

RESPONSIVENESS SUMMARY

A PROGRAM PROVIDING FOR COLLECITON AND RECYCLING OF MERCURY-CONTAINING LAMPS DISPOSED BY COVERED ENTITIES IN VERMONT

The NEMA Plan submitted on February 17, 2017 was slightly amended as requested by ANR before being posted for public comment for 30 days until June 9, 2017. The following is a synopsis of the comments received with repeated common themes and some by specific comment. Comments were received by: Northwest Vermont Solid Waste District, Lamoille Solid Waste Management District, Mercury Policy Project, Vermont Product Stewardship Council, Chittenden Solid Waste Management District, and Central Vermont Solid Waste Management District and most of the comments were from the perspective of solid waste districts/municipalities.

COMMON THEMES:

1. COMMENTS: Veolia mail-back packaging.

- Mail back boxes are labor intensive to assemble, the 8' especially take at least two persons working together to build. Suggest wider selection of shipping containers.
- Although Veolia offers bulk packaging, it is not offered in this program
- Veolia offers a freight option for 20+ boxes but load of this size encompasses 3-6 pallets and for small facilities there are space constraints.
- Collection system (containers/convenience) skewed toward smaller collection sites.
- Discourages participation for districts/municipalities.

RESPONSE: NEMA's collection program under their collection plan must effectively serve municipal as well as retail collectors. NEMA must work with Veolia to provide bulk packaging, bulk pick up for larger volumes, a broader selection of box types, or alternative collection systems to meet the collection needs of municipalities (districts and towns).

2. COMMENTS: FedEx shipping.

- Challenges with requesting pickup- long telephone waits/internet not an option for some facilities.
- Some requests for pickup are not met, skipped, come when the facility is closed and if this happens the facility must start the process over again.

RESPONSE: Mail-back is simpler for retail locations because of their regular hours of operation and easily accessible locations. Districts/municipalities have varying operational hours. The pickup agent under the NEMA plan must be able to adequately pick up from facilities during their hours of operation.

3. COMMENTS: Reimbursement program.

- Reimbursement costs have not been updated for the past five years for increases in recycling costs, transportation cost increases, etc.
- Reimbursement cost does not reflect reimbursement for boxes or pickup.
- Costs are only reimbursed quarterly- suggestion to reimburse by pickup.
- Plan states reimbursement rates will be no higher than those paid to Veolia. Difficult to imagine a mail-back program would charge less than recycler pickup.

RESPONSE: 10 V.S.A. §7154 (a)(1) states "The collection program shall also provide for the payment of the costs for recycling and transportation from a collection facility to a recycler." The current mail-back service is labor intensive, especially for those locations with many lamps to manage. NEMA's plan and collection program must serve and cover recycling and

transportation costs for both large and small municipal collection locations, whether NEMA's collection program is mail-back or by a pick-up agent.

Additionally, the Agency recommends that reimbursement be more frequent than quarterly as some districts/municipalities have requested more frequent payment.

4. COMMENTS: Incidental and accidental breakage.

- **No outreach or guidance to facilities as to how to manage broken bulbs brought in by customers.**
- **Also, no outreach to customers or general public relating to breakage and whether it can be collected by the program.**
- **No guidance for incidental breakage to retailers. NEMA should provide a report on what guidance was provided to retailers for the previous 5 program years.**
- **Concern of lamp breakage during shipping- zip-tie system is not adequate closure on some boxes and internal plastic should be taped.**

RESPONSE: 10 V.S.A. §7154(a)(3)(C) identifies that the plan must have an outreach component that notifies the public of the special handling considerations associated with mercury-containing lamps. NEMA and the state agreed during our meeting that joint letters would be written to provide this information to both retail and municipal/district collectors on proper lamp management, guidance on breakage, and a reminder about the 10-lamp limit. In addition, the plan should include a commitment by NEMA or it's recycler to provide at least annual information on safe handling of lamps (including broken bulbs) to collectors and how this information will be provided, such as through correspondence letters and mailed materials. Any such guidance from either party on safe handling should provide details about proper handling of broken bulbs rather than just referencing Vermont law.

5. COMMENTS: Program outreach.

- **Types of outreach that will be provided for the program is vague.**
- **Plan should include how outreach materials are made available to collection sites.**
- **Outreach geared toward CFLs only.**
- **NEMA should be partnering with districts/municipalities to provide outreach by including basic text, graphics, logos, etc.**
- **NEMA website is completely outdated. Suggestion for report from NEMA showing website is updated quarterly.**
- **Web site does not provide a list of current collection sites and is completely outdated.**

RESPONSE: 10 V.S.A. §7154(a)(3) states "The collection plan shall include an education and outreach program that may include media advertising, retail displays, articles in trade and other journals and publications, and other public education efforts. At minimum, the education and outreach program shall notify the public of the following: (A) that there is a free collection program for mercury-containing lamps; (B) the location of collection points and how a covered entity can access the collection program; and (C) the special handling considerations associated with mercury-containing lamps". The Plan must be revised to address the following:

- The Plan must specify the types of media and frequency of outreach that will be implemented by the program. NEMA must modify the plan to include detailed information with an outreach timeline.
- The plan must also include:
 - A commitment to update the NEMA website quarterly with a current list of all collection locations.
 - A commitment to produce and supply program promotional materials to collection locations and general public that include pictures of all types of

mercury containing lamps and not just outreach focused solely on CFL collection.

6. COMMENTS: Participation agreements.

- **On-line forms not current.**
- **Requires collector to gather unnecessary data for collection of 25+ CFLs from any customer.**
- **Data collected on the CFL information should be provided in a report by NEMA and information as to the use of the data collected.**

RESPONSE: The on-line participation agreements do not reflect the current vendor, contact information, etc. NEMA needs to modify participation agreements included in the plan to more clearly outline the new vendor, bulbs accepted by the program, what must be done with broken bulbs, and eliminate the requirement to document covered entities bringing in more than 25 CFLs.

7. COMMENTS: Lamps from households.

- **The lamp plan identifies it is for the collection of household lamps, which is inconsistent with the law.**

RESPONSE: The terminology used in the plan reference to “households” is incorrect and must be removed from the plan. 10 V.S.A. §7151 defines “covered entity” as “any person who presents to a collection facility that is included in an approved plan: (A) any number of compact fluorescent mercury-containing lamps; or (B) 10 or fewer mercury-containing lamps that are not compact fluorescent lamps.” There is no reference to households.

8. COMMENTS: Collection sites.

- **Originally there were 181 collection sites – today, it is unclear how many sites exist.**
- **Requirement in law for two sites per county – unclear if that is being met.**
- **Limit enrolling additional collection locations subject to their audit.**

RESPONSE: Lamp plan requirements as outlined in 10 V.S.A. §7154(a)(2) states that the plan shall identify “convenient collection locations” for all municipal and retail that sell mercury-containing lamps, and “at a minimum, has not less than two collection facilities in each county.” Also, statute requires the collection program allow all municipal collection locations and all retailers that sell mercury-containing lamps to opt to be a collection facility. The audit requirements do not specifically permit limiting enrollment. NEMA must revise the plan to identify the *active* collection locations and indicate whether the two-per county minimum has been met.

9. COMMENTS: Five-year audit.

- **Plan cannot be properly evaluated until the third-party audit is received.**
- **Not the intent of the legislature to evaluate the program after a new plan is approved.**
- **Suggestion to not approve the plan prior to receiving the audit as it would not allow for any changes after the plan is renewed.**
- **Suggestion to conditionally approve only after all concerns are met and audit reviewed.**

RESPONSE: The Agency will delay final approval of the plan pending receipt of the audit. NEMA’s collection program will continue to operate under the current plan.

10. COMMENTS: Stewardship Organization.

- **NWSWMD requests a timeline of its prior discussions relating to amending the law or NEMAs proposal to identify a Stewardship Organization meeting the technical requirement of the law to fulfill manufacturer’s obligations.**
- **VT should require a timeline to end the manufacturer’s technical program non-compliance with a requirement moving Program operations from NEMA to a Stewardship Organization as required by law.**

RESPONSE: 10 V.S.A. §7154(a) states “...a manufacturer, individually or as a participant in a stewardship organization, shall submit a collection plan to the Secretary for review.” If NEMA is not acting as a stewardship organization, then it is the responsibility of each manufacturer participating in the submission of this plan to undertake the manufacturer’s responsibilities under sections §7152, §7153, and §7154 of 10 V.S.A 164A as identified in §7155 “Stewardship Organizations.” It would be sufficient if each manufacturer individually signs the NEMA collection plan, effectively assuming their responsibility for the plan and collection program.

11. COMMENTS: Recovery Rate.

- **Need to understand recovery rates – plan states this is “impossible to determine with a reasonable degree of confidence”**
- **An alternate proposal could be made that would give the state a level of confidence that the program is achieving the goal of collecting unwanted mercury lamps from covered entities and is keeping mercury lamps out of the trash.**

RESPONSE: 10 V.S.A. §7153(a)(3) requires the annual report submitted by a manufacturer or stewardship organization include “An estimate of the number of mercury-containing lamps available for collection and the methodology used to develop this number. Sales data and other confidential business information provided under this section shall not be subject to inspection and review pursuant to 1 V.S.A. chapter 5, subchapter 3 (access to public records). Confidential information shall be redacted from any final public report.” NEMA has provided annual reports in the past estimating the number of lamps as required by statute. The methodology and estimates used in these reports is still acceptable to the Agency. NEMA’s plan must continue the commitment to providing available lamp estimates to the state within annual reports.

INDIVIDUAL COMMENTS:

- 1. COMMENT: Removing shatter protection from linear lamps is difficult and leads to almost certain breakage- Veolia expects district to remove – doesn’t make sense to expect them to remove since glass is just going to ADC.**

RESPONSE: Statute requires manufacturers pay for the costs for recycling and transportation from a collection facility to a recycler. Disassembling lamps is a recycling activity that collection sites should not be performing. NEMA’s recycling and transportation service provider cannot require recycling activities of collection sites.

- 2. COMMENT: Suggest “regional collection center” to lower costs**

RESPONSE: Although this may be a cost-saving option, the law allows the manufacturers to develop a program and submit a plan based on the criteria listed in §7154. The only opportunity to make such an evaluation would be the results from the audit in §7153(b) that examines the “cost-effectiveness of the program.”

3. **COMMENT: No record of compliance for the first 5 years – require annual submission of ROC**

RESPONSE: It is not clear what compliance this comment is referring to.

4. **COMMENT: Program should provide current pricing of record from Veolia**

RESPONSE: This information is not required by law. See the response to comment #6 above.

5. **COMMENT: Audit should require a minimum of one external TSDF environmental audit per service facility utilized by the Program.**

RESPONSE: Statute requires an independent third-party audit of the effectiveness of the program in collecting and disposing of mercury-containing lamps. The Agency recommends that the NEMA audit include an assessment of the facilities used to recycle and dispose of lamps by their collection program. The Agency also recommends that NEMA provide information in their annual reports of how lamps are being managed throughout the recycling process including how the residuals from broken lamps are managed/recycled by the receiving recycler.

6. **COMMENT: SWIP report diversion numbers. Number of lamps collected by location should be reported annually and made available to the public for reporting requirements.**

RESPONSE: 10 V.S.A. §7153(a)(2) requires manufacturers to submit an annual report that contains the number and type of mercury-containing lamps collected and the collection facility from which the lamps were collected. NEMA reports this lamp data annually to the Agency by program year, July 1 to June 30. The Agency recommends that NEMA provide this data on-line and searchable, so these numbers can be easily accessed without the need for collectors or the state to contact NEMA to obtain the calendar-year totals.