



## **Responses to Comments About Proposed E-Waste Legislation (S.6047)** **August 2009**

The New York Product Stewardship Council (NYPSC) believes that the enactment of strong and workable electronic waste (e-waste) take-back legislation during this legislative session is critically important. It will represent an important first step for New York State in advancing true product stewardship, by shifting primary responsibility for e-waste management at the end of the product's useful life from local recycling programs to manufacturers. This shift in responsibility should ultimately result in product design changes that reduce toxicity and enhance future reuse and recycling.

In June, the New York State Assembly passed an e-waste recycling bill (A.9049) that incorporates the principles of product stewardship. The State Senate needs to follow suit and adopt an identical bill, S.6047, when it returns for a special legislative session this fall. NYPSC believes that the adoption of this e-waste product stewardship legislation would be a big step in the right direction for all New Yorkers and the environment.

During the legislative review process, some concerns have been raised about this proposed e-waste legislation. The NYPSC has prepared responses to comments on bill number S.6047 that have come to its attention, in an effort to contribute to the legislative process. The NYPSC's responses regarding various comments on bill number S.6047 are set forth below.

- 1. COMMENT:** The bill requires take-back programs to serve commercial, industrial and municipal entities in addition to individual consumers at no cost. We object to the prohibition on charges to all consumers for recycling; among other reasons, this will impose costs on the manufacturers to products already sold, eliminating the ability to include this cost in the pricing of equipment. Other e-waste proposals allow manufacturers to assess a collection fee on consumers that have full-time employees.

Business users already have ample opportunities to collect and recycle their electronic equipment. Many manufacturers and electronic waste recyclers offer recycling services to commercial entities. It is not necessary to force manufacturers to eliminate these programs and adopt a state mandated program that must be offered for free. Any new take-back program should allow manufacturers to charge for recycling services provided to consumers having full-time employees.

**NYPSC RESPONSE:** *Producer responsibility properly shifts the burden of handling waste from local governments and taxpayers to those who produce and use it. By requiring manufacturers to internalize the costs of handling their products at end-of-life, they are encouraged to design products that are easier to recycle, more durable, less toxic, and use more reusable parts and less virgin resources. There is no reason to differentiate among types of consumers (between individuals and others) in this system, and in fact it is enhanced if it applies to all consumers equally. However, the Governor's program bill would have allowed manufacturers to charge large employers. A compromise that would do so – while also providing free collection for schools, local governments and charitable organizations – would preserve most existing contractual relationships while ensuring that the primary goals of extended producer responsibility (EPR) are met.*

- 2. COMMENT:** This legislation broadens the scope of “covered electronic equipment” by expanding the definition of “computer” to include computer central processing units and monitors. These are the very computer systems that manufacturers and businesses already have established recycling arrangements. Any state program should cover only those consumer products that are commonly included in product take-back programs based on environmental concerns, including desktop and laptop computers, televisions and monitors.

**NYPSC RESPONSE:** *These products contain many of the same toxic components as TVs and computers and are used with similar frequency, presenting similar environmental and economic concerns. Furthermore, the collection and processing infrastructure necessary to recycle TVs and computers can also handle the other types of electronics covered in the legislation. Therefore, a broader scope of products will create economies of scale that allow for a lower cost per item and greater system efficiency.*

- 3. COMMENT:** This bill should allow manufacturers to generate credits for collection of electronic waste in excess of its annual obligation in 2012 rather than 2013. There is no reason to delay the credits, particularly since the recycling surcharges for failure to meet the manufacturer's acceptance standard take effect in 2012.

**NYPSC RESPONSE:** *The manufacturers' obligation in the first three years were derived to be readily achievable, given the levels of collection and participation in other states, and are defined in the statute. Since a manufacturer can plan to meet those obligations, and they are reasonable, credits are not a critical element at that point. The credits kick in when the goal begins to “float” based on actual experience to enable manufacturers to better respond to changing goals over time.*

- 4. COMMENT:** This legislation would be strengthened with the addition of a provision to include credits for electronics waste recycling collection in rural areas, as has been done in Minnesota, Illinois and Indiana. This will give further incentive for manufacturers to provide services in areas of the state that might otherwise be underserved.

**NYPSC RESPONSE:** *An important goal of the legislation is to ensure that all New Yorkers have access to e-waste recycling programs. Therefore, the convenience standard requires that all counties and large communities have some manner of collection available, giving manufacturers' flexibility in determining what collection methods make sense for their business model and to achieve their performance goal. Furthermore,*

*defining areas that warrant extra credit is more difficult in New York given the geographic and demographic diversity of the state.*

5. **COMMENT:** The provision allowing DEC to “establish additional requirements to ensure convenient collection from consumers” should be deleted from this bill. Any guidelines for collection of equipment should be listed in the bill. DEC should not have the authority to require manufacturers to take on further collection responsibilities not stated in the law. A similar provision in the New York City law has caused huge problems with their take-back program.

**NYPSC RESPONSE:** *The legislation anticipates that over time, as the state gains experience in the program, there may be a need to further refine what it means to be convenient. In the event that the DEC pursues such regulation, the regulatory process involves significant stakeholder involvement and review which will provide ample opportunity for debate. The provision is intended to enable the state to respond if the statutory approach does not meet the goal of providing access to e-waste recycling for all New Yorkers or if market distortions occur. For example, manufacturers could satisfy their obligation by aggressively collecting e-waste in the more populated areas of the state and providing only minimal access elsewhere.*