

Internal Documents Reveal Undue Industry Influence on Maine's Product Stewardship Programs

Analysis from the Natural Resources Council of Maine (NRCM)¹ Based on Freedom of Access Act (FOAA) Request for DEP Documents Related to the 2012 Report, *Implementing Product Stewardship in Maine*

In December 2011, the Department of Environmental Protection (DEP) released a report on five “product stewardship” programs administered by the state that have reduced mercury and lead pollution to Maine’s environment, diverted millions of pounds of waste from Maine’s landfills and incinerators, and saved money for taxpayers and municipalities. The five product stewardship programs² were created with overwhelming bi-partisan legislative support and have been identified as among the most successful such programs in the nation.³ But rather than focusing on these benefits to Maine people and the environment, DEP’s *Implementing Product Stewardship in Maine* presented a surprising assault on DEP’s product stewardship programs, including a perplexing recommendation to consider termination of the programs.⁴ The report stands as a dramatic shift in DEP’s assessment of Maine’s product stewardship programs and is a complete change from the 2011 report. For example:

- DEP’s 2011 product stewardship report identified a broad range of benefits from product stewardship programs, including decreased demand for landfill capacity, increased recycling, and reduced environmental impacts from products.⁵ DEP’s 2012 report describes *no* program benefits. Although it claims to be a “cost-benefit” analysis, the report only focuses on costs—and includes costs that are inflated, unsubstantiated, and incorrectly assigned to product stewardship. (Appendix D)
- DEP’s 2011 report (consistent with legislative intent) identified several possible new product stewardship programs, in areas such as used paint, used pharmaceuticals, and household hazardous waste. DEP’s 2012 report, in contrast, identifies *no* additional categories for possible product stewardship.
- DEP’s 2011 report included multiple specific ways to improve implementation of Maine’s five existing product stewardship programs. DEP’s 2012 report only contains vague

¹ This analysis was done by NRCM Advocacy Director Pete Didisheim and NRCM Policy Advocate Abigail King

² Maine’s product stewardship programs, passed with overwhelming bi-partisan support, focus on removing toxic and troublesome products from the waste stream and require manufacturers to establish collection systems to recycle or properly dispose of them. Current programs address: mercury-added lamps, mercury switches in motor vehicle components, mercury-added thermostats, electronic waste, and mercuric oxide and rechargeable batteries.

³ See for example *Turning Up The Heat*: “Maine has achieved the highest per capita mercury thermostat collection rate in the country by far.” <http://mercurypolicy.org/wp-content/uploads/2010/02/turning-up-the-heat-3.pdf>

⁴ http://maine.gov/dep/ftp/product_stewardship/2012_report/

⁵ <http://www.maine.gov/dep/waste/publications/legislativereports/documents/2011psreportfinal.pdf>

recommendations about reducing program costs by combining programs and marketing efforts, collaborating with industry groups where possible, and developing legislation for 2013 “aimed at sun-setting select product categories where appropriate.”

A close read of the 2012 report shows that it contains: 1) incorrect and unsubstantiated information about program implementation, 2) unsupported and improperly inflated cost estimates, and 3) skewed data that seem intended to support a pre-determined agenda of maligning DEP programs that – in other contexts – are seen as among the most successful of their type in the country. (See Appendix D for list of errors, omissions, and inconsistencies in the 2012 report.)

In an effort to better understand how the DEP’s 2012 Product Stewardship report was created, NRCM on January 3, 2012, submitted a FOAA request to the Department (Appendix E) for all documents related to development of the report. Our review of those documents confirms our suspicion that the report was very substantially influenced by representatives of out-of-state companies that opposed enactment of these laws in the first place. Representatives of the Thermostat Recycling Corporation (TRC) and National Electronics Manufacturing Association (NEMA), in particular, had easy and repeated access to top DEP officials in the new LePage Administration. Although the Department committed to a “robust stakeholder process” on product stewardship in a letter to a key legislator in June 2011, it appears that the only stakeholders who were provided with input were out-of-state manufacturers and their in-state lobbyists.

More specifically, we find that: (see chronology Appendix A for details)

- Governor Paul LePage targeted Maine’s product stewardship program for attack within his first month of office, as part of his so-called “Phase I Regulatory Reforms”. (1/24/11)
- During her first week at DEP in early February 2011, then Deputy Commissioner Patricia Aho received an e-mail from Thomas Doyle, a former colleague at the Pierce Atwood law firm and the in-state lobbyist for TRC. The e-mail said: “TRC respectfully suggests it is appropriate to review Maine’s mercury thermostat recycling program,” [including] “the cumbersome financial incentive program.” (2/4/11)
- An e-mail from early February 2011 also documents that Patricia Aho was raising questions internally about whether DEP’s 2011 Product Stewardship Report should be rewritten. (2/3/11)
- DEP launched an “audit” of Maine’s product stewardship programs in spring 2011, and assigned the job of conducting this analysis to a staff member, Kerri Malinowski, who previously had been in an administrative position in the Health, Safety and Training Unit of the Bureau of Remediation and Waste Management. It is not apparent that Malinowski had any prior experience with Maine’s product stewardship programs. Malinowski now serves as a “special projects” assistant to Ron Dyer, Director of the Bureau for Radiation and Waste Management.
- Patricia Aho, Ron Dyer, and Kerri Malinowski met with TRC and NEMA officials more than ten times over the past year. (Appendix B)

- In a 6/30/11 letter to Rep. Melissa Walsh-Innes, then Acting DEP Commissioner Aho promised an “active stakeholder process” on product stewardship, but DEP never followed up to initiate stakeholder input. Aho, Dyer, and Malinowski met with TRC on 6/28/11 just two days before Aho’s response to Rep. Innes, revealing that DEP was engaged with only a narrow representation of stakeholders.
- Patricia Aho intervened in the legislative process, at the behest of Pierce Atwood lobbyist Thomas Doyle (representing TRC), to strike provisions in a DEP-proposed bill that would have enhanced performance of Maine’s thermostat recycling program. (4/8/11, 4/26/11, 4/27/11, 6/3/11)
- DEP staff responsible for managing Maine’s five product stewardship programs were deliberately excluded from participating in drafting the 2012 Product Stewardship report, and in fact did not see the report until it was posted on DEP’s website. (6/1/11,1/4/12)

NRCM also has carefully reviewed public comments submitted to the DEP in response to the 2012 Product Stewardship report. The deadline for such comments was January 16, 2012. The results are telling: At least 341 comments were submitted expressing strong concerns about the report’s poorly presented information, incomplete analysis, failure to address program benefits, incomplete and inaccurate data, drafting bias, and/or indefensible conclusions. In contrast, only seven comments were filed in support of the report, six of which were filed by out-of-state industry representatives.

As a result of this FOAA, we now understand why DEP’s report *Implementing Product Stewardship in Maine* was so poorly written and researched and so inconsistent with DEP’s prior analyses and reporting on Maine’s product stewardship programs. Industry representatives had preferential access to DEP staff, other input (including from internal program staff) was not solicited, and the report was drafted by a staff member with little apparent prior knowledge about the programs. These factors combined to result in a report that NRCM believes is indefensible and should be retracted.

1. OPEN DOOR TO INDUSTRY LOBBYISTS

An open door for industry and closed door for other stakeholders allowed the aggressive efforts of industry representatives to influence the data, methodology, scope, and conclusions of the report.

Over the past year, DEP staff met repeatedly with lobbyists and representatives of the Thermostat Recycling Corporation (TRC), the entity that represents the three major manufacturers of mercury-containing thermostats (GE, Honeywell, and White Rogers). These companies, individually and through TRC, have been working across the country to block or undermine thermostat collection programs which help remove mercury products from the waste stream through an incentive program.⁶ Other companies that have opposed Maine’s successful product stewardship programs also met with senior DEP staff during the period when the 2012 Product Stewardship report was being drafted.

Representatives of TRC, NEMA, GE and Osram Sylvania (also a manufacturer of mercury-containing products) and industry lobbyists at Pierce Atwood and the Public Affairs Group, met with relevant staff

⁶ Honeywell, for example, spent more than \$90,000 in New York State alone to defeat legislation similar to Maine’s. http://www.nypirg.org/pubs/enviro/toxics/2011.12.21_NYPIRG_Honeywell_Report.pdf

at DEP at least ten times during the ten months leading up to the publishing of the report (Appendix A and B).

These meetings were not simply in response to incoming requests for meetings to DEP; they also were actively solicited by DEP. Prior to a June 2011 meeting that involved TRC and DEP staff (Acting Commissioner Patricia Aho, Ron Dyer, and Kerri Malinowski), an email from Kerri Malinowski said: “Spoke with Mark Tibbetts at Thermostat Recycling Company [sic] this morning. He is thrilled to be invited to meet with us.⁷” In a June 2011 follow-up email, TRC wrote that the meeting was “very productive” and that they are “looking forward to ‘turning a new leaf’” with the administration. TRC writes, “We’ll work on developing guidance on program administration and get a draft off...⁸”

Industry Influences Scope of Written Report: Further communications between representatives from TRC and DEP staff Ron Dyer and Kerri Malinowski (the two who apparently drafted the product stewardship report, with help from DEP Policy Director Heather Parent)⁹ point to a continued close relationship throughout the past year. In Sept 2011, TRC sent DEP staffers the “recommendations” that the DEP had apparently requested in the June 28, 2011 meeting.¹⁰ In their letter to DEP, TRC “focused on things the Department could focus on in the absence of any legislative changes.”¹¹ The letter includes multiple recommendations for ways that TRC could be relieved of the responsibility of having to pay thermostat collection incentives, and DEP staff carried most of these recommendations directly into the 2012 Product Stewardship report.¹²

The emails, meetings, and TRC memo with recommendations demonstrate that TRC had easy access to DEP staff, providing them with a privileged opportunity to influence the attitude of senior DEP staff with regard to the effectiveness of Maine’s thermostat collection program.

Industry Dictated Legislative Changes: In January 2011, DEP submitted to the legislature an omnibus package of proposed legislative changes to programs administered by the department. Three of the proposed changes in the omnibus bill would affect DEP’s thermostat collection program – clarifying which thermostats and which payees were eligible for the \$5 cash incentive paid by TRC.¹³ These proposed changes were sought by the Department to help improve performance of the program by removing perceived loopholes that TRC was using to refuse payments and to report lower collection rates. On April 8, TRC became aware of these strengthening changes and their in-state lobbyist, Pierce Atwood attorney Thomas Doyle, expressed to Commissioner Aho that TRC had “significant heartburn” with the thermostat provisions in the omnibus bill. In response, Commissioner Aho withdrew the changes (that DEP had proposed) when she delivered her oral testimony to the Environment and

⁷ June 8, 2011 email from Kerri Malinowski to Bureau Director Ron Dyer:

⁸ June 29, 2011 Email from Mark Tibbetts (TRC, NEMA) to Ron Dyer and Kerri Malinowski

⁹ DEP reports generally list the author(s), but the 2012 Product Stewardship report inexplicably does not.

¹⁰ Email from Mark Tibbetts, TRC, to Ron Dyer and Kerri Malinowski. The recommendations document was sent in Sept 2011 and then again on Jan 5, 2012.

¹¹ Ibid

¹² Maine DEP, Implementing Product Stewardship in Maine, January 16, 2012, pp.12-13

¹³ DEP Legislative Proposal, “An Act to Make Minor Changes to Statues Administered by the Department of Environmental Protection (DEP03)

Natural Resources (ENR) Committee on April 12. The explanation for the changes was still in her written testimony, but she spoke against them. Thomas Doyle stayed in contact with Patricia Aho via e-mail to confirm TRC's desire that the changes would be deleted. However, the omnibus bill was adopted by the Legislature in June 2011, with the thermostat program amendments intact. Thomas Doyle (TRC) again contacted Acting Commissioner Aho to seek to have the provisions stricken, and she worked to do so. The deletions sought by TRC were implemented later in June in the Legislature's Errors and Inconsistencies bill.¹⁴

This back-and-forth between TRC and DEP's Acting Commissioner is further evidence of DEP's willingness to give in to pressure from industry lobbyists. Maine was on track to adopt statutory language recommended initially by DEP to strengthen the thermostat collection program and improve collection rates, but then DEP reversed course at the request of industry and actively sought to strike its own amendments—and prevailed in doing so.

2. CLOSED DOOR TO STAKEHOLDERS

Internal documents demonstrate that DEP staff provided TRC and other industry representatives with frequent and ample opportunities for input on the statutes, regulations, administration and reporting related to the state's product stewardship programs, particularly the thermostat collection program, yet the same staff provided no similar opportunities to other stakeholders.

Over the past year, DEP's political leadership has demonstrated no interest in receiving input concerning Maine's product stewardship programs from any stakeholders other than industry—not even from program staff involved in implementing the programs or lawmakers who helped craft Maine's product stewardship laws. In June 2011, for example, State Representative Melissa Walsh Innes (D-Yarmouth), who is a member of the Environment and Natural Resources Committee, wrote to DEP Acting Commissioner Aho requesting information about the product stewardship reporting process.¹⁵ Innes' letter states that "committee members have requested to be notified of any meetings or discussions" regarding the Department's review of the product stewardship program.

Later that month, Acting Commissioner Aho responded to Rep. Innes, stating, "...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."¹⁶ While the commissioner claimed in her July letter that "product stewardship programs need robust stakeholder input," our investigation reveals that DEP made no effort to engage any stakeholders for input other than industry.

Although Deputy Commissioner Aho informed Rep. Innes that she should wait, and DEP would contact her, Aho (with Ron Dyer and Kerri Malinowski) two days earlier had met with TRC Executive Director

¹⁴ Part E, Sect. E-1 38 MRSA 1665-B, sub-2, Para A, "An Act To Correct Errors and Inconsistencies in the Laws of Maine."

¹⁵ Letter sent June 24, 2011 from Representative Melissa Walsh Innes to Acting Commissioner Aho

¹⁶ Letter sent June 20, 2011 from Acting Commissioner Aho to Representative Melissa Walsh Innes

Mark Tibbetts. Moreover, TRC and NEMA met with Aho, Dyer and/or Malinowski at least nine additional times through 2011, before the 2012 Product Stewardship report was released in late December 2011. (See Appendix A and B.) Documents show that Kerri Malinowski and Ron Dyer were gathering and analyzing data for the 2012 report throughout summer and fall 2011. An internal email sent Sept 1, 2011 references the “ongoing audit which is underway,¹⁷” but NRCM has not identified any evidence to support Commissioner Aho’s commitment to “an active stakeholder process” that would involve stakeholders such as municipalities, waste-to-energy facility operators, or public interest groups.

3. STAFF EXPERTS EXCLUDED

The DEP staff most knowledgeable about Maine’s product stewardship programs were deliberately excluded from providing input into the 2012 Product Stewardship report, leaving a staff member newly assigned to the project highly susceptible to industry influence. Our investigation revealed that senior DEP officials intentionally excluded knowledgeable program experts from being involved in drafting the 2012 Product Stewardship report, assigning the drafting of the report instead to staff with no familiarity with the program. In February 2011, an email from an internal program staff member to then Deputy Commissioner Aho, inquiring about the status of the DEP product stewardship reporting requirement, appears to have been ignored.¹⁸ Three months later, in May 2011, heated internal correspondence among DEP staff reveals that reporting on product stewardship programs had been reassigned to Kerri Malinowski, who was relocated from the Safety Training Unit to work on special projects for Ron Dyer.¹⁹

The emails reveal that Kerri Malinowski did not have prior knowledge about DEP’s product stewardship programs.²⁰ It appears from some emails that Kerri Malinowski was so new to this area of work that she did not know which product stewardship programs DEP administered, which staff members were responsible for managing them, and who the industry representatives were for TRC or NEMA. As one program staff member said in a May 24, 2011 email to Kerri Malinowski: “you do not have enough information about the programs to ask questions that will result in you getting appropriate information.” Another communication shows that Kerri Malinowski was seeking information from the State Planning Office that did not have any relationship to product stewardship. “This reporting has nothing to do with product stewardship programs,” said Carole Cifrino in a May 24, 2011 email.

Our investigation also uncovered the transcript of a voicemail recording left for Carole Cifrino by representatives of TRC and NEMA in which one of the two says that they intend to “get her fired”.²¹ Mark Tibbetts (TRC) and Mark Kohorst (NEMA) apparently thought that they had hung up, but the voice message continued to record their conversation.

¹⁷ Sept 1, 2011 Email sent from Lynn Boutilier on behalf of Patricia Aho to Ron Dyer and Kerri Malinowski

¹⁸ February 8, 2011 email exchange between Carole Cifrino, Manager, and Patricia Aho, Acting Commissioner

¹⁹ May 25, 2011 email between Kerri Malinowski, Vicky Bryant, Sue Alderson, Carole Cifrino, Lindsay Niles and Bureau Director Ron Dyer. Malinowski was classified as an Office Associate II, an administrative support position.

²⁰ Email exchange, May 24, 2011 between Carole Cifrino and Kerri Malinowski

²¹ Transcript from voicemail message for Carole Cifrino, November 2010

This expressed industry view to seek termination of a DEP staff member is alarming, as is the Department's decision to transfer the responsibility for drafting the product stewardship report away from staff members who understand the program. This re-assignment appears to have provided industry lobbyists with what they were seeking: a report writer who could be influenced in drafting a report that would reach conclusions not substantiated by facts and not consistent with DEP's prior assessments of product stewardship.

4. INDUSTRY INTERFERENCE IN MAINE: PART OF A LARGER PATTERN

The efforts of the industry to undermine Maine's product stewardship programs have not been limited to their influence on DEP's product stewardship report, last year's DEP omnibus bill, and program staffing. **Internal DEP documents also reveal that the Thermostat Recycling Corporation (TRC) has worked hard to undermine a project that could further bolster the already compelling evidence that Maine's incentive-based thermostat collection program is the highest performing program in the nation.**

As background, it is important to understand that TRC has worked nationwide to block or undermine enactment at the state level of laws that mandate the collection of used thermostats through policies that involve a financial incentive. TRC uses every available avenue to disrupt incentive-based programs in an attempt to decrease their reported thermostat retrieval rates—because incentive-based programs are performing so much better than the voluntary approach promoted by TRC. As explained in a report *Turning Up the Heat: Exposing the Manufacturers' Lackluster Mercury Thermostat Collection Program*:

“TRC collection data indicates that their voluntary program has failed to collect the vast majority of mercury thermostats coming out of service... In many states, the TRC program barely functions, capturing only a tiny fraction of discarded mercury thermostats.”²²

Here in Maine, during 2011, TRC objected forcefully to a project that could demonstrate the value of providing an even higher incentive than the current \$5 bounty provided for recovered thermostats.

Industry Objects to Improvements in the Thermostat Program: Maine's current product stewardship program for mercury-containing thermostats requires TRC to reimburse collection sites for a \$5 coupon that is awarded to anyone who returns a thermostat at their location. The incentive encourages homeowners and contractors to keep toxic mercury out of the traditional waste stream, and the incentive program has been shown to work. Figure 1 shows that Maine has demonstrated the highest per capita thermostat collection rate in the country—far higher than TRC's voluntary collection program.

²² <http://mercurypolicy.org/wp-content/uploads/2010/02/turning-up-the-heat-3.pdf>

Figure 1: 2008 Per Capita Thermostat Collection Data²³

State	Thermostats Collected	Population 2008	Thermostats Collected per 10,000 residents
Maine	5,555	1,316,456	42.2
Minnesota	12,724	5,220,393	24.4
Vermont	1,367	621,270	22.0
Maryland	10,207	5,633,597	18.1
Wisconsin	8,663	5,627,967	15.4
Virginia	8,191	7,769,089	10.5
Oregon	3,072	3,790,060	8.1
Delaware	681	873,092	7.8
North Dakota	483	641,481	7.5
Ohio	8,571	11,485,910	7.5
Michigan	7,436	10,003,422	7.4
Indiana	4,614	6,376,792	7.2
Florida	12,410	18,328,340	6.8
Pennsylvania	7,560	12,448,279	6.1
Nebraska	998	1,783,432	5.6
Connecticut	1,838	3,501,252	5.2

Removing mercury-containing thermostats (and other mercury-containing products) from the waste stream is an important goal and explains why Maine lawmakers have strongly supported a broad range of policies to address mercury pollution. These products continue to be one of the most significant sources of preventable mercury pollution. The U.S. EPA estimates that 2-3 million mercury-containing thermostats come out of service each year; if not removed from the waste stream, then the mercury enters the environment—where it presents a risk to human health and wildlife.

Waste-to-energy generating facilities also face significant potential mercury pollution abatement costs to remove mercury coming out of the stack. To help reduce the presence of mercury in the waste stream, one of Maine’s four waste-to-energy incinerators, Eco-Maine, proposed a Supplemental Environmental Project (SEP) to the DEP in March 2011. The proposed program would allow Eco-Maine to add an additional \$5 cash bounty to every thermostat collected at their facility, bringing the total incentive provided to each payee to \$10. The program was developed with input from program staff at the DEP and was approved by the Board of Environmental Protection (BEP) and the Attorney General in June 2011. When industry representatives at TRC learned of the Eco-Maine program in summer 2011, they informed DEP staff of their objections about “not [being] consulted prior to finalizing the SEP with

²³ <http://mercurypolicy.org/wp-content/uploads/2010/02/turning-up-the-heat-3.pdf> page 6 for complete table.

Eco-Maine” and “escalated [their concerns] to others within the Department.²⁴” In other words, TRC went directly to top officials at DEP to voice their objections, and included those concerns in a September 1, 2011, letter from TRC Executive Director Mark Tibbetts to Ron Dyer.²⁵

The TRC letter to Dyer shows that TRC’s true concern is not that it would need to cover the additional cost of the bounty to go from \$5 to \$10, because it wouldn’t; those costs will be paid by Eco-Maine. Rather, TRC is concerned that this project may further reveal that incentive-based systems substantially outperform TRC’s preferred voluntary approach. But that is not how TRC voiced their concern. Rather, in couched language, Mark Tibbetts wrote: “TRC fears the project will have limited value and its findings will be subject to misinterpretation in other states.”

DEP staff members were very accommodating of TRC. Rather than considering whether it was even appropriate for TRC to have input on an SEP that would be financed entirely by Eco-Maine, internal emails show that staff scrambled to connect with TRC and hear their concerns.²⁶

PUBLIC RESPONSE TO FLAWED DEP PRODUCT STEWARDSHIP REPORT

The public response to the DEP’s 2012 Product Stewardship report demonstrates the extent to which the report would have benefited from an inclusive drafting process at the agency and input from stakeholders other than the manufacturing sector. At the time of DEP’s public comment deadline for the report (1/16/12), at least 308 individuals and 34 organizations submitted comments in opposition to the report. In contrast, only seven groups submitted letters in support of the report; six of these came from out-of-state industry representatives that oppose the laws.

These programs keep toxic mercury and lead out of the waste stream and save taxpayers and municipalities money. They protect the health of people, wildlife and our environment by preventing mercury and lead contamination. But manufacturers that are responsible for the collection of these problem products have been given inappropriate access to the regulators whose role is to hold them accountable. Maine’s programs are not the only target of the industry’s campaign to undermine them. NRCM is aware of efforts by manufacturers in New York, California, and many other states to try to defeat product stewardship programs such as the ones in Maine that are helping to protect our environment and the public health of Maine people. What is alarming from this analysis, however, is the extent to which senior DEP officials in the Administration of Governor LePage are prepared to assist industry in the undoing of programs that are working well for Maine.

NRCM believes that the 2012 DEP Report *Implementing Product Stewardship in Maine* presents such a flawed, incomplete, and biased view of Maine’s product stewardship programs that the report should be retracted. The “analysis” in the report is so obviously indefensible that the report’s continued appearance on the DEP website reflects poorly on the credibility of the DEP.

²⁴ Email sent July 28, 2011 from Mark Tibbetts, TRC, to Anne Pistell, DEP

²⁵ Letter sent Sept 1, 2011 from Mark Tibbetts, TRC to Ron Dyer and Melanie Loyzim, DEP

²⁶ Email sent August 8, 2011 from Bryce Sproul, DEP to Peter Carney, DEP

Appendix A -- Timeline of Interactions Related to Product Stewardship

- 11/8/10 Transcript of voice message for Carole Cifrino (Manager, DEP Product Management Programs) by Mark Tibbetts (Thermostat Recycling Corporation) and Mark Kohorst (National Electronics Manufacturing Association). “Hi Carole. It’s Mark Tibbetts and Mark Kohorst at NEMA about 4:00 on Monday afternoon calling to follow up on your e-mail from last week. Give either Mark Kohorst at (#) or myself at (#) a call and we can try to answer your questions here. Thanks a lot. Talk to you soon. Bye. [Attempt to hang up; recording continues] Mark Tibbetts. “Yeah. Four o’clock. That’s when she leaves. I know what to e-mail Ann [Robinson; Lepage Transition Team]. OK, I’m going to get her fired. Actually, I’m going to let Larry [Kast; General Counsel for Honeywell] get her fired.”
- 1/11/11 Memo from DEP Acting Commissioner James Brooks to Kathleen Newman, Office of the Governor, with copy of DEP’s proposed legislation “An Act to Make Minor Changes to Statutes Administered by the Department of Environmental Protection” (DEP Omnibus Bill) that includes proposed changes to mercury-added thermostat collection program – including requirement that TRC provide financial incentive with a minimum value of \$5 for the return of each thermostat “with or without a cover.”
- 1/24/11 Office of Governor LePage released “Phase I Regulatory Reform Proposal,” including proposal to “Review all consumer products recycling and ‘take back’ statutes and revise as necessary to develop a policy that ensures that manufacturers do not have to pay to recycle their consumer products.”
- 1/31/11 Letter from TRC Executive Director Mark Tibbetts to DEP Acting Commissioner James Brooks saying “we respectfully request it is appropriate to review Maine’s mercury thermostat recycling program at this time.”
- 2/2/11 Email from the Governor’s Communication Director, Dan Demeritt, to Patricia Aho, welcoming her to her new job at DEP (“Welcome to Work”) and forwarding an inquiry from a Portland Press Herald reporter about the Governor’s proposed rollback of product stewardship laws.
- 2/3/11 Email from Carole Cifrino to Jim Dusch and Paula Clark (Solid Waste Program) regarding 2011 Product Stewardship report: “What’s the current status of submittal of this one? I’m getting inquiries.”
- 2/3/11 Email from Patricia Aho to Jim Dusch regarding Product Stewardship report [Aho’s response to Dusch’s forwarding of Cifrino e-mail]: “Jim—I think we need to discuss the re-writing of this report based on the comments DEP received.”

- 2/4/11 Email from lobbyist Thomas Doyle (on behalf of TRC) to Patricia Aho: "TRC respectfully suggests it is appropriate to review Maine's mercury thermostat recycling program at this time."
- 2/8/11 Email from Patricia Aho to Carole Cifrino, Product Management Programs: "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."
- 2/8/11 Email from Carole Cifrino to Patricia Aho: "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."
- 2/11/11 **MEETING:** Commissioner-appointee Darryl Brown and Patricia Aho meet with Thomas Doyle (Pierce Atwood, representing TRC) and TRC representatives.
- 2/13/11 Email from Patricia Aho to Darryl Brown suggesting reassignment of product stewardship program management away from Carole Cifrino, and referencing upcoming meeting with "interested parties" on 2/16.
- 3/29/11 Andrea Lani, DEP Manager of Safer Chemicals, testifies at Legislature on her own time in opposition to a bill, supported by the LePage Administration, that would weaken Maine's Kid Safe Products Act.
- 4/1/11 Andrea Lani transferred out of staff position responsible for Kid Safe Products Act, replaced by Kerri Malinowski – who previously worked in the Safety Training Unit of the Oil and Hazardous Waste Spill Reporting Program.
- 4/1/11 Email from Pierce Atwood attorney Thomas Doyle to DEP Commissioner Darryl Brown and Deputy Commissioner Patricia Aho. "In advance of our meeting next Friday morning, Mark Tibbetts, the Executive Director of the Thermostat Recycling Corporation, has asked me to forward you a copy of TRC's annual report filed with the Department... 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."
- 4/5/11 **MEETING:** Erik Sorenson (Program Manager) and Clark Silcox (General Counsel) of National Electronics Manufacturers Association (NEMA) sign-in for meeting at DEP
- 4/8/11 Email from Thomas Doyle to Patricia Aho regarding DEP Omnibus Bill: "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 manufacturer) to allocate costs of the program. We appreciate your agreeing to delete both section 27 and 28."

- 4/8/11 Email from Thomas Doyle to Patricia Aho: "Pattie, per your request, attached is TRC's report for calendar year 2009... In the cover letter, and on pages 8-9, TRC expresses its concern over potential fraud involved in the payments... 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 determination of wrongdoing."
- 4/26/11 Testimony of Patricia Aho to Environment and Natural Resources Committee on DEP Omnibus Bill. Written testimony says: "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 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.
- 4/27/11 Email from Thomas Doyle to Patricia Aho re: DEP Omnibus Bill: "Pattie, do you know whether the "Thermostat deletions" will be worked on Tuesday afternoon."
- 4/27/11 Email from Patricia Aho to Thomas Doyle confirming that deletions expected to be done: "Yes – I expect they will be worked."
- 5/3/11 **MEETING:** Mark Tibbetts (TRC) meeting with Ron Dyer; documented in email from Mark to Ron: "It was a pleasure to meet you yesterday."
- 5/24/11 Email exchanges between Kerri Malinowski and Susan Alderson confirming that Kerri has been assigned responsibility to work on product stewardship: Sue: "Is this your new project? Are you working on solid waste safety or something?" Kerri: "Yes, this is the project I'm working on – not relative to safety but to product stewardship."
- 5/24/11 Email from Susan Alderson to Carole Cifrino: "Read from the bottom [of e-mail string] up please. Vicky [Bryant] got a question from Kerri [Malinowski], who works with Linda Doran in the safety unit. Seems **very** odd that she'd be involved with product stewardship."
- 5/24/11 Email from Carole Cifrino to Kerri Malinowski: "I would be happy to work with you, but it is clear 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."

- 6/1/11 Email from Carole Cifrino to Ann Pistell, Enid Mitnik, Susan Alderson, with notes of meeting held that day between Ron Dyer, Paula Clark, and Carole Cifrino: "here's what I learned: Ron has reassigned Kerri Malinowski from Safety & Training Unit to work on special projects for him... Ron has asked Kerri to assess a number of program areas, including product stewardship, to determine what has been accomplished so far. When I asked Ron which programs specifically are part of this effort, he said the 'five program areas listed in the product stewardship report.' Ron is 'looking to gain perspective from outside the program areas.'.. He wants the report to include recommendations on what we can do better based on industry feedback." This email shows that Ron Dyer wanted program staff to provide Kerri Malinowski with information, if she requested it, but that they would have no role in assembling, evaluating, or interpreting that information.
- 6/3/11 Email from Thomas Doyle to Patricia Aho re: Omnibus Bill: "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."
- 6/3/11 Email from Patricia Aho to Thomas Doyle: "thanks Tom – unfortunately the bill was enacted today – so hopefully she [Committee Analyst Susan Johannesman] can make the correction in the errors bill."
- 6/6/11 Kerri Malinowski e-mail chain with Carole Cifrino: "Hi Carol, Is there a contact at the Thermostat Recycling Corporation that DEP has developed a relationship with?" "Hi Kerri. Mark Tibbetts managed the thermostat recycling program for TRC." "Hey Carole—How about NEMA?" CC: "Mark Kohorst is Executive Director of NEMA"
- 6/8/11 Kerri Malinkowski e-mails to Ron Dyer that she had spoken with Mark Tibbetts at Thermostat Recycling Company (sic) and that morning and "He is thrilled to be invited to meet with us."
- 6/24/11 Letter from Representative Melissa Walsh Innes (D-Yarmouth) to Patricia Aho "in regards to your product stewardship department... 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." Innes requests in the letter "information and any correspondence outlining the concerns [from industry]," she asks "Does DEP have plans to write and submit the annual product stewardship report," and says "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."
- 6/28/11 **MEETING:** TRC Mark Tibbetts meets with Patricia Aho, Ron Dyer, Kerri Malinowski

- 6/29/11 Mark Tibbetts email to Ron Dyer and Kerri Malinowski: "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."
- 6/30/11 E-mail from Carlisle McLean, Senior Natural Resource Advisor, Office of the Governor, to Patricia Aho, asking about changes to thermostat collection system in "An Act to Correct Errors and Inconsistencies in Maine Law."
- 6/30/11 Email from Patricia Aho to Carlisle McLean: "These were our requested changes."
- 6/30/11 Response letter from Patricia Aho to 6/24/11 Letter from Rep. Innes: "I look forward to working with you and other interested stakeholders on product stewardship issues here in Maine... We plan to submit the annual product stewardship report to the ENR Committee as required by the 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 effectiveness of those programs... 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... Product stewardship programs need robust stakeholder input."
- 8/3/11 **MEETING:** TRC meeting with DEP staff.
- 8/5/11 **MEETING or PHONE CALL:** E-mail from Mark Tibbetts (TRC) to Kerri Malinowski "Thanks for the time this afternoon."
- 8/17/11 **MEETING:** Erik Sorenson(NEMA), Joe Howley (General Electric) and Jenn Dolin (Osram Sylvania) meeting at DEP, according to Visitor's Registry
- 8/24/11 **MEETING:** Pierce Atwood Attorney Thomas Doyle (TRC) meeting with Ron Dyer
- 9/1/11 Email from Patricia Aho to Ron Dyer: "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 by early this fall.. 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?"
- 9/1/11 TRC Mark Tibbetts letter to Ron Dyer expressing concern about Supplemental Environmental Project (SEP) being implemented by ecomaine as part of an Administrative Consent Agreement. [The SEP would increase bounty for collection of thermostats to \$10, paid by ecomaine (not TRC).] "TRC fears the project will have limited value and its findings will be subject to misinterpretation in other states."

- 9/9/11 **MEETING:** Thomas Doyle (Pierce Atwood, representing TRC) meeting at DEP, according to Visitors' Register
- 9/16/11 Mark Tibbetts email to Ron Dyer and Kerri Malinowski submitting "the list of recommendations that you requested when we met at the start of the summer." Four-page document includes attack on Maine's bounty system for collecting thermostats: "while the monetary incentive is viewed by some as a panacea, we maintain it has limited utility as an effective long-term policy... 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... [and to] seek voluntary, collaborative approaches with them." [Note: the recommendations focus on reducing abuse/fraud and reducing administrative costs –lines of criticism frequently asserted by TRC in an apparent effort to undermine Maine's incentive-based program.]
- 9/16/11 Email from Leann Diehl (representing NEMA) to Patricia Aho: "Patti – is there someone on staff I could speak to briefly about the DEP review of the lamp program?" Reply e-mail from Aho: "Yes—Kerri Malinowski is working on these programs."
- 9/28/11 **MEETING:** Mark Kohorst (NEMA) and Leann Diehl (Public Affairs Group) meeting with DEP officials, according to Visitors' Register
- 10/18/11 Carole Cifrino e-mail to DEP Policy Director Heather Parent, providing link to the 2011 DEP Product Stewardship report. "I'm happy to meet with you anytime to discuss the processes we went through to prepare the report and legislative options, the anticipated and received responses, the current implementation of our various programs, and developments in product stewardship programs nationally and in Canada."
- 11/2/11 **MEETING:** Mark Tibbetts (TRC) and another TRC representative meeting with Ron Dyer
- 11/18/11 Internal Product Stewardship Report 2012 Check-in meeting involving Ron Dyer and "just Kerrie and Heather" (calendar)
- 12/21/11 **MEETING:** Thomas Doyle (Pierce Atwood, representing TRC) meeting with DEP, according to Visitors' Register
- 12/24/11 DEP releases Implementing Product Stewardship in Maine, including the recommendation that "The Department recommends the development of draft legislation for 2013, aimed at sunseting select product categories where appropriate."
- 1/4/12 Email from Ann Pistell to Carole Cifrino: "I had the opportunity to read the 2012 Report on Implementing Product Stewardship in Maine while I was home sick. Wow! I would like to provide you with my comments in case there is any interest in correcting and amending the report so that the distortions and inaccuracies presented does not cause further embarrassment for the department.... Were you ever asked for data or input

into this report? I am concerned especially with the thermostat section that the 4-6 trips TRC has made here to talk only with the Commissioner's office last year has resulted in a very real misrepresentation of the program. If there was no communication about the thermostat program with the staff who has been administering it over the last 5 years, where is the credibility in the information/perspective presented?"

1/4/12

Email from Enid Mitnik (Motor Vehicle Mercury Switch Removal Program coordinator) to Carole Cifrino: "Since I have had several people ask me about the 'incompleteness' of the 2012 reports cost analysis, I thought I would share with you my thoughts on what I would have said had anyone asked for my input on the report... [details about value of mercury reduction, with links to sources] "using this same generalized logic, our mercury program costs should state that roughly we saved conservatively \$20 for every dollar we spend to keep mercury out of the waste stream..." "I know we have been told that we should not comment on the report and should direct all questions on the report to the report's author but as you may have noticed the report has no author listed and the only note is to send comments to Ron Dyer..." "I just wanted to state to you my concerns with the inaccuracies (far more than I can mention here) with this report and my concern with such a public document causing more harm than good." [underline added]

1/14/11

Mark Tibbetts of TRC submits comments on DEP's 2012 product stewardship report saying, among other things, "TRC also fully supports an effort to sunset the program at the appropriate time."

Appendix B – Evidence of at Least 12 Industry Visits to DEP

1. 2/11/2011 – Acting Commissioner Darryl Brown and Deputy Commissioner Pattie Aho’s calendar and email shows a meeting with Tom Doyle of Pierce Atwood, representing TRC, and representatives from TRC, on the subject of the thermostat program. An email from Commissioner Aho sent in Feb 2011 confirms a February meeting with “interested parties”.
2. 4/5/2011 – Front Desk Visitors Register shows two representatives from NEMA arrive.
3. 5/3/2011 – Ron Dyer’s incoming email shows that he and a representative from TRC met recently (no location specified).
4. 6/28/2011 – Ron Dyer’s Calendar and emails show June 28 meeting with TRC. Other documents confirm that Acting Commissioner Aho and Kerri Malinowski participated in the meeting.
5. 8/3/2011 – Ron Dyer’s Calendar shows meeting with TRC and other DEP staff regarding the Ecomaine Supplemental Environmental Project.
6. 8/5/11 **MEETING or PHONE CALL:** E-mail from Mark Tibbetts (TRC) to Kerri Malinowski “Thanks for the time this afternoon.”
7. 8/17/2011 – Front Desk Visitors Register shows representatives from NEMA, GE, and Osram Sylvania meeting
8. 8/24/2011 - Front Desk Visitors Register shows Tom Doyle, Pierce Atwood, meeting with Ron Dyer
9. 9/9/2011 - Front Desk Visitors Register shows Tom Doyle, Pierce Atwood, meeting with Ron Dyer
10. 9/28/2011 - Front Desk Visitors Register shows NEMA and Public Affairs Group (representing NEMA) arrival
11. 11/2/2011 – Ron Dyer’s calendar and emails and Front Desk Visitors Register shows TRC meeting with Ron Dyer and Paula Clark (a second TRC representative met with DEP Staff in Land and Water Quality Bureau later that day)
12. 12/21/2011 - Front Desk Visitors Register shows two representatives from Pierce Atwood meeting with Peter Carney
13. No Date – Visitor Form at DEP shows Tom Doyle, Pierce Atwood, Meeting with Ron Dyer, Paula Clark, Carla Hopkins for an 8:30 appointment.

Appendix C -- Public Response to DEP's 2012 Report *Implementing Product Stewardship in Maine*

Over the past twelve years, Maine has enacted a series of product stewardship laws that protect people and the environment by keeping toxic products out of the waste stream in requiring producers to establish and operate collection systems for these items. More than a dozen other states have followed Maine's lead.

In December of 2011, The Maine Department of Environmental Protection (DEP) released their annual review of five of the product stewardship programs they administer. These producer take-back programs require manufacturers to recover certain batteries, auto switches, thermostats, and lamps that contain mercury, as well as electronic waste that contains lead and other toxins, from the waste stream. The DEP's report presents a biased analysis that contains incorrect and unsubstantiated information about the costs of the programs, no information about program benefits to Maine people and the environment, and a perplexing conclusion that Maine's programs should be evaluated for termination. In response to the administration's assault on Maine's successful product stewardship programs, 34 organizations and 308 individuals across Maine submitted comments to the DEP by the January 16th deadline. In contrast, 7 groups submitted letters in support of the methods and conclusion of the report; six of these came from out-of-state industry representatives that oppose the laws.

The Natural Resources Council of Maine (NRCM) has carefully reviewed all public comments submitted to the DEP. The overwhelming response to the report has been strong concern about the DEP's poorly presented information, incomplete analysis, failure to address program benefits, incomplete and inaccurate data, drafting bias, and indefensible conclusions. Some highlights from these comments are below.

For access to the complete set of documents, see http://maine.gov/dep/ftp/product_stewardship/2012_report/

Name/Organization	Comments Critical of 2012 Product Stewardship Report
Alliance for a Clean and Healthy Maine	“The five product stewardship programs targeted for “sun-setting” keep significant amounts of mercury and lead out of the waste stream and protect Maine people and the environment from exposure to these toxic chemicals. The benefits of keeping mercury-containing thermostats, lamps, vehicle switches, batteries, and lead-containing electronic waste out of incinerators and landfills are substantial and demonstrable. This report, however, acknowledges not one of these benefits in its analysis.”
Eco-Maine	“What is missing from the report is whether or not the programs are working and how the total amount of metal recovered and removed from the environment benefits the health and environment of Maine and its citizens.”
E-Waste Maine	“In reality, the data shows Maine outperforms the OEM [original equipment manufacturer] run programs despite having more challenges.”
Learning Disabilities Association of Maine, Disability Rights Center, G.E.A.R./Parent Network, Maine Developmental Disabilities Council, Maine Parent Teacher Association	“We highly recommend that additional information should be provided by the DEP, either as a revision to this report or to accompany the report when it is presented to the Legislature, to identify the benefits of preventing mercury and lead pollution. We are concerned with the DEP’s recommendation of “sunsetting” product stewardship programs based on a “cost-benefit analysis,” especially because the report does not mention any of the benefits of preventing mercury and lead pollution.”
Maine Auto Recyclers Association	“However, we disagree with the review’s suggestion that “some programs, such as mercury vehicle components, should be reevaluated due to the success of the program...This particular program continues to remove mercury from Maine’s environment and costs Maine taxpayers very little, if anything at all.”
Maine Medical Association	“Lead bioaccumulates in bone as a result of exposure over time....therefore making it critical that exposure is prevented in the first place”

Multi-State Mercury Products Campaign	“DEP’s product stewardship report fails to properly evaluate either the costs or benefits of Maine’s product stewardship programs. The benefits side is ignored; the cost side consists of a series of unsupported or improperly inflated estimates. The committee should investigate DEP’s cost estimates, requesting appropriate documentation and justification, so that a proper accounting of costs can be performed. We believe once this occurs, DEP’s costs will be a small fraction of what is provided in the report, and the cost effectiveness of Maine’s mercury collection programs will be undeniable.”
Natural Resources Council of Maine	“This report provides such a poor assessment of Maine’s product stewardship programs that we believe DEP should retract the document and rewrite it so that it addresses the actual legislative intent of the reporting provision in Maine’s Framework Product Stewardship law.”
Northwest Product Stewardship Council	“Many states and industry sectors are considering product stewardship for a variety of products including paint, carpet, batteries, mattresses, an expanded scope of electronic products and pharmaceuticals. Maine should not remove itself from having this option, particularly given its past leadership in this arena. Harmonization of legislation and programs across states represents a tremendous opportunity for individual states to maximize program effectiveness and performance in collaboration with industries.”
Product Policy Institute	“After reviewing the recent report by Maine DEP, we are deeply disturbed by the seemingly 180 degree reversal that the Department has taken with regard to Maine’s product stewardship laws. We understand that different administrations have different priorities, but it is difficult to understand why DEP would reverse course on policy initiatives that were passed with overwhelming bi-partisan support, and have been widely demonstrated to be environmental and economic success stories.”
Product Stewardship Institute	“Unfortunately, many conclusions in the DEP’s report are based on faulty assumptions and incomplete information. Most troubling perhaps is the strong reliance on data and comments from industry without consultation with other governments or organizations that could have made this report more balanced and accurate.”

<p>Representative Melissa Walsh Innes, Maine House of Representatives, Yarmouth</p>	<p>“It is also my understanding that reports are usually written by staff that work in the policy area, and have their experience in the field to best inform the report...The several people at DEP who do have this experience were excluded from the development of the report, including the author of last year’s report. Why would DEP expend resources of people without known product stewardship experience to create a report instead of the people best versed in the work?”</p>
<p>Dr. Rick Freeman, Professor of Economics Emeritus, Bowdoin College</p>	<p>“Whatever this report, “Implementing Product Stewardship in Maine” may be, it in no way should be considered a ‘cost-benefit analysis’”.</p>
<p>Dr. Travis Wagner, Associate Professor, University of Southern Maine</p>	<p>“This report presents only a cost analysis while ignoring the benefits of controlling mercury, the economic benefits to municipalities in reduced waste management costs, the economic benefits to small businesses that can now participate in the product stewardship program for e-waste, and Maine-based companies and/employees that are partners in product stewardship. A cost-only analysis presents only one side of the equation and in fact skews the analysis such that it is not meaningful or credible.”</p>
<p>Dr. Mary E. Davis, Adjunct Assistant Professor, University of Maine, Tufts University</p>	<p>“The negative human health effects of lead and mercury exposure are significant, and the scientific evidence in support of minimizing human exposure to these contaminants is among the strongest in the environmental health literature.”</p>
<p>Dr Carol Hubbard, Director, Developmental- Behavioral Pediatrics,Maine Medical Center</p>	<p>“I really see mercury as the lead of our generation, and people in the future will likely be amazed at our nonchalance about it. Please work to maintain and strengthen our current lases to keep mercury out of the landfills, air and water.”</p>
<p>Sue Maxwell, Zero Waste British Columbia</p>	<p>“If the objective is to reduce costs both to business and government while still increasing environmental protection, then the conclusions would include: Make it a true producer responsibility program. Have the producers run and manage the programs but have the DEP set the targets, require annual reporting and monitor compliance. In other words the producers should be responsible for the programs and the DEP should ensure compliance.”</p>

Deborah Garrett, Former DEP Staff	“However, because it dramatically posits a flawed, in my opinion, cost/benefit analysis as the yardstick for measuring the need to maintain, or even increase, product stewardship initiatives, I believe it could be misinterpreted/misused to truncate the needed and justifiable full evaluation. This outcome could prematurely end worthwhile efforts that are producing results wholly in keeping with the State’s waste management policy as well as the goals and objectives of Maine’s commitment to public health and the environment.”
Susan Cottle, South China, ME	“Until now, Maine has been making excellent progress in helping to prevent further problems from toxic pollution by recognizing that keeping toxins out of the environment to begin with is much less costly than trying to clean them up after they are “out there.” After all, once we or our children have gotten toxics inside us –isn’t it too late?”
Dave Betts, Industry, ME	“Since derived health benefits are the major reason for mercury removal, how can you possibly exclude those benefits from the report and present it as a complete analysis?”
Mal Carey, Newcastle, ME	“Keeping mercury out of the waste stream, where its future dispersal and entry into the food chain can’t be ruled out, should remain a government priority.”
Cynthia Simon, Gorham, ME	“I believe the long term health, wildlife, and environmental savings more than cover the annual cost of cleaning up mercury from our environment. We must begin to think more long term about our investment in this great state.
Karen O. Fletcher, Freeport, ME	“As a tax-paying citizen of Maine, I am willing to do my part to recycle, reuse, repurpose and properly dispose of the products that I use. The Department of Environmental Protection needs to do its part to truly protect the environment and to develop additional programs to ensure that we behave in a way that does, indeed, preserve and protect our environment for future generations”
Maine Municipal Association	“Generally speaking, we believe it is fair to say that although the establishment of the [e-waste] program was something of a chore on the municipal level, it is now operating fairly smoothly and successfully diverts 4,000 tons of waste material from the municipal solid waste stream, according to this report.”

Name/Organization	Comments Supportive of 2012 Product Stewardship Report
National Electronic Manufacturers Association	“We have been encouraged by apparent changes in philosophy and direction within the DEP in 2011 – changes that have greatly improved our working relationship with Department staff. We look forward to continuing discussions with both the DEP and the Committee on how best to achieve the goals outlined in the report.”
Sony Electronics, Inc.	“A producer responsibility model, where good design can yield lower costs, which in turn mean lower costs passed along to consumer, can exist, but only with EPR regulated at the national level.”
The American Chemistry Council	“ACC supports the interest in voluntary programs and the Department’s recommendations to strengthen and improve current initiatives before considering further program expansion.”
The Consumer Electronics Association	“A major reason for Maine’s slightly lower collection rate than a few other states with comparable e-waste mandates is the current program’s inability to account for privately collected e-waste through CE retailers and charities working with CE manufacturers. As part of a movement to introduce market forces and industry management into the e-waste program, CEA recommends that electronics collected through these other channels be incorporated into Maine’s program.”
The Plastics Industry Trade Association	“We appreciate the efforts of the Department in compiling this report. In particular, the measured approach and scope of review undertaken...The Department is to be commended for undertaking a cost-benefit analysis of the programs reviewed.”
Thermostat Recycling Corporation	“TRC deeply appreciates your willingness to engage in a constructive dialogue. The next step is to begin to coordinate and collaborate on program activities...TRC also fully supports an effort to sunset the program at the appropriate time.”

Appendix D - Errors, Omissions, and Inconsistencies in the 2012 Product Stewardship Report

Public comments submitted to the DEP identify a number of errors, omissions and inconsistencies in DEP's 2012 product stewardship report. Listed below are some of the most significant such flaws, which raise serious questions about the credibility of the report and of the DEP.

Inflated and Erroneous Costs: DEP has attempted to evaluate the effectiveness of each of Maine's five product stewardship programs by identifying "the cost to run and implement each program". However, public comments received by DEP raise serious questions about the credibility of the cost figures contained in the 2012 product stewardship report, as follows:

- 1. Overestimated Salaries (p. 19, 21):** The report includes entire salaries for staff, even though they worked on programs other than product stewardship. The salary cost estimate of \$1,229,461 is based on the statement in the report that, "Dedicated human resources within the Department have included three full-time positions, whose sole focus is product stewardship management." No evidence is provided that DEP has had three staff who are entirely dedicated to product stewardship, and that is not correct. As one former DEP staff member stated in her comments, "the interwoven nature of many of the bureau's efforts precludes any specific employee being 100% dedicated to any single effort. The costing methodology seems overly simplistic and therefore suspect."²⁷ For example, a staffer working on the vehicle switch program was also responsible for processing sales ban exemption requests, mercury use reporting, and mercury product labeling through the Interstate Education and Reduction Clearinghouse (IMERC), not through the DEP's product stewardship program. Each of the staff devoted to mercury collection have other job responsibilities, so the inclusion of their entire salary in this cost estimate is in error.
- 2. Costs attributed to Incorrect Program (p.21):** Table 3 ascribes the salaries of three DEP staff to the cost of Maine's mercury collection programs, yet two of these three were devoted to DEP's e-waste program – which primarily targets lead, not mercury. E-waste program costs should not be attributed to mercury collection programs. This error alone may have inflated the salary cost estimate by 50 percent.
- 3. Unsubstantiated "Other Costs" (p. 19, 21)** DEP program costs included in the "other" category in Table 3 are indefensible. This category totals \$331,602 yet cites only two costs – printing 40,000 brochures and conducting training sessions. In January 2008 the DEP reported that they had offered training "on request" and hold "about 8 sessions a year." These trainings included education on "how to manage lamps and other universal wastes." The costs for these trainings cannot be 100 percent attributable to mercury product stewardship programs, since they addressed other topics such as universal waste. Additionally, the 2012 report does not cite how

²⁷ See public comments by Deborah Garrett on DEP 2012 Report, "Implementing Product Stewardship in Maine". Available at http://maine.gov/dep/ftp/product_stewardship/2012_report/PSR%20Organization%20Comments.pdf

many trainings were offered in 2008, 2009, 2010 or 2011; what their costs were; or what the cost of printing 40,000 brochures was. The report presents no information on whether DEP costs were reimbursed, or were supported in whole or in part by grant funds received from U.S. EPA or other sources. Without substantiation, the costs appear highly inflated.

- 4. Inappropriate Allocation of Funds Dispersed by SPO (p. 20, 21)** This cost estimate consists of funds distributed to towns before the product stewardship programs were put into law. The State Planning Office distributed \$750,000 to municipalities between 2001 and 2006 for collection sheds and signage for recycling of mercury- and lead-containing products. But the mercury-added lamps product stewardship program went into effect on January 1, 2011, the thermostat program began in 2007, and the vehicle switch program collection system was not covered by these SPO funds. In addition, the storage sheds paid for with these funds housed all universal wastes, not just those covered by Maine's product stewardship programs. It is questionable whether any of these funds can be attributed to mercury product stewardship programs, since decisions on the funds were made before the product stewardship programs were adopted.
- 5. Fees paid by manufacturers are not DEP Program costs (p.14):** DEP incorrectly lists as a program cost the annual fee incurred by manufacturers, not by Maine's taxpayers. The annual manufacturing fee (page 14) is paid by manufacturers to implement the e-waste program. These are not costs to DEP; rather, they are savings to Maine taxpayers and a principal reason why the Legislature adopted the e-waste program in 2004.

Erroneous Cost-Effectiveness Metrics: The per-pound costs calculated by the DEP associated with mercury removal through product stewardship methods must be compared to something. Since the aim of product stewardship programs is to prevent mercury and lead pollution in the first place, this cost ought to be compared to the cost of removing that same unit of mercury from the environment if it were to be released.

- 6. No Comparison to other programs targeting mercury:** The report includes an estimated cost of mercury collected for reuse at about \$6,000 per pound, but offers no context to evaluate this figure. This cost is irrelevant if we cannot compare it to the cost of other programs that target mercury removal. As examples, other federal programs calculate the cost of mercury removal at about \$20,000 per pound for mercury connected with chlorine and caustic soda production, \$39,000 per pound for power plant mercury emissions controls, and \$6,890 per pound for cement plant emissions controls.²⁸ In comparison, the \$6,000 per pound figure, which appears inflated based on inaccurate and inflated cost estimates (see above), is quite cost-effective.
- 7. Comparison of elemental mercury to methylmercury (in press release).** The Department's December 30, 2011 press release reads, "Even without those additional expenditures factored

²⁸ See "Comments of the Multi-State Mercury Products Campaign to the Maine Joint Standing Committee on Environment and Natural Resources on the Maine DEP Report "Implementing Product Stewardship in Maine" January 13, 2012

in, that works out to around \$6,000 per pound for removal of mercury from Maine’s environment. A pound of mercury can be purchased on the market for around \$10.” Elemental mercury in products and methylmercury in the environment are completely different. Comparing end-of-cycle mercury retrieval costs to the cost of purchasing elemental mercury in the marketplace is a meaningless comparison that is erroneous and misleading and reflects a serious misunderstanding of product stewardship program objectives.

Inconsistent Performance Metrics: DEP uses inconsistent metrics and outdated information in a fashion that does a disservice to the programs.

- 8. E-Waste Collection Rates Obfuscated:** The DEP made use of inconsistent and outdated statistics in an attempt to downplay the recycling rates of various product stewardship programs. In the case of e-waste, the DEP used an outdated number and chose an unfair basis of comparison. The DEP judged performance on a per-capita collection rate in comparison to four other states with widely varying programs. Maine’s 2010 collection rate of 3.99 pounds per capita is compared to Oregon and Washington’s higher rates. These states, however, have product stewardship programs that collect e-waste from small businesses, governments, and charities, so their per-capita rates are correspondingly inflated.
- 9. No Basis of Comparison for Thermostat Collection Rate:** While the DEP presented the e-waste collection rate as a per-capita figure and compared it with other states in order to pass judgment on its success, it used a different metric for the thermostat recycling program. A similar exercise for this program would have revealed that Maine’s per capita collection rate is twice as high as the next highest state and 10 times the national average. The DEP omitted this relevant data which would have given context to the waste diversion analysis on page 12.

Omitted Benefits: There are many economic benefits of Maine’s product stewardship programs. Remarkably, none of these were mentioned in DEP’s report—despite the report’s claim to be a “cost-benefit” analysis.

- 10. No Public Health Benefits identified:** A full and proper accounting of benefits associated with Maine’s product stewardship programs would capture avoided health care costs and avoided loss in lifetime earnings. Mercury exposure causes serious health impacts that result in very substantial costs to Mainers each year. Total health care costs of caring for children with environmentally attributable neurobehavioral conditions in Maine are between \$100 million and \$325 million annually²⁹. Product stewardship programs also provide cost savings by preventing IQ loss from mercury and lead exposure that causes foregone lifetime earnings. Additional avoided costs come from preventing lead exposure that can cause brain damage, kidney damage, anemia, and death, and low birth weight and pre-term delivery of children born to women who are chronically exposed to lead. Avoided costs from toxic pollution prevention programs, of which product stewardship programs are part, is a benefit to Maine. The

²⁹ Davis, Mary E. “Economic Assessment of Children’s Health and the Environment in Maine” Maine Policy Review, Winter/Spring 2010. p.40

department's omission of any of these costs is a glaring oversight that negates any conclusion that could be drawn from the "analysis" of product stewardship programs.

- 11. No Environmental Benefits Identified:** Product stewardship programs benefit the environment by preventing toxins, primarily lead and mercury, from entering the environment. This benefits Maine's land, water, and air ecosystems, and includes plants, wildlife, and people. A study of blood and feathers from loons in Maine show that they have some of the highest levels of mercury contamination in the nation, reaching levels that affect successful breeding. At high levels of exposure, mercury can cause reproductive complications, slowed growth and development, abnormal behavior, and even death. And the Maine CDC advises children and women of child-bearing age to strictly limit consumption of all fish caught in inland waters, because of high levels of mercury contamination.
- 12. No Mention of Taxpayer Savings from Mercury Program:** Were product stewardship programs not in place, more mercury would end up in the waste stream where tax-payer funded incinerators would have to pay for costly down-stream removal of mercury from incinerator emissions. The product stewardship programs scrutinized in this report provide an economic benefit by reducing mercury abatement costs associated with operating incinerators in Maine. This was a key consideration when lawmakers adopted these mercury-reducing programs, and the benefits have been real.
- 13. No Mention of Taxpayer Savings from E-Waste Program:** Since Maine has a disposal ban on e-waste, municipalities and residents – absent Maine's e-waste law -- would have had to pay to recycle these products. Instead, the e-waste program covers the costs of the collection, hauling and recycling of this waste. Maine's e-waste law has saved municipalities millions of dollars by sharing the costs of recycling electronics with manufacturers.
- 14. No Mention of Economic Benefits and Job Creation:** Maine's product stewardship programs have created jobs in Maine as a result of increased recycling associated with the programs. As an example, an Auburn-based recycler added 18 new jobs as a result of the 2011 e-waste expansion program. But no attempt is made in the report to identify and ascribe value to these jobs.

APPENDIX E – FOAA REQUEST

January 3, 2012

Commissioner Pattie Aho
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Dear Commissioner Aho:

I am writing on behalf of the Natural Resources Council of Maine (NRCM) to request information related to DEP's implementation of the Thermostat Recycling Program (38 MRSA §1665-B) and development of DEP's 2012 report *Implementing Product Stewardship in Maine*. NRCM is making this request under Maine's Freedom of Access Law, (1 M.R.S.A. § 401, et seq). Specifically, I am requesting:

1. All DEP documents from November 1, 2010 through December 2011 related to the Thermostat Recycling Corporation, including all documents related to Honeywell, White-Rogers, and General Electric. Documents should include electronic and paper materials, including but not limited to: letters, memoranda, complaints, reports and data submissions, emails and attachments, video recordings, audio recordings, correspondence, and meeting, telephone, and field notes.
2. Phone logs and calendars for 2011 of the DEP Commissioner, Deputy Commissioner, Director of the Bureau of Remediation and Waste Management, Director of the Division of Solid Waste Management, and all staff involved in implementing Maine's Thermostat Recycling program, including Ann Pistell, Carole Cifrino, Kerri Malinowski, and Peter Carney.
3. The DEP Headquarters sign-in log from November 2010 through December 2011.
4. All DEP documents related to the development of the 2012 report *Implementing Product Stewardship in Maine*, including but not limited to documents that express the position, views, or input about Maine's product stewardship programs from the Governor's Office, National Electronic Manufacturing Association, Maine Chamber of Commerce, Thermostat Recycling Corporation, Honeywell, White-Rogers, General Electric, Alliance of Automobile Manufacturers, and any other entity or their agents. Documents should include, but not be limited to letters, spreadsheets, cost calculations and supporting documentation, memoranda, emails and attachments, meeting notes, video recordings, audio recordings and correspondence.

Again, please consider this as a request under Maine's Freedom of Access Law, 1 M.R.S.A. § 401, et seq. As provided by the open records law, we expect a response from DEP concerning this request within five business days. If you choose to deny this request, please provide a written explanation for the denial including reference to the specific statutory exemptions upon which you rely.

Further, pursuant to 1 M.R.S.A. § 401 §§6.B, we respectfully request a waiver of fees to compile the records, because release of these public records is in the public interest since they will contribute to the public's understanding of the operations and activities of government.

Please feel free to contact me with any questions.

Sincerely,



Pete Didisheim
Advocacy Director