the Plan in the 30 days provided, given the number of components necessary to address each of the 11 or more potential program participant categories identified in the draft agreement. The Department will find itself trying to sort through pilot designs, timelines, numbers of entities covered, the full array of incentives to be tested, the appropriate amount of the incentives, etc, for at least 11 program participant categories. The challenges associated with developing a coherent program under such conditions are formidable. Accordingly, we urge the Department to

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<sup>2</sup> See <http://www.thermostat-recycle.org/signup/>.

specify priority components of the Incentive Pilot Project Plan in this draft agreement, so the Department's review and revision task post-agreement is manageable and realistic, given Department resources and the 30 day review period.

We propose three components above based upon the importance of the program participants and program requirements in other states. We note 44% of the Maine thermostats collected in 2013 originated from HHW facilities or retailers, and in Vermont, 52% of the thermostats collected that year came from HHW facilities or retailers. In 2014, 2,427 of the 4,341 thermostats TRC collected in Maine, and 68% of the thermostats collected in Vermont, came from retailers or HHW facilities. Vermont requires the manufacturers to provide a five dollar financial incentive, and previously had a very successful pilot with retailers using an immediate monetary discount incentive. Illinois recently began a similar retailer incentive pilot.<sup>3</sup> Maine requires a five dollar incentive generally, but one HHW facility (ECOMAINE) temporarily offered an immediate ten dollar incentive when the thermostat was brought in (half the incentive was provided through an enforcement SEP), and since then collections at this facility have increased substantially (693 collected in 2013, 404 in 2014). We recommend the ten dollar incentive here to gather additional data on a monetary incentive of this size.

The large contractor incentive is proposed because TRC collected only 380 thermostats from contractor locations in California during 2014, thus this aspect of the program is ripe for immediate and vast improvement.<sup>4</sup> The manufacturers readily acknowledge direct participation by the large contractors is "one of the best opportunities" to improve program effectiveness in California (TRC 2014 Report, p. 4). The ten dollar incentive will jump-start the large contractor outreach and participation, and should yield immediate results. We note large contractors do not typically purchase thermostats from wholesalers and thus much of TRC's activities in California to date have bypassed this crucial category of program participants. Significantly, the Department can take advantage of the direct purchasing relationships between large contractors and thermostat manufacturers, by requiring direct and timely monetary incentives from the manufacturers for mercury thermostat returns.

We stipulate these three monetary incentive pilots must run for at least one year statewide because of the seasonal variations in HVAC equipment and thermostat replacements, and the time associated with bin returns. Pilots running less than a year may provide misleading results depending upon the timing of the pilots.

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 Incentive 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 continued in conjunction

<sup>3</sup> See <http://www.productstewardship.us/news/249950/Thermostat-Collection-Program-for-Residents-and-Small-Contractors-Launches-in-Illinois.htm>.

<sup>4</sup> In 2014, one large contractor in Rhode Island (Rise Engineering) collected 814 thermostats, accounting for 31% of the total collection in the state last year.

~~with the Plan Revisions and program modifications implemented under Paragraph 3.5 - 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.~~

**Comment: See changes and comments on Paragraph 3.5 below.**

3.5. ~~Program Modification Plan~~ Interim Milestones and Plan Revisions

~~3.5.1. Respondents shall report quarterly on the progress made in increasing access to the program and the number of mercury thermostats collected. Beginning six months after the effective date of this Order, respondents shall propose modifications to the Outreach Plan if the number of TRC collection points in the state has not increased by 25% each quarter the Plan is being implemented through calendar years 2016 and 2017. Beginning July 15, 2016, and every six months thereafter until the number of thermostats collected achieves the performance requirements established by rule, respondents shall propose modifications to the Incentive Pilot Program Plan if the number of thermostats collected has not increased by at least 20,000 versus the number of thermostats collected over the previous six month period (i.e., January – June 2016). For each proposed modification, the Respondents shall include in the proposed modifications, the specific data or information the proposed modification is based on, as well as the anticipated impact on either access to the program or thermostat collections.~~

~~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.~~

**Comment:** The program plan modification process, as proposed in the draft agreement, appears both unworkable and unnecessary. It appears unworkable because it does not allow sufficient time for the outreach and incentive pilot program components to demonstrate many of the program elements required to service each of the potential program participants. It appears unnecessary because, as written, it is simply another layer of process devoid of meaningful measures and milestones for the necessary improvements in the collection program.

Instead of more process, we propose the Department instead concentrate on improvements to the outreach and incentive plans until such time as TRC has achieved meaningful progress through these plans, and only then should the Department formalize these plans into program plan modifications. Under this approach, TRC is obligated to propose continuous improvements to these program elements over the next two years, unless and until TRC demonstrates it is on a path toward meeting the collection requirements mandated by rule.

We have proposed two significant milestones to measure TRC's progress regarding outreach and collection performance. Both are quantifiable, and currently measured, thus can be easily evaluated. Regarding outreach, since the principal purpose of these activities is to expand access to the program, such access can be measured by the number of TRC collection boxes in use. We propose the simplest yardstick – a 25% increase in the number of collection boxes per quarter – an extremely reasonable goal given TRC has virtually ignored all of the 11 or more potential program participant categories to date.

Regarding collection, we are mindful that TRC collected the equivalent of 22,453 mercury thermostats in 2014, compared to TRC's legal obligation to collect 95,400 mercury thermostats in 2014, 113,850 in 2015,<sup>5</sup> and 131,300 in 2016. The current TRC collection deficit is enormous, reflective of the grossly inadequate efforts made to date in California. Immediate and substantial improvements must be compelled by the draft agreement, and we propose milestones designed to compel these improvements. We propose incremental improvements of 20,000 thermostats every six months as the interim yardstick to measure TRC's progress toward achieving compliance. After two years of such improvements, TRC would achieve compliance with the 2015 performance requirement, and perhaps the 2016 requirement, albeit after the required date. Accordingly, these milestones are both achievable and necessary in light of TRC's recalcitrance and legal obligations.

3.5.2. No later than thirty (30) days after submittal of the ~~draft Program Modification Plan~~ proposed Plan Revisions 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~~ proposed Plan Revisions in accordance with its provisions. Respondents shall ensure that adequate resources are available

<sup>5</sup> The Department indicated the manufacturers admit they are collecting about the same number of thermostats in 2015 as they did in 2014. See [http://www.dtsc.ca.gov/HazardousWaste/upload/Merc-Therm-Act\\_PN.pdf](http://www.dtsc.ca.gov/HazardousWaste/upload/Merc-Therm-Act_PN.pdf).

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, or as directed by the Department, 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.~~3~~ 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 will making~~ the draft Plans submitted by Respondents pursuant to this Order, available to the public immediately upon receiving the Plans, ~~or Nothing in this Order prevents the Department~~ 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.

**Comment:** The draft compliance plan completely lacks specificity, so the critical details of the revisions to improve the program are left to subsequent plan submission and review processes. Public input into these subsequent processes will be critical, both to ensure the revisions will be meaningful and effective, and to enable the targets of the outreach and

incentive elements to comment on how the plans can be improved. The limited times provided for Department review, coupled with the Department's resource limitations, further reinforce the need for public review and comment to ensure the program improvements meet the statutory objectives of maximizing collection. Accordingly, public input must be built directly into this agreement, not left as a discretionary act which may or may not occur in a timely manner. There is no point in providing public comment on this draft agreement, only to deny public comment on the more important documents yet to come.

### 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 demonstrate that the thermostats would not have been collected but for the efforts of one or more respondents, include the rationale for giving credit to Respondents for those 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.

**Comment: The Department's regulations specify it is the responsibility of the manufacturers to meet the collection requirements in the rule. Accordingly, to receive credit for any non-TRC collection, the manufacturers must demonstrate they are nevertheless responsible for the collection, not the beneficiary of the unrelated activities of others.**

### 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 plans~~ 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 Toxic Substances Control. The remitted check shall also reference the Docket Number of this Order.

**Mercury Thermostat Collection Program  
 Manufacturer’s Plan for Program Improvements Defined Terminology**

Paragraph	Definition
3.1	TRC- Thermostat Recycling Corporation is a non-profit stewardship organization that facilitates and manages the collection disposal of mercury-containing thermostats.
3.1.2	Department - California Department of Toxic Substances Control
3.3.1	Exhibit B - List of potential program participants in California that may be generators <span style="border: 1px solid black; padding: 2px;">Formatted Table</span> <ol style="list-style-type: none"> <li>1. Household Hazardous Waste Collection Facilities</li> <li>2. HVAC contractors</li> <li>3. Demolition contractors</li> <li>4. General contractors</li> <li>5. Local building <u>and environmental</u> departments</li> <li>6. Utility companies <u>and non-profit energy auditors in each county</u></li> <li>7. School districts</li> <li>8. Property management companies of multi-family housing developments</li> <li>9. Property management companies of commercial/industrial properties</li> <li>10. Hotel/motel managers and maintenance companies</li> <li>11. Consumers</li> <li><u>12. Retailers</u></li> <li><u>13. Labor Unions</u></li> <li><u>14. Non-Government Organizations</u></li> </ol>
3.5.5.	See Section 66274.4 in the Mercury Thermostat Collection and Performance Requirements
3.6	Paragraph 16 is an agreement from both Parties to resolve all disputes in a quick informal fashion.
3.8	See Section 25214.8.13 of the Mercury Thermostat Collection Act of 2008
3.9	See Section 66274.5 in the Mercury Thermostat Collection and Performance Requirements

Comment 3

**From:** [Le, Huy \(ENV\)](#)  
**To:** [Thermostats@DTSC](mailto:Thermostats@DTSC)  
**Subject:** Respondents" Plan for Compliance  
**Date:** Wednesday, October 07, 2015 9:51:45 AM

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DTSC Thermostats,

In the draft "Respondents' Plan for Compliance" I had question concerning paragraph 3.3.2. where Respondents may terminate outreach efforts with any potential Program participant group based on satisfactory explanation. What exactly would constitute a valid reason? I just viewed this as a loophole for Program participants to avoid such consent order.

Also, what time frame does DTSC plan on finalizing the consent order? Thank you for your time and effort.

**Huy Le, HHW & Used Oil Program Coordinator**

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Comment 4

**From:** [RRosen@uri.com](mailto:RRosen@uri.com)  
**To:** [Thermostats@DTSC](mailto:Thermostats@DTSC)  
**Subject:** Pubic comment of the mercury thermostat collection program  
**Date:** Monday, October 19, 2015 1:19:02 PM

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Re: Pubic comment of the mercury thermostat collection program

Dear Ms. Avila,

United Refrigeration is one of the distributors that must collect mercury contained thermostats and sensors in order to sell new thermostats in the state of California. We find it prejudiced that the big box companies and that mail order businesses are not required to provide a means or even offer information to collect mercury contained thermostats. This puts an unfair market advantage on these companies not having to engage the California purchaser with collection information for their old thermostats. Not to mention, capturing a very large market that may be dumping their mercury thermostats in the municipal garbage.

It has been almost ten years that the sale of mercury thermostats has been banned in the state. What is the core interest in obtaining these thermostats? If it is to reduce the amount of mercury going back into our environment, shouldn't the resources and energy by the DTSC be better spent focusing on polluters of significant discharges of mercury such as, municipal waste combustors, medical waste incinerators and coal fired power plants? The amount of mercury emitted by old thermostats is dwarfed by the tons emitted by these industries.

Mercury switches where the best use of technology years ago for heating and refrigeration. We would not have been able to keep food from rotting, keep our homes comfortable, and many other controls that conserved energy and reduced the use of carbon sources and hazardous materials. In doing so, there was a material and energy offset that took place that is not recognized which may have accounted for environmental damage far more reaching than the mercury thermostats pose remain in the state of CA.

If the DTSC was looking for a proven method for reclaiming mercury they should have looked at the model the automotive battery industry uses by charging a core charge for the sale of a new battery.

The infrastructure is already in place to collect the thermostats at the distributors across the state. The program could work identically the same way the battery program functions. When a thermostat is purchased a core charge is applied until another thermostat is returned in its place. Then the core charge is returned to the purchaser. This simple method has worked successfully keeping lead out of our

environment for many years. Mimicking this simple model the industry wouldn't have to spend a lot of resources for outreach and education. If a mandate is enacted which makes it mandatory to turn in old thermostats by charging a core fee it would force most mercury thermostats out of buildings and into the recyclers for both mercury and non-mercury thermostats. In a few years one would expect the mercury thermostats turned in would decline drastically. Data would be quantified by proof of the amount of mercury thermostats that have been collected from the state. Eventually, the percentage of mercury to non-mercury thermostats would decline to the point the core charge program could retire.

The liability of disposing mercury thermostats should not be directed at the manufacturers and distributors but the polluters themselves. Home owners and building owners should be accountable the same way they are accountable separating recycling from their own garbage.

Compared to other states the collection rate in California is phenomena. The manufacturers and distributors should be commended on their actions in establishing and operating an infrastructure the public and building owners can utilize. If penalties were imposed to the manufactures, devastating consequences could result, especially the smaller companies in maintaining their operations. The added expense the DTSC requires the group of manufactures to develop the collection program further in the state has already put an undue burden on one of our suppliers of thermostats. Many others may be following the same path losing American jobs purely by American bureaucracy.

Respectfully submitted,

Rich Rosen, MES  
Regulatory Compliance Manager  
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Comment 5

The Individuals identified below provided the same comments through email.  
Please see the next page for the comments.

Nancy Petranto  
Alan Schenck  
David Gjestson  
Laura Stuck  
Zsuzsi Hussla  
Alberto Acosta  
Tim Arau  
Dave Troup  
Debra Smith  
Alanna McFall  
O. H. Perry Lloyd  
Leslie Correll  
Les Roberts  
Michael Sage  
Emily Juneau  
Katharine Ruthroff  
Phyllis Ball  
Kathleen Ruppel  
Karen Holmes  
Dorothy Lebovitz  
Sandra Witecki  
Roxane Becker  
Karen Hansen  
Chris Arkenberg  
Diane Bolman  
Brian Luenow  
Mary Moresi  
Lois Murray  
Lisa Chipkin  
D. Bryan  
Stacey DeGooyer  
Melody Semereaux  
Ellen Greenwood  
Ann Smith  
Denise Mayosky  
D. Singer  
Craig Cook  
Anne Barker  
Carolyn Mone  
Teri Searcy  
Jim Patton  
Margaret Howard  
Suzanne Wertheim  
Patricia Barile  
Jacob Hoy  
Caroline Cunningham  
Nancy Gordon  
Eleanor Cohen  
Don Green  
Marilena Silbey

A. Wolf  
Edwin Aiken  
Ryan Bunson  
Rosemary Everett  
Rene Lambert  
Kathleen Kuczynski  
N Kaluza  
Ron Giddings  
Jan Salas  
Mark Garcia  
Reevyn Aronson  
Doris Mitsch  
Jerry Peavy  
Amy Bruckmeier  
Laureen Felton  
Judy Schriebman  
Michael Lee  
Sharon Haywood  
Marc Vezian  
Jennifer Robins  
Marie Fisher  
Elaine Benjamin  
Eileen Bill  
John Turney  
Darrell Clarke  
Celia Scott  
John Scott  
Johanna Lindsay  
William Dutcher  
Ana Chou  
Ana Herold  
Ann Rennacker  
Jessica Lettween  
Rohana McLaughlin  
Wes Rawlins  
Jessica Lettween  
Cristiane Bastos  
Peter Anderson  
Stephenny McGraw  
Andrea Ross  
Linda White  
Lillian Hanahan  
Todd Snyder  
Galen Abbott  
Kalee Tock  
Joanna Abbot  
Jeanette Phelps  
Sandra Walker  
Malcolm Moore  
Lesley Schultz

Emil Oatfield  
Forest Frasier  
Robert Reed  
Monica Rosoff  
Paul Byrne  
Robert Thomas  
DeWitt Durham  
Maria Potter  
Robert Harris  
Stephani Lesh  
Jared Goor  
Jeannette Scharich  
Don Gerletti  
K Joseph  
Caryn Graves  
Thomas Lipkis  
Allen Wolman  
John Kirk  
Carole Cool  
Bruce England  
Leslee Cotlow  
Julie Long Gallegos  
Joanna Katz  
Mary Gill  
Thomas Kirlin  
Ronald Bogin  
John Farquhar  
Carrie Barclay  
Brian Gray  
David Herzl  
Henry Schlinger  
Maura Greenlaw  
E. Johnson  
Janet Jacobson  
Ross Heckmann  
Andrea Tong-Dickson  
Nathan Avilla  
Tom Johnson  
Joanna Dewey  
Rosemary Battaglia  
Andria Ventura  
Candy LeBlanc  
Karen Berger  
Ellyn Sutton  
Anna Thurman

To Whom It May Concern:

When the Department of Toxic Substances Control (DTSC) fails to enforce California law, the result is continued pollution as well as a culture whereby companies can easily flout the law without consequence. That is why I am disappointed by the vague nature of the draft "consent agreement" the Department has negotiated with the thermostat industry as a means of bringing them into compliance with the state's Mercury Thermostat Collection Act. The agreement continues to rely on the industry to voluntarily develop a more robust outreach strategy and to comply with annual required collection rates. Given the abysmal failure of the manufacturing community to come anywhere near compliance since the regulations were put in place, this strategy is a mistake.

As written, the consent agreement is more about process than it is about performance. It should include basic requirements, including a minimal list of parties that responsible companies must reach out to and engage, specific components of incentive pilot programs, specific improved collection milestones that the industry must meet and report on, adequate time for the Department to adequately review collection plans and subsequent changes, and full transparency with public input on draft compliance plans.

Preventing mercury from entering the environment is a serious responsibility. Between 200,000 and 460,000 infants are born each year in the United States with mercury levels linked to IQ loss. The lack of any specification or detail in the draft consent agreement leaves Californians with no assurance that thermostat manufacturers will improve their performance in order to reduce mercury loadings or that DTSC is doing its job by creating a strong implementation and enforcement plan. According to your own website, recycling mercury thermostats isn't a choice. It's the law. Please enforce it.

Sincerely,