



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

March 15, 2010

Senator Seth A. Goodall, Senate Chair
Representative Robert S. Duchesne, House Chair
Joint Standing Committee on Natural Resources
Cross office Building Room 214
Augusta, Maine 04333-003

Re: Update report to the Legislature on mercury thermostat recycling in Maine

Dear Senator Goodall, Representative Dushesne and Members of the Natural Resources Committee:

In 2006 the 122nd Maine Legislature passed *An Act To Protect Maine Families and the Environment by Improving the Collection and Recycling of Mercury Thermostats* (Public Law 2005, chapter 558) that established a financial incentive for the return of a mercury-added thermostat. To encourage recycling, the incentive was a minimum value of \$5 per thermostat to be paid by the thermostat manufacturers. The law also set performance goals of 125 pounds of mercury collected within two years of the program startup (1/2009), and 160 pounds within three years of full program implementation (8/2010). There were several factors that prompted this law, including

- o previous attempts to capture out-of-service thermostats did not have substantial success;
- o mercury thermostats have the greatest estimated reservoir of mercury of any source in Maine's waste stream;
- o Maine has environmental degradation due to mercury pollution; and
- o Maine, like 48 other states, has a health advisory recommending limits on consumption of fish caught in state waters.

The financial incentive plan was developed in two phases with the help of stakeholders. Phase 1, the incentive plan for plumbing, heating and electrical contractors, was implemented by May 2007. Phase 2, the incentive plan for homeowners, was substantially delayed but is underway as of February 2009.

Contractors have responded favorably and thermostat returns have increased with the incentive system. However it has become clear that the program needs strengthening in several areas and statutory changes are recommended.

Collection Data: The Thermostat Recycling Corporation (TRC) program, a non-profit recycling program originally sponsored by Honeywell, General Electric and White-Rodgers, has been in operation in Maine since 2001. Since 2007 TRC has significantly expanded its membership base to 28 members, in part due to the Maine law. Table 1 outlines the collection rates over time.

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Table 1: Number of Thermostats Collected

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
TRC Program	233	280	482	1,079	1,290	2924	4656	5555	6374
UW collection	253	856	1398	335	701	361	667	823	655
EPI Program ¹	0	0	0	0	0	0	363	353	0
Total	486	1136	1880	1414	1991	3285	5686	6731	7029
Recycling Rate*	2%	4.2%	7%	5.2%	7.3%	12%	20.9%	24.7%	25.8%

*Based on baseline calculations of 27,200 estimated mercury thermostat removals per year in Maine.

Measuring Performance: Nationally Maine had the highest per capita thermostat capture rate in 2007 and 2008, due in most part to the incentive. Consequently it is expected that Maine will retain the highest per capita rate of returned mercury thermostats in the country in 2009; 54 thermostats per 10,000 people. Still, the program collected only 26% of what is currently estimated as available in a given year.

Table 2: Pounds of Mercury Collected

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
TRC Program	1.5	1.8	4.49	9.42	15.11	22.0	36.92	38.54	44.45
UW collection	1.67	5.65	9.24	2.2	4.6	2.4	4.4	5.4	4.3
EPI Program	0	0	0	0	0	0	2.4	2.3	0
Total	3.17	7.45	13.73	11.62	19.71	24.4	43.73	46.24	48.75

Collection rates did not meet the statutory goal of 125 pounds for 2009 and, unless there are serious changes to the collection program, are likely to miss the 2010 goal of 160 pounds. TRC up to now has argued that the Maine methodology for calculating the number of thermostats available for collection in any given year was flawed and the poundage goals are unrealistically high. A recent study² commissioned by TRC (due to requirements by the state of California), confirmed that Maine's methodology is not only valid, but extremely conservative. Maine's statutory goals, if anything, are too low. Two additional methodologies³ accepted by many states also indicate that Maine calculations underestimate the number of mercury thermostats available annually for recycling.

Issues with Program Implementation: The program has experienced multiple implementation problems, some of which have been addressed. Still, substantial issues remain. They fall into the following categories:

- **Payment procedures, consistency and timing:** Since the inception of the incentive program DEP staff has visited every collection location at least twice a year. The purpose of the visits is to provide program assistance and to talk with collection location staff and their customers about any program implementation problems. The most common and consistent comments are that the

¹ EPI was the program administrator for the many of the manufacturers, but reached an agreement with TRC to enable all collection through the TRC system.

² Skumatz, L.; *Mercury-Containing Thermostats: Estimating Inventory and Flow from Existing Residential & Commercial Buildings*. December 2009.

³ Methodologies developed by the US EPA and the Product Stewardship Institute.

technicians never received payment for their thermostats, payment takes too long or there is too much paperwork to make the \$5 worthwhile. Many have been so discouraged that they acknowledge they don't bother anymore to try and collect the incentive payment. In their 2009 report TRC acknowledged that 27% of received thermostats did not include the necessary paperwork for payment.

- **Education and Outreach:** Since the beginning of the program, the manufacturers' education and outreach (E&O) program have been minimal and not effective in reaching key populations with information on why, where and how to recycle mercury thermostats. 38 MRSA §1665-B. 2. requires that the manufacturers "Establish and maintain a collection and recycling program... to ensure that: (1) A maximum rate of collection of mercury-added thermostats is achieved; ..". The heating industry is dynamic and an on-going robust education and outreach program is needed in order to fulfill this requirement. The DEP agreed that in 2009 TRC would implement an E&O of their choice, since there was fundamental disagreement on what was needed to reach Maine audiences. Consequently, TRC's cut its E&O budget from approximately \$15,000 in 2008 to \$4,000 in 2009 and program growth was minimal.

Conclusions and Recommendations: The incentive program has made Maine a national leader in the collection of mercury thermostats. Still, many thermostats are going into the trash and the mercury will eventually end up in the environment.

Unfortunately it is in the manufacturers' best interest for the program to fail. The DEP is concerned that so many technicians have "lost faith" that they will receive their incentive payment and that the required paperwork is perceived as burdensome.

DEP recommends:

1. a statutory change to incorporate considerable monetary penalties for failure to reach or come reasonably close to the collection goals. Penalty funds could be directed to a energy efficiency program to remove residential mercury thermostats and upgrade them with those that are more energy efficient;
2. adding the requirement for heating technicians to recycle mercury thermostats as part of their licensing or license renewal; and
3. requiring the TRC to conduct a statistically valid survey of contractors to identify barriers to program participation and ideas for improvements.

DEP plans to hold stakeholder meetings over the summer to discuss a retooling of the program. It is hoped that the manufacturers and other stakeholders can reach a consensus regarding how to substantially increase thermostat returns. If so, statutory changes may not be needed.

Please contact me at 207-287-7703 or at ann.e.pistell@maine.gov if you have any questions about this report or the implementation of Maine's thermostat recycling law.

Sincerely,

Ann Pistell, Thermostat Recycling Program Coordinator
Division of Solid Waste/Bureau of Remediation & Waste Management

Transcript from voicemail message;

Audix: Carole Cifrino. You have 3 new messages. Voice call received 4:04 p.m.
Monday, November 8th, 2 minutes. To listen, press 0. (beep)

(2010)

Mark Tibbetts (MT): Hi Carole. It's Mark Tibbetts & Mark Kohorst at NEMA about 4 o'clock on Monday afternoon calling to follow up on your e-mail from last week.

Give either Mark Kohorst at 703-841-3249 or myself at 703-841-3246 a call and we can try to answer your questions here. Thanks a lot. Talk to you soon. 'Bye.

Mark Kohorst (MK): 'Bye Carole

(MT/MK attempt to hang up, recording continues)

MK: Alright (unintelligible).

MT: Yeah. Four o'clock. That's when she leaves. I know what to e-mail Ann. (laughs)
OK I'm going to get her fired. (Robinson)

MK: OK

MT: Actually I'm going to let Larry get her fired...

(Kast - General Counsel for Honeywell)

(mumbling) Ventura, Johnson Supply, Ventura, California. They're still signing up a year and a half later (sound of keyboarding)



December 22, 2010

Governor-Elect LePage
c/o Gloria Pinza, Esq., Member, Transition Advisory Team
Pierce Atwood
One Monument Square
Portland, Maine 04101

Subject: PUBLIC LAW 558: *"An Act To Protect Maine Families and the Environment by Improving the Collection and Recycling of Mercury Thermostats"*

Dear Governor LePage:

I am writing on behalf of the Thermostat Recycling Corporation (TRC) and its member companies regarding our experience with, and our concerns about, the past effectiveness and implementation of the above law in Maine. TRC and its members are respectfully requesting your help in working with TRC to develop improvements in the effectiveness of the law and in creating a more cooperative and productive working relationship between TRC and the Maine Department of Environmental Protection (DEP).

TRC is a not-for-profit organization founded voluntarily in 1998 by Honeywell, White Rodgers and GE, all members of the National Electrical Manufacturers Association (NEMA), to ensure proper recovery of waste mercury thermostats. In 2010, the TRC recovered nearly 200,000 thermostats through its operations in 47 states, including Maine; thereby ensuring nearly one ton of mercury was kept out of the nation's solid waste.

In 2006, Maine passed the first state law requiring manufacturers to implement a collection program for mercury thermostats, making mandatory what previously had been a voluntary effort in the state. Unlike laws passed subsequently in other states (many of which were supported by manufacturers), the Maine legislation also requires manufacturers to pay a \$5 financial incentive (or "bounty") to contractors and other parties for each thermostat they send to TRC for recycling. At the locations where the majority of thermostats are dropped off for recycling (HVAC wholesale distributors) this is accomplished through a cumbersome process of attaching a coupon to the thermostat with a barcode and then mailing a remittance coupon with a matching barcode to TRC. When TRC receives both the thermostat with a barcode and the remittance coupon, it issues payment. This often takes months as there is a significant lag between the time the thermostat is dropped off and when the recycling container is shipped to TRC.

TRC member companies supported the intent of the Maine law, and we are not debating the fact that TRC will continue to provide a mechanism to recycle thermostats at no cost to the people of Maine and other states. However, TRC has opposed the financial incentive provision as unnecessary, administratively complex, and vulnerable to abuse. Four years after implementation, the TRC member companies' concerns over this aspect of the program have proven to be warranted. Examples of the issues we have encountered include:

- Administrative costs of providing the financial incentive are greater than the value of most payments. The majority of payments have been between \$5 and \$15. However, TRC estimates it costs upwards of \$15 to administer the handling of coupons and the issuance of each check.
- Given the mercury disposal ban in Maine, the thermostats need to be recycled and TRC acknowledges its important role in providing cost free mercury thermostat recovery. However, the incentive payments are neither timely nor direct, creating little independent incentive to recycle. TRC members do not have a direct contractual relationship with contractors and homeowners who are not TRC's members' customers. As a result, we must rely on the coupons distributed by the collection points and on the collection points to ship us the recycling containers containing the thermostats. As it may take months to fill a container, HVAC contractors recycling thermostats at HVAC wholesale distributors are sometimes forced to wait months for payment, which discourages participation in the incentive. Significantly, 28% of the thermostats collected in 2009 had *no* request for an incentive payment. Recycling behavior has changed in Maine, but the change in behavior is not solely attributable to the incentive. The change of behavior is more related to the disposal ban, to TRC providing avenue for cost-free mercury recovery, and to the targeted education and outreach program funded by TRC.
- At face value, the results of the program seem positive, collections are up in Maine and the state enjoys one of the highest collections rates in the nation by some measures. However, if one looks at the data in more detail, the results of the financial incentive are not so clear: Collections increased by 127% in Maine in 2006, the year *before* the incentive was established, in the years subsequent to the implementation of the incentive collections have average an annual increase of 31 percent. Meanwhile other states with no bounty have had growth in collections that have equaled or exceeded those in Maine. For instance, in 2010 TRC has increased collections by 80% in California, by 100% in New Hampshire, and by 240% in Michigan, a state in which the program is completely voluntary.
- TRC has documented to DEP clear instances of abuse, if not fraud, within the program. TRC informed Maine DEP of these activities in its official 2009 program report, noting that a significant percentage of payments had gone to parties not specified in the law. At least 20% of payments have gone to staff at collection points, rather than to HVAC contractors or homeowners, the intended recipients. Moreover, TRC has documented to DEP the outright theft of thermostats at one location. To our knowledge, the Department has not investigated these issues.

In addition to the above-described issues TRC members have encountered with the law itself, we have found that the DEP's ability to work constructively with TRC on the implementation of the law has greatly eroded and we would like your help to improve that under your administration.

TRC has made several significant policy concessions regarding its members' role in the implementation of the law. For instance, TRC has voluntarily agreed to accept all brands of waste mercury thermostats into TRC's program, including those of non-member or defunct manufacturers. This concession, which comes at a direct cost to TRC members, eliminated the need for the DEP to administer its own collection program.

As another concession, TRC agreed to pay the incentive on non-member brands of mercury thermostats, on defunct manufacturers' "orphan" waste, and has routinely as a matter of practice paid on thermostats without covers to identify the manufacturer. Again, this concession, which was not required by the law itself, results in a direct cost to the TRC member companies, a cost previously been borne by the DEP. In the absence of TRC recycling the thermostats, it would cost DEP, or Maine contractors, local governments and individuals, upwards of \$15 per thermostat for recycling in order to comply with the mercury disposal ban.

We have found that our concessions have been met with DEP placing ever-increasing demands on the manufacturers alone for the development and operation of the program. The DEP's institutional presumption is that manufacturers are solely responsible for the perceived limitations of the program, and that virtually any additional demand on manufacturers is justified under, and within the scope of, the law. However, these demands go far beyond the requirements of the law itself and fail to follow an appropriate administrative review procedure. As a result, manufacturers have expended enormous resources in responding to DEP's demands and engaging with DEP on policy disputes. The DEP's approach is not conducive to a workable relationship and contrasts sharply with TRC's experience in other states.

In conclusion, we ask the new administration to engage with TRC and its members in a constructive dialogue on the mandatory financial incentive program and other aspects of the implementation of the law that warrant a review. We are confident that constructive changes may be made to the program, reducing the regulatory burden, simplifying its administration, and in the end delivering better environmental results.

Sincerely Regards,



Mark Tibbetts
Executive Director

Cc: TRC Board of Directors



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

JAMES P. BROOKS
ACTING COMMISSIONER

Memorandum

Date: January 11, 2011
To: Kathleen Newman, Office of the Governor
From: James P. Brooks, Acting Commissioner
Subj: Cabinet Meeting Follow-up

Following Monday's cabinet meeting you requested information regarding rulemaking, the Department's proposed legislation and 2010 reports to the Legislature.

Attached please find the following documents in response to this request:

- Section I Board of Environmental Protection – update on pending matters (rulemaking/other)
- Section II: DEP Legislative Proposal – “An Act to Make Minor Changes to Statutes Administered by the Department of Environmental Protection (DEP03)
- Section III: 125th Legislative Session – Reports due

Please be sure to contact me at 287-2812 (office) or 592-7413 (cell) if you have any questions or if you need clarification on any of the attached material.

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The goal of this collection and recycling effort is to minimize mercury emissions to the environment by ensuring that all mercury switches are removed from motor vehicles for recycling before the vehicles are flattened, baled or crushed.

In complying with the requirements of this subsection, manufacturers of motor vehicles shall establish a system that does not require a person who removes a mercury switch to segregate switches separately according to each manufacturer of motor vehicles from which the switches are removed.

Sec. 31. 38 MRSA §1665-B, sub-§1, as amended by PL 2009, c. 277, §4, is further amended to read:

D. "Wholesaler" means a business that the department determines is primarily engaged in the distribution and selling of ~~electrical supplies or large quantities of~~ heating, ventilation and air conditioning components to contractors that install ~~electrical or~~ heating, ventilation and air conditioning components.] ①

Sec. 32. 38 MRSA §1665-B, sub-§2, as amended by PL 2009, c. 277, §§6 through 9, is further amended to read:

2. Manufacturer responsibility. Each manufacturer of mercury-added thermostats that have been sold in this State shall, individually or collectively:

A. Establish and maintain a collection and recycling program for out-of-service mercury-added thermostats. The collection and recycling program must be designed and implemented to ensure that:

- (1) A maximum rate of collection of mercury-added thermostats is achieved;
- (2) Handling and recycling of mercury-added thermostats are accomplished in a manner that is consistent with section 1663, with other provisions of this chapter and with the universal waste rules adopted by the board pursuant to section 1319-O;
- (3) Authorized bins for mercury-added thermostat collection are made available a reasonable one-time fee not to exceed \$25 to all wholesaler heating, ventilation and air conditioning supply, electrical supply and plumbing supply distributor locations that sell thermostats and to all retailers and electrical supply wholesalers who volunteer to participate in the program; and] ①
- (4) By January 1, 2007, authorized bins for mercury-added thermostat collection are made available at a reasonable one-time fee not to exceed \$25 to municipalities and regions requesting bins for mercury-added thermostat collection at universal waste collection sites or at periodic household hazardous waste collection events, as long as the collection sites or events are approved by the department for mercury-added thermostat collections;

B. Work cooperatively with the department and others in accordance with subsection 4 to establish appropriate systems in order to implement the plan developed pursuant to subsection 4;

C. Within 3 months after the department develops phase one of the plan required by subsection 4, implement phase one of the plan;

D. Within 3 months after the department develops phase 2 of the plan required by subsection 4, implement phase 2 of the plan;

E. Within 3 months after the department develops phase one of the plan required by subsection 4, provide a financial incentive with a minimum value of \$5 for the return of each mercury-added thermostat, with or without a cover, ~~by a contractor or service technician~~ to an established wholesaler recycling collection point; (2)

F. Within 3 months after the department develops phase 2 of the plan required by subsection 4, provide a financial incentive with a minimum value of \$5 for the return of each mercury-added thermostat, with or without a cover, ~~by a homeowner~~ to an established retail recycling collection point; (2)

G. Beginning in 2008, submit an annual report to the department by January 30th of each year. The report must be submitted on a form provided by the department and must include at a minimum:

- (1) The number of mercury-added thermostats collected and recycled by that manufacturer pursuant to this section during the previous calendar year;
- (2) The estimated total amount of mercury contained in the thermostat components collected by that manufacturer pursuant to this section;
- (3) An evaluation of the effectiveness of the manufacturer's collection and recycling program and the financial incentive provided pursuant to paragraphs E and F;
- (4) An accounting of the administrative costs incurred in the course of administering the collection and recycling program and the financial incentive plan developed pursuant to subsection 4;
- (5) A description of the education and outreach strategies employed during the previous calendar year to increase participation and collection rates and examples of education and outreach materials used; and
- (6) Modifications that the manufacturer is proposing to make in its collection and recycling program; and

H. Beginning January 1, 2010, submit a quarterly report to the department within 30 days after the end of each quarter that, for each shipment of thermostats received by the manufacturer or manufacturer's agent for recycling during the quarter, provides:

- (1) The collection location that shipped the thermostats;
- (2) The date the manufacturer received the shipment;
- (3) The number of mercury thermostats; and
- (4) The total amount of mercury collected.

Sec. 33. 38 MRSA §1665-B, sub-§6, as enacted by PL 2005, c. 558, §1, is amended to read:

6. Report. By March 15, 2007 and annually thereafter, the department shall submit a report on the collection and recycling of mercury-added thermostats in the State to the joint standing committee of the Legislature having jurisdiction over natural resources matters. The report due in 2007 must include a description and discussion of the financial incentive plan established under this section and recommendations for any statutory changes concerning the collection and recycling of mercury-added thermostats. Subsequent reports must include an evaluation of the effectiveness of the thermostat collection and recycling programs established under this section, information on actual collection rates and recommendations for any statutory changes concerning the collection and recycling of mercury-added thermostats. Beginning in 2012, the department may submit this information as part of the product stewardship program report under section 1772.

Sec. 34. 38 MRSA §1771, sub-§6, as enacted by PL 2009, c. 516, §1, is amended to read:

6. Product stewardship program. "Product stewardship program" means a program financed ~~without a visible fee at purchase~~ and either managed or provided by producers individually or collectively that and includes, but is not limited to, the collection, transportation, reuse and recycling or disposal, or both, of unwanted products. A product stewardship program may be financed through an assessment paid by the producers to a stewardship organization.

Sec. 35. 38 MRSA §1771, sub-§8-A, is enacted to read:

8-A. Stewardship organization. "Stewardship organization" means a corporation, nonprofit organization, or other legal entity created by a producer or group of producers to implement a product stewardship program.

Sec. 36. 38 MRSA §2165, sub-§6, as amended by PL 2009, c. 86, §2, is repealed:

SUMMARY

Section 1 enacts 32 MRSA §4174(3)(4) to authorize the Maine Department of Environment to allow an operator to review a completed operator certification test with department staff in order to identify subject areas for which questions were answered incorrectly and further study is advisable.

Section 2 repeals an obsolete provision of law governing certification of underground oil storage tank removers. The law establishing a separate certification category for tank removers was eliminated in 2007.

Section 3 clarifies the law governing liability of fiduciaries and lenders who undertake investigations of contaminated property.

Section 24 amends the oil spill remediation law by enacting 38 MRSA §568-A(2-B) to emphasize that oil cleanup costs from leaking storage tanks are eligible for coverage by Ground Water Oil Clean-up Fund if the applicant for coverage (i.e., the tank owner or operator) pays the applicable statutory deductibles.

Section 25 enacts 38 MRSA §569-C to limit the liability of municipalities that acquire oil storage facilities through tax delinquency proceedings.

Section 26 repeals and replaces 38 MRSA §584-A to incorporate the Federal Ambient Air Quality Standards by reference, and eliminates the need to revise the Maine Ambient Air Quality Standards in piecemeal fashion as the new Federal standards become effective. The Maine Ambient Air Quality Standards for three toxic air pollutants were adopted in their current form in 1983, prior to regulation of these pollutants by the U.S. Environmental Protection Agency. These standards are obsolete and inconsistent with ambient air guidelines issued and regularly revised by Maine's Department of Health.

Section 27 amends the wellhead protection law at 38 MRSA §1393(1)(B) to extend the siting restrictions on auto maintenance shops to public works garages and other non-commercial facilities where motor vehicles are serviced.

Section 28 amends the wellhead protection law at 38 MRSA §1393(2)(A) to eliminate language regarding the applicability of wellhead siting restrictions to development under construction. The language has been rendered obsolete by the passage of time.

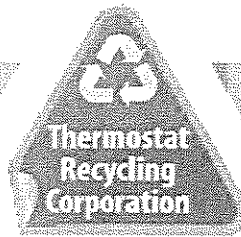
Sections 29 and 36 amend the mercury products law to consolidate restrictions on the sale of mercury-added batteries.

Section 30 amends the mercury products law to clarify that automakers must pay at a minimum of \$4 for mercury switches from motor vehicles if the year, make and model of the vehicle are provided.

Sections 31 and 32 amend the law on recycling of mercury thermostats to clarify the requirements for distribution of collection bins to recycling locations. Section 33 also amends the provisions requiring thermostat manufacturers to pay a \$5 bounty on each mercury thermostat returned for recycling. Specifically, the amendment would clarify that the bounty is owed whether or not the thermostat is returned with the exterior cover intact.

Section 33 consolidates reporting requirements under the thermostat recycling and product stewardship laws.

Sections 34 and 35 amend the product stewardship law to make explicit that product manufacturers may create a stewardship organization to implement their responsibilities for managing the environmental impacts of their products.



January 31, 2011

Mr. James Brooks, Acting Commissioner
Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Ms. Ann Pistell
Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Subject: Thermostat Recycling Corporation's 2010 Annual Report

Dear Mr. Brooks and Ms. Pistell:

Attached is TRC's annual collection report for calendar year 2010. TRC has made its best effort to be responsive to the Department's request for expense and collection data.

TRC would like to take the opportunity to summarize a few of its major accomplishments in 2010.

- Notwithstanding continued economic challenges for the HVAC industry, the national recovery of thermostats increased by 29 percent, keeping almost 1,900 pounds of mercury out of landfills and municipal solid waste incinerators.
- Industry participation in TRC continued to grow and by year end, TRC represented 29 manufacturers that historically branded and distributed mercury switch thermostats.
- TRC continues to see substantial growth in access to the program, adding over 700 new collection locations in 2010. TRC saw solid growth in all collection location types in 2010.

Unfortunately, we did not see similar results in Maine. Collection growth in Maine was relatively flat in 2010, despite our and the Department's efforts to promote and expand the program.

Since legal requirements to ensure waste mercury thermostats are diverted from landfills and municipal solid waste incinerators in Maine have now been in force for over nine years, we respectfully suggest it is appropriate to review Maine's mercury thermostat recycling program at this time. While TRC continues to strongly support the intent of the law, we have been and remain critical of certain aspects, including, by way of example, the cumbersome financial incentive program imposed on manufacturers, and urge the Department to review the program and to work with us to make recommendations for simplifying its administration.

We look forward to working with the Department and other stakeholders if it opts to conduct such a review.

Sincere Regards,

A handwritten signature in black ink, appearing to read "Mark Tibbetts", is written over a horizontal line.

Mark Tibbetts
Executive Director

Boutillier, Lynn A

From: Thomas Doyle [tdoyle@pierceatwood.com]
Sent: Friday, February 04, 2011 4:41 PM
To: Brown, Darryl; Aho, Patricia
Cc: Tibbetts, Mark
Subject: Thermostat Recycling Corporation
Attachments: TRC_2010_Annual_Report.pdf

Dear Commissioner Brown and Deputy Commissioner Aho,

In advance of our meeting next Friday morning, Mark Tibbetts, the Executive Director of the Thermostat Recycling Corporation (TRC), who is travelling today, has asked me to forward you a copy of TRC's annual report filed with the Department on Monday of this week as it was the deadline for filing the report by statute. The Department is due to file its own report on the thermostat recycling program with the Legislature's E&NR Committee by March 15. Thus, our meeting next Friday is quite timely.

Because the legal requirements to ensure waste mercury thermostats are diverted from landfills and municipal solid

waste incinerators in Maine have now been in force for over nine years, TRC respectfully suggests it is appropriate to review Maine's mercury thermostat recycling program at this time. TRC continues to strongly support the intent of the law, but remains critical of certain aspects of the program, including, by way of example, the cumbersome financial incentive program imposed on manufacturers, and urges the Department to review the program and to work with TRC to make recommendations for simplifying its administration.

TRC's concerns with the current program and recommendations for improving it are summarized on pages 10 through 12 of the attached report. We look forward to having a frank discussion with you about the program next Friday.

Best regards,

Tom

<<TRC_2010_Annual_Report.pdf>>

Thomas R. Doyle

Partner

Pierce Atwood LLP

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2/9/2011

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This email was sent from the law firm Pierce Atwood LLP. It may contain information that is privileged and confidential. If you suspect that you were not intended to receive it, please delete it and notify us as soon as possible. Thank you.

2/9/2011

Aho, Patricia

From: Cifrino, Carole A
Sent: Tuesday, February 08, 2011 11:52 AM
To: Aho, Patricia
Subject: RE: Product Stewardship

Thanks Pattie. I'm hoping we can find a few moments to have a conversation about the larger process of which this report is just a piece. Maybe when you're back in the office tomorrow?

Carole Cifrino, Manager
Product Management Programs
Division of Solid Waste Management
Maine Dept. of Environmental Protection
Phone - 207-287-7720; Fax 207-287-6220
carole.a.cifrino@maine.gov

From: Aho, Patricia
Sent: Tuesday, February 08, 2011 9:20 AM
To: Cifrino, Carole A
Cc: Brown, Darryl; Clark, Paula M
Subject: Product Stewardship

Hi Carol -

I know you've asked whether to release the Product Stewardship Report which is on the website. I have spoken with Darryl and we will be getting back to you shortly. I apologize for not getting back to you last week.
Pattie

Pattie Aho
Dept. Commissioner
Department of Environmental Protection
17 State House Station
Augusta, ME 04333
207-287-7830

Aho, Patricia

From: Aho, Patricia
Sent: Thursday, February 03, 2011 3:11 PM
To: Dusch, Jim E
Subject: RE: Product Stewardship report

Jim - I think we need to discuss the re-writing of this report based on the comments DEP received.

From: Dusch, Jim E
Sent: Thursday, February 03, 2011 10:11 AM
To: Aho, Patricia
Subject: FW: Product Stewardship report

From: Cifrino, Carole A
Sent: Thursday, February 03, 2011 8:32 AM
To: Dusch, Jim E; Clark, Paula M
Cc: Pistell, Ann E
Subject: Product Stewardship report

What's the current status of submittal on this? I am getting inquiries....

Carole Cifrino, Manager
Product Management Programs
Division of Solid Waste Management
Maine Dept. of Environmental Protection
Phone - 207-287-7720; Fax 207-287-6220
carole.a.cifrino@maine.gov

Pistell, Ann E

From: Pistell, Ann E
Sent: Wednesday, March 16, 2011 9:41 AM
To: 'Susan Eastwood'
Subject: RE: ME thermostat recycling incentives
Attachments: Legislative Thermostat report 3 11.doc; 2010 PSAG briefing pt2 (3).doc; TRC national numbers 2008.xls

Hi Susan,

Let me start by saying that the incentive has been a great success. Maine has the highest per capita capture rate for mercury thermostats in the country as of 2009. We collected over 51 mercury thermostats per 10,000 people. In contrast Connecticut captured 5.25 mercury thermostats per 10,000 population.

(TRC no longer releases state-by-state numbers because they didn't want other states considering legislation to see our numbers.) Still, TRC has placed so many hurdles to claim the incentive that many technicians have given up on the incentive program.

Our capture rate is still not good, hovering around 25% of what is coming off the walls. We did a survey of technicians last summer to find out why. I have attached the survey and some background material for you. Susan, please call me and we can talk. There is simply too much to put in an email.

Ann Pistell
 ME DEP
 17 State House Station
 Augusta, ME 04333
 (207) 287-7703

From: Susan Eastwood [mailto:seastwood@cleanwater.org]
Sent: Tuesday, March 15, 2011 2:19 PM
To: Pistell, Ann E
Cc: Metzner, Tom; LaFrance, Robert
Subject: ME thermostat recycling incentives

Dear Ann,

I work with Clean Water Action on issues of toxics, energy and climate change. We are working with several other groups to pass a bill in Connecticut to add a \$5 incentives for the return of mercury thermostats (SB 205), which is based on your bill as well as Vermont's. At our public hearing questions were raised about the effectiveness of the \$5 incentive. The lobbyist from TRC talked about his numbers showing that Maine's numbers of recycled mercury thermostats did not go up significantly after the \$5 incentive was put in place. We don't have his numbers because he didn't submit written testimony (it will be transcribed and available in a few weeks).

Tom Metzner gave me your email and thought that you could tell me whether or not the \$5 incentive has been effective in Maine.

Do you have numbers for Maine that I can use to rebut this testimony and show that the incentives are effective?

Thank you so much for any help you can give me!
 Best,
 Susan

Susan Eastwood
 Director of Outreach and Communications
 Coalition for a Safe and Healthy Connecticut

1/11/2012

Clean Water Action
www.cleanwateraction.org
645 Farmington Avenue, Third Floor
Hartford, CT 06105
W: (860)232-6232 F: (860)232-6334
C: (860)428-5304

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Thank you.

Visitors' Register

DATE	NAME	FIRM	ADDRESS	TO SEE
3/24	Jim Hulse	Modern Pol services	STREET CITY STATE	TIME IN 11:55 TIME OUT 12:05
3/24	DAVID EMERY	SELF	STREET CITY STATE	TIME IN 1:25 TIME OUT 1:52
3/24	Patricia DeForge Blackman	self	STREET CITY STATE	TIME IN TIME OUT
3/24	Garth Armstrong	Summit	STREET CITY STATE	2:00 TIME IN 2:35 TIME OUT
3/24	Tom Doyle	Pierce Atwood	STREET CITY STATE	2:18 TIME IN 4:10 TIME OUT
3/24	George Baker	Fox Blind wood	STREET CITY STATE	2:25 TIME IN 4:10 TIME OUT
3/24	Eric Wound	Acentech	STREET CITY STATE	2:25 TIME IN 4:10 TIME OUT
3/24	Any Mills	AGO	STREET CITY STATE	2:25 TIME IN 4:45 TIME OUT
3/25	CHIC CLARKE	Transco	STREET CITY STATE	9:20 TIME IN 10:00 TIME OUT
3/25	Jason Tully	Transco	STREET CITY STATE	9:25 TIME IN 10:00 TIME OUT
3/25	POF Carroll	Carroll Bros	STREET CITY STATE	9:50 TIME IN 10:30 TIME OUT
3/25	Chris Rushton	MaineDOT	STREET CITY STATE	12:00 TIME IN TIME OUT
3/25	Maureen Maslak	BLA	STREET CITY STATE	12:50 TIME IN OUT TIME OUT
"	Judy Homuth	LAA	STREET CITY STATE	12:50 TIME IN OUT TIME OUT
3/25	Maggie Sharov	COLA	STREET CITY STATE	Bebara W 12:50 TIME IN TIME OUT

Visitors' Register

DATE	NAME	FIRM	ADDRESS		TO SEE	
4/5	Bill Monagle	CWD	STREET		3:00	
			CITY <i>Winthrop</i>	STATE	12:55	TIME OUT
4/5	De Fuzell	KSWCD	STREET	1:00	3:13	
			CITY	STATE	TIME IN	TIME OUT
4/5	Nancy Macintosh	OAG	STREET		<i>Paula Gate</i>	
			CITY	STATE	1:10	3:10
					TIME IN	TIME OUT
4/5	Jennifer Dolin	OSRAM SYLVANIA	STREET		1:30	3:00
			CITY	STATE	TIME IN	TIME OUT
5 April	Enk Sorenson	NEMA	STREET			
			CITY	STATE	1:30	3:30
					TIME IN	TIME OUT
4/5	Clark Silcox	NEMA	STREET			
			CITY	STATE	1:30	3:30
					TIME IN	TIME OUT
4/5	Rick Dumas	ERS	STREET			
			CITY	STATE	1:55	3:00
					TIME IN	TIME OUT
4/5	66 ^{PM} Morally	resident	STREET			
			CITY	STATE	1:55	
					TIME IN	TIME OUT
4/5	Brad Sloat	CES	STREET			
			CITY	STATE	2:10	3:24
					TIME IN	TIME OUT
4/5	Steven Grossitt	IPS	STREET		2:50	
			CITY	STATE	TIME IN	TIME OUT
4/6	Steve Marrotte	Summit	STREET			
			CITY	STATE	6:10 A	8:00
					TIME IN	TIME OUT
4/6	Sam Morris Sue Alderson	SPO	STREET			
			CITY	STATE	10:30	10:45
					TIME IN	TIME OUT
4/6	Tera Pare	WW	STREET			
			CITY	STATE	11:16	12:20
					TIME IN	TIME OUT
4/6	Shirley Rand	WW	STREET			
			CITY	STATE	11:19	12:15
					TIME IN	TIME OUT
4/6	Web Caw	W/W	STREET			
			CITY	STATE	11:19	12:15
					TIME IN	TIME OUT

Aho, Patricia

From: Aho, Patricia
Sent: Friday, April 08, 2011 5:09 PM
To: Thomas Doyle
Subject: RE: DEP Omnibus Bill

Thanks for the information on section 29 - I hadn't caught that!

From: Thomas Doyle [mailto:tdoyle@pierceatwood.com]
Sent: Friday, April 08, 2011 5:02 PM
To: Aho, Patricia
Subject: DEP Omnibus Bill

Pattie, I have now caught up again with TRC on the omnibus bill (link attached).

- ① **With respect to sections 25 and 26 (revised definition of "wholesaler"), TRC has no problem with those sections**
- ② **With respect to sections 27 and 28, as we've discussed, TRC has significant heartburn with both sections, because the proposed deletions change the intent of the program and the addition of the "no cover" provision would not allow TRC to know where (i.e., to which manufacturers) to allocate costs of the program. We appreciate your agreeing to delete both section 27 and 28.**
- **On section 29, just as a heads up, if the DEP submitted its report on the thermostat program with the "product stewardship program report" which is due January 15 each year, it would not have the benefit of the manufacturers' report, which is due January 30th each year.**

Thanks for the heads up on this bill. Have a good weekend.

http://www.mainelegislature.org/legis/bills/bills_125th/billtexts/HP102701.asp

Thomas R. Doyle

Partner

Pierce Atwood LLP

One Monument Square

Portland, ME 04101

207-791-1214 direct

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tdoyle@pierceatwood.com

<http://www.pierceatwood.com/bios/doyle.html>

Aho, Patricia

From: Aho, Patricia
Sent: Friday, June 03, 2011 3:02 PM
To: Thomas Doyle
Subject: RE: DEP Omnibus Bill

thanks Tom - unfortunately the bill was enacted today - so hopefully she can make the correction in the errors bill.

Pattie Aho
Dept. Commissioner
Department of Environmental Protection
17 State House Station
Augusta, ME 04333
207-287-7830

From: Thomas Doyle [<mailto:tdoyle@pierceatwood.com>]
Sent: Friday, June 03, 2011 2:56 PM
To: Aho, Patricia
Subject: DEP Omnibus Bill
Importance: High

Pattie, in looking through the Department's Omnibus Bill and the Committee Amendment thereto, I just noticed that Sections 26 through 29 (all on mercury-added thermostats) were not deleted as you had requested and as the Committee voted. I called Susan Johannesman to see if I was misreading the amendment. She confirm that I was right and that this was an oversight on her part. She's going to see what can be done about it.

I thought you would want to know this.

Thomas R. Doyle

Partner

Pierce Atwood LLP

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tdoyle@pierceatwood.com

<http://www.pierceatwood.com/bios/doyle.html>

This email was sent from the law firm Pierce Atwood LLP. It may contain information that is privileged and confidential. If you suspect that you were not intended to receive it, please delete it and notify us as soon as possible. Thank you.

Aho, Patricia

From: Aho, Patricia
Sent: Friday, April 08, 2011 1:41 PM
To: Thomas Doyle
Subject: RE: Thermostat Recycling Corp.'s 2009 Annual Report

Tom - thank you very much for your prompt reply!

From: Thomas Doyle [<mailto:tdoyle@pierceatwood.com>]
Sent: Friday, April 08, 2011 1:35 PM
To: Aho, Patricia
Subject: Thermostat Recycling Corp.'s 2009 Annual Report

Pattie, per your request, attached is TRC's report for calendar year 2009. This was filed with DEP in January 2010, and the Department's Ann Pistell should have a copy as it was addressed to her.

In the cover letter, and on pages 8-9, TRC expresses its concern over potential fraud involved in the payments. Certain individuals who were not intended to receive incentive did receive them. TRC's top 2 recommendations on page 9 relate to concerns over potential fraudulent claims in the coupon program:

"1) TRC recommends the Department, in consultation with manufacturers, wholesalers, and HVAC contractors amend its Guidance (December 2006) and modify the program to ensure its implementation is consistent with the statute including, but not limited to, ensuring that mechanisms are in place to protect against fraudulent claims on the return of thermostats and that administrative costs of the plan are minimized.

2) TRC recommends the Department open an investigation into payments to individuals and/or businesses that seem contrary to the intent of the law and take appropriate action upon a determination of wrongdoing."

In Exhibit 5 (pages 10-12), TRC highlights in yellow suspicious payees. TRC has cancelled checks showing these payees received checks and cashed them. To TRC's knowledge, no investigation has been undertaken.

<<2009 Annual Report 1-29-10.pdf>>

Thomas R. Doyle

Partner

Pierce Atwood LLP

One Monument Square

Aho, Patricia

From: Thomas Doyle <tdoyle@pierceatwood.com>
Sent: Friday, April 01, 2011 1:56 PM
To: Aho, Patricia
Subject: FW: Thermostat Recycling Corporation
Attachments: TRC_2010_Annual_Report.pdf

Hi Pattie, I just left you a VM, but realize now that the State offices likely have shut down due to the snowstorm. TRC asked me to follow-up on our meeting and on the status of the Department's report to the E&NR Committee.

Please give me a call when you have a moment.

Thanks,

Tom

From: Thomas Doyle
Sent: Friday, February 04, 2011 4:41 PM
To: 'Darryl Brown (darryl.brown@maine.gov)'; 'patricia.aho@maine.gov'
Cc: 'Tibbetts, Mark'
Subject: Thermostat Recycling Corporation

Dear Commissioner Brown and Deputy Commissioner Aho,

In advance of our meeting next Friday morning, Mark Tibbetts, the Executive Director of the Thermostat Recycling Corporation (TRC), who is travelling today, has asked me to forward you a copy of TRC's annual report filed with the Department on Monday of this week as it was the deadline for filing the report by statute. The Department is due to file its own report on the thermostat recycling program with the Legislature's E&NR Committee by March 15. Thus, our meeting next Friday is quite timely.

Because the legal requirements to ensure waste mercury thermostats are diverted from landfills and municipal solid

waste incinerators in Maine have now been in force for over nine years, TRC respectfully suggests it is appropriate to review Maine's mercury thermostat recycling program at this time. TRC continues to strongly support the intent of the law, but remains critical of certain aspects of the program, including, by way of example, the cumbersome financial incentive program imposed on manufacturers, and urges the Department to review the program and to work with TRC to make recommendations for simplifying its administration.

TRC's concerns with the current program and recommendations for improving it are summarized on pages 10 through 12 of the attached report. We look forward to having a frank discussion with you about the program next Friday.

Best regards,

Aho, Patricia

From: James, John
Sent: Tuesday, April 12, 2011 3:18 PM
To: Aho, Patricia
Cc: Dyer, Ron; Karagiannes, Mike
Subject: testimony; LD 1398

Pattie,

I reworked the draft omnibus testimony omnibus to address the BRWM parts. It resides at "H:/Legislation/125th session/DEP proposals/proposals pursued/LD 1398 omnibus." A copy is attached. Also attached is a background memo on the BRWM parts. Let me know if you need more.

John



LEG_125th_DE...



1398

background B...

From: Aho, Patricia
Sent: Tuesday, April 12, 2011 7:43 AM
To: James, John
Cc: Dyer, Ron; Karagiannes, Mike
Subject: Testimony

Hi John -

On April 26th there are three bills up for hearing which impact your bureau:

LD 1250 - Operator Training

LD 1390 - oil spill reporting

LD 1398 - Omnibus bill - WRB provisions

May I please have some background memos on the three bills so I can start discussing the issues with the Governor's Office.

Also - on the 29th there are five product stewardship bills up for hearing, though I will be clarifying with the sponsor whether she is withdrawing two of the bills.

Thanks!

Pattie Aho
Dept. Commissioner
Department of Environmental Protection
17 State House Station
Augusta, ME 04333
207-287-7830



TESTIMONY OF
PATRICIA AHO, DEPUTY COMMISSIONER
MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

SPEAKING IN SUPPORT OF L.D. 1398
AN ACT TO AMEND THE LAWS ADMINISTERED BY THE DEPARTMENT OF
ENVIRONMENTAL PROTECTION

SPONSORED BY REPRESENTATIVE HAMPER
BEFORE THE JOINT STANDING COMMITTEE
ON THE ENVIRONMENT AND NAUTRAL RESOURCES

DATE OF HEARING: APRIL 26, 2011

Senator Saviello, Representative Hamper, and members of the Committee, I am Pattie Aho, Deputy Commissioner of Environmental Protection, speaking in support of LD 1398. The bill makes a number of relatively minor clarifications and adjustments to laws administered by the Department of Environmental Protection

Section 1

Section 2 allows an operator of publically operated wastewater treatment plant (POTW) to review a completed and graded test for a certificate of competency with department staff in order to identify subject areas where further study is advisable.

Section 3 repeals obsolete language in the law governing certification of underground oil storage tank workers. The language proposed for repeal relates to certification of “tank removers,” a certification category that was eliminated from the law in 2007.

Section 4 amends the law governing liability of fiduciaries and lenders to make it clear that they are not liable if they exacerbate a discharge of oil or other contaminants while investigating the discharge in accordance with a cleanup plan approved by the Commissioner of Environmental Protection.

Sections 5 and 6 ...

Sections 7 through 10 amend the Stormwater Management Law. Section 7 amends the requirement that the department establish a list of sensitive or threatened regions or watersheds to add the requirement that the list include regions or watersheds that are already degraded. This change is necessary so that appropriate standards apply in those watersheds.

Sections 8 and 9 move the exemption for certain waste facilities under the “relationship to other laws” provision. The effect of the change is to provide that the facilities are still exempt from permitting under the Stormwater Management Law, but that the department may require the project to meet standards for stormwater management adopted pursuant to the stormwater management Law. This allows the department to reference appropriate standards, rather than creating separate and potentially unnecessarily inconsistent sets of standards.

Section 10 amends the provision that authorizes the department to establish a nonpoint source reduction program to allow an applicant to pay a compensation fee in lieu of meeting certain requirements, by adding the alternative of allowing an applicant to carry out a compensation project in lieu of meeting such requirements. Section 8 also deletes a related provision that authorizes the department to allow an applicant to meet a municipally required mitigation option in certain circumstances as an alternative to paying a compensation fee. Section 8 is unnecessary, because to the extent the department has allowed a municipality or quasi-municipality to substitute a stormwater management system approved by the department as provided in Section 2 of the stormwater management law, the municipality authority has the same authority as the department to allow an applicant to substitute payment of a compensation fee, or project, for meeting particular requirements.

Section 11 amends Maine’s Classification Law at 38 MRSA §469 to add text consistent with the first paragraph of Section 469, for ease of use. There is no substantive change.

Section 11 also amends Maine’s Classification Law to supply location coordinates that are missing in one provision. This amendment does not make any substantive change to how this provision has been implemented.

LD 1398
Testimony of Patricia Aho / DEP
Public Hearing: April 26, 2011

Sections 12 and 13 amend the Oil Discharge Prevention and Pollution Control Law to exclude liquid natural gas (LNG) from the definition of oil. This change will codify our current interpretation of the law. The department does not currently consider LNG to be oil and does regulate LNG under these laws because LNG is not a liquid at ambient temperatures. If LNG containment is breached, it dissipates as gas and therefore does not pose a type of environmental hazard—the risk of surface and ground water contamination—that the oil discharge laws guard against.

Section 14 amends the law on registration of underground oil storage tanks [38 MRSA §563(1)(A)] to specify that new tanks must be registered within the year preceding installation. This will help ensure that registration information on new facilities is current, and that the department has the opportunity to ensure new facilities are installed in accordance with the latest regulatory requirements.

Section 15 amends the law governing removal of oil storage facilities [38 MRSA §566-A(2)] to allow flexibility in providing notice to the department in advance of removal work. The current law requires 30 day notice. In our experience, it is not possible to definitively schedule removal work that far in advance.

Section 16 amends a provision in the oil spill remediation law [38 MRSA §568-A(1)(B-2)] that makes oil discharge cleanup costs ineligible for coverage by the Groundwater Oil Clean-up Fund if the discharge was from what we call a “non-conforming” tank or piping—a facility in which the tank or piping is made of bare steel or other materials that are not resistant to corrosion. The main purpose of the amendment is to codify our understanding, based on examination of the legislative record, that this provision does not apply and was not intended to apply to aboveground home heating oil tanks. A secondary purpose of the amendment is to shorten and simplify the provision by eliminating obsolete language related to eligibility for fund coverage of discharges that were discovered before October 1, 1999.

Section 17 inserts a new provision [38 MRSA §568-A(2-B)] in the oil spill remediation law that will make coverage of cleanup costs under the Insurance Program of the Ground Water Oil Cleanup Fund (fund) contingent on payment of the applicable deductibles by the person who suffered the discharge. The Insurance Program covers the cost of cleaning up discharges from

oil storage tanks up to \$1 million per occurrence, less certain statutorily specified deductibles. This bill would leverage payment of those deductibles by authorizing the commissioner to withhold fund coverage of all cleanup costs if the tank owner refuses to pay the deductible amount.

Section 18 enacts a new provision [38 MRSA §569-C] limiting the liability of municipalities that acquire oil storage facilities through tax delinquency proceedings. The provision mirrors a language limiting municipal liability under the Uncontrolled Sites law [38 MRSA §1367-B(1)].

Section 19

Section 20 amends the wellhead protection law [38 MRSA §1393(1)(B)] to extend siting restrictions on auto maintenance shops to public works garages and other non-commercial facilities where motor vehicles are serviced. The current law restricts the siting of commercial garages in “wellhead protection zones,” a term that encompasses land areas within 1,000 feet of a public drinking water well or within 300 feet of a private well. The purpose of this restriction is to minimize the risk of water well contamination by keeping auto maintenance and repair activities a safe distance away. It shouldn’t matter whether the facility is commercial or government owned. The risk relates to the nature of the activity.

Section 21 amends the wellhead protection law [38 MRSA §1393(2)(A)] to eliminate language regarding the applicability of wellhead siting restrictions to development under construction. The language has been rendered obsolete by the passage of time.

Sections 22, 23, 32 and 33 amend the mercury products law to consolidate restrictions on the sale of mercury-added batteries within the same section of the Maine Statutes.

Section 24 amends the law requiring automakers to pay a \$4 bounty for each mercury switch recovered from motor vehicles [38 MRSA §1665-A(5)]. Under the current law, automakers must pay the bounty only if the 17-digit Vehicle Identification Number (VIN) of the source vehicle is provided.

Subsequent to Maine’s enactment of this first-in-the nation law, automakers instituted a nationwide program for recycling mercury switches. In order to align the Maine collection effort

LD 1398
Testimony of Patricia Aho / DEP
Public Hearing: April 26, 2011

with the national program, automakers have proposed to also pay the bounty if, in lieu of the VIN, the person seeking the bounty provides the vehicle make, model and year. This change will provide flexibility in the program that could benefit Maine auto dismantlers and junkyard operators, who are required by law to remove any mercury switches before a vehicle is crushed and shredded for the scrap metal market.

Sections 25 through 28 amend the law requiring thermostat manufacturers to pay a \$5 bounty on each mercury thermostat returned for recycling. Specifically, the amendment would make it clear that the bounty is owed regardless of who returns the thermostat.

The amendment also would require manufacturers to pay the bounty whether or not the thermostat is returned with the exterior cover intact. The Thermostat Recycling Corporation (TRC), the third party entity formed by thermostat manufacturers to operate the mercury thermostat collection program, currently refuses to pay the bounty on thermostats that lack a cover. The cover makes it easier to identify who made the thermostat and helps the TRC apportion program costs among its member companies. Contractors, on the other hand, often discard the cover in the course of removing a thermostat from the wall. Thermostats have markings (numbers) that allow the manufacturer to be identified without the cover, but it requires TRC to, in effect, look for the small print.

Section 29 consolidates reporting requirements under the thermostat recycling and product stewardship laws.

Sections 30 and 31 amend the product stewardship law to make explicit that product manufacturers may join together to create a stewardship organization to collectively implement their responsibilities for managing the environmental impacts of their products.

LD 1398

An Act to Amend the Laws Administered by the Department of Environmental Protection

[BRWM parts]

DEPARTMENT: Environmental Protection

BUREAU: Remediation & Waste Management

DATE SUBMITTED: April 11, 2011

PRIMARY CONTACT: Ron Dyer, 287-7890

BACK UP CONTACT: John James, 287-7866

DESCRIPTION: This bill makes housekeeping changes to several laws administered by the BRWM.

- 32 MRSA §10010-A [re: certification of underground oil storage tank removers by the Board of Underground Storage Tank Installers] will be repealed. This section of law was rendered moot by changes in 2007 that repealed provisions establishing removers as a separate certification classification.
- The oil spill prevention laws will be amended at 38 MRSA §§542(6) and 562-A(15) to make it clear that liquid natural gas (LNG) is not oil. LNG is not a liquid at ambient temperatures and therefore does not pose the type of environmental hazard that the law guards against.
- 38 MRSA §563[requiring registration of underground oil storage tanks] will be amended to specified that tanks must be registered within one year of commencing construction.
- 38 MRSA §568-A(1)(B-2) [providing that an oil storage tank owner is ineligible for coverage of oil cleanup costs by the Ground Water Oil Clean-up Fund if the discharge was from a tank or piping not constructed of fiberglass, cathodically protected steel or other noncorrosive material] will be amended to make it clear that the provision does not apply to aboveground tanks with a capacity of less than 660 gallons.
- A new provision [38 MRSA §568-A(2-B)] will be inserted into the oil spill remediation law to emphasize that coverage of oil cleanup costs by the Ground Water Oil Clean-up Fund is contingent on payment of the applicable statutory deductibles. If the deductible is not paid the parties responsible for the spill are liable for the entire cost of the cleanup.
- The oil spill remediation law at 38 MRSA §568-A(2)(B)(3)(c) [setting forth certain deductible amounts that must be paid by applicants seeking coverage of oil cleanup costs under the

insurance program of the Ground Water Oil Clean-up Fund] will be repealed and replaced to make it clear that a separate \$5,000 deductible is owed for violation of each of the UST monitoring, maintenance and operating requirements set forth in paragraphs B, C, D, E, F and I of 38 MRSA §564(2-A). The current law is confusing, leading some to conclude that the maximum deductible for violation of subsection 2-A is \$5,000.

- A new provision, 38 MRSA §569-C, will be enacted to limit the liability of municipalities that acquire oil storage facilities through tax delinquency proceedings. The provision will mirror existing language in the Uncontrolled Sites law. See 38 MRSA §1367-B(1).
- 38 MRSA §1319-I(2-A) [authorizing the DEP commissioner to assess a fee for non-compliance with the Toxic Use Reduction Act] will be repealed. The authority is no longer needed given the recent repeal of the act and replacement with a different regulatory scheme.
- The wellhead protection law at 38 MRSA §1393(1)(B)(3) [prohibiting the installation of a commercial automobile maintenance facility in a wellhead protection zone] will be amended to eliminate the word “commercial.” This will, in effect, extend the prohibition to public works garages. The aim of the prohibition is minimize the risk of water well contamination by keeping auto maintenance and repair activities a safe distance away. It shouldn’t matter whether the facility is commercial or government owned. The risk relates to the nature of the activity.
- The wellhead protection law at 38 MRSA §1393(2)(A) will be clarified by eliminating language regarding the applicability of siting restriction to development under construction in 2008 when the law was first enacted and eliminating other language rendered obsolete by the passage of time.
- The mercury products law will be amended at 38 MRSA §§1661-C(9) and 2165(6) to consolidate restrictions on the sale of mercury-added batteries.
- The mercury products law will be amended at 38 MRSA §1665-A(2-A)(B) to clarify that automakers will pay a \$4 bounty for mercury switches from motor vehicles if the year, make and model of the vehicle is provided.
- The product stewardship law [establishing procedures for identification of products the disposal of which is appropriately financed by the manufacturer] will be amended to make explicit that manufacturers can band together under a product stewardship organization to collectively meet their stewardship responsibilities.

1. COSTS

- a. Will this bill cost the state money due to additional expenses or reduced revenues including loss of federal matching funds? No**
- b. Will it require an appropriation from the General Fund or a dedicated account? No**

2. REVENUE/SAVINGS/FEDERAL MATCHING FUNDS

Will this bill generate additional state revenue, savings or federal matching funds? No.

3. FISCAL NOTE

	FY '11	FY '12	FY '13
Personal services	\$0	\$0	\$0
Capital	\$0	\$0	\$0
All other	\$0	\$0	\$0

4. STATE WORKERS

Will this proposal result in the state adding or eliminating any state workers? No.

5. RULES

Will this proposal result in new or revised rules for Maine's citizens and businesses? No.
We do not anticipate the need for rulemaking to implement the changes proposed in this bill.

6. EFFECT ON STATE AGENCIES

What other state government departments would be affected? None that we know of. The changes are housekeeping only, clarifying what the law already requires.

7. IMPACT - COUNTY AND/OR LOCAL GOVERNMENT

- a. Will this bill have any impact on county or local government? No**
- b. Will the bill require a 2/3 vote due to municipal mandate? No**

8. IMPACT – INDIVIDUALS AND/OR BUSINESSES

- a. **How will this bill impact individuals or businesses?** It will not impact businesses or individuals. The aim of the changes is to clarify current law so that the regulated community can more easily understand what is required of them.
- b. **Will it increase their costs, reduce their revenues or create more work for them?** No

9. ORIGIN

Who is the source of this idea? Department staff put forward the suggested changes based on their day to day experience administering the affected laws

10. INTEREST GROUPS

What interest groups support this bill? What interest groups oppose this bill? Thermostat manufacturers are likely to oppose the requirement in sections 27 and 28 of the bill to pay a \$5 bounty on mercury thermostats returned to them without a cover. Contractors often discard the cover when they remove a thermostat from the wall. The cover makes it easier for manufacturers to identify which one of them made the thermostat.

We do not expect active opposition to or support of the other the sections of the bill that make changes to BRWM-administered laws.

Aho, Patricia

From: Aho, Patricia
Sent: Wednesday, April 27, 2011 9:59 PM
To: 'tdoyle@pierceatwood.com'
Subject: Re: LD 1398 - DEP omnibus work session

Yes- I expect they will be worked
Pattie Aho - sent from my Blackberry

From: Thomas Doyle [<mailto:tdoyle@pierceatwood.com>]
Sent: Wednesday, April 27, 2011 06:32 PM
To: Aho, Patricia
Subject: FW: LD 1398 - DEP omnibus work session

Pattie, do you know whether the "Thermostat deletions" will be worked on Tuesday afternoon too, or is this work session only on the BIW aspect of the bill. I recall the Committee discussion carving the BIW discussion out of the larger omnibus bill, but I don't know how this shook out.

From: John Delahanty
Sent: Wednesday, April 27, 2011 5:09 PM
To: Environmental Attorneys; Government Relations Practice Group
Subject: LD 1398 - DEP omnibus work session

Work session scheduled for Tuesday May 3rd at 1pm

John D. Delahanty, Esq.

PIERCE ATWOOD LLP

One Monument Square

Portland, ME 04101

207-791-1222 Direct

207-791-1350 Fax

<mailto:idelahanty@pierceatwood.com>

<http://www.pierceatwood.com/bios/deilahanty.html>

This email was sent from the law firm Pierce Atwood LLP. It may contain information that is privileged and confidential. If you suspect that you were not intended to receive it, please delete it and notify us as soon as possible. Thank you.

Dyer, Ron

From: Tibbetts, Mark [Mark.Tibbetts@Nema.org]
Sent: Wednesday, May 04, 2011 3:55 PM
To: Dyer, Ron
Subject: RE: Contact info
Attachments: 2011_Letter to Collection Points.pdf

Ron,

It was a pleasure to meet you yesterday. Attached is the letter we sent to both wholesale and municipal collection points last month.

We had a number of locations contact us and ask when we were coming to pick up the bin. It seems they were expecting someone to come and take the bin away and I was able to ascertain this something Ann did when she visited the sites and hence the confusion.

We also noted some other challenges we've had with the program, which in part was why I was in Augusta yesterday.

If you have questions about the program or concerns, please do not hesitate to contact me.

Regards,

Mark Tibbetts
Executive Director
Thermostat Recycling Corporation

Direct: 703.841.3246
Fax: 703.841.3346
Mobile: 202.340.6232
www.thermostat-recycle.org
www.nema.org

From: Dyer, Ron [mailto:Ron.Dyer@maine.gov]
Sent: Tuesday, May 03, 2011 1:44 PM
To: Tibbetts, Mark
Subject: Contact info

1/6/2012

April 19, 2011

Contact
Wholesale Distributor
Address
City, State Zip

Subject: Administration of Mercury Thermostat Recycling Program in Maine

Dear Contact:

I am writing to address some recent confusion we've become aware of regarding the administration of the waste mercury thermostat collection program.

Under Maine law all mercury thermostat manufacturers must either collectively or individually administer a collection program for waste mercury thermostats. The program in Maine is administered by the non-profit Thermostat Recycling Corporation (TRC). TRC is financially supported by thirty-one manufacturers that historically branded and distributed mercury-switch thermostats in the United States.

The green TRC recycling containers are the property of TRC and are only to be used to store and ship waste mercury thermostats to TRC. **TRC staff does not come to your location to pick-up the container.** Each container comes with a **pre-paid Federal Express shipping label** and when the container is full, or once per year, the container should be shipped to TRC using this label.

In the past, your location may have been visited by representatives of the Maine Department of Environmental Protection (DEP). You do not need to wait for and should not rely on DEP representatives to prepare the container for shipment; it is your responsibility to ship the containers to TRC and we encourage you to do so as soon as it is full or at least once per calendar year.

Additionally, TRC has had instances where it has not received remittance coupons (portion of coupon with name/address of the payment recipient) that we understand were left at collection locations rather than mailed directly to TRC by the contractor, technician or homeowner. It is their responsibility to send the coupons to TRC in accordance with the instructions on the back of the coupon. As such, we advise wholesale and municipal collection sites not to collect and send the remittance coupons direct to TRC.

Finally, TRC has shared concerns with the apparent abuse of our collection and recycling program with the DEP. TRC has already confirmed one case in which staff at a collection point was claiming, as his own, thermostats dropped off by customers. Please closely monitor your staff involved with the program and discourage your staff from claiming thermostats dropped-off at your location that are not their own.

If you have any questions or concerns, please do not hesitate to contact me directly at 703-841-3246.

Best Regards,

Mark Tibbetts
Executive Director

Dyer, Ron

From: Niles, Lindsay
Sent: Wednesday, May 25, 2011 9:06 AM
To: Dyer, Ron
Subject: FW: 2010 Annual SWM Report

Hi Ron, we should discuss this when you return to the office. There are quite a few emails going back and forth, so please read from the very bottom to the top. Thanks.

From: Malinowski, Kerri
Sent: Wednesday, May 25, 2011 8:55 AM
To: Niles, Lindsay
Subject: FW: 2010 Annual SWM Report

Lindsay -

Here is the flurry of activity from yesterday.

My initial request was to Vicky Bryant (listed as the contact on the report), Vicky emailed Sue Alderson, Sue Alderson emailed Carole Cifrino in what appears to be a warning aimed at calling attention to my involvement...the wildfire ignited quickly.

Carole is understandably concerned that I am intruding onto her territory, and in considering this possibility I was deliberate in approaching from an alternative direction. There may have been a better way for me to handle Carole's obvious distaste for my request; please begin from the original message to Vicky Bryant (at the bottom) and work your way to Carole's end reply.

At this point I will move away from this direction and pursue other avenues, there is much work to do.

Thanks for helping to get Ron prepared for the inevitable.

- Kerri

*Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333*

*Direct: 207.287.2990
Office Reception: 207.287.7688*

From: Malinowski, Kerri
Sent: Tuesday, May 24, 2011 3:31 PM
To: Cifrino, Carole A
Subject: RE: 2010 Annual SWM Report

Ok.

Thanks --

Kerri

Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333

Direct: 207.287.2990
Office Reception: 207.287.7688

From: Cifrino, Carole A
Sent: Tuesday, May 24, 2011 3:31 PM
To: Malinowski, Kerri
Subject: RE: 2010 Annual SWM Report

I would be happy to work with you, but it is clear that you do not have enough information about the programs to ask questions that will result in you getting appropriate information. I don't want to waste staff time reporting incomplete data, or data from inappropriate sources. I think the best way to figure this out is for me to talk with Ron so you're not caught in the middle.

Carole Cifrino, Manager
Product Management Programs
Division of Solid Waste Management
Maine Dept. of Environmental Protection
Phone - 207-287-7720; Fax 207-287-6220
carole.a.cifrino@maine.gov

From: Malinowski, Kerri
Sent: Tuesday, May 24, 2011 3:26 PM
To: Cifrino, Carole A
Subject: RE: 2010 Annual SWM Report

Carole –
Should I read from your message that you are not intending to work with me but would prefer to work directly with Ron?
Thanks –
Kerri

Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333

Direct: 207.287.2990
Office Reception: 207.287.7688

From: Cifrino, Carole A
Sent: Tuesday, May 24, 2011 3:22 PM
To: Malinowski, Kerri
Subject: RE: 2010 Annual SWM Report

There are several stewardship programs, and the data is reported in ways other than through the form you identified.

I will be happy to work with Ron to identify and provide the data he needs.

Carole Cifrino, Manager
Product Management Programs
Division of Solid Waste Management
Maine Dept. of Environmental Protection
Phone - 207-287-7720; Fax 207-287-6220
carole.a.cifrino@maine.gov

From: Malinowski, Kerri
Sent: Tuesday, May 24, 2011 3:16 PM
To: Cifrino, Carole A
Subject: RE: 2010 Annual SWM Report

Hi Carole –

I am working with our Bureau Director to determine our progress with the stewardship program. Please let me know if you are willing to share your 2010 Report data.

Thank you –

Kerri

*Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333*

*Direct: 207.287.2990
Office Reception: 207.287.7688*

From: Cifrino, Carole A
Sent: Tuesday, May 24, 2011 3:15 PM
To: Malinowski, Kerri
Cc: Alderson, Susan A
Subject: RE: 2010 Annual SWM Report

Since I don't know the purpose or scope of your project, I can't judge whether I have a "fair percentage" of the reports at this point.

Carole Cifrino, Manager
Product Management Programs
Division of Solid Waste Management
Maine Dept. of Environmental Protection
Phone - 207-287-7720; Fax 207-287-6220
carole.a.cifrino@maine.gov

From: Malinowski, Kerri
Sent: Tuesday, May 24, 2011 3:10 PM
To: Cifrino, Carole A
Subject: RE: 2010 Annual SWM Report

Hi Carole --

Page 3 of the 2010 Annual Report looks like it is specific to the products covered in our Product Stewardship program. It looks like you are the contact for the management of this report data. Have you received a fair percentage of the reports at this point?

Thanks --

Kerri

*Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333*

*Direct: 207.287.2990
Office Reception: 207.287.7688*

From: Cifrino, Carole A
Sent: Tuesday, May 24, 2011 3:01 PM
To: Malinowski, Kerri
Cc: Alderson, Susan A
Subject: RE: 2010 Annual SWM Report

Hi Kerri. Yes, I am currently on my conference call.

I oversee the management of data from licensed solid waste facility annual reports legally due to DEP on the various dates listed below by Sue. Licensed solid waste facilities report using the "2010 Annual Solid Waste Management Report" form. This is a form that combines solid waste reporting requirements applicable to municipalities (reports due to SPO) and licensed solid waste facilities (reports due to DEP), eliminating duplication of reporting when a municipality manages all its solid waste through its own facility. The April 30 date listed on the form is a due date that we agreed upon with SPO to best accommodate their data reporting requirements; it is not a legally-enforceable deadline for many of our licensed solid waste facilities. This reporting has nothing to do with product stewardship programs.

As you can see, solid waste reporting is not as simple as one might expect. It would be very helpful for me to understand the purpose and scope of your project so I can be sure to get you appropriate and accurate data.

Carole Cifrino, Manager
Product Management Programs
Division of Solid Waste Management
Maine Dept. of Environmental Protection
Phone - 207-287-7720; Fax 207-287-6220
carole.a.cifrino@maine.gov

From: Malinowski, Kerri
Sent: Tuesday, May 24, 2011 2:41 PM
To: Cifrino, Carole A
Subject: RE: 2010 Annual SWM Report

Hi Carole -

I'm assuming your on the conference call now.

Can you let me know if you are managing the data collection from the 2010 Annual Solid Waste Management Report due to our Department April 30, 2011?

Thanks -

Kerri

*Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333*

*Direct: 207.287.2990
Office Reception: 207.287.7688*

From: Cifrino, Carole A
Sent: Tuesday, May 24, 2011 2:39 PM
To: Malinowski, Kerri
Subject: RE: 2010 Annual SWM Report

Kerri, we need to talk about this. The underlying premise of your question may not be accurate.

Carole Cifrino, Manager
Product Management Programs
Division of Solid Waste Management
Maine Dept. of Environmental Protection
Phone - 207-287-7720; Fax 207-287-6220
carole.a.cifrino@maine.gov

From: Malinowski, Kerri
Sent: Tuesday, May 24, 2011 2:31 PM
To: Cifrino, Carole A
Subject: RE: 2010 Annual SWM Report

Hi Carole --

Regarding our 2010 Annual Solid Waste Management Report due to our Department on April 30, 2011.

What percentage of reports expected have you received?

Who is managing the new data?

Thanks --

Kerri

Kerri Malinowski

Department of Environmental Protection

Bureau of Remediation and Waste Management

17 State House Station

Augusta, ME 04333

Direct: 207.287.2990

Office Reception: 207.287.7688

From: Cifrino, Carole A

Sent: Tuesday, May 24, 2011 2:26 PM

To: Malinowski, Kerri

Subject: FW: 2010 Annual SWM Report

Importance: High

Hi Kerri. I can explain to you the solid waste reporting due dates and anything about our product stewardship programs that you need to know. Sue forwarded this to me because your question really doesn't make any sense to us, and she was hoping I might be able to help you. I swung by your desk and you weren't there. I'll try calling you again when I get off the conference call I'll be on starting in 4 minutes.

Carole Cifrino, Manager

Product Management Programs

Division of Solid Waste Management

Maine Dept. of Environmental Protection

Phone - 207-287-7720; Fax 207-287-6220

carole.a.cifrino@maine.gov

From: Alderson, Susan A

Sent: Tuesday, May 24, 2011 1:55 PM

To: Cifrino, Carole A

Subject: FW: 2010 Annual SWM Report

Importance: High

Read from the bottom up please. Vicky got a question from Kerri, who works with Linda Doran in the safety unit. Seems very odd that she'd be involved with product stewardship...

From: Alderson, Susan A

Sent: Tuesday, May 24, 2011 1:53 PM

To: Malinowski, Kerri

Subject: RE: 2010 Annual SWM Report

I might. Depends on the product. If I'm not the person, someone else up here would be.

If you could explain more details of what you're doing I'd be able to help better because I'm not understanding what product stewardship has to do with any reports due April 30 so I'm not sure which data you're needing.

From: Malinowski, Kerri
Sent: Tuesday, May 24, 2011 1:47 PM
To: Alderson, Susan A
Subject: RE: 2010 Annual SWM Report

Hi Sue --

Yes, this is the project I'm working on -- not relative to safety but to product stewardship.

Looking to wrap our arms around the report information due April 30.

Do you manage that data?

Thanks --

Kerri

*Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333*

*Direct: 207.287.2990
Office Reception: 207.287.7688*

From: Alderson, Susan A
Sent: Tuesday, May 24, 2011 1:43 PM
To: Malinowski, Kerri
Subject: RE: 2010 Annual SWM Report

Hi there,

Is this your new project? Are you working on solid waste safety or something?

Different solid waste reports are due at different times.

Jan 31: Septage
Feb 28: Compost, Sludge & residuals, Beneficial Use
April 30: Landfills and Incinerators
October 31: Transfer stations and tire storage.

Many transfer station reports have already arrived. We have a joint form with the State Planning Office and I believe their due date is April 1. Because ours (and its associated fee) isn't due until October many facilities send in the form in April and fee in October. Some wait until October for both.

Is that helpful at all?

-Sue

From: Bryant, Wicky

Sent: Tuesday, May 24, 2011 1:37 PM
To: Malinowski, Kerri
Cc: Alderson, Susan A
Subject: RE: 2010 Annual SWM Report

Hi Kerri,

I think you may need to speak with Sue Alderson regarding the data in the reports. We are located in the Ray Building on the 3rd floor south.

Thank you,

Vicky Bryant, ATS Coordinator
Maine Dept of Environmental Protection
17 State House Station
Augusta, ME 04333-0017
Phone (207)287-7865
Fax (207)287-4774

From: Malinowski, Kerri
Sent: Tuesday, May 24, 2011 1:34 PM
To: Bryant, Vicky
Subject: 2010 Annual SWM Report

Hi Vicky –
In doing some research on our waste management policies, I noticed the 2010 Annual Solid Waste Management Report was due to you by April 30, 2011. Are you managing the data gathered from this report? Do you have an idea of the percentage of recipients that have responded?
If it's easier I can make a trip to your desk. Which building are you located in?
Thanks –
Kerri

*Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333*

*Direct: 207.287.2990
Office Reception: 207.287.7688*

Cifrino, Carole A

From: Cifrino, Carole A
Sent: Tuesday, June 07, 2011 12:06 PM
To: Malinowski, Kerri
Subject: RE: TRC

Mark Kohorst is Executive Director of NEMA.

Carole Cifrino, Manager
Product Management Programs
Division of Solid Waste Management
Maine Dept. of Environmental Protection
Phone - 207-287-7720; Fax 207-287-6220
carole.a.cifrino@maine.gov

From: Malinowski, Kerri
Sent: Tuesday, June 07, 2011 12:04 PM
To: Cifrino, Carole A
Subject: RE: TRC

Hey Carole –
Excellent, thanks.
How about NEMA?
Hope you have been outside today, it incredible!
-Kerri

*Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333*

*Direct: 207.215.1894
Office Reception: 207.287.7688*

From: Cifrino, Carole A
Sent: Tuesday, June 07, 2011 12:03 PM
To: Malinowski, Kerri
Subject: RE: TRC

Hi Kerri. Mark Tibbetts manages the thermostat recycling program for TRC.

Carole Cifrino, Manager
Product Management Programs
Division of Solid Waste Management
Maine Dept. of Environmental Protection
Phone - 207-287-7720; Fax 207-287-6220

carole.a.cifrino@maine.gov

From: Malinowski, Kerri
Sent: Monday, June 06, 2011 1:45 PM
To: Cifrino, Carole A
Subject: TRC

Hi Carole –

Is there a contact at the Thermostat Recycling Corporation that DEP has developed a relationship with?

Thanks –

Kerri

*Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333*

*Direct: 207.215.1894
Office Reception: 207.287.7688*

Malinowski, Kerri

From: Niles, Lindsay
Sent: Wednesday, June 08, 2011 11:14 AM
To: Malinowski, Kerri
Subject: RE: TRC - Mark Tibbetts

Sure, Monday morning the 11th, Tuesday afternoon the 12th, and any times the 13th-15th.

Lindsay

From: Malinowski, Kerri
Sent: Wednesday, June 08, 2011 11:12 AM
To: Niles, Lindsay
Subject: RE: TRC - Mark Tibbetts

can we also give him some options for the following week in July ?

*Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333*

*Direct: 207.215.1894
Office Reception: 207.287.7688*

From: Niles, Lindsay
Sent: Wednesday, June 08, 2011 11:00 AM
To: Malinowski, Kerri; Dyer, Ron
Subject: RE: TRC - Mark Tibbetts

Looking at both our calendars, anytime Monday morning the 27th looks good, or in the afternoon of Tuesday the 28th.

Lindsay

From: Malinowski, Kerri
Sent: Wednesday, June 08, 2011 10:48 AM
To: Dyer, Ron
Cc: Niles, Lindsay
Subject: TRC - Mark Tibbetts

Ron -

Spoke with Mark Tibbetts at Thermostat Recycling Company this morning. He is thrilled to be invited to meet with us, describing his past/current relationship with MDEP as acerbic.

He asked that we look at scheduling options for the end of June, beginning of July.

Let's talk about everyone's availability; do you want to extend an invite to Patty and Jim also?

Thanks –

Kerri

*Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333*

*Direct: 207.215.1894
Office Reception: 207.287.7688*

Visitors' Register

DATE	NAME	FIRM	ADDRESS	TO SEE
6/21/11	RON VACHAN	St Andrews Hosp	STREET CITY Bathing Harbor STATE ME	Diana Schneider 8:28 8:55 TIME IN TIME OUT
6/21/11	Tom Dinsmore	DOC	STREET 124 Beach Blvd CITY Boxborough STATE ME	8:25 TIME IN TIME OUT
6/21	Lucas Hallaway	Ransom	STREET 400 Commercial St CITY Portland STATE	8:40 8:50 TIME IN TIME OUT
	Jay Lindsey	FOCW	STREET CITY Augusta STATE	9:25 TIME IN TIME OUT
6/21	Ronda Letourneau	DEP	STREET 189 Clifford Rd CITY Phippsburg STATE	9:35 TIME IN TIME OUT
6/21/11	Ryan S. Nickerson	Nickerson Septic	STREET CITY Turner STATE ME	12:15 12:40 TIME IN TIME OUT
6/21/11	M A Biker	Smithdown Marine	STREET 280 E Stage Rd CITY Pittsboro STATE ME	12:40 TIME IN TIME OUT
6/21	Kevin Roche	ecomaine	STREET Blueberry Rd CITY Portland STATE ME	1:20 3 TIME IN TIME OUT
21 JUN 11	ANNE HEWES	ecomaine	STREET BLUEBERRY Rd. CITY PORTLAND STATE ME	1:25 3 TIME IN TIME OUT
"	J Hillier	HAI	STREET CITY Augusta STATE ME	2:00 TIME IN TIME OUT
6/22	N Callahan	—	STREET CITY STATE	Beth Callahan TIME IN TIME OUT
6/22	Jennifer MacGregor	Preli Flaherty	STREET CITY Portland STATE	8:45 10:15 TIME IN TIME OUT
6/22	Westley Wofford	USCA	STREET 22 Seawater Terr CITY Belfast STATE ME	TIME IN TIME OUT
6/22	Jimmi Brown	J. Brown Ent. Inc.	STREET 1083 Miller Rd CITY Siletson STATE ME	Ron Ayer 9:33 TIME IN TIME OUT
6/22	GLENN DuMont	Reacher Bldg	STREET PO Box 2508 CITY Augusta STATE	9:52 10:30 TIME IN TIME OUT



HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002
(207) 287-1400
TTY: (207) 287-4469

Melissa Walsh Innes

400 East Elm Street
Yarmouth, ME 04096
(207) 846-4302

Patricia Aho
Acting Commissioner
Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

June 24, 2011

Dear Acting Commissioner Aho:

I am writing to the Department to make some specific inquiries in regards to your product stewardship department. As has been discussed in this session's Environment and Natural Resources Committee, committee members have requested to be notified of any meetings or discussions that occur regarding the stated "review" of the product stewardship program and the statutes that you administer. This "review" of the program appears to be outside of the statutory annual report on product stewardship, and has brought forth the following questions which I hope your Department can answer:

1. During ENR Committee discussions, you had stated that several industry concerns were brought forward concerning current product stewardship programs. I request this information and any correspondence outlining the concerns, including any DEP responses/actions to the concerns.
2. Does DEP have plans to write and submit the annual product stewardship report to the ENR committee by January 15, 2012?
3. Have there been discussions or decisions made at DEP to make any staffing changes or reductions in the product stewardship program? If so, what are they and what was the basis for the changes made?
4. I applaud DEP in seeking comprehensive stakeholder input regarding implementation of our current and future product stewardship programs. Assuming that there will be additional future programs, I request that the municipal and environmental community, as well as the legislature, be made aware of and invited to these meetings.
5. Later in the session, DEP requested and received a change in our existing statute to delay the start date of the ban on mercury added batteries, with the explanation that the Japan tsunami has created a decrease in supply. I have received information that contradicts this statement, and additionally have heard that Japan had already converted to producing mercury-free batteries over a year ago. Which stakeholders requested this change? Were other producers and suppliers that might have been impacted involved in DEP's decision to delay the ban? I am concerned that this issue might be a symptom of a reluctance on the part of importers not wanting to purchase the potentially more costly batteries, not a simple matter of lack of supply. It is very important to signal to the regulated community clarity around dates of implementation so that no group who works to comply stands alone and finds itself at a competitive disadvantage.

I thank the department for their time in addressing my questions and requests in a timely manner.

Sincerely,

Melissa Walsh Innes

Melissa Walsh Innes

Boutilier, Lynn A

From: Aho, Patricia
Sent: Tuesday, June 28, 2011 1:35 PM
To: Boutilier, Lynn A
Subject: Another draft letter

Hi Lynn - here's another draft letter I need some help on formatting and finalizing.
Thanks!

Patricia Aho
Acting Commissioner
Department of Environmental Protection
17 State House Station
Augusta, ME 04333
207-287-2812



InnesPSPD...

DRAFT
Melissa Innes
House of Representatives
2 State House Station
Augusta, ME 04333-0002

Dear Representative Innes:

Thank you for your June 24, 2011 inquiry regarding Maine's Product Stewardship Program. I will address your questions below,

To address your question about concerns raised by industry and our responses, I have attached the program year 2009 and 2010 reports which document questions regarding the program, include specific requests from the Thermostat Recycling Corporation and include the 2009 DEP staff response to those concerns. The investigation we discussed has been completed and its resulting internal action is protected by Human Resources and collective bargaining agreements.

We plan to submit the annual product stewardship report to the ENR Committee as required.

Regarding the staffing questions, there have been no staffing changes made within the program and we expect the focus to stay on improving the efficiency and effectiveness of the program and do not intend to discuss the personnel decisions made within the department.

Regarding stakeholder input, the current focus as stated above is on looking for opportunities to improve the existing programs. If there are additional areas added in the future, we will commit to an active stakeholder process at that time.

The legislative initiative to extend the ban for button cell batteries an additional six months was not initially proposed by the department. A case was made that in fact one or more suppliers would have difficulty meeting the deadline due to the tsunami, and given the fact that most battery suppliers have in fact already made the change to mercury free batteries, we felt the overall risk was not great in providing an extension. The batteries are in fact being phased out and in most cases are already mercury free. In addition, I believe you will find RI and CT have pushed the dates out as well.

I hope these answer your concerns and ask that you contact me if you have additional questions or comments.

Sincerely,

ENC:

PSP Annual Reports (2009 and 2010)

TRC Annual Report Letters (2010 and 2011)

DEP response to 2010 Letter



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
ACTING COMMISSIONER

June 30, 2011

The Honorable Melissa Walsh Innes
Maine House of Representatives
400 East Elm Street
Yarmouth, ME 04096

Dear Representative Innes:

Thank you for your June 24, 2011 inquiry regarding Maine's Product Stewardship Program. As we have discussed over the past few months, I look forward to working with you and the other interested stakeholders on product stewardship issues here in Maine. Your letter requested specific information relating to our current programs and I hope I have addressed your concerns and questions.

You asked for information regarding the concerns raised by program members and our responses. I have attached requests from the Thermostat Recycling Corporation and a DEP staff response to those concerns. The investigation we discussed into this matter has been completed and its resulting internal action is protected by Human Resources and collective bargaining agreements.

We plan to submit the annual product stewardship report to the ENR Committee as required by the current law and our staff is presently undertaking a thorough review of the existing product stewardship programs with a focus on improvements to the efficiency and the effectiveness of those programs. I anticipate the review will be ongoing over the next few months. You also asked about staffing changes which have been or may be made to the current programs. There have been no staffing changes made within the programs, but as with all of the Department's programs, changes in workload, priorities, funding and related needs are constantly being assessed in order for us to appropriately manage the Department so it may meet its overall workload needs and objectives.

As we also discussed, following our internal review of the current program efficiencies and effectiveness we will then turn our attention to determining which additional program areas might be added in the future, and we will certainly commit to an active stakeholder process at that time.

AUGUSTA
17 STATE HOUSE STATION
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(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

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106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
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312 CANCO ROAD
PORTLAND, MAINE 04103
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PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04679-2094
(207) 764-0477 FAX: (207) 760-3143

Product stewardship programs need robust stakeholder input in order to create the right program design for Maine and to maximize the effectiveness and efficiency of a program for both program members and for administrative oversight.

The legislative initiative to extend the ban for button cell batteries for an additional six months was not initially proposed by the department. A case was made that in fact one or more suppliers would have difficulty meeting the deadline due to the tsunami, and given the fact that most battery suppliers have in fact already made the change to mercury free batteries, we felt the overall risk to the environment was not great in providing a six-month extension. The batteries are in fact being phased out and in most cases are already mercury free. In addition, I believe you will find Rhode Island and Connecticut have pushed the dates out as well.

I hope these answer your concerns and please don't hesitate to call me if you have any additional questions. I also encourage you not to hesitate to contact Ron Dyer, Bureau Director of Waste & Remediation (287-7890) regarding our product stewardship programs. I look forward to working with you on these and other programs over the next few years.

Sincerely,

Patricia W. Aho, Esq.
Acting Commissioner

Enclosures:

PSP 2011 Annual Report
TRC Annual Report Letters (2010 and 2011)
DEP response to 2010 Letter

Cc: Ron Dyer, Director Bureau of Waste & Remediation

Dyer, Ron

From: Tibbetts, Mark [Mark.Tibbetts@Nema.org]
Sent: Wednesday, June 29, 2011 11:23 AM
To: Dyer, Ron; Malinowski, Kerri
Subject: Thank you
Attachments: 1035_001.pdf

Ron and Kerri,

Thank you for investing the time to meet with me yesterday. I thought it was very productive and looking forward to "turning a new leaf" as they say in Maine. We'll work on developing guidance on program administration and get a draft off to late next week or earlier the following.

Also, following up on some of the issues at collection sites. The attached image came from a coupon dropped off at Riverside Recycling in Portland. TRC takes no position on local governments charging for wastes. However, for those thermostats that the homeowner (or contractor) forgo the incentive on, they claim the incentive. It's this behavior that we seek some guidance on.

Regards,

Mark

From: Johnson, Neisha
Sent: Wednesday, June 29, 2011 9:37 AM
To: Tibbetts, Mark
Subject: FW: Attached Image

From: TCHSVCS_CANON [mailto:Donotreply@nema.org]
Sent: Wednesday, June 29, 2011 10:30 AM
To: Johnson, Neisha
Subject: Attached Image

NEMA's Public Policy Portal (NEMA P3) is your members-only source for the latest information about public policies affecting the electroindustry. Bookmark <http://p3.nema.org> and stay informed.

Dyer, Ron

From: Malinowski, Kerri
Sent: Monday, June 20, 2011 2:21 PM
To: Dyer, Ron
Subject: TRC Report
Attachments: TRC_2010_Annual_Report.pdf

Hi Ron --

Just received this from Ann. It may be the last piece of info Pattie was looking for last week.

Thanks --

Kerri

*Kerri Malinowski
Department of Environmental Protection
Bureau of Remediation and Waste Management
17 State House Station
Augusta, ME 04333
Direct: 207.215.1894
Office Reception: 207.287.7688*

From: Pistell, Ann E
Sent: Monday, June 20, 2011 2:15 PM
To: Malinowski, Kerri
Subject:

Kerri,
Carole said you asked for this.

Ann

Ann Pistell
ME DEP
17 State House Station
Augusta, ME 04333
(207) 287-7703

Aho, Patricia

From: Aho, Patricia
Sent: Thursday, June 30, 2011 10:40 AM
To: McLean, Carlisle
Subject: Re: Mercury-Added Thermostats

These were our requested changes.
Pattie Aho - sent from my Blackberry

From: McLean, Carlisle
Sent: Thursday, June 30, 2011 10:26 AM
To: Aho, Patricia
Subject: Mercury-Added Thermostats

Changes were made in Part E, Sect. E-1 38 MRSA 1665-B, sub-2, Para A to the thermostat collection system in "An Act To Correct Errors and Inconsistencies in the Laws of Maine." It looks more substantive than clerical and I am not recalling the intention there can you assist or send information on it?

Carlisle J.T. McLean
Senior Natural Resources Advisor
Office of the Maine Governor
Direct Dial: (207) 287-3535
Cell: (207) 592-0041
Carlisle.McLean@maine.gov

#1 State House Station
Augusta, ME 04333-0001

Aho, Patricia

From: Aho, Patricia
Sent: Friday, June 03, 2011 3:02 PM
To: Thomas Doyle
Subject: RE: DEP Omnibus Bill

thanks Tom - unfortunately the bill was enacted today - so hopefully she can make the correction in the errors bill.

Pattie Aho
Dept. Commissioner
Department of Environmental Protection
17 State House Station
Augusta, ME 04333
207-287-7830

From: Thomas Doyle [<mailto:tdoyle@pierceatwood.com>]
Sent: Friday, June 03, 2011 2:56 PM
To: Aho, Patricia
Subject: DEP Omnibus Bill
Importance: High

Pattie, in looking through the Department's Omnibus Bill and the Committee Amendment thereto, I just noticed that Sections 26 through 29 (all on mercury-added thermostats) were not deleted as you had requested and as the Committee voted. I called Susan Johannesman to see if I was misreading the amendment. She confirm that I was right and that this was an oversight on her part. She's going to see what can be done about it.

I thought you would want to know this.

Thomas R. Doyle

Partner

Pierce Atwood LLP

One Monument Square

Portland, ME 04101

207-791-1214 direct

207-791-1350 fax

tdoyle@pierceatwood.com

<http://www.pierceatwood.com/bios/doyle.html>

This email was sent from the law firm Pierce Atwood LLP. It may contain information that is privileged and confidential. If you suspect that you were not intended to receive it, please delete it and notify us as soon as possible. Thank you.

Carney, Peter J

From: Dyer, Ron
Sent: Thursday, July 28, 2011 2:49 PM
To: Hopkins, Carla J
Cc: Clark, Paula M; Cifrino, Carole A; Carney, Peter J
Subject: RE: ecomaine

Hi Carla, as per our conversation, this issue was just brought to my attention, and in brief, TRC has stated they were not consulted during the SEP process and this caught them by surprise. I want to understand this issue better before responding and have set up time to meet with Paula on Monday to discuss how this concern can best be addressed now and going forward. Thank you for the follow up and I hope you have a nice few days off, Ron

From: Hopkins, Carla J
Sent: Thursday, July 28, 2011 12:54 PM
To: Dyer, Ron
Cc: Clark, Paula M; Cifrino, Carole A
Subject: FW: ecomaine

Hey Ron,

Since I am covering for Paula this week, Carole asked if I had heard anything about this. Since I haven't, I thought perhaps you might have some information. Are you aware of any communication with TRC? We were unclear to what Mr. Tibbetts might be referring in his e-mail. I am leaving the office today at 1:15 and am not in the office tomorrow but will be available by cell phone at [REDACTED] Thanks.

Carla

From: Cifrino, Carole A
Sent: Thursday, July 28, 2011 12:40 PM
To: Hopkins, Carla J
Subject: FW: ecomaine

Since you're covering for Paula this week, I was wondering if you know anything about TRC's contact with DEP management on this issue?

Carole Cifrino, Manager
Product Management Programs
Division of Solid Waste Management
Maine Dept. of Environmental Protection
Phone - 207-287-7720; Fax 207-287-6220
carole.a.cifrino@maine.gov

From: Pistell, Ann E
Sent: Thursday, July 28, 2011 11:15 AM
To: Cifrino, Carole A
Subject: FW: ecomaine

Ann Pistell
ME DEP
17 State House Station
Augusta, ME 04333
(207) 287-7703

From: Tibbetts, Mark [mailto:Mark.Tibbetts@Nema.org]
Sent: Thursday, July 28, 2011 11:14 AM
To: Pistell, Ann E
Cc: Thomas Doyle
Subject: RE: ecomaine

Ann-

I hadn't responded as I escalated this to others within the Department. Regrettably, TRC was not consulted prior to finalizing the SEP with EcoMaine. At this point, I am waiting further guidance from Department.

Regards,

Mark

From: Pistell, Ann E [mailto:Ann.E.Pistell@maine.gov]
Sent: Thursday, July [REDACTED] M
To: Tibbetts, Mark
Subject: ecomaine

Mark,

I completed the ecomaine training yesterday and have provided them with the following bins: M13679, M13639, M13572. I also provided them with the retail forms for submitting payments since I hadn't received any comments or response from you and this seemed most advantageous to both entities.

Contact information: Anne Hewes or Mark Maritato. 64 Blueberry Road, Portland, ME 04102 Ph: 207-773-1738. Is there anything else you need?

Ann

Ann Pistell
ME DEP
17 State House Station
Augusta, ME 04333
(207) 287-7703

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Malinowski, Kerri

From: Tibbetts, Mark <Mark.Tibbetts@Nema.org>
Sent: Friday, August 05, 2011 2:52 PM
To: Malinowski, Kerri
Subject: FW: ecomaine
Attachments: SEP 4 thermostats.pdf

FYI- thanks for the time this afternoon.

Regards,

Mark

From: Anne Hewes [<mailto:Hewes@ecomaine.org>]
Sent: Friday, August 05, 2011 1:23 PM
To: Tibbetts, Mark
Cc: Kevin Roche
Subject: ecomaine

Mark – I am attaching our Supplemental Environmental Project (SEP) for ecomaine’s mercury thermostat recycling program we discussed initially with MDEP in March. I had assumed you had been notified about this project since the idea came from Ann Pistell at the MDEP, the coordinator of the State’s Thermostat Recycling Program.

As I mentioned in our phone conversation, the project is focused on removing mercury from the waste stream by targeting licensed hvac technicians in ecomaine communities. Internally, we held many discussions and meetings to develop an efficient protocol for collection, processing and payment of the thermostats and precautionary measures to safely collect these items. We also sought MDEP input including visits to ecomaine by Ann Pistell and Carole Cifrino to assure that we were developing a program that met their standards. I also kept Kurt Tidd and Peter Carney of the Air Bureau in the loop as the implementation plan was being developed.

As you know the SEP was approved June 16 by the Board of Environmental Protection on recommendation by the MDEP and that the Attorney General’s office also authorized the SEP on June 22, 2011. Throughout this discourse, I had trusted that TRC was informed of the program. ecomaine has proceeded in a transparent and upfront manner with the MDEP – my regret is that you were not notified and I am concerned that this will now reflect poorly on our SEP. From our conversation it sounds as though you see merits in the program and ecomaine’s goal to remove Hg from the waste stream. I reiterate, that I will solicit your input in regard to the results of the program (limitations and future actions) to the final report that I will submit to the MDEP upon completion of the SEP.

Thank you for calling me and conveying your concerns.
Very truly yours, Anne

Anne K. Hewes, Ph.D.
Environmental Manager
www.ecomaine.org

Register now at <http://www.nema.org/illuminations> for NEMA's 85th annual meeting, Illuminations Weekend, held October 28 and 29 at The Mayflower Renaissance Hotel in Washington, D.C.

Malinowski, Kerri

From: Tibbetts, Mark <Mark.Tibbetts@Nema.org>
Sent: Thursday, July 28, 2011 1:27 PM
To: Malinowski, Kerri
Subject: FW: ecomaine

Kerri,

Just an FYI. As I said on the phone it's not clear how this can be undone (if it can be undone and if it's worth undoing...). We can discuss after you had a chance to discuss internally.

Thanks

Mark

From: Tibbetts, Mark
Sent: Thursday, July 28, 2011 11:14 AM
To: 'Pistell, Ann E'
Cc: 'Thomas Doyle'
Subject: RE: ecomaine

Ann-

I hadn't responded as I escalated this to others within the Department. Regrettably, TRC was not consulted prior to finalizing the SEP with EcoMaine. At this point, I am waiting further guidance from Department.

Regards,

Mark

From: Pistell, Ann E [<mailto:Ann.E.Pistell@maine.gov>]
Sent: Thursday, July 28, 2011 10:30 AM
To: Tibbetts, Mark
Subject: ecomaine

Mark,

I completed the ecomaine training yesterday and have provided them with the following bins: M13679, M13639, M13572. I also provided them with the retail forms for submitting payments since I hadn't received any comments or response from you and this seemed most advantageous to both entities.

Contact information: Anne Hewes or Mark Maritato. 64 Blueberry Road, Portland, ME 04102 Ph: 207-773-1738. Is there anything else you need?

Ann

Ann Pistell
ME DEP
17 State House Station
Augusta, ME 04333

Malinowski, Kerri

From: Tibbetts, Mark <Mark.Tibbetts@Nema.org>
Sent: Friday, July 22, 2011 3:51 PM
To: Malinowski, Kerri
Subject: FW: ecomaine thermostat recycling

Kerri,

Are you and/or Ron aware of this? Ann sent this to me yesterday. At this point, this isn't a direction we'd like to go. I'm unsure of the merits making payments to a 3rd party and think it best that we address issues with current program before undertaking an expansion.

I've been swamped since our meeting and only now getting to the review of the program as promised. I'm off to CA Monday, returning on Wend. I should be able to provide our recommendations by the end of next week.

Regards,

Mark

From: Pistell, Ann E [<mailto:Ann.E.Pistell@maine.gov>]
Sent: Thursday, July 21, 2011 4:19 PM
To: Tibbetts, Mark
Subject: ecomaine thermostat recycling

Mark,

ecomaine, a non-profit waste management and recycling company owned and operated by 21 municipalities in Southern Maine, is about to begin a campaign to collect mercury thermostats from HVAC companies and technician working in the areas of their member towns. I will be issuing them probably 3 bins and will send you those bin numbers next week after I meet with them. They will cut the individual checks to the participants, and then look to TRC for the \$5 incentive reimbursement per eligible thermostat. This should save TRC money because you will be cutting one check instead of potentially dozens.

I will be training their staff about what is acceptable under the TRC program etc. so that TRC does not receive inappropriate materials. The ecomaine program will be offered for at least 6 months and up to 18 months. When they have a full bin for shipment, the retail invoice form would work for their use, thereby cutting TRC's costs for the coupons, scanning etc. Do you foresee any issues using the retail invoice form if they follow the same instructions as the retailers i.e. yellow copy in bin, white copy to you? They are very excited about this program and its potential to keep mercury out of their incinerator.

On another note, I have not heard from Linda R. that she has sent a memo out to Aubuchon stores. I am holding back visiting the Aubuchons until I know they have directions in hand from their headquarters.

Ann

Ann Pistell
ME DEP
17 State House Station
Augusta, ME 04333
(207) 287-7703

Visitors' Register

DATE	NAME	FIRM	ADDRESS	TO SEE	
8/17	KEVIN NELSON	DEP/SMRO	STREET CITY STATE	10:45 TIME IN	12:40 TIME OUT
17 August	Enk Sorenson	NEMA	STREET CITY STATE	1:00 P TIME IN	2:30 TIME OUT
17 August	Joe Hawley	GE	STREET CITY STATE	2:00 P TIME IN	2:30 TIME OUT
17 August	Jenn Dolin	OSRAM SYLVANIA	STREET CITY STATE	2:00 P TIME IN	2:30 TIME OUT
8/18/2011	Brett Deyling	Summit	640 Main St CITY Lewiston STATE ME	0837 TIME IN	0945 TIME OUT
8/18/2011	[Signature]	AMEE	STREET CITY STATE	8:45 TIME IN	TIME OUT
8/18/2011	STEVE ROBERGE	SJ2 ENG	STREET CITY STATE	8:50 TIME IN	10:50 TIME OUT
8/18/11	Paul K	Boyle	STREET CITY STATE	9:00 TIME IN	11:00 TIME OUT
8-18-11	H. Storlazzi Ward	Boyle	STREET CITY STATE	8:55 TIME IN	10:50 TIME OUT
8/18/11	Jim Boyle	Boyle	STREET CITY STATE	9:00 TIME IN	11 TIME OUT
8/18/11	Rob Payson	3-others	STREET CITY STATE	9:11 TIME IN	TIME OUT
8/18/11	Curt McDonto	MULT 1	STREET CITY STATE	1:00 TIME IN	5:00 TIME OUT
8/18	Don Anderson	2nd floor copy	STREET CITY Gardner STATE	1:10 TIME IN	2:30 TIME OUT
9/1	Rick Croft	Transco	STREET CITY STATE	1:45 TIME IN	2:45 TIME OUT
8/18	Corinne Dawson	BRCA	STREET CITY STATE	3:50 PM TIME IN	3:55 PM TIME OUT

Carney, Peter J

From: Sproul, Bryce
Sent: Monday, August 08, 2011 2:53 PM
To: Tidd, Kurt; Carney, Peter J
Subject: RE: ecomaine

Do I understand correctly that Carole and Ann dropped the ball on this one?

Bryce J. Sproul, Director
Division of Licensing and Enforcement
Bureau of Air Quality
207-287-7048
bryce.j.sproul@maine.gov

From: Tidd, Kurt
Sent: Monday, August 08, 2011 1:50 PM
To: Sproul, Bryce; Carney, Peter J
Subject: FW: ecomaine

From: Anne Hewes [mailto:Hewes@ecomaine.org]
Sent: Monday, August 08, 2011 1:43 PM
To: Tidd, Kurt
Subject: FW: ecomaine

From: Anne Hewes
Sent: Friday, August 05, 2011 1:23 PM
To: 'mark.tibbetts@nema.org'
Cc: Kevin Roche
Subject: ecomaine

Mark – I am attaching our Supplemental Environmental Project (SEP) for ecomaine's mercury thermostat recycling program we discussed initially with MDEP in March. I had assumed you had been notified about this project since the idea came from Ann Pistell at the MDEP, the coordinator of the State's Thermostat Recycling Program.

As I mentioned in our phone conversation, the project is focused on removing mercury from the waste stream by targeting licensed hvac technicians in ecomaine communities. Internally, we held many discussions and meetings to develop an efficient protocol for collection, processing and payment of the thermostats and precautionary measures to safely collect these items. We also sought MDEP input including visits to ecomaine by Ann Pistell and Carole Cifrino to assure that we were developing a program that met their standards. I also kept Kurt Tidd and Peter Carney of the Air Bureau in the loop as the implementation plan was being developed.

As you know the SEP was approved June 16 by the Board of Environmental Protection on recommendation by the MDEP and that the Attorney General's office also authorized the SEP on June 22, 2011. Throughout this discourse, I had trusted that TRC was informed of the program. ecomaine has proceeded in a transparent and upfront manner with the MDEP – my regret is that you were not notified and I am concerned that this will now reflect poorly on our SEP. From our conversation it sounds as though you see merits in the program and ecomaine's goal to remove Hg from the waste stream. I reiterate, that I will solicit your input in regard to the results of the program (limitations and future actions) to the final report that I will submit to the MDEP upon completion of the SEP.

Thank you for calling me and conveying your concerns.
Very truly yours, Anne

Anne K. Hewes, Ph.D.
Environmental Manager
www.ecomaine.org

Visitors' Register

DATE	NAME	FIRM	ADDRESS	TO SEE
6/23	Stef. Oliver		STREET CITY STATE	TIME IN TIME OUT
8/23	Andrea Dickinson	CES	STREET CITY STATE	8:48 TIME IN TIME OUT
8/23	Peter Patenaude		STREET CITY STATE	TIME IN TIME OUT
8/23	MICHAEL GLASSNER	—	STREET CITY STATE	10:20 TIME IN TIME OUT
8/23	JACOB BLAISDELL	—	STREET CITY STATE	12:40 TIME IN TIME OUT
8/23	Eric Han	★ VIK ★	STREET CITY STATE	2:00 TIME IN TIME OUT
8/24			STREET CITY STATE	TIME IN TIME OUT
8/24	Ron Williams		STREET CITY STATE	TIME IN TIME OUT
11	Mary Javer	AGU	STREET CITY STATE	6. Seel 9:20 TIME IN TIME OUT
11	Tony Doyle Ron Doyle	PA	STREET CITY STATE	Ron Doyle 10:58 TIME IN TIME OUT
8/24	Emily Normandin		STREET CITY Augusta STATE ME	1pm TIME IN TIME OUT
8/24	JOHN KORIS	PIKE MD	STREET CITY WESTBROOK STATE ME	1:28 TIME IN TIME OUT
8/24	Toni Cofh Long Welob	COFI	STREET CITY STATE	1:30 TIME IN TIME OUT
8/24	Nancy Macinowski	OAG	STREET CITY STATE	1:53 TIME IN TIME OUT
8/25	RICHARD MSHERRY	AMEC	STREET CITY STATE	0:50 TIME IN TIME OUT

Malinowski, Kerri

From: Boutilier, Lynn A on behalf of Aho, Patricia
Sent: Thursday, September 01, 2011 2:02 PM
To: Dyer, Ron
Cc: Malinowski, Kerri
Subject: Product stewardship business audit

Ron,

I wanted to check in with you to determine the status of your product stewardship audit, and the recommendations you are hoping to compile for us to discuss by early fall. Because the issues will be discussed during the 2012 legislative session, I was hopeful that you would be able to give me a status report of your program audit, and the suggestions you may have for changes to the current program by October 1st.

Will this work with the status of the on-going audit which is underway?

Best regards,
Pattie



September 1, 2011

Mr. Ronald Dyer
Director, Bureau of Remediation and Waste Management
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Ms. Melanie Loyzim
Acting Director, Air Bureau
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Subject: Thermostat Recycling Corporation's Participation in ecomaine's Supplemental Environmental Project (SEP)

Dear Director Dyer, Director Loyzim:

I am writing on behalf of Thermostat Recycling Corporation (TRC) and its member companies in regards to a Supplemental Environmental Project (SEP) being implemented by ecomaine in association with DEP staff within the Bureau of Remediation and Waste Management. We are particularly troubled by the Department's lack of engagement with manufacturers, who were not consulted in advance of the project nor asked to comment on its structure and objectives. We view this as indicative of the need for improved communication between TRC and the Department and respectfully ask your help in addressing this problem.

TRC and its members received no prior notice of the SEP and did not become aware of it until July 21, 2011. This was only ten days prior to the scheduled start of the project and a full *three months* after ecomaine had signed the Administrative Consent Agreement (ACA) that includes the SEP. At that time, email correspondence from DEP's Ann Pistell provided limited information on the project, but did not mention the SEP, the \$10.00 incentive it involves, or the overall intent of the project. TRC learned of the SEP and its expected involvement after contacting DEP's Kerri Malinowski on July 22nd. Moreover, TRC only learned of the full scope of Department staff's involvement in formulating this SEP through discussions with Anne Hewes of the ecomaine staff.

Aside from the communication issues, TRC has serious concerns about the project itself. We are troubled by a lack of internal controls that are needed to protect against fraud and abuse. It is our understanding that there is no mechanism in place to determine the eligibility of the payee (*i.e.*, a

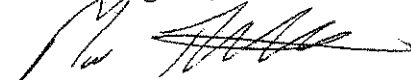
technician, contractor, or homeowner, as required by statute) and to prevent the fraudulent return of thermostats.

Additionally, this project purports to be a test on the impact of more timely payments *and* an increase in the incentive. However, it is unclear to TRC how the project tests either hypothesis, as it will be impossible to determine which factor may affect behavior. In fact, there seems to be no effort planned to gather data on participants or the factors that influence their collection behavior. That being the case, TRC fears the project will have limited value and its findings will be subject to misinterpretation in other states.

If these deficiencies in project design cannot be addressed and sufficient rigor applied to the program's evaluation, TRC will find it difficult to justify participating in this project. We respectfully urge the Department to acknowledge the limitations of the project clearly in its program evaluation report.

TRC and its members remain committed to the program's core objective of providing a convenient, no-cost mechanism for recovering mercury-switch thermostats throughout the State of Maine. We recognize that the SEP is aimed at strengthening the program but do not feel it can be effective or informative as currently designed. We appreciate the DEP's willingness to discuss these concerns and work with us to ensure a more open, constructive dialogue with the Department going forward and as such, request a meeting to discuss this matter.

Sincere Regards,



Mark Tibbetts
Executive Director

Cc: Patricia Aho, Esq., Acting Commissioner
Kevin Roche, ecomaine
TRC Board of Directors

Visitors' Register

DATE	NAME	FIRM	ADDRESS	TO SEE
9/7	Don White	DEP	STREET CITY STATE	9:45 12:00 TIME IN TIME OUT
9/7	Mike Kuncce	Chander	STREET CITY STATE	9:58 12:30 TIME IN TIME OUT
9/7	Tony Pizzelli	Chander	STREET CITY STATE	9:58 12:30 TIME IN TIME OUT
9/7	Kelley Rhee	TRC	STREET CITY STATE	10:05 out TIME IN TIME OUT
9/7	Nicole Argonnes	MSEA	STREET CITY STATE	10:30 12:20 TIME IN TIME OUT
9/7	Mike Huber	SLA	STREET CITY ALBANY STATE ME	1:15 1:35 TIME IN TIME OUT
9/7	CHRIS YODER	MBI	STREET CITY Columbus STATE OH	Susan DAVIES 3:07 TIME IN TIME OUT
9/7	TOM TRAINOR	SUI COLE	STREET CITY GRAY STATE ME	VRAP 3:45 6:00 TIME IN TIME OUT
9/9	Damon Frecker	Cote Street	STREET CITY STATE	VRAP 3:53 6:00 TIME IN TIME OUT
9/9	Tom Doyle	Pierce Atwood	STREET CITY STATE	3:53 6:00 TIME IN TIME OUT
9/8	Patrick Gurnea	Integral	STREET CITY STATE	0827 1030 TIME IN TIME OUT
↓	Paul Stevens	Paro Utilty Distr	STREET CITY STATE	0827 1030 TIME IN TIME OUT
↓	Steve Arnold	Paro Utilty Distr	STREET CITY STATE	0827 1030 TIME IN TIME OUT
9/8	Wendy Dennis	CWD-	STREET CITY STATE	Deirdre Schneider 8:42 8:55 TIME IN TIME OUT
9/8	Whitney King	Colby	STREET CITY STATE	9:58 9:59 TIME IN TIME OUT

Dyer, Ron

From: Tibbetts, Mark [Mark.Tibbetts@Nema.org]

Sent: Thursday, September 08, 2011 3:04 PM

To: Dyer, Ron

Cc: Loyzim, Melanie

Subject: RE: TRC correspondence regarding SEP

Ron,

Thank you for the quick response. I don't have an immediate plans on being in Maine, but can certainly arrange for a trip. A member representative may also want to attend and I need to coordinate schedule with him.

Also, I have had some medical issues at home and for the immediate time, I'm trying not to schedule any overnight trips. I'm hopeful that we'll have things settled at home early next week and I'll be able to get back on the road.

As this project is already in progress, my sense we want to get this scheduled quickly. If it's just going to be me, we may want to schedule a call rather than wait until I can get on the road. I should have a better handle on things tomorrow and we can go from there if that works for the Department.

Thanks

Mark

From: Dyer, Ron [mailto:Ron.Dyer@maine.gov]

Sent: Wednesday, September 07, 2011 10:06 AM

To: Tibbetts, Mark

Cc: Loyzim, Melanie

Subject: RE: TRC correspondence regarding SEP

Hi Mark, thank you for the voice mail and this letter outlining your Board's concerns w/ the ecomaine SEP. I would like to set up a time to meet and review next steps in response to this message. When will you be in Maine again? thank you, Ron

From: Tibbetts, Mark [mailto:Mark.Tibbetts@Nema.org]

Sent: Thursday, September 01, 2011 7:34 PM

To: Dyer, Ron

Subject: TRC correspondence regarding SEP

Ron,

I left you a voicemail this evening. Attached is a copy of the correspondence.

Regards,

Mark

1/6/2012

Dyer, Ron

From: Tibbetts, Mark [Mark.Tibbetts@Nema.org]
Sent: Sunday, October 23, 2011 11:45 PM
To: Carney, Peter J
Cc: Thomas Doyle; nlivesay@pierceatwood.com; Dyer, Ron
Subject: Re: Ecomaine SEP

Peter,

Looking at this again I think the voucher is missing a critical element. There is no certification by the payee the thermostats were sourced from a Maine location and through their normal course of business. Payments are only supposed to go to contractors, technicians, and homeowners. The form in the current version fails to address these issues.

Which also leads back to the issue of back payments. Will ecomaine be able to verify the payee was eligible for payments under Maine's thermostat law

I'm meeting with Ron dyer a week from wend in Augusta. Should we add a few minutes to the agenda to wrap this up? I'm traveling all week and between a 6 hour time difference and meetings it's a tough week for me.

Regards

Mark

Sent from my iPad

On Oct 20, 2011, at 10:27 AM, "Carney, Peter J"
<Peter.J.Carney@Maine.gov<mailto:Peter.J.Carney@Maine.gov>> wrote:

Thanks for the reply Mark. Tom, could you confirm that we are okay to proceed?

If Tom confirms we are set to move forward, can we correctly assume that TRC will reimburse ecomaine for the shipments already received by TRC once ecomaine provides the supporting documentation (i.e. the recycling program voucher forms).

Thanks.

Pete

From: Tibbetts, Mark [mailto:Mark.Tibbetts@Nema.org]
Sent: Thursday, October 20, 2011 10:25 AM
To: Carney, Peter J; Thomas Doyle;
nlivesay@pierceatwood.com<mailto:nlivesay@pierceatwood.com>
Cc: Dyer, Ron
Subject: RE: Ecomaine SEP

Peter,

This works very well. Thank you for recognizing our concerns and addressing them. I'm traveling for the next 10 days but will be able to keep an eye on email. Also, I will be meeting with Ron in Augusta on 11/2.

Regards,

Mark

From: Carney, Peter J [mailto:Peter.J.Carney@Maine.gov]
Sent: Wednesday, October 19, 2011 12:57 PM
To: Thomas Doyle; Tibbetts, Mark;
nlivesay@pierceatwood.com<mailto:nlivesay@pierceatwood.com>

Subject: Ecomaine SEP

Tom, Nick, and Mark:

Attached is a redraft of the Ecomaine SEP. Also attached is a copy of the form that Ecomaine has the party dropping off a thermostat fills out and copies of which would be submitted to TRC when TRC is invoiced by ecomaine. Let me know what you think of the redraft. Thanks for working on this.

Pete

Sincerely,

Peter J. Carney
Director of Procedures and Enforcement
Office of the Commissioner
Maine Department of Environmental Protection
#17 State House Station
Augusta, Maine 04333-0017
Phone: (207) 287-4305
Fax: (207) 287-2814
peter.j.carney@maine.gov<mailto:peter.j.carney@maine.gov>

Register now at <http://www.nema.org/illuminations> for NEMA's 85th annual meeting, Illuminations Weekend, held October 28 and 29 at The Mayflower Renaissance Hotel in Washington, D.C.

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Dyer, Ron

From: Tibbetts, Mark [Mark.Tibbetts@Nema.org]
Sent: Thursday, October 27, 2011 5:36 PM
To: Dyer, Ron
Cc: Carney, Peter J
Subject: Re: Ecomaine SEP

Ron and Peter

Works for me. Thanks

Mark

Sent from my iPad

On Oct 27, 2011, at 10:10 AM, "Dyer, Ron" <Ron.Dyer@maine.gov> wrote:

> Mark and Pete, we are meeting 9-11 on Nov 2nd, I'm ok with extending
> the mtg to finish this up, Ron
>
> -----Original Message-----
> From: Tibbetts, Mark [mailto:Mark.Tibbetts@Nema.org]
> Sent: Sunday, October 23, 2011 11:45 PM
> To: Carney, Peter J
> Cc: Thomas Doyle; nlivesay@pierceatwood.com; Dyer, Ron
> Subject: Re: Ecomaine SEP
>
> Peter,
>
> Looking at this again I think the voucher is missing a critical element.
> There is no certification by the payee the thermostats were sourced
> from a Maine location and through their normal course of business.
> Payments are only supposed to go to contractors, technicians, and homeowners.
> The form in the current version fails to address these issues.

>
> Which also leads back to the issue of back payments. Will ecomaine be
> able to verify the payee was eligible for payments under Maine's
> thermostat law
>

> I'm meeting with Ron dyer a week from wend in Augusta. Should we add a
> few minutes to the agenda to wrap this up? I'm traveling all week and
> between a 6 hour time difference and meetings it's a tough week for me.

> Regards

> Mark

> Sent from my iPad

>
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> Peter J. Carney
> Director of Procedures and Enforcement Office of the Commissioner
> Maine Department of Environmental Protection
> #17 State House Station
> Augusta, Maine 04333-0017
> Phone: (207) 287-4305
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> annual meeting, Illuminations Weekend, held October 28 and 29 at The
> Mayflower Renaissance Hotel in Washington, D.C.

Dyer, Ron

From: Tibbetts, Mark [Mark.Tibbetts@Nema.org]
Sent: Tuesday, December 13, 2011 12:25 PM
To: Clark, Paula M; Pistell, Ann E
Cc: Dyer, Ron; Carney, Peter J
Subject: EcoMaine and other issues
Attachments: EcoMaine Balance 12122011.xls

Paula and Ann:

We're still having issues with the EcoMaine program.

1. Paperwork—TRC Admin office received fax copies of the invoice and the yellow copy of the invoice was included in the bin. However, to date TRC has not received any copies of the agreed to "Project Voucher" forms. Ecomaine shipped TRC containers on or about 11/29 and we agreed to the revised form on 11/2. At what point should TRC start receiving agreed to paperwork? I assume some of thermostats received with the 11/29 shipment would have the additional paperwork associated with them. My email to Anne Hewes went unanswered.
2. Thermostats with incentive coupons attached. To date we have received 62 thermostats with TRC incentive coupons attached. It seems persons are transferring thermostats from existing collection points to the Ecomaine program. We are logging these incentive coupons in as ineligible to avoid double payment. I remain concerned that the person(s) that are submitting these thermostats may be different than the person(s) who originally submitted them.
3. Discrepancy between EcoMaine count and TRC count. Please review the attached spreadsheet. Our count of thermostats has generally been higher than EcoMaine's. I believe EcoMaine may be submitting thermostats without covers or ones where the Brand name is not clearly visible that it did not pay on. I noted this exception in the revised SEP. TRC has always paid the incentive whether there is a cover attached or not. If this is the case, this conflicts with TRC procedure on counting receipts from retail bins in Maine and Vermont as staff are instructed to verify the count and TRC pays on TRC staff count (total number of mercury-switch thermostats in the bin including those without covers), not the collection location count. Before I remit payment I need to know whether ecomaine staff are inaccurately counting (discrepancies on bin counts are not infrequent and TRC double counts all ME/VT retail bins to ensure accuracy) or including thermostats they deem as ineligible in the bin. If this is the case TRC will simply pay on the lowest count (TRC or Ecomaine). EcoMaine should receive very few thermostats without covers as the need for covers is well established in the state.

At our meeting on 11/2 I agreed to pay the invoices from August and moving forward participate in the program. I do need clarity on issue number 1 and 3 before I can pay the August invoices (which count) and the bins submitted on or about 11/29 (both count and paperwork).

Finally, on an unrelated matter, TRC has received several hundred coupons from Maine DEP in the last week or so. I assume Ann sent those in. Again, if DEP staff are visiting distributors please reinforce the need for the payee to submit coupons directly to TRC. Collection points should not collect and hold coupons. As I mentioned in the meeting on 11/2, having someone other than the payee submit the coupon is the biggest drivers of slow or no payment. At minimum it delays payment by at least 30 if not 60 days and the biggest cause of missing remittance coupons is the contractor leaving it with the collection point. Having someone else handle them just adds one more layer complexity (and point of failure) to an already cumbersome process.

1/6/2012

Regards,

Mark

1/6/2012

Invoice #	Date on Invoice	Yellow Copy	EcoMaine		Armt Due
			Count	TRC Count	
257	5-Aug-11	Yes	87	93	\$ 465
256	12-Aug-11	Yes	62	62	\$ 310
336	19-Aug-11	Yes	107	107	\$ 535
334	19-Sep-11	Yes	41	42	\$ 210
1016	19-Sep-11	Yes	48	54	\$ 270
337	29-Nov-11	Yes	70	71	\$ 355
1020	29-Nov-11	Yes	70	75	\$ 375

Dyer, Ron

From: Clark, Paula M
Sent: Wednesday, December 14, 2011 10:06 AM
To: Dyer, Ron
Subject: RE: EcoMaine and other issues

Ron – I am following up on the issues raised in Mark's e-mail, but won't be able to discuss with Ann until Monday. I'll check with Lindsay about your schedule, and will also check in with Pete since he's been talking with ecomaine too. The issues raised are, for the most part, quite specific to the ecomaine project. I did want to let you know however, that I've also done some of the follow up on the broader package of issues that was discussed at the November meeting, and at some point I'd like to discuss that further as well. Thanks. (Enjoy Aroostook County!)

Paula

From: Dyer, Ron
Sent: Tuesday, December 13, 2011 4:57 PM
To: Clark, Paula M; Pistell, Ann E
Cc: Carney, Peter J; Parent, Heather; Niles, Lindsay; Loyzim, Melanie
Subject: RE: EcoMaine and other issues
Importance: High

Paula and Ann, lets meet soon and discuss a response and how best to move forward. Will you please work with Lindsay to find the best time for all of us to meet, maybe this Friday? thank you, Ron

From: Tibbetts, Mark [mailto:Mark.Tibbetts@Nema.org]
Sent: Tuesday, December 13, 2011 12:25 PM
To: Clark, Paula M; Pistell, Ann E
Cc: Dyer, Ron; Carney, Peter J
Subject: EcoMaine and other issues

Paula and Ann:

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1/6/2012

with TRC procedure on counting receipts from retail bins in Maine and Vermont as staff are instructed to verify the count and TRC pays on TRC staff count (total number of mercury-switch thermostats in the bin including those without covers), not the collection location count. Before I remit payment I need to know whether ecomaine staff are inaccurately counting (discrepancies on bin counts are not infrequent and TRC double counts all ME/VT retail bins to ensure accuracy) or including thermostats they deem as ineligible in the bin. If this is the case TRC will simply pay on the lowest count (TRC or Ecomaine). EcoMaine should receive very few thermostats without covers as the need for covers is well established in the state.

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Regards,

Mark

1/6/2012

Dyer, Ron

From: Tibbetts, Mark [Mark.Tibbetts@Nema.org]
Sent: Thursday, December 15, 2011 4:00 PM
To: Clark, Paula M; Pistell, Ann E
Cc: Dyer, Ron; Carney, Peter J
Subject: RE: EcoMaine and other issues
Attachments: Supporting Documentation for invoices

Paula,

Thanks for the heads up. I received Ann Hewes email with the information on payee's but no response to the issue regarding counts (#3). I do need some clarity on that issue. I can cut a check for the lessor amount, but if it's wrong then I need to cut a second check and I'd prefer to just cut one.

Also, I think I determined in part what's going on with thermostats with coupons attached. Two of the payee's in Anne's email are staff at wholesalers in the Portland area. T. Erwin is the owner of Northern Burner Supply in Portland and S. Cohen is staff at Distributor Corp of New England in Westbrook.

I will be out for the Christmas holiday starting on 12/22 and will not be back until 1/2. If I can get some clarity on the issue of counts I'll cut the check next week before I leave. The back payments were not made as I received no response on my initial inquiry regarding the supporting documentation.

Regards,

Mark

From: Clark, Paula M [mailto:Paula.M.Clark@maine.gov]
Sent: Thursday, December 15, 2011 11:30 AM
To: Tibbetts, Mark; Pistell, Ann E
Cc: Dyer, Ron; Carney, Peter J
Subject: RE: EcoMaine and other issues

Hi Mark – Just a quick note to acknowledge receipt of your e-mail. Due to our various schedules this week we were not able to convene to discuss these issues yet. We'll connect on Monday and will get back to you just as soon as possible. Thanks, Mark.

Paula

*Paula M. Clark, Director
 Division of Solid Waste Management
 Bureau of Remediation and Waste Management
 Maine Department of Environmental Protection
 17 State House Station
 Augusta, Maine 04333
 (207)287-7718*

From: Tibbetts, Mark [mailto:Mark.Tibbetts@Nema.org]
Sent: Tuesday, December 13, 2011 12:25 PM
To: Clark, Paula M; Pistell, Ann E
Cc: Dyer, Ron; Carney, Peter J

1/6/2012

Subject: EcoMaine and other issues

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Regards,

Mark

1/6/2012

Dyer, Ron

From: Dyer, Ron
Sent: Wednesday, December 21, 2011 6:48 PM
To: 'Mark.Tibbetts@Nema.org'
Subject: Re: EcoMaine

Mark, hope you have a nice holiday, I wanted to ensure you knew we posted a 2012 PS Report on our website, please comment if interested, Cheers, Ron

From: Tibbetts, Mark [mailto:Mark.Tibbetts@Nema.org]
Sent: Wednesday, December 21, 2011 06:35 PM
To: Pistell, Ann E; Clark, Paula M
Cc: Dyer, Ron
Subject: EcoMaine

Paula and Ann,

I just cut a check to Ecomaine in the amount of \$2425. This represents bins/paperwork we received through early December. I paid the EcoMaine count, working on the assumption they claimed only on thermostats with covers, not the total count of thermostats in the bin.

I'm heading out on leave through the end of the year tonight and didn't want to leave this until next year. If we ended up short paying we can adjust accordingly. I do need some clarity on this going forward.

Happy holidays,

Mark

1/6/2012

Malinowski, Kerri

From: Tibbetts, Mark <Mark.Tibbetts@Nema.org>
Sent: Friday, September 16, 2011 10:10 AM
To: Dyer, Ron; Malinowski, Kerri
Subject: TRC suggestions on improving Mercury Thermostat Program
Attachments: TRC Thermostat Program Issues Revised 08252011.doc

Ron and Kerri,

This has been on my to-do list for too long. My apologies for not providing it to you sooner. This is the list of recommendations that you requested when we met at the start of the summer.

We intentionally focused on things that we believed the Department could focus on in the absence of any legislative changes and could be implemented rather quickly versus needing legislative approval.

If you have questions regarding our suggestions, please let me know. We can certainly arrange a call to review our recommendations.

Again, thank you for this opportunity. TRC and its member companies deeply appreciate your willingness to engage with us.

Sincere Regards,

Mark Tibbetts
Executive Director
Thermostat Recycling Corporation

Direct: 703.841.3246
Fax: 703.841.3346
Mobile: 202.340.6232
www.thermostat-recycle.org
www.nema.org

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Maine DEP issued guidance for the Contractor Program (December 2006) and Homeowner Program (July 2007). In our view the current guidance is vague and lacks balance. We suggest the Department initiate a review of the guidance and make a number of revisions. Our recommendations below should help inform staff on current weaknesses in the program and specific recommendations from manufacturers.

1. Reducing the Abuse and/or Fraud within the Program

1a. Issue Discussion: The statute requires payments to contractors, service technicians, or homeowners. However, TRC has documented (see 2010 Annual Report to the Department) that a substantial portion of payments have gone to staff at collection points. This leads to a conflict of interest and potential abuse of the program. Enabling staff at collection points to financially benefit from the program incents them not to promote the program and has led to outright fraud (where staff claimed thermostats belonging to others as his own at a wholesale collection location) in at least one instance.

Recommendation(s):

- a. The Department provides notice to all collection points that staff and their immediate families are not eligible for payments under the program.
- b. Allow TRC to include notice on the coupon that Department staff, staff at collection points, and their immediate families are prohibited from financially benefiting from the program.
- c. Require participants to provide a unique identifier on each coupon. This is a requirement in Vermont and we recommend the same approach in Maine. Providing a unique identifier allows us to track program participants more efficiently. With a unique identifier, TRC can distinguish that a person with the same name and different address is the same person (but with an address change) or a different person. Moreover, TRC must report payments to persons in excess of \$599 to the IRS and having a unique identifier facilitates compliance with IRS reporting requirements. TRC recommends using either a professional license number or driver license number as an identifier.
- d. Require participants certify thermostat submitted was generated from a residential or commercial structure in the state of Maine.

1b. Issue Discussion: Retail incentive coupons are redeemable by a homeowner, contractor or technician at any time, and not necessarily at the time of return of the recycled thermostat at the retail store. However, TRC has been reimbursing retailers based on the number of eligible thermostats received, not the value of incentive coupons redeemed. This has the unintended effect of compensating retailers not

contractors, service technicians, or homeowners as required by law. Additionally, there are no controls to limit payments only to thermostats generated from Maine locations.

Recommendation(s):

- a. Allow TRC to revise retail incentive coupons and require immediate redemption at the retail store upon return of the thermostat.
- b. Require participants show proof of Maine residency prior to claiming incentive.

2. Improving Program Efficiency and Reducing Administrative Costs

2a. Issue Discussion: The "mail-back" program was intended to provide access to homeowners in northern and eastern Maine, as initially there was no retail take-back. There are over 40 retailers throughout Maine collecting thermostats and most local governments that collect universal wastes accept thermostats. Moreover, TRC has documented that the substantial majority of "mail-back" participants are from areas where access to recycling drop-off locations was not an issue.

Recommendation(s):

- a. No longer require manufacturers to provide pre-paid UPS shipping labels to Maine residents.

2b. Issue Discussion: The incentive coupon process is complex and has multiple points of potential failure. This has led to instances where payments were delayed or not made. TRC has made a best effort to work within these limitations and developed a number of processes and internal controls to ensure the timeliness and accuracy of payments to the extent of its control.

One area of potential improvement is the compliance assistance program currently conducted by DEP staff. In our view, policy and procedures are inadequately documented and there is a seemingly lack of structure to compliance assistance.

As such, guidance has been inconsistent and in some cases likely contrary to the statute. Moreover, efforts by Department staff with compliance assistance in some instances have interfered with TRC's and others administration of the collection program.

Recommendations:

- a. TRC and the Department in consultation with HVAC wholesalers should collaboratively review program policy and procedures and document them. We suggest the review should focus on developing policies and procedures that are consistent with statute, minimize administrative costs, and protect against the

fraudulent return of thermostats balanced with the objective to maximize collections.

b. Prior to conducting compliance assistance, TRC encourages the Department to train staff and be familiar with established policies/procedures. This will enable staff to provide consistent guidance on established policies and procedures to collection points and others.

c. TRC encourages the Department to review (and, if they do not exist, establish) protocols for compliance assistance at collection points. We recommend protocols focus on compliance with the statute and/or universal waste regulations (e.g., accumulation time limits, promotion of program, staff awareness, etc.) and identification/documentation of issues (missing bins, no coupons, etc.). We respectfully suggest that staff should not be engaged in program operations such as preparing bins for shipment, shipping bins, replacing bins, providing pre-printed labels for completing coupons, etc. The statute assigns these responsibilities to others.

d. TRC encourages the Department to review (and, if they do not exist, establish) protocols for compliance assistance to persons seeking payment, or inquiring relative to missing or delayed payments. We suggest persons with missing or delayed payments should first be referred to TRC for assistance. Additionally, they should be provided with information on what is necessary to research payments (e.g., coupon number, date of disposal, location of disposal, etc.).

3. Improving Environmental Results

3a. Issue Discussion: In our view the program has always been approached by the Department as a mandate versus reaching consensus on collaborative strategies. This approach generally gets minimum compliance, which frankly will not achieve the environmental outcomes we collectively desire.

Additionally, while the monetary incentive is viewed by some as a panacea, we maintain it has limited utility as an effective long-term policy. Efforts to modify the incentive program to make it more effective are limited by manufacturers' position in the supply channel, resistance by other stakeholders, and industry economics.

Rather than focusing on continuing to jam a "square peg into a round hole," we suggest the Department focus efforts on increasing engagement by other stakeholders.

Recommendations:

a. If the Department seeks to maintain, if not increase collections then we recommend it engage other stakeholders and seek voluntary, collaborative

approaches with them. These stakeholders should include contactors, building/energy code officials, distributors, etc.

b. These discussions could be used to inform the Department and others on better strategies for the program and frankly as a means of engaging other parties.

DRAFT

Malinowski, Kerri

From: Aho, Patricia
Sent: Friday, September 16, 2011 4:43 PM
To: LDiehl
Cc: Malinowski, Kerri (Kerri.Malinowski@maine.gov)
Subject: RE: Meeting on 28th

Yes – Kerri Malinowski is working on these programs and her line is: 215-1894. I have copied her on this email so you have her email address as well.

Patricia Aho
Acting Commissioner
Department of Environmental Protection
207-287-2812
Patricia.Aho@Maine.gov

From: LDiehl [<mailto:ldiehl@pagmaine.com>]
Sent: Friday, September 16, 2011 4:41 PM
To: Aho, Patricia
Subject: Re: Meeting on 28th

Patti - is there someone on staff I could speak to briefly about the DEP review of the lamp program ?

You enjoy the weekend too!!

On Sep 16, 2011, at 2:36 PM, "Aho, Patricia" <Patricia.Aho@maine.gov> wrote:

Thank you so much! Enjoy this great weekend!

Patricia Aho
Acting Commissioner
Department of Environmental Protection
207-287-2812
Patricia.Aho@Maine.gov

From: LDiehl [<mailto:ldiehl@pagmaine.com>]
Sent: Friday, September 16, 2011 2:35 PM
To: Aho, Patricia
Subject: Re: Meeting on 28th

My guys said they can meet at 2:15. You are in demand!!!

On Sep 16, 2011, at 2:21 PM, "Aho, Patricia" <Patricia.Aho@maine.gov> wrote:

Thanks so much and I apologize. I have an SPO Task Force meeting 11:00 -2:00, so if need be I can leave a few minutes early to meet you.

Patricia Aho
Acting Commissioner
Department of Environmental Protection
207-287-2812
Patricia.Aho@Maine.gov

From: LDiehl [<mailto:ldiehl@pagmaine.com>]
Sent: Friday, September 16, 2011 2:20 PM
To: Aho, Patricia
Subject: Re: Meeting on 28th

I have asked and will let you. I'm sure it depends on return flight.

On Sep 16, 2011, at 12:20 PM, "Aho, Patricia" <Patricia.Aho@maine.gov> wrote:

Leann –

Any chance you can push our meeting on the 28th until 2:15?

Patricia Aho
Acting Commissioner
Department of Environmental Protection
207-287-2812
Patricia.Aho@Maine.gov

DATE	NAME	FIRM	ADDRESS	TO SEE
	Amy Jay	ACC	STREET CITY STATE	TIME IN TIME OUT
	Rob & Pam King		STREET CITY STATE	TIME IN TIME OUT
9/28/11	Brian Bachmann	St. Germain Collins	STREET CITY STATE	1356 TIME IN 1500 TIME OUT
	Leann Diehl	PAG	STREET CITY STATE	2:15 TIME IN 3:30 TIME OUT
	MARK KOTFORST	NEMA	STREET CITY STATE	2:15 TIME IN 3:30 TIME OUT
9-28-11	Gordon Bennett	Icon	STREET CITY STATE	3:06 TIME IN 4:11 TIME OUT
9/28/11	Nik Gauthier	Icon	STREET CITY STATE	TIME IN TIME OUT
9/28/11	Dan Anderson	Icon	STREET CITY STATE	3:56 TIME IN 4:11 TIME OUT
9/28/11	Stacey Thomas	OSC	STREET CITY STATE	8:55 TIME IN 10:09 TIME OUT
9/29/11	Dena Wunsch	ENAC	STREET CITY STATE	TIME IN TIME OUT
9/29/11	Todd CFH Rudd / Perry	GET	STREET CITY STATE	8:30 TIME IN 9:30 TIME OUT
9/30/11	Carroll Hutton	D&S/OUT	STREET CITY STATE	0900 TIME IN 1000 TIME OUT
9/30/11	Patrick Coughlin	St. Germain Collins	STREET CITY STATE	Paula Clark 0945 TIME IN 1150 TIME OUT
7/30/11	Rachel McMullen		STREET CITY STATE	9:50 TIME IN 12:20 TIME OUT
9/30/11	Scott Collins	St. Germain Collins	STREET CITY STATE	9:55 TIME IN 11:50 TIME OUT

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DATE	NAME	FIRM	ADDRESS	TO SEE
11/1 2011	Leo & Peter	Arbor Tee	STREET	Don C.
			CITY STATE	TIME IN TIME OUT
11/2	Whitney King	Colby	STREET	
			CITY STATE	9:00 11:00 TIME IN TIME OUT
11/2	Rock Fortin	Drumlin	STREET	File Rm
			CITY STATE	8:30 11:50 TIME IN TIME OUT
11/2	Maura Tibbels	TRC	STREET	
			CITY STATE	11:50 TIME IN TIME OUT
11/2	Lidie Robbins	30 MRWA	STREET	
			CITY STATE	1208 120 TIME IN TIME OUT
11/2	Jim Maher	CBE	STREET	
			CITY STATE	1300 1320 TIME IN TIME OUT
	Paul Sp	Su	STREET	
			CITY STATE	1:30 3:15 TIME IN TIME OUT
11/2	MARK AYON	Macdonald Page	STREET	Lindsay Niles
			CITY STATE	TIME IN TIME OUT
11/2	POPE TOTTIER	TRC	STREET	ART McGowan Rm
			CITY STATE	2 PM 3 PM TIME IN TIME OUT
	RENÉ BURDET	KENNEBEC MESSALOSKI TRAILS	STREET	
			CITY WATERVILLE STATE ME	8:00 4:00 TIME IN TIME OUT
11/2	Peter Garrett	"	STREET	Bill Butler
			CITY STATE	3:22 4:20 TIME IN TIME OUT
11/3	Bruce Goodwin	AMEC	STREET	Chris Allin
			CITY STATE	9:15 12:15 TIME IN TIME OUT
11/3	Bill Branch		STREET	
			CITY STATE	TIME IN TIME OUT
11/3	JOHN POWERS	CES	STREET	
			CITY STATE	1:25 PM 2:45 PM TIME IN TIME OUT
11/3	Wesley Harden	Summit	STREET	
			CITY STATE	1:25 2:00 TIME IN TIME OUT

Visitors' Register

DATE	NAME	FIRM	ADDRESS	TO SEE
	Pete [Signature]	AAE	STREET CITY STATE	TIME IN 12:55 TIME OUT 2:24
	Ken [Signature]	PIERCE ATWOOD	STREET CITY STATE	TIME IN 1:20 TIME OUT 3:50
12/21	Tom Doyle	Pierce Atwood	STREET CITY STATE	Pete Carney TIME IN 1:30 TIME OUT 3:00
12/21	Jim Vanasse		STREET CITY STATE	Andrea Lapointe TIME IN 2:00 TIME OUT 3:00
12/21	Michelle Harsay	County Environmental Engineering	STREET CITY STATE	TIME IN 1500 TIME OUT 1600
12/22	Brett Deyling	Summit	STREET 640 Main St CITY Lewiston STATE ME	TIME IN 0900 TIME OUT 0910
12/22	Chet Homer		STREET CITY Bridgeton STATE	TIME IN TIME OUT
	Benny Tibbitts	Town of Kennebunk	STREET CITY STATE	TIME IN 10- TIME OUT 11:10
12/22	Chris Osterrieder	DeLuca-Hoffman	STREET CITY STATE	TIME IN 10- TIME OUT 11:10
12/22	KATHLEEN R MILLER	TETRA TECH	STREET CITY STATE	TIME IN TIME OUT 11:59
12/23	John Kennedy	SME	STREET CITY STATE	Beth Callahan TIME IN 8:50 TIME OUT 10:00
12/23	DOUG SUKETFORTH	SELF	STREET CITY STATE	TIME IN 8:55 TIME OUT 9:05
23 DEC	Jeff McElroy	Backyard Farms	STREET CITY STATE	TIME IN 8:55 TIME OUT 10:00
23 DEC	Brian Gowen	Backyard Farms	STREET CITY STATE	TIME IN 8:55 TIME OUT 10:00
12/27 TUESDAY	Carl McKinnay		STREET CITY STATE	TIME IN 8:00AM TIME OUT 5:00