

MEMORANDUM

To: Richard Karney – DOE ENERGY STAR Program

From: Noah Horowitz – PEARL Board Chair

Date: January 20, 2006

Re: PEARL Comments on CFL Spec – DOE Draft 2

On behalf of the PEARL Board, I am writing to express our appreciation and support for DOE's progress towards the creation of a sustainable third-party QA testing program as a required element of its revised CFL specification. The PEARL Board represents the program provider and efficiency advocate community in this process. We are the ones who bear the brunt of consumer dissatisfaction when ENERGY STAR CFLs do not perform as promised. Our programs' savings are reduced when ENERGY STAR qualified CFLs burn out earlier than they should. The promotion of ENERGY STAR CFLs generates the most claimed savings of any single technology for most of our programs. This is all by way of saying that we have a lot at stake in this process. To ensure a smooth transition from PEARL to a successful and transparent successor QA testing program, we provide DOE with the following observations and recommendations:

- 1. Allow comprehensive audits of the third-party QA testing program to ensure that DOE and its Administrator follow the requirements contained in the new version of the ENERGY STAR for CFLs specification regarding product nomination and procurement, product testing, data reporting, marginal failures, and disqualification appeals. Also publish summaries of the results of the appeals process and the outcome of follow-up testing by manufacturers who had marginal failures.*

Per the current proposal, the PEARL Board would relinquish its access to the model-specific testing data in exchange for continuance of a consistent and reliable third-party testing process that covers all participating manufacturers. The PEARL Board also expects that DOE will continue to promptly delist those products found to be non-compliant with the ENERGY STAR requirements.

In short, we are requesting that the new system contain sufficient transparency and oversight to make sure that expectations are met on an ongoing basis

To that end, the PEARL Board feels very strongly that there needs to be a mechanism that gives us the ability to check and make sure that the new system is working as expected. We therefore request that DOE include language in the specification requiring it to:

- a. Allow an independent auditor, selected and paid for by PEARL, to have unlimited access to its overall third-party testing program and to publish a report of the findings for review by the PEARL board. The auditor would be subject to confidentiality agreements as imposed by DOE and the manufacturers and the above report would not include any model- or manufacturer-specific information.
- b. Publish an annual list of the number of appeals processed and the outcome of these appeals, including a brief summary of why an appeal was granted or denied. Although this information would likely be reported on a product masked basis (manufacturer and model name not provided), it would provide key stakeholders with a snapshot of the frequency and disposition of appeals. Similar information should also be provided on the number of marginal failures and the percent of cases where the manufacturer retested its product and what the outcome was.

Because an independent auditor, and not energy efficiency program providers or advocates, would perform these tasks and have access to the raw data, we assume this approach would not be objectionable to the manufacturers. In fact, we believe the manufacturers would support this independent audit concept as it would help to further ensure a level playing field and provide them with additional confidence that their competitor's products would be delisted, should they fail to meet the program's requirements. This only furthers the commonly stated goal voiced by manufacturers of desiring a level playing field.

2. Perform the product nomination process before running the random generator

As stated previously by the Board, we think it is very important for the testing program to include the CFL models with greatest market share, models with unproven track records that use new geometries or technologies, and models from manufacturers that have experienced repeated non-compliance during previous QA testing. As such, we think the nominations submitted by the various stakeholders should be reviewed and decided upon first BEFORE adding models to the list from the random generator. This will help ensure that the models of greatest potential concern have a sufficient likelihood of being tested.

3. Provide DOE and the Nomination Committee the flexibility to test more than six models per manufacturer each year.

Page 18 of the specification states “A maximum of six bulbs per CFL partner may be tested within the fiscal year (two cycle timeframe)”. As stated in our previous comments, we believe this is both too restrictive and potentially unworkable. The nominating process should have sufficient flexibility to focus on models with the greatest market share, models that incorporate new technology, and on manufacturers who have a repeated pattern of non-compliance with the specification per the QA testing.

If the maximum of six per year restriction remains in effect, DOE will: a) likely be placing a disproportionate amount of the testing resources and attention on models that have very low market share, and b) preclude increased focus on manufacturers where it appears warranted due to the results of prior testing.

Also, DOE has stated a goal of testing 20% of all listed models per year. To meet this goal, DOE will need to test roughly 300 CFL models each year. We applaud this goal, but if only 6 models per company per can be tested, DOE will need to acquire samples from more than 50 different manufacturers each year. Per the collective experience of the PEARL Board, we believe that DOE’s Administrator will be hard-pressed to find commercially available product in a given year from more than 15 or so manufacturers. As such, DOE would not come close to its target of testing 20% of the listed products each year.

For all of these reasons, we strongly recommend DOE add some flexibility to this section and add language that grants the Administrator the ability to go beyond 6 models per company per year where market share or prior test results warrant it.

4. Add additional clarity to the Product Procurement section on page 19.

The PEARL Board worked very hard to attempt to ensure the samples of CFLs we collected and tested were representative of all commercially available product, and were not selected from the same lot, or manufactured on the same day, etc. Date codes or lot numbers are not always accessible on CFLs or packaging, or may only be intelligible by the manufacturer. In response to this challenge, PEARL developed a purchasing protocol intended to consistently give us a representative sample. We suggest revising the language currently contained in the draft specification as follows:

a. Specify what you mean by “geographic location”. The current draft states: “At a minimum, samples must be purchased from two separate geographic regions of the US. The recommended number of locations is four.”

For simplicity you might want to divide the country into East and West regions, perhaps drawing a line with the Mississippi.

b. Specify the number of stores from which the purchaser must purchase CFLs to be tested. We recommend that for each model to be tested, that samples be purchased from a minimum of two retail locations in each region. In addition, wherever possible the samples should be purchased from different retailers (i.e. Home Depot and Ace Hardware, vs. two different Home Depot stores).

c. Explain how to pool the CFLs to be tested and determine which units to test and which to retain for future potential testing. Also include a retention policy for tested models and under what conditions the tested units will be made available to the manufacturer.

5. *Reduce the proposed fee structure for receiving the trend data.*

In previous comments, the PEARL Board supported the notion of a “nominal fee” for access to the trend data and the adoption of a tiered fee structure (i.e., higher fee for bigger organizations). The current draft has a flat \$2,500 fee for all stakeholders. This fee is not nominal, and the one-size-fits-all fee structure does not reflect our prior recommendation to scale the fee to an organization’s size/ability to pay.

Please note that throughout the past three years, the PEARL sponsors paid for the vast majority of the testing costs and made the trend data accessible to all interested parties, including manufacturers, at no cost. Insisting on \$2500 per organization for access to this trend data seems inconsistent with the spirit of cooperation that the PEARL Board and other stakeholders continue to strive for.

We believe that a fee on the order of \$50 to \$250 is more appropriate. This would more than offset the administrative costs of posting the material on a password-protected website or to send out hard copies.

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In closing, we appreciate the opportunity to provide you with our comments for your consideration and look forward to a timely and successful rollout of the new third-party QA testing program. Please feel free to contact our Board Chair, Noah Horowitz at nhorowitz@nrdc.org or 415-875-6100 should you wish to discuss any of these issues further.