



From: New York Product Stewardship Council

Date: June 10, 2009

RE: Recommendations for Key Provisions of E-Waste Take Back Legislation

The New York Product Stewardship Council (NYPSC) was created this winter under the auspices of the New York State Association for Solid Waste Management, and is constituted primarily of representatives of local public solid waste managers, together with representatives of other stakeholders who support the product stewardship approach, including state solid waste officials, business, recyclers and the environmental community. This unique partnership is working toward adoption of the product stewardship approach, also known as extended producer responsibility (“EPR”), as the priority policy for solid waste management. In brief, product stewardship places responsibility for managing products at end-of-life onto the manufacturers who produce them.

The NYPSC believes that the enactment of strong and workable EPR-based electronic waste (“e-waste”) 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 solid waste managers to manufacturers. This shift in responsibility will ultimately result in product design changes that reduce toxicity and enhance future reuse and recycling at the end of a product’s useful life.

The U.S. Environmental Protection Agency has identified e-waste as the fastest growing component of the solid waste stream. This rising tide of e-waste should not continue to be dumped on the backs of our local solid waste management programs and taxpayers. It is time for manufacturers to step up and take responsibility for the design of, and the end-of-life fate of, their electronic products. It is also critically important that e-waste programs be workable and effective.

It is therefore imperative that e-waste legislation establish high standards for manufacturer take back percentages and consumer convenience. Only through such high standards will the State be able to prevent the disposal of large volumes of e-waste in landfills and other disposal facilities. There is no cost effective, practical way to recycle or reuse e-waste once it has been commingled with municipal solid waste received at a disposal facility — at that point it is too late. Furthermore, local solid waste managers should not be put in a position of being cited for a violation of an e-waste disposal ban simply because low take back standards and weak convenience requirements – even if they are fully met by manufacturers – would result in a high residual of e-waste remaining in the waste stream rather than in a manufacturer’s take back program.



In reviewing the e-waste bills under consideration in the current legislative session, including A.7571 (Sweeney), S.5401 (Thompson), and the Governor's Program Bill #44, there are elements of each that merit inclusion in a final piece of legislation. The NYPSC recommends that the following measures be incorporated in New York State e-waste legislation enacted this session:

1. Free and convenient collection of e-waste must be provided to all residents. Every area of the state needs to have free and convenient means to return e-waste to manufacturers. The following acceptance methods meet this convenience standard, which manufacturers must provide for free unless otherwise indicated:
  - a. Mail or ship back return programs.
  - b. Fixed acceptance locations – including dedicated acceptance sites operated by the producer or its agent or designee, or facilities for the acceptance of electronic waste provided through agreements with local governments, retail stores, sales outlets, and not-for-profit organizations – that satisfy the applicable convenience standards set forth below:
    - i. For cities of a population of 1 million or more, the number of fixed acceptance locations in each county must be reasonably proportionate to the number of retail outlet locations selling electronic products within that city.
    - ii. For all other parts of the state, fixed e-waste collection locations must be provided in every county, as well as in every municipality (village; city; or town outside a village or city) with a population greater than 10,000.
    - iii. All fixed e-waste acceptance locations must accept e-waste at least one day each week, on days and hours that are reasonably convenient to residents in that community.
  - c. Due to high population density and limited access to vehicles, in cities with a population of 1 million or more premium collection services must be available. Such premium services may be provided for a reasonable fee, and may include at-home pickup services and upgraded services at fixed acceptance locations. Premium services cannot be the only service available, unless it is provided for free.
  - d. A reasonable fee or other charge may be assessed for the acceptance of electronic waste for recycling or reuse from any consumer having more than twenty-five full-time employees.



2. Manufacturers must satisfy, at a minimum, the following performance standards. These standards are based on a percentage, by weight, of what each manufacturer sold in New York State during the prior year. Data from other states that have already implemented e-waste collection programs indicate that these take back requirements are readily achievable:
  - a. 60% for the first year that the law is in effect (e.g., 2010).
  - b. 70% for the second year.
  - c. 80% for the third and each subsequent year.
3. Manufacturers must accept e-waste returns for any type of electronic product they sell. Each manufacturer must take back such e-waste even if that manufacturer has already met its take back percentage requirements for that year. This take back requirement provides a mechanism for the collection of orphan e-waste for which the manufacturer is defunct or cannot be found. It also ensures that manufacturers cannot stop collecting e-waste once they have met their statutory take back percentage standards.
4. Payments made to the state by manufacturers that fail to achieve required performance standards should be allocated to a dedicated fund that will reimburse municipalities for the costs of e-waste collection, management and related public education programs.
5. Manufacturers must fully inform the public about their take back programs and how to participate. Such information must be included on the internet, in advertisements, at the point of sale, and by all other means that the manufacturer uses to advertise its products to consumers.
6. Solid waste management facilities should not be deemed in violation of any state law or regulation in the event that e-waste is delivered to their facilities instead of to a take back acceptance location. Solid waste management facilities should make good faith efforts to educate their customers about the availability of e-waste take back programs. The Department of Environmental Conservation should periodically evaluate the effectiveness of e-waste take back programs through field waste composition studies undertaken within each region of the Department.
7. Since the nature of electronic products is rapidly changing, the Department should be authorized to define which products are covered under e-waste legislation. Therefore, as new products enter the marketplace that do not clearly fall within the statutory definition of covered electronic equipment, the Department would have the authority to determine whether or not they are covered. Current examples of devices that could require such determinations include digital picture frames, digital book readers, and portable digital assistants that are also portable digital music players.



8. Producers should be required to report which e-waste collection facilities they utilize, to provide transparency and public accountability for the ultimate destination for their products at end-of-life.
9. To ensure state-wide consistency and avoid undue burdens upon manufacturers, the provisions of this e-waste legislation should preempt any inconsistent provisions of local laws and ordinances regarding e-waste.
10. It is important that all of these features be included in the e-waste legislation to ensure that it provides maximum benefit to New Yorkers and the environment. A piece meal approach would substantially weaken the effectiveness and severely diminish potential benefits of e-waste legislation. It is recommended that New York State e-waste legislation require manufacturers to meet all of these requirements.

These elements are vital to ensure that the maximum possible amount of e-waste is collected from consumers and diverted from the waste stream. This, in turn, will most effectively reduce the unfunded mandate on local solid waste managers to manage these discarded products at the end of their useful lives and properly shift that burden to the producers.

The New York Product Stewardship Council looks forward to helping achieve effective, workable e-waste legislation for all New Yorkers this session. For further information, contact NYPSC member Tom Rhoads by phone at 315-453-2866 or via e-mail at [TRhoads@ocrra.org](mailto:TRhoads@ocrra.org).