



*Sustainable Solutions to Protect Our Environment*

**Comments in Response to  
Maine DEP Report  
“Implementing Product Stewardship in Maine”**

**January 13, 2012**

The Product Stewardship Institute, Inc. (PSI) submits these comments on the report, “Implementing Product Stewardship in Maine,” which was produced by the Maine Department of Environmental Protection (DEP) for the Joint Standing Committee on Natural Resources. PSI is a national non-profit environmental institute with memberships from 47 states and more than 200 local governments, and partnerships with over 75 businesses, organizations, universities, and non-U.S. governments. PSI works with these groups to establish cooperative agreements to reduce the health and environmental impacts from consumer products.

PSI appreciates DEP’s interest in evaluating its product stewardship programs and supports the development of effective and efficient systems. 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.

Further, the report leaves the strong impression that DEP product stewardship staff took inappropriate actions, which is solely based on allegations from an industry group, the Thermostat Recycling Corporation (TRC). This serious statement was made without disclosing TRC’s concerns, whether those concerns were found to be valid, and what action the Department took. Allegations against DEP staff, who put in place nationally recognized product stewardship programs, should be fully documented and vetted with all stakeholders before publicly denigrating their work.

Finally, instead of seeking to dismantle effective product stewardship programs, the ME DEP should be seeking to work with the American Coatings Association (ACA), which seeks to establish an industry-sponsored paint stewardship program in Maine that is similar to

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laws in Oregon, California, and Connecticut. ACA is working with PSI and other northeastern states to implement a regional model program that has been developed collaboratively with government agencies, paint manufacturers, and our organization. Maine has an opportunity to work with the industry and other groups to pass legislation that will support paint recycling businesses and provide an estimated financial benefit of more than \$2.6 million if all paint from households and contractors is collected and properly managed.

There are more than 70 extended producer responsibility (EPR) laws in the U.S. in 32 states on 10 product categories, with legislation introduced on many other products. EPR programs have been in place in Europe and Canada for over 20 years and are spreading rapidly. These programs are viewed as a core strategy for the successful management of waste around the world.

Maine's product stewardship programs have so far prevented lead, mercury, cadmium, and other toxic substances from being emitted into the state's natural environment. In addition, these programs have saved local governments in Maine the costs that have otherwise been borne by industry are fairer to taxpayers who only pay to manage products that they purchase as compared to paying to dispose of products from wasteful consumers. Maine's product stewardship programs also create recycling jobs and economic value.

Any consideration of repealing these laws must propose who should bear the costs and responsibilities now assigned under the law for safely managing wastes, and the expected impact on the DEP, Maine local governments, manufacturers, retailers, and waste-related organizations. The proposal should also outline the consequences to Maine's environment, public health, and local economies if toxic substances, such as lead, mercury, and cadmium, are released to the environment.

PSI also finds that the DEP report draws broad conclusions based on an analysis that fails to consider the following key elements:

- What it would have cost government to achieve the same results without a product stewardship program;
- Costs associated with keeping mercury and other toxins out of the environment if products are *not* diverted from the waste stream;
- Public health costs mitigated through the reduction of toxic emissions from products; and
- Jobs and other economic value created by recycling and waste management industries (particularly as related to electronic waste covered under the law expanded by the Committee in 2011).

In addition, DEP costs incurred prior to the implementation of product stewardship laws should not be included to evaluate those same laws.

### **Mercury-added Lighting**

PSI joins the DEP in commending the efforts of lighting manufacturers to reduce the amount of mercury in their products. The quantity of mercury in CFLs and other lamps continues to decline as a result of both manufacturer innovations and policies that set limits on the quantity of mercury allowed. In 2008, PSI convened three national meetings that reached consensus among

stakeholders that fluorescent lamps should be promoted for their energy efficiency benefits (until a viable, less toxic alternative exists) and should be recycled instead of disposed of in landfills and incinerators. Meeting stakeholders included local, state, and federal government officials; recyclers; fluorescent lamp manufacturers; electric utilities and energy efficiency advocates; state and national retail associations; and environmental organizations.

PSI provides the following additional comments on the Department's assessment of Maine's new mercury-containing lamps product stewardship program:

- It is premature to evaluate the effectiveness of the manufacturer-run product stewardship program for household mercury-containing lighting. That program began in 2011 and data are not included in this report. Instead, this report presents piecemeal and incomplete data related to earlier mercury reduction programs run by the state, as well as municipal collections of mercury lighting prior to the product stewardship program. Data on the former Public Utilities Commission program, which engaged retailers to collect compact fluorescent lamps (CFLs) throughout the state, are not included.
- In 2013, as specified in statute, the Department is required to assess the percentage of mercury-added lamps recycled from the state. At that time, if the low recycling rates about which the Department expresses concern (page 7) continue under the manufacturer-run product stewardship program, this will indicate the ineffectiveness of the industry's own efforts.
- The report provides seemingly inaccurate information regarding the relationship between CFL sales in Maine and messaging about recycling programs. The report states that CFL sales dropped in 2007, and attributes this to "confusion in messaging regarding mercury content and disposal concerns." Instead, we see that, at least through the PUC's rebate program, more CFLs were sold in Maine in 2007 (788,125) after the start of the PUC's short-term collection program than in the previous year (636,704). Sales through the rebate program grew to more than one million in 2008.<sup>1</sup> From these data, no correlation between lamp recycling programs and CFL sales in the state is evident.
- The Public Utilities Commission program referenced on page five has ended. This program should not be referred to as "current" (page 5).

### **Mercury-containing Thermostats**

Maine's mercury thermostat law is the result of an agreement between the Thermostat Recycling Corporation (TRC), Natural Resources Council of Maine (NRCM), the DEP, and the Environmental Health Strategy Center. PSI brought the parties together and mediated the agreement in 2004-2005.

- While the sale of mercury thermostats has significantly declined, these long-lasting products are expected to remain on the walls of our homes and workplaces for many years

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<sup>1</sup> Efficiency Maine. Annual Report. 2008.

to come. TRC commissioned a study in California in 2009 to determine a statistically valid estimate of the mercury-containing thermostats that become waste annually in California.<sup>2</sup> TRC's study also determined the rate at which old mercury thermostats will come out of service over the next 25 years.<sup>3</sup>

The industry's study found between 99,000 and 205,000 thermostats will still be entering the waste stream in California in 2034. Assuming a comparable *per capita* generation rate in Maine, which is useful for illustrative purposes, this would mean that even in 2034 between 3,500 and 7,300 thermostats will enter the waste stream in Maine. Since thermostats contain, on average, 4 grams of mercury, between 30 and 64 pounds of mercury could still be entering Maine's environment from the disposal of mercury thermostats even in 2034.

- The 28% increase in collections required by Maine law from 2009 to 2010 is referenced on page 11. This should be considered in context of the overall timeline described in the law. It did not require a significant increase in collections starting in the first program year, but rather described a ramp-up process to take place between 2004 and 2010.
- We share the implied concern on page 11 that Department staff resources were required to support implementation of the program. The Thermostat Recycling Corporation should have been fully implementing the program, with only oversight required by Department staff.
- The data showing a significant increase in program effectiveness once Maine's law took effect (Table 3, page 12) is consistent with national trends, although (again) it is unclear why the report includes data that are not related to the implementation of the product stewardship law. As indicated by their performance in other states, if not held accountable, the TRC program does not collect many thermostats.<sup>4</sup>
- Additional information is required regarding the potentially "inappropriate" processing and payment for thermostats referenced on page 13. While the report states that the Thermostat Recycling Corporation expressed concerns, it does not provide information about the basis for any changes made. While the impression is given that Department staff acted inappropriately, additional information should be provided regarding the actions taken and how the industry's claims were supported.
- Additional information is required regarding the industry claim that "20 percent of thermostat incentive payments have gone to people the law did not intend," as mentioned on page 12. The law requires that "...adequate incentives and education are provided to contractors, service providers, and homeowners to encourage return of thermostats..." It is

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<sup>2</sup> Skumatz Economic Research Associates, Inc. "Mercury-Containing Thermostats: Estimating Inventory". December 28, 2009. Available at: [http://www.dtsc.ca.gov/HazardousWaste/upload/TRCThermostat-Report-12\\_09.pdf](http://www.dtsc.ca.gov/HazardousWaste/upload/TRCThermostat-Report-12_09.pdf)

<sup>3</sup> These assumptions use the following population data: California (36,961,664), Maine (1,318,301)

<sup>4</sup> Thermostat Recycling Corporation. Annual Report. 2008.

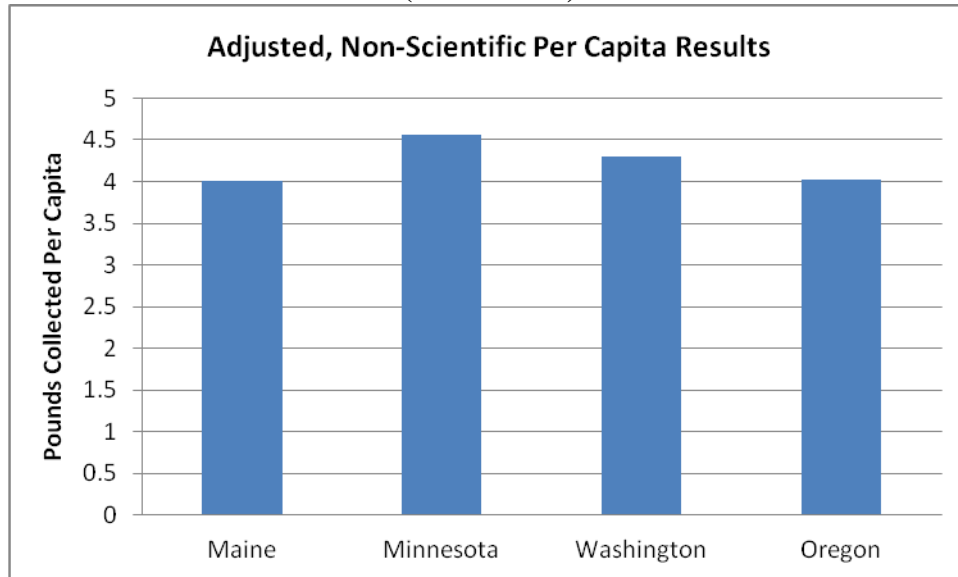
unclear who purported to be claiming the incentive that does not fall into one of these three categories.

- During PSI's national thermostat stewardship stakeholder meetings in 2004-2006, TRC emphasized the need for retailers to play a greater role in collecting thermostats. When PSI was later successful in obtaining the support from a significant number of retail participants to collect thermostats for recycling, TRC changed its position and stated that it was not cost-effective to collect from retailers since only a small percentage of thermostats are sold through retailers. Since the retail collection of thermostats was actively dissuaded by TRC, it does not appear to be a relevant measure to determine program success.

## **Electronic Waste**

- As identified in Table 4 (page 15), electronics product stewardship programs vary in their length of operation, stakeholder roles, the entities allowed to recycle electronics, and the types of collection sites used. Maine's program relies on collection by municipalities, while other programs may include municipalities in addition to other collection sites.
- To illustrate the impact that these factors can have on the number of pounds collected *per capita*, PSI provides the chart below (Table 1 of these comments). This analysis was conducted by PSI and the National Center for Electronics Recycling for an annualized program year from July 2008 to June 2009. By quantifying the impact of different program characteristics on *per capita* collections, this chart illustrates that Maine's program is comparable to other leading state e-waste programs.
- It is still worth considering improvements to the e-waste program, above and beyond the changes adopted by the Committee in 2010. PSI would be glad to provide information to the Department and the Committee regarding some of the differences that exist among programs, and opportunities for increasing overall program efficiency.

**Table 1. Comparison of Four Top Performing State E-waste Programs Adjusted for Select Program Variables<sup>5</sup>  
(2008 - 2009)**



**Motor Vehicle Components (Mercury Auto Switches) and Rechargeable Batteries**

The mercury auto switch and the mercuric oxide and rechargeable battery programs should be evaluated in the context of the total quantity of the products available for disposal. This more thorough examination will yield a better understanding of what is needed for the future of these programs. For now, it is evident from the data presented that they are important for reducing the release of toxic substances in Maine.

**Comments on Summary and Recommendations**

General Comments

The analysis provided in this report is not sufficiently robust to reach general conclusions that product impacts have been fully eliminated, or that programs have failed to produce expected results (except in the case of the thermostat program where the manufacturers have failed to reach the results set in statute). PSI raises the following concerns:

- **The conclusion regarding a per-pound cost to keep mercury out of the environment is unfounded.** Data related to the Department’s human resource expenditures should not be included as far back as fiscal year 2002 when the only product stewardship laws in effect at that time (for dry cell mercuric oxide and rechargeable batteries) limit Department responsibilities to technical rulemaking, as indicated on page 17. The cost of the

<sup>5</sup> Excerpted from presentation given by Jason Linnell (National Center for Electronics Recycling) and Jennifer Nash (Product Stewardship Institute), E-SCRAP Conference, September 22, 2009. Deductions to normalize results include -10% for desktops, -5% for small peripherals, and one of the following: -35% if all entities are included; 15% for small business, school districts, and local governments; and -10% for small business/non-profits only.

Department's mercury programs over the past decade is not the same as the costs of overseeing the implementation of the product stewardship laws for mercury products (the most recent of which is still in its first program year). The analysis is similarly confused by the use of collection data that are not part of product stewardship programs.

An estimate of the costs that municipalities have *avoided* by implementing Maine's product stewardship programs should be included. In addition, the analysis summary cites costs to municipalities to collect mercury lamps, but this cost was incurred prior to the start of the product stewardship program for that product, as was the Public Utilities Commission program. Why are these cost data presented in an assessment of product stewardship programs? Future analysis, when implemented in 2013 as required by law, will benefit from additional municipal cost data from the product stewardship program launched in 2011.

- **The reference to the relevant statute omits key factors which could lead to new product stewardship programs.** The report falsely references the Product Stewardship Framework Law as requiring that potential new product categories *must* be demonstrated to “reduce the costs of waste management to local governments and taxpayers.” This is just one of several criteria included in the statute.<sup>6</sup> In addition, any costs must always be considered within the context of the value of benefits derived from those costs.

#### Response Specific Recommendations

- Education and outreach are critical to program success. It is only effective to combine messaging when the audiences are the same. In some cases, messaging must target specific audiences (such as the contractors removing thermostats, or auto dismantlers handling mercury switches). Furthermore, the recommendations indicate that a “unified marketing and promotional approach” should be developed “with private sector leadership.” Although not clearly articulated here, this “leadership” should include the design and widespread dissemination of program promotional information conducted by, and paid for, by industry. It is important that producers internalize all costs related to producing their products so that any costs passed onto consumers account for these lifecycle costs. Otherwise, taxpayers and government will have to pay for those costs.
- Collaboration with manufacturers is essential to developing effective and efficient product stewardship programs. However, equally critical are the viewpoints of local governments, organizations, retailers, and other key stakeholders. PSI was founded to foster just this kind of multi-stakeholder collaboration, and has more than 10 years of experience through which to understand how valuable all these perspectives are to successful product stewardship programs. By only including the viewpoint from manufacturers, the

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<sup>6</sup> Other criteria included in statute are as follows: the product category is found to contain toxics, recovery of materials for re-use or recycling will be increased, success in collecting or processing the product has been demonstrated elsewhere, and existing voluntary programs are not effective in achieving the policy of the state.

Department has reached erroneous conclusions and created a document that is not credible based on its extreme bias.

- According to the Product Stewardship Framework Law, the DEP’s report to the Committee must “include draft legislation if any is necessary to implement a product stewardship program requirement for the product or product category.” The vague statement on page 22 that draft legislation should be “aimed at sunseting select product categories where appropriate” fails to meet the intent of this requirement to provide transparency about potential changes in Maine’s product stewardship programs. The report should be re-submitted with specific legislative language proposed and a 30-day opportunity for interested parties to comment on proposed language. Even so, PSI believes it is way too early to reach conclusions about ending any product stewardship programs. Rather, PSI sees great opportunity for the Department to work with paint manufacturers to pass paint stewardship legislation in 2012 that will save significant funds for Maine local governments, better protect the environment, and create recycling jobs (see below).
- As noted above, the DEP and Committee should support legislation in 2012 to establish a paint stewardship program sponsored by the American Coatings Association (ACA) and based on a PSI-facilitated national agreement. ACA is working to introduce and pass this legislation across the northeast. By getting involved sooner rather than later, Maine will stand a better chance at attracting paint recycling businesses. A national company has already taken steps to establish a facility in Connecticut following passage of paint stewardship legislation there in 2011.
- PSI agrees that it is important to evaluate programs using clear and meaningful metrics, including those related to the quantity of toxic substance releases avoided and the total cost of programs. In addition, the following metrics should also be considered: convenience to the consumer, consumer awareness, and the overall percentage of a product collected (which places the quantity collected into the context of the total amount available for collection). PSI can provide expertise and information to support this effort.

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