



Department of Toxic Substances Control

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Secretary for
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Edmund G. Brown Jr.
Governor

March 6, 2017

Mr. Steve Hellem
Program Manager
Thermostat Recycling Corporation
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Fort Washington, Pennsylvania 19034

DISAPPROVAL OF SUBMITTED PROGRAM MODIFICATION PLAN

Dear Mr. Hellem:

The Department of Toxic Substances Control (DTSC) has completed its review of the plan submitted on January 5, 2017 by the Thermostat Recycling Corporation (TRC) titled "Program Modification Plan for the Collection of Mercury Added Thermostats in California" (Program Modification Plan). The Program Modification Plan was prepared by S. Groner Associates on behalf of TRC. DTSC has determined that the Program Modification Plan does not meet the requirements of paragraph 1.5.1 of Exhibit B of the February 10, 2016 Consent Order and is disapproving the submitted plan for the reasons discussed below.

TRC's January 5, 2017 Program Modification Plan describes modifications TRC proposes to make to its outreach and pilot project efforts as described in its Outreach Plan for the Collection of Mercury Added Thermostats in California (Outreach Plan) and its Pilot Programs Plan: Assessing Monetary and Nonmonetary Incentives to Increase the Collection of Mercury Added Thermostats in California (Pilot Projects Plan). Both of those plans were reviewed and approved by DTSC, with modifications, on October 7, 2016. The Program Modification Plan does not present the information it is required to contain.

Paragraph 1.5.1 of Exhibit B of the Consent Order specifies the content requirements for the Program Modification Plan:

"B-1.5.1. 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 mercury-added 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 mercury-added 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 sixty (60) days after submittal of the draft plan to the Department."

The modifications to be included in the Program Modification Plan are to be modifications to TRC's Program, not to the ongoing outreach and pilot project efforts as was presented in TRC's January 5, 2017 submittal. The definition of Program is found in California statutes, and was repeated in Paragraph 1.3 of the Consent Order:

"1.3. Definition of Program. California Health and Safety Code section 25214.8.11, subdivision (a) defines a Program as 'a system for the collection, transportation, recycling, and disposal of out-of-service mercury-added thermostats that is financed, as well as managed or provided, by a manufacturer or collectively with other manufacturers.'"

The requirement to include proposed program modifications is not unique to the Consent Order. Although Exhibit B of the Consent Order includes a paragraph that discusses the Program Modification Plan, the requirement for TRC to report on modifications to its program has been part of its annual reporting responsibilities as required by DTSC's regulations. Title 22, California Code of Regulations (22 CCR) Section 66274.8, specifies the content of TRC's report that is to be submitted annually:

"66274.8. On or before April 1 of each calendar year, a manufacturer or group of manufacturers that operates a program shall submit an annual report to the department that shall include all of the information specified in California Health and Safety Code section 25214.8.13, subsection (i) and all of the following additional information for the calendar year covered by the report:

* * *

(h) A description of:

- (1) Any changes to the program from the previous year and an evaluation of their effectiveness in increasing collection rates; and
- (2) Any planned changes to the program to increase collection rates."

TRC's January 5, 2017 Program Modification Plan included no proposals for modifying its Program, nor did it provide information in support of TRC's continuation of Program elements without change. The Program Modification Plan contained none of the information it was to have included, and is therefore disapproved.

Although DTSC is disapproving the Program Modification Plan, some of the information that was presented in the plan, as well as reported to DTSC in update calls and meetings, raise a number of questions regarding TRC's understanding of the Consent Order and its operation.

Regarding the information that was included in the January 5, 2017 Program Modification Plan, if TRC wishes to modify any of the activities in its approved Outreach Plan, it must seek DTSC's approval before doing so (see Paragraph B-1.3.2 of Exhibit B of the Consent Order, which states "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 the Department in writing for its consideration and approval.") No similar provision exists for the activities in the approved Pilot Projects Plan. If TRC would like DTSC to consider discontinuation or modification of any of the activities in its approved Outreach Plan, it must submit the request in writing, along with the required explanatory information. TRC must, however, continue to implement the Outreach Plan, as approved, unless and until DTSC approves a request to discontinue or modify the planned activities.

DTSC also reminds TRC that the Consent Order not only includes important definitions and content requirements for the Outreach Plan, Pilot Projects Plan, and Program Modification Plan, it also includes a provision that incorporates the content and schedules that are in any of these plans as approved (including any modifications DTSC specifies through its approval). Paragraph 9 of the Consent Order states:

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“9. Incorporation of Plans and Reports. All plans, schedules, and reports that are submitted by Respondents and approved by the Department pursuant to this Order are incorporated in this Order.”

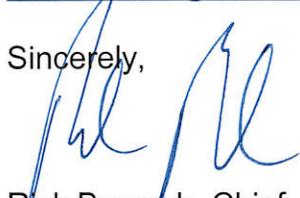
Based on this, TRC needs to remain aware not only of the deadlines established in Exhibit B of the Consent Order, but also of the responsibilities and deadlines that are included in the approved Outreach and Pilot Project Plans. In its January 5, 2017 Program Modification, TRC indicated that some of the tasks it identified in its Outreach Plan and its Pilot Projects Plan will not be implemented, and outreach indefinitely delayed toward other program participants. No activity or deadline proposed in either of those plans may be modified without approval from DTSC.

On a related note, in approving TRC's Pilot Projects Plan on October 7, 2016, DTSC included a set of modifications that formed the basis for its approval of the plan. DTSC has not, to date, received any information from TRC that confirms that the modifications have been incorporated into its Pilot Projects Plan or activities implementing the plan. As noted above, the Pilot Projects Plan, including DTSC's mandated modifications, is incorporated into the Consent Order by reference and are included in TRC's obligations under the Consent Order.

As communicated previously, DTSC remains very interested in working more closely with TRC regarding its Consent Order responsibilities. Closer coordination may have prevented what appears to be misinterpretation or misunderstanding of the Consent Order's requirements.

In light of DTSC's disapproval of TRC's Program Modification Plan, please submit a revised Program Modification Plan for DTSC's review within 30 days (by April 5, 2017). DTSC is also reviewing TRC's "Group B Outreach & Pilot Plan For the Collection of Mercury-Containing Thermostats in California" submitted on February 7, 2017, and hopes to provide feedback to you soon. If you have any questions about this letter, please contact Ms. Renée Avila at (916) 322-4819 or by email at Renee.Avila@dtsc.ca.gov.

Sincerely,



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cc: See next page

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