

**San Luis Obispo County  
Integrated Waste Management Authority  
ORDINANCE NO. 2010-1**

**AN ORDINANCE ESTABLISHING AN OUT-OF-SERVICE MERCURY-ADDED  
THERMOSTAT MANAGEMENT PROGRAM**

The Board of Directors of the San Luis Obispo County Integrated Waste Management Authority ordains as follows:

**Section 1. General Provisions**

The San Luis Obispo County Integrated Waste Management Authority (IWMA) finds and declares all of the following:

- (a) The purpose of this ordinance is to reduce the likelihood of disposal of Out-of-service mercury-added thermostat in violation of the California Health and Safety Code.
- (b) The purpose of this ordinance is shift the financial burden for management of Out-of-service mercury-added thermostat from local government to the producers and retailers of thermostats.
- (c) The purpose of this ordinance is to enact a law that establishes a program that is convenient for consumers and the public to return and ensure the safe and environmentally sound recycling of Out-of-service mercury-added thermostat.
- (d) The purpose of this ordinance is to encourage retailers to use the not-for-profit Thermostat Recycling Corporation (TRC) program.
- (e) The purpose of this ordinance is to recognize that there are significant environmental and human health impacts associated with thermostats that when disposed of improperly can contaminate the IWMA Region's environment.
- (f) The purpose of this ordinance is to complement AB 2347, Mercury Thermostat Recycling Act of 2008.

**Section 2. Definitions**

For the purposes of this ordinance, the following terms have the following meanings, unless the context clearly requires otherwise:

- (a) "Consumer" means a purchaser or owner of a Thermostat. "Consumer" also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity.
- (b) "IWMA Region" means the geographic area that includes the unincorporated area of San Luis Obispo County, California and the seven incorporated cities within San Luis Obispo County.

(c) "Out-of-service mercury-added thermostat" means a mercury-added thermostat that is removed from a building or facility in the IWMA Region and is intended to be discarded.

(d) "Retailer" means any entity, including but not limited to, a person or business, of whatever form of organization, which sells Thermostats in the IWMA Region to a consumer.

(e) "Thermostat" means a product or device that uses a switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. "Thermostat" includes a thermostat used to sense and control room temperature in residential, commercial, industrial, and other buildings.

### **Section 3. Retailer Responsibility**

(a) After the effective date of this ordinance, every retailer of Thermostats sold in the IWMA Region shall establish within the retail outlet a system for the acceptance and collection of Out-of-service mercury-added thermostat for recycling or proper disposal. A retailer who sells Thermostats is required to accept, collect and dispose of Out-of-service mercury-added thermostat.

(b) A system established by a retailer for the acceptance and collection of Out-of-service mercury-added thermostat during the retailer's normal hours of operation, for recycling or proper disposal shall, at a minimum, include all of the following elements:

(1) A convenient location within the retail establishment for the "take-back" from the consumer of Out-of-service mercury-added thermostat at no cost to that consumer. While this ordinance prohibits the retailer from charging the consumer to take back Out-of-service mercury-added thermostat, nothing in this ordinance prohibits the retailer from increasing the sales price or adding a recycling surcharge on new Thermostats to fund the cost of taking back Out-of-service mercury-added thermostat.

(2) Appropriate signage, prominently displayed within 5 feet of any entrance to the retail establishment and easily visible to the consumer, indicating that the retail establishment accepts and collects Out-of-service mercury-added thermostat from consumers.

(c) A retailer who is required to accept Out-of-service mercury-added thermostat shall at a minimum provide the following take back services:

(1) The take-back from the consumer of Out-of-service mercury-added thermostat that the retailer sold or previously sold to the consumer, at no cost to that consumer. In that event, the retailer may require proof of purchase of the prior sales. In addition, if the retailer sells the brand of thermostat that the consumer brings to the retailer that shall be considered proof of purchase. The retailer shall only be required to accept Out-of-service mercury-added thermostat in an amount not to exceed the amount previously sold to the consumer.

(2) The take-back of Out-of-service mercury-added thermostat from a consumer purchasing thermostats from the retailer, at no cost to that consumer. In that event, the retailer shall only be required to accept Out-of-service mercury-added thermostat in an amount not to exceed the amount being purchased.

(3) The take-back from the consumer of Out-of-service mercury-added thermostat that the retailer did not sell or previously sell to the consumer, at no cost to that consumer. The retailer shall only be required to accept Out-of-service mercury-added thermostat in an amount not to exceed 10 Out-of-service mercury-added thermostat per week per consumer from any consumer who resides in the IWMA Region.

#### **Section 4. Enforcement**

(a) The IWMA may enforce the provisions of this Ordinance through a civil action for civil penalties in the amounts established herein, and any other civil remedy, including prohibitory and mandatory injunctive relief, filed in the Superior Court for the County of San Luis Obispo to compel and enforce the provisions herein against any Retailer who is in violation of this Ordinance. In addition to any relief available to IWMA to enforce this Ordinance, the IWMA shall also be entitled to recover its reasonable attorneys' fees and costs incurred in enforcing this Ordinance.

(b) For any violation of this Ordinance, the IWMA may sue to recover civil penalties in the amount of \$1,000.00 per day for every day on which a violation exists. For purposes of calculating the civil penalties to be established hereunder, each day on which the Retailer fails to comply with the requirements of this Ordinance, after having received a written notice of violation issued by the IWMA, shall constitute a separate offense.

(c) In addition to the civil relief available to the IWMA set forth above, any violation of this Ordinance shall also constitute a misdemeanor punishable under the laws of the State of California. The District Attorney, the County Counsel, or any City Attorney shall be authorized to enforce the provisions of this Ordinance within their respective jurisdictions. In the event of such criminal enforcement, the following criminal penalties apply to violations of this Ordinance:

(1) Violation as Misdemeanor. Violations of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor.

(2) The San Luis Obispo County Sheriff's Department and/or any other police department or law enforcement agencies located within the IWMA's jurisdiction may issue a Notice to Appear Citation for any misdemeanor pursuant to California Penal Code Section 853.6 for any violation of this Ordinance.

(3) Penalty for Misdemeanor. Any retailer found to be in violation of any provision of this Ordinance, or who fails to comply with any of its requirements, shall upon conviction thereof be punished by imprisonment in the county jail for not more than six months, or be fined not more than one thousand dollars (\$1,000.00), or by both. Each day such violation continues shall be considered a separate offense.

(d) To the extent that the County of San Luis Obispo, the incorporated cities, and the districts within said County have adopted code enforcement ordinances applicable to their jurisdictions, this Ordinance shall be enforceable by said governmental entities under said ordinances as land-use or code-enforcement violations consistent with said ordinances.

#### **Section 5. CEQA Findings**

The Board of Directors of the IWMA finds that this Ordinance is exempt from the California Environmental Quality Act pursuant to Public Resources Code § 21080(b)(8) and CEQA Guidelines Section 15273. The Board of Directors further finds that this Ordinance falls within the activities described in Section 15061(b)(3) of the CEQA Guidelines which are deemed not to be "projects" for the purposes of CEQA, because it can be seen with certainty that the adoption of the Ordinance will not have a significant effect on the environment. The IWMA Manager is directed to prepare and file an appropriate notice of exemption.

#### **Section 6. Severance Clause**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or

the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the IWMA hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

**Section 7. Effect of Headings in Ordinance**

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

This Ordinance was introduced and the title thereof read at the regular meeting of the IWMA Board of Directors on September 8, 2010 and further reading was waived by a majority vote of those Directors present. This Ordinance shall take effect and be in full force on and after sixty (60) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Directors voting for and against the same, said publication to be made in a newspaper of general circulation published in the county of San Luis Obispo.

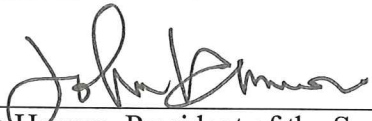
On a motion by Director Gibson, seconded by Director Ashbaugh, the foregoing Ordinance was passed and adopted by the Board of Directors of the San Luis Obispo County Integrated Waste Authority, on November 10, 2010, by the following vote:

AYES: Ashbaugh, Beraud, Borchard, Brooks, Ehring, Fellows, Gibson, Hill, Mecham, Mires, Patterson, Hamon

NOES: None

ABSTAIN: None

ABSENT: Achadjian

  
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John Hamon, President of the San Luis Obispo  
County Integrated Waste Management Authority

ATTEST:

  
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Carolyn Goodrich, IWMA Board Secretary

ORDINANCE CODE PROVISION APPROVED  
AS TO FORM AND CODIFICATION:

  
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RAYMOND A. BIERING  
IWMA Counsel