

**Public Comments Received on Manufacturers' Revised  
Program Modification Plan**

**As of June 27, 2017**

## **Comment 1**

**From:** Lennett, David  
**To:** [Thermostats@DTSC](mailto:Thermostats@DTSC); [Brusch, Rick@DTSC](mailto:Brusch,Rick@DTSC); [Avila, Renee@DTSC](mailto:Avila,Renee@DTSC)  
**Cc:** [aventura@cleanwater.org](mailto:aventura@cleanwater.org)  
**Subject:** Comments on TRC May 19 Program Modification Plan  
**Date:** Thursday, June 01, 2017 2:32:09 PM  
**Attachments:** [Comments on TRC May 19 2017 Program Modification Plan.pdf](#)

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See attached.

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## COMMENTS ON TRC'S REVISED MERCURY THERMOSTAT COLLECTION PROGRAM MODIFICATION PLAN

June 1, 2017

### Introduction

On January 5, 2017, the Thermostat Recycling Corporation (TRC) submitted proposed revisions to the manufacturers' mercury thermostat collection program.<sup>1</sup> As we recommended, DTSC rejected the proposal by letter dated March 6, 2017.<sup>2</sup> TRC submitted a revised program modification plan on May 19, 2017 (hereafter "TRC Modification Plan").<sup>3</sup> While the second TRC submission is an improvement over the first, the proposed changes are too modest under the current circumstances, as detailed below.

It is important to place the TRC Modification Plan and the current status of the TRC collection program in context. TRC collected 15,501 mercury thermostats in 2016, a decrease of 2,759 thermostats (or about 15%) versus 2015. This is the second consecutive year where collection results have decreased. Over the last two years,

<sup>1</sup> See <http://www.dtsc.ca.gov/HazardousWaste/upload/TRC-Program-Modification-Plan-2017-01-05.pdf>.

<sup>2</sup> See <http://www.dtsc.ca.gov/HazardousWaste/upload/Program-Modification-Plan-Disapproval-03062017.pdf>.

<sup>3</sup> See <http://www.dtsc.ca.gov/HazardousWaste/upload/RevisedProgram-Modification-Plan.pdf>.

collection results decreased by about 23%, at the very time TRC should be substantially improving program performance.<sup>4</sup>

The California mercury thermostat regulatory collection goal for 2016 is 131,300, thus TRC collected about 12% of what California law requires for 2016.<sup>5</sup> The program as presently operated is substantially underfunded and understaffed, as demonstrated by the virtual lack of physical presence in the state, and the lack of advertising to promote key elements of the program. For example, TRC conducted only 37 site visits in California during 2016, all or virtually all directed at promoting bin returns from already participating wholesalers.<sup>6</sup>

Last year, TRC reported 284 active collection locations in California. TRC generated only 91 new bin requests in 2016.<sup>7</sup> Accordingly, the TRC program has about 375 active collection locations for the entire state. Statewide geographic coverage of the program remains extremely poor with 20 of 58 counties reporting no bin returns in 2016.<sup>8</sup>

TRC's Modification Plan must be viewed against this backdrop of prolonged and continuing poor performance. DTSC's program performance regulations were published four years ago. The statute demanding improved program performance passed more than four years before that. TRC has had ample time to conduct research or undertake studies the manufacturers thought necessary. Now, action is required, supported by resources commensurate with the legal obligations.

Therefore, we find ourselves disappointed at the modest program improvements proposed by TRC, and frustrated with DTSC's passive approach toward TRC's recalcitrance. The program is severely underperforming, what TRC has done to date and proposed will not fundamentally change that, and unless DTSC reacts promptly and appropriately, the program will not meet its legal or environmental obligations.

## Incentives

TRC proposed no expansion of the extremely limited financial incentive initiatives underway, claiming insufficient data from the pilots thus far to warrant expansions at this

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<sup>4</sup> See TRC California Annual Report for 2016 (hereafter "TRC Annual Report"), available at [https://www.thermostat-recycle.org/files/uploads/2016\\_CA\\_Annual\\_Report\\_Final.pdf](https://www.thermostat-recycle.org/files/uploads/2016_CA_Annual_Report_Final.pdf), Figure 1.1.

<sup>5</sup> TRC Annual Report, p. 2.

<sup>6</sup> TRC Annual Report, p. 32.

<sup>7</sup> TRC Annual Report, p. 4. TRC claims 860 active locations in California (TRC Annual Report, Appendix 3), but the basis for this number is never provided. For example, Appendix 5 is a list of collection locations not returning a bin over the last 18 months, and it is not clear whether TRC counts these locations among the 860.

<sup>8</sup> TRC Annual Report, p. 32.

time.<sup>9</sup> There are three serious flaws with this TRC reasoning. First, there are ample data from other states to justify expansion of the incentives, as reflected by the collection results in Maine and Vermont. Second, the rationale fails to consider the poor performance of the existing program, and the pressing need for substantial improvement now.

Third, TRC's rationale assumes data to be collected from these pilots will be useful in identifying potential areas for replication and expansion, but given the way TRC has chosen to implement these pilots, the pilot data will be virtually useless for this purpose. For example, TRC unilaterally limited the retailer incentive pilot to just three retailers per city or region, nine stores in all for the entire state. TRC provided no analysis of how the three retailers per venue would provide sufficient geographic coverage in each place for the pilot to be useful. Notwithstanding recent success in adding retailer collection locations in other places (33 as of the end of March 2017), TRC has apparently stopped any efforts to expand the number participating in the pilot venues.

In addition, TRC has conducted no advertising outside of the pilot retailer stores, so virtually no one in these cities is aware of the pilots. Under the TRC Program Modification Plan as proposed, only consumers who venture down the thermostat aisle in the stores will encounter the in-store advertising.<sup>10</sup> Therefore, any data produced from these pilots will mean nothing due to lack of convenient access and public awareness. The TRC Modification Plan contains nothing to change these fundamental flaws, even though TRC failed to collect any thermostats from retailers in 2016.

Similarly, in its October 7, 2016 letter approving the Outreach and Pilot Plans,<sup>11</sup> DTSC ordered TRC to implement a \$10.00 financial incentive pilot for HHW facilities. Following receipt of the letter, TRC unilaterally chose to limit the HHW pilot incentive to three cities, and chose to delay delivery of the incentive to consumers for months through a coupon return system. Since DTSC ordered this HHW pilot incentive to apply to "anyone who turns in thermostats at HHW facilities", without limitation to three municipalities, we believe TRC is violating DTSC's express instructions. There is no credible justification for limiting the financial incentive to just three municipalities.<sup>12</sup>

Moreover, there is no purpose behind testing the delayed incentive model. Is it really necessary to collect data to know that consumers prefer immediate incentives versus delayed incentives? As documented in the first quarterly report for 2017, the delayed

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<sup>9</sup> TRC Program Modification Plan, pp. 3-4.

<sup>10</sup> TRC Program Modification Plan, p. 7.

<sup>11</sup> <http://www.dtsc.ca.gov/HazardousWaste/upload/DTSC-Approval-Letter-10072016.pdf>, p. 2.

<sup>12</sup> TRC asserts that mercury thermostat collection is declining at California HHW facilities (TRC Annual Report p. 13), referring to Appendix 10, but the data in Appendix 10 indicate increases, not decreases, in universal waste collected over the last three years. TRC collections from HHW facilities rose from 1,096 in 2015, to 1,395 thermostats in 2016.

incentive approach will cause problems for participating HHW facilities, rendering the data for the pilot useless.<sup>13</sup> Significantly, in its Modification Plan, TRC acknowledges it is intuitively obvious that immediate incentives work better than delayed incentives, and suggests (without any specificity or evidentiary support), that it is testing the delayed incentive solely because the immediate incentive is “logistically difficult”.<sup>14</sup> What is logistically difficult about providing a gift card instead of a coupon at HHW facilities?

In its October 7 letter, DTSC required TRC to implement a wholesaler financial incentive pilot “for each bin returned by wholesalers”, without limitation. Nevertheless, TRC has improperly limited the wholesaler pilot to just 12 stores, instead of applying it statewide. Moreover, there is no promotion effort associated with this pilot. Therefore, given its extremely limited scope and lack of promotion, this pilot is unlikely to produce useful data.

Accordingly, we find the case for delaying incentive expansion extremely unpersuasive. We note the large HVAC contractor incentive already applies statewide. We recommend that DTSC require TRC to submit within 30 days proposed program modifications requiring statewide application of financial incentives for those wholesalers and HHW facilities wanting to access those incentives, using an immediate incentive mechanism. We further recommend that DTSC require TRC to submit by July 31, 2017 a plan for expanding the retailer incentive to 50 stores before the end of September 2017, and to 100 stores by the end of the calendar year.<sup>15</sup>

### Large HVAC Contractors

TRC conducted virtually no site visits in 2016 targeting HVAC contractors, large or small (see TRC Annual Report, Appendix 2). Phone calling of large HVAC contractors achieved about a 10% success rate for bin orders in the fourth quarter of 2016 (24 bins ordered out of 250 contractors called).<sup>16</sup> An additional four bins were placed in the first quarter of 2017.<sup>17</sup> We consider this effort one of the more successful activities conducted to date, demonstrative of the huge growth potential from this avenue of thermostat collection.

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<sup>13</sup> See <http://www.dtsc.ca.gov/HazardousWaste/upload/TRC-California-Quarterly-Report-2017-Q1.pdf>, p. 20.

<sup>14</sup> TRC Program Modification Plan, p. 4.

<sup>15</sup> We note that DTSC previously rejected including zero incentive stores in the retailer pilot, thus it would be consistent for DTSC to require that TRC make available to all new retailers which join the collection program the financial incentives to promote higher collection results.

<sup>16</sup> TRC Annual Report, Appendix 9, 4th quarter progress report, p. 4.

<sup>17</sup> See <http://www.dtsc.ca.gov/HazardousWaste/upload/TRC-California-Quarterly-Report-2017-Q1.pdf>, p. 7.

Consequently, we are baffled as to why TRC has not proposed any program enhancement for this group. We believe TRC should be doubling down and conducting an even more aggressive personal approach to expand participation for this sector, through site visits and other means.<sup>18</sup>

In its Modification Plan, TRC never even addresses the option of site visits and other enhancements aimed at expanding large HVAC contractor participation. In contrast, we note TRC proposes to conduct sites visits (among other outreach activities) for non-participating wholesalers.<sup>19</sup> The same logic would apply here, and the positive response to cold phone calls suggests the personal touch is important (as is the statewide incentive program). TRC's continuing reluctance to expand its physical presence in the state to reach non-participating large HVAC contractors is a prominent example of how the program is understaffed and underfunded.<sup>20</sup> Our specific recommendation in this area is provided below (see Overall Outreach).

### Overall Outreach

As we noted earlier, TRC has conducted virtually no advertising related to the incentive pilots or otherwise. This program suffers profoundly from lack of awareness by the public and other key stakeholders.

Compounding this shortfall is the virtual lack of physical presence in the state. As noted above, very few site visits were conducted in 2016.

The TRC Modification Plan does not change these fundamental shortcomings. In the case of advertising, there is a vague reference to the purchase of advertising in the "unchanged" portion of the Plan,<sup>21</sup> without any budget or specifics, reinforcing the very limited resources TRC intends to devote to this effort.

TRC identifies lower income class households as a key target population, as purchasers of older homes without the financial means to renovate them. To address this target population, TRC proposes preparing outreach materials in Spanish, but then proposes no mechanisms, plan, or resources for reaching out to the target population.

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<sup>18</sup> Modifications 2-5 apply only to locations already with collection bins.

<sup>19</sup> TRC Program Modification Plan, pp. 11-12.

<sup>20</sup> TRC suggests post cards are a good communication tool because they are a "friendly, less intrusive" means of communication. TRC Program Modification Plan, p. 6. We find it odd that TRC would be seeking "less obtrusive" means of communication when its poor program performance suggests some urgency and attention-getting communication would better serve the program. Site visits can be both friendly and helpfully obtrusive.

<sup>21</sup> TRC Modification Plan, p. 14.

Moreover, TRC should target the portions of the state where housing renovation is particularly active (i.e., Willow Glen in San Jose), because this is where the HVAC systems are undergoing system upgrades and thermostats are replaced. TRC should be developing advertising strategies aimed specifically at reaching the California home renovation market. These areas should also be prime targets for retailer and HVAC contractor expansion.

Regarding site visits, TRC now proposes a “minimum” of 200 existing collection site visits, and an unspecified number of site visits to expand wholesaler participation.<sup>22</sup> TRC claims there are only 37 non-participating wholesalers in the state, but given the complete lack of returns in 2016 from 28 counties, and very small returns from other counties, we question the TRC definition of “non-participation”. If a wholesaler has not returned a bin during the past two years, it is likely inactive and thus not participating. We recommend that DTSC require a site visit in 2017 for all non-participating wholesalers in the state, including those stores inactive during 2015 and 2016.

More fundamentally, unless and until DTSC asserts itself and requires a more serious public face on this program, and boots on the ground, the program will be largely more of the same, with tweeking of the message but no adequate means of delivering the message. How many more months need to be squandered before TRC is required to adequately staff and support this program?

The Group A Outreach Plan was approved last October. There is enough experience from it (in conjunction with “best practices”) to know that more effort is needed in these areas. DTSC should not wait for TRC to acknowledge improvements are needed, since that day may never come.

Accordingly, we recommend that DTSC request TRC to submit a program modification addressing advertising (purchase and otherwise) for consumers and HVAC contractors for 2017-2018, which includes a proposed budget; specific elements aimed at promoting awareness of the pilots, the program generally, and improving collection performance; and a mechanism for measuring awareness for the Group A stakeholders before and after the advertising program is conducted. Similarly, we recommend that DTSC require TRC to submit a proposed modification for expanding site visits to every inactive or non-participating wholesaler, and to target large HVAC contractors without a bin, during 2017 and 2018. The program modifications should be submitted by July 31, 2017.

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<sup>22</sup> TRC Modification Plan, pp. 8, 11.

## Geographic Coverage

We are pleased to see that TRC recognizes the poor geographic coverage of the current program, and thus proposes to use GIP mapping software to review collection locations and target a campaign to promote bin placement where gaps in coverage exist.<sup>23</sup> However, TRC proposes to delay submitting the report and campaign plan until the 2017 annual report is submitted, almost a year from now. This GIS analysis is long overdue, and should not be delayed any longer since program access is fundamental to program improvement. TRC offers no justification for its proposed delay. Accordingly, we request that TRC require submission of the GIS report and proposed campaign plan by July 31, 2017.

## Conclusion

Given the record of decreasing program results over the past two years, the continuing failure to meet regulatory requirements, and the ongoing lack of resources devoted to this effort, DTSC should request more fundamental program modifications, as specified in these comments.

Respectfully submitted,

David J. Lennett, Senior Attorney  
Natural Resources Defense Council

Andria Ventura, Toxics Program Manager  
Clean Water Action

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

Bill Allayaud, California Director of Government Affairs  
Environmental Working Group

Nick Lapis, Advocacy Director  
Californians Against Waste

Sherri Norris, Executive Director  
California Indian Environmental Alliance

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<sup>23</sup> TRC Modification Plan, p. 12.

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

Susan JunFish, Director  
Parents for a Safe Environment

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

Leslie Mintz Tamminen, Ocean Program Director  
Seventh Generation Advisors

## **Comment 2**

**From:** Ryan Kiscaden  
**To:** [Thermostats@DTSC](mailto:Thermostats@DTSC)  
**Cc:** [Kohorst, Mark](#)  
**Subject:** Public Comments on TRC's Program Modification Program  
**Date:** Monday, June 05, 2017 1:50:47 PM  
**Attachments:** [Comments on PMP - Coalition Letter.pdf](#)

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Hi Renee,

On behalf of the undersigned to the attached letter, please find attached public comments on TRC's recently submitted Program Modification Plan. If you have any questions about this, please direct them to Mark Kohorst with NEMA ([Mar\\_Kohorst@nema.org](mailto:Mar_Kohorst@nema.org)).

Regards,

**Ryan L Kiscaden**

*Executive Director*

Thermostat Recycling Corporation

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\*Please note, TRC offices have moved (as of 12/1/2016) to 500 Office Center Drive – Suite 400, Fort Washington, PA 19034.

June 5<sup>th</sup>, 2017

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

**Re: Request for comments on the draft Program Modification Plan for the collection of mercury-added thermostats in California.**

Dear Ms. Avila:

Thank you for the opportunity to review the Thermostat Recycling Corporation's revised program modification plan for the collection of mercury-added thermostats in the State of California dated May 19<sup>th</sup>, 2017. We believe the refinements made in this draft only strengthen an already easy to administrate program in California. The TRC provided ample support for increasing activities and justifying keeping those activities in place which drive results. We, the undersigned, encourage the DTSC to approve this program modification plan as written. The TRC team stands ready to work collaboratively with the DTSC in implementing these plans and has already positioned itself to move quickly upon an approval.

For any questions regarding this letter, please contact Mark Kohorst at [Mar\\_Kohorst@nema.org](mailto:Mar_Kohorst@nema.org).

Respectfully,

ACCA, the Air Conditioning & Cooling Contractors of America  
*Todd Washam*

Air Conditioning, Heating and Refrigeration Institute (AHRI)  
*Garrett McGuire*

Call2Recycle, Inc.  
*Carl Smith*

Heating, Air-conditioning & Refrigeration Distributors International (HARDI)  
*Jon Melchi*

National Electrical Manufacture Association (NEMA)  
*Mark Kohorst*

A handwritten signature in black ink, appearing to read 'Mark A. Kohorst', with a stylized flourish at the end.

Partnership of Air Conditioning, Refrigeration Heating Accretion  
*Warren Lupson*

United Refrigeration, Inc.  
*Rich Rosen*

A handwritten signature in black ink, appearing to read 'Rich Rosen', with a long horizontal line extending to the right.

### **Comment 3**

**From:** Marisa Hull  
**To:** [Thermostats@DTSC](mailto:Thermostats@DTSC)  
**Subject:** Comments on DTSC for the Mercury Thermostat Program  
**Date:** Monday, June 05, 2017 4:29:11 PM  
**Attachments:** [CMTA - DTSC - Mercury Thermostat Program - Letter Final.pdf](#)

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Ms. Avila,

On behalf of Shaina Brown, Policy Director of Environmental Quality, I am submitting our comments regarding the Mercury Thermostat Program, due by C.O.B., Tuesday, June 6, 2017.

Feel free to contact me if you have any questions regarding the attached.

Thank you,

Marisa  
Assistant to Shaina Brown

**Marisa Melendez-Hull**

Legislative Assistant

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June 5, 2017

Ms. Renee Avila  
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**Re: Request for comments on the draft Program Modification Plan for the collection of mercury-added thermostats in California.**

Dear Ms. Avila:

Thank you for the opportunity to review the Thermostat Recycling Corporation's ("TRC") revised program modification plan for the collection of mercury-added thermostats in the State of California dated May 19<sup>th</sup>, 2017. We appreciate the refinements made in this draft and believe that they strengthen the efforts to locate and properly recycle mercury thermostats.

The TRC provided ample support for increasing activities and justifies keeping those activities in place to drive results. The California Manufacturers & Technology Association ("CMTA") encourages DTSC to approve this program modification plan as written and without delay. CMTA would strongly encourage the DTSC to work collaboratively with the TRC to see these thoughtful plans implemented quickly upon approval.

For any questions regarding this letter, please contact Shaina Brown at [sbrown@cmta.net](mailto:sbrown@cmta.net).

Respectfully,

Shaina Brown  
Policy Director  
California Manufacturers & Technology Association

## **Comment 4**

**From:** Courtney Scott  
**To:** [Thermostats@DTSC](mailto:Thermostats@DTSC)  
**Subject:** Public Comment  
**Date:** Thursday, June 15, 2017 10:46:48 AM

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Hello –

Would love to see the mercury thermostat collection program turned into an all-encompassing mercury containing device collection program. Particularly for HHW programs, we'd love to be able to put thermometers in there.

Thank you,

Courtney Scott  
Waste Management Specialist - HHW  
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