



Yana Garcia
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Director
1001 "I" Street
P.O. Box 806
Sacramento, California 95812-0806



Gavin Newsom
Governor

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Mr. Mark Kurschner, President
PCA Product Stewardship Inc.
420 – 2238 Yukon St.
Vancouver, BC, V5Y 3P2
Mark@productcare.org

sent via e-mail

DTSC'S APPROVAL DETERMINATION OF PCA PRODUCT STEWARDSHIP INC.'S MERCURY THERMOSTAT COLLECTION PROGRAM PLAN

Dear Mr. Kurschner:

The Department of Toxic Substances Control (DTSC) received PCA Product Stewardship Inc.'s (Product Care) Revised Mercury Thermostat Collection Program Plan (Program Plan) on July 29, 2022 pursuant to the requirements of the Mercury Thermostat Collection Act of 2021 (Act). DTSC determined the Program Plan to be complete on August 26, 2022. California Health and Safety Code (HSC) section 25214.8.11.6(c) requires DTSC to issue an approval determination within 30 days of its determination that the Program Plan is complete and notify Product Care of its determination. DTSC staff reviewed Product Care's Program Plan for approval and for the reasons set forth below conditionally approve Product Care's Program Plan.

Mercury Thermostat Collection Program Plan Areas of Identified Conditions

1. Incentives

Requirements

Pursuant to HSC section 25214.8.11.5(g)(1), the qualified third party is required to provide out-of-service mercury-added thermostat collection incentives to consumers, of no less than thirty dollars (\$30) per out-of-service mercury-added thermostat collected, and educate contractors, service technicians, and residents on the availability of the incentives.

Result

The Program Plan states that Product Care will issue incentives to consumers of no less than 30 dollars per out-of-service mercury-added thermostat. The process to receive an incentive, as described, requires consumers to provide materials such as sealable plastic bags and printed and completed incentive forms. The thermostat and accompanying form may then sit in a collection bin for up to 1 year before being sent to the mercury retort facility. At the facility, it

takes approximately one month to verify the thermostat as a mercury-added thermostat. Once the mercury-added thermostat is processed and verified, a payment will be issued.

Condition 1a

To encourage consumers to turn in mercury-added thermostats, incentive payments should be timely, and the status of an individual consumer's incentive payment should be transparent. In the process described in the Program Plan, it could easily take up to 13 months for a consumer to receive an incentive payment. DTSC is concerned that the extended timeframe could decrease the effectiveness of the payment as a mechanism to encourage collection of out-of-service thermostats. For example, the lengthy process might cause complications in delivering payments to consumers whose contact information changes between the time a thermostat is collected and the time the thermostat is verified as a mercury-added thermostat.

On or before April 1, 2023, Product Care must develop and implement a process or strategies to ensure the effectiveness of the incentive. The process or strategies can be developed in consultation with DTSC and should take into consideration the flexibility of the program to allow for payments to be provided to all consumers who turn in an eligible thermostat.

Condition 1b

Product Care is responsible for providing collection incentives. If, to receive an incentive, the consumer must take additional steps beyond turning a thermostat in to a collection location, then Product Care should be responsible for facilitating those extra steps and accounting for incurred costs. DTSC is concerned that additional steps for the consumer, even if facilitated by Product Care, may decrease the effectiveness of the payment to encourage collection of thermostats. DTSC also expresses concern that incurred costs for the consumer decrease the value of the incentive payment. For example, if Product Care requires plastic bags and completed incentive forms for a consumer to be eligible for the incentive, then Product Care should have those materials available to the consumer at the collection location.

On or before December 31, 2022, Product Care must submit to DTSC an addendum to the Program Plan that explains the development and implementation of a plan to eliminate extra steps or incurred costs on the consumer to qualify for or receive an incentive.

2. Safe Recycling and Disposal

Requirements

Pursuant to HSC section 25214.8.11.5(c), the qualified third party is required to develop and implement, and update as necessary, a statewide educational and outreach campaign to inform appropriate entities about the importance of safe recycling and disposal of out-of-service mercury-added thermostats, where and how to access out-of-service mercury-added thermostat collection locations, and how to access available out-of-service mercury-added thermostat collection incentives.

Result

The Program Plan provides an explanation of the activities that Product Care plans to implement to meet the statewide educational and outreach requirements of the statute. The Program Plan includes information on where and how to access out-of-service mercury-added thermostat locations and how to access available out-of-service mercury-added thermostat collection incentives. The Program Plan also expresses the importance of safe recycling and disposal of out-of-service mercury-added thermostats and indicates that certain tactics laid out in the plan are designed to inform the appropriate entities about the safe recycling and disposal. However, the Program Plan does not detail how the qualified third party will inform appropriate entities about the importance of safe recycling and disposal of out-of-service mercury-added thermostats. The Program Plan simply states that Product Care will inform appropriate entities of the necessary information.

Condition 2

Pursuant to HSC section 25214.8.11.6(c)(1)(B), for DTSC to approve the Program Plan, Product Care must meet the following condition:

- a. Within 30 days of the date of this letter, submit to DTSC an addendum to the Program Plan that explains the method for communicating to the appropriate entities the importance of safe recycling and disposal of mercury-added thermostats, including what messaging they intend to relay, and how and when they intend to relay that messaging.
 - i. Product Care must add more detail for tactics in which the Program Plan indicates that the program will inform the appropriate entities about the safe recycling and disposal of mercury-added thermostats

3. Universal Waste Regulations

Requirements

HSC Section 25214.8.11.5(a) requires the qualified third party to collect, handle, and arrange for the appropriate management of out-of-service mercury-added thermostats in compliance with the Act. California Code of Regulations, title 22, section 66273.30 et. seq. lays out the requirements for handlers of universal waste.

Result

Through the Program Plan, Product Care asserts that all persons who handle mercury thermostats as part of the program receive training in the handling of hazardous waste and universal waste. However, the Program Plan also indicates that only certain partners will receive training and reference materials to support the safe collection and handling of mercury-added thermostats. It is unclear what training materials will be provided and to whom.

Condition 3

HSC section 25214.8.11.5(a) places the responsibility on the qualified third party to collect, handle, and arrange for the appropriate management of out-of-service mercury-added thermostats. It is therefore the responsibility of Product Care to ensure that universal waste

regulations are being adhered to. Many of the facilities hosting a collection bin may be unfamiliar with universal waste regulations. Product Care needs to ensure that its program partners have the knowledge and tools necessary to comply with the universal waste requirements. These requirements include training of staff and all record keeping requirements pursuant to CCR, title 22, section 66273.30 et. seq.

- a. Within 60 days of the date of this letter, Product Care must submit to DTSC an addendum to the Program Plan explaining how Product Care will educate all program partners on the universal waste regulations and ensure that the materials and practices in place are sufficient to comply with the requirements of the regulations.

4. Collection Bin Requests

Requirements

Pursuant to HSC section 25214.8.11.5(a), a qualified third party selected by a manufacturer, or group of manufacturers, to develop and implement the program shall collect, handle, and arrange for the appropriate management of out-of-service mercury-added thermostats in compliance with the Act.

Result

The Program Plan does not detail the process of requesting a collection bin. Within some education and outreach tactics, the Program Plan states that the 'Contractors' landing page on the website will act as a hub of information as well as a tool to request a container. The website created by Product Care does not include a collection bin request form. The website instead links to the manufacturer's website for collection bin request forms. The Program Plan does not include an implementation timeline that explains when a collection bin request form, and instructions for where to submit the form, will be uploaded to the website. The Program Plan also does not include detailed information explaining how Product Care will facilitate collection bin requests, nor does it explain who receives and evaluates a collection bin request form.

Condition 4

DTSC approves the Program Plan on the condition that, within 30 days of the date of this letter, Product Care submits an addendum to the Program Plan with an explanation of how it will facilitate collection bin requests. This addendum should include:

- a. Where and how a potential collection location can request a collection bin.
- b. A description of who a potential program partner would contact if they had questions about collection, as well as where to find that contact information

DTSC reminds Product Care that the statute names the qualified third party as the party responsible for arranging collection, so the forms should go through them. The Thermostat Care website should also be updated to reflect these changes.

5. Educational Materials

Requirements

Pursuant to HSC section 25214.8.11.5(e), the website established by the qualified third party must have all of the following:

- (A) Templates of educational materials, in a form and format that can be easily downloaded;
- (B) Location information, by county, of all established out-of-service mercury-added thermostat collection sites in the state. Location information shall be posted and updated in a manner that allows members of the public to easily identify the most convenient location for collection of out-of-service mercury-added thermostats; and
- (C) Information about accessing available out-of-service mercury-added thermostat collection incentives.

Result

The Program Plan does not have a clear timeline as to when the qualified third party will implement each of the requirements in HSC section 25214.8.11.5(e)(1)(A) through (C), inclusive. The Program Plan states that the Program will establish a website for the Program that is accessible to the public on or before July 1, 2022. The website will include the educational materials in a format that can be easily downloaded. However, the website submitted by Product Care to DTSC via e-mail on July 7, 2022 did not include educational materials in a format that can be easily downloaded. Subsequent updated versions of the website sent to DTSC via e-mail by Product Care also did not include educational materials in a format that can be easily downloaded. The Program Plan does not include an implementation timeline that explains when the educational materials, which are a requirement of HSC section 25214.8.11.5(e)(1)(A), will be uploaded to the website.

Condition 5

Pursuant to HSC section 25214.8.11.5(e)(1)(A), Product Care is required at time of plan approval to have on its website templates of educational materials in a form and format that can be easily downloaded.

- a. As a condition of Program Plan approval, DTSC requires Product Care to submit, within 30 days of the date of this letter, an addendum to the Program Plan with a clear timeline to develop educational materials and upload them to the Thermostat Care website.

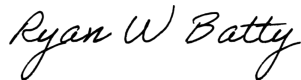
Additional Comments

- a. For certain tactics within the Program Plan, Product Care states that it will explore DTSC's involvement to influence partnerships with various stakeholders. As a regular part of normal operations, DTSC interacts with other agencies regarding the programs it has responsibility for implementing. DTSC will not be able to expand upon those normal interactions to influence the success of the Program Plan presented by Product Care.

- b. DTSC recommends Product Care remain up to date on current and future legislation that may impact the program. Upon enactment of any new laws, Product Care will be statutorily required to comply with those new laws.

Pursuant to HSC section 25214.8.11.6(d), DTSC's completeness and approval reviews tolled the July 1, 2022 deadlines for compliance. With this conditional approval, Product Care has 30 days to implement each of the requirements tolled by DTSC'S completeness and approval. All addendums required by this letter are subject to DTSC approval, and once approved become a part of the Program Plan. If Product Care fails to comply with the conditions and timeframes listed as part of this conditional approval, Product Care will be out of compliance with the Act. Any questions regarding this letter may be directed to Emma Finklang at (279)895-5084 or at Emma.Finklang@dtsc.ca.gov and Thermostats@dtsc.ca.gov.

Sincerely,



Ryan Batty, P.E.
Acting Branch Chief
Permitting Division
Hazardous Waste Management Program

cc: Hin-Yun Lee, Department of Toxic Substances Control
Taylor Grose, Department of Toxic Substances Control
Emma Finklang, Department of Toxic Substances Control
Mannie Cheung, PCA Product Stewardship Inc.
Stephen Groner, SGA Marketing
Paige Rosenberg, SGA Marketing
Allie Shields, SGA Marketing