

**Discussion Document for Model Electronic Recycling Legislation:
An Act Providing for the Recovery and Recycling of Used Electronic Devices**

April 2006

I. Introduction

In February 2005, the Council of State Governments/Eastern Regional Conference (CSG/ERC) and the Northeast Recycling Council (NERC) launched a collaborative project to develop a coordinated legislative approach to end-of-life electronics management in the Northeast. As part of the project, CSG/ERC and NERC facilitated an effort among legislators, legislative and state environmental agency solid waste management staff from ten states¹, the U.S. Virgin Islands, Puerto Rico, and Québec to craft model legislation. Following an intensive 14-month effort, the group has released model legislation: *An Act Providing for the Recovery and Recycling of Used Electronic Devices*.

Currently, there is no national program to address the proliferation of electronic waste in a comprehensive manner. Four states – California, Maine, Maryland, and Washington -- have passed laws that mandate different approaches to financing and administering electronics end-of-life management systems. More than twenty other states have introduced legislation governing electronic waste. Many state officials and stakeholders in the Northeast agree that in the absence of a national program, a coordinated regional effort is preferable to having a patchwork of laws and regulations resulting in increased management and compliance costs and decreased recycling opportunities.

The idea for the regional electronics legislation project first arose in the fall of 2004, during a discussion among several members of the CSG/ERC Energy & Environment Committee. Committee members, concerned with the lack of comprehensive programs to collect, reuse, process, and recycle discarded computers, televisions, and other electronic devices in their states, requested that CSG/ERC facilitate a process to help legislators develop a coordinated legislative effort to address these issues in the region. CSG/ERC invited NERC, a non-profit organization that operates in the same ten Northeastern states as CSG/ERC, to collaborate on the project.

During the course of the project, CSG/ERC and NERC sought to forge consensus among state participants on the scope and content of electronics legislation. CSG/ERC and NERC staff facilitated a series of bi-monthly conference calls in which state participants debated key elements of electronics management systems. Participants also solicited input from electronics manufacturers, retailers, recyclers, leasing companies, reuse organizations, environmental groups, and local government representatives through two multi-stakeholder meetings, plus additional single stakeholder meetings and conference calls. These gatherings granted stakeholders the opportunity to explain what they wished to have included in regional legislation governing electronics end-of-life management, and to provide comments on two full draft legislative proposals and one partial draft that were released to the public. State participants, in turn, made

¹ Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

a concerted effort to incorporate the suggestions provided by stakeholders. The final legislative proposal is the result of this 14-month-long process.

It should be noted that the more than 50 legislators, legislative, and state environmental agency staff that contributed to this effort during the course of more than a year represent a multiplicity of interests. Many expressed differing opinions regarding the provisions included in the final legislative proposal, as well as those that ultimately were not included. It is generally understood among participants that if the legislation is filed in different states, many of those provisions will be modified to suit the needs of the inhabitants of those states. Participants agreed, however, that the financing mechanism should be similar across states if government and stakeholders are to reap the benefits of coordinated end-of-life electronics management – including reduced compliance costs for manufacturers, lower management costs for government, and increased recycling opportunities and efficiencies. The legislation was crafted to provide the opportunity for coordinated multi-state end-of-life programs.

The purpose of this discussion document is to provide background about legislators' and other state participants' deliberations regarding some of the key issues that were raised during the process of drafting the model regional electronics legislation.

II. Key Discussion Issues

A. Scope of Products (Section 1 (e)): Participants in the CSG/ERC – NERC effort generally agreed to limit the scope of covered electronic devices (CEDs) in the final legislative model to desktop and personal computers, computer monitors, laptops, and televisions. The legislation includes an option for either the legislature or the state regulatory agency to expand the scope of regulated products as they see fit. (Please see Section 2).

B. Financing Mechanism (Sections 5 & 6): Legislators felt strongly that the financing mechanism for an end-of-life electronics management system must not impose direct fees on the consumer, and that the financial responsibility must rest with the manufacturers. After much discussion, the legislators determined that retailers should not be involved in the collection of fees. Other priorities were to create a simple and equitable system for covering orphan waste, to ensure that minimal burden is placed on municipalities for the collection and transport of used electronics to consolidation or processing centers, and that existing infrastructures are incorporated into new statewide programs. In addition, many legislators wished to create a financial incentive for the development of manufacturer-run programs.

In order to address all of these criteria, a compromise solution was crafted: manufacturers of CEDs would be required to report on sales (or request that the state agency calculate their sales on their behalf); pay an annual registration fee; and either pay for the cost of collecting, transporting, and recycling their total obligation (or share) of CEDs, by weight, or implement take-back programs that result in the collection, transportation, and recycling of their total obligation. Manufacturer obligation is based on the annual sales, by weight, of CEDs in the previous year multiplied by the state recycling rate for electronics.

Additional detail is as follows:

1) Reporting and Registration (Section 5): The model legislation requires all manufacturers of CEDs to register annually with the agency and pay a \$5,000 registration fee; and report to the agency the total weight of CEDs sold in the state during the previous year. Alternatively, a manufacturer could request that the agency calculate the total weight of CEDs it sold in a state using prorated sales data based on state population.

Many manufacturers have indicated that they do not possess state-specific sales data for their products, and that it cannot be obtained. In an effort to facilitate the collection of such data, state participants proposed during the fall of 2005 that retailers report directly on their sales of CEDs in a state, by brand, to the state agency. Retailers indicated that they would oppose such a requirement. Nevertheless, in recent weeks, a trade association that represents several national retail chains has expressed support for a reporting requirement in which retailers would provide data on their sales of CEDs in a state to manufacturers or suppliers. Under such an arrangement, suppliers would be required to remit the data to manufacturers, and manufacturers would report the data to the agency. State officials may wish to consider including this retailer reporting requirement in electronics legislation.

2) Manufacturer Responsibility (Section 6): In addition to the annual registration fee and reporting requirement, manufacturers would have the option of either: 1) paying a fee to cover the cost of collecting, transporting, and recycling their share, based on their retail sales by weight; or 2) collecting, transporting, and recycling it themselves.

A manufacturer's total responsibility for collection and recycling would be determined as follows:

- First, the agency sets a state recycling rate. The state recycling rate is equivalent to the ratio of the weight of total overall returns of covered electronic devices in the state to the weight of total overall sales of CEDs in the state during the previous calendar year.
- A manufacturer is required to either:
 - a) Pay a fee calculated as:
 - The state recycling rate multiplied by the weight of the manufacturer's CEDs sold in the state during the previous calendar year, multiplied by no more than \$0.50 per pound; or
 - b) Collect, transport, and recycle a quantity of CEDs equal to the weight of the manufacturer's CEDs sold in the state during the previous calendar year, multiplied by the state recycling rate.

In order to be eligible for option "b" above, the manufacturer must submit a plan for such a program that is approved by the agency. If a manufacturer fails to comply with all of the terms of an approved plan, it must submit a payment to cover the cost of collecting and recycling the unmet portion of its obligation, plus a penalty payment.

- Manufacturers can obtain credits if they collect and recycle in excess of their obligation, and apply them to their obligation the following year, or sell them.
- No end-of-life fees of any type are permitted.

In theory, use of the state recycling rate as defined above should provide for the collection, transportation, and recycling of all discarded CEDs in a state in a given year. It should be noted that, in lieu of utilizing the state recycling rate, some state participants have indicated that they may prefer to opt for a fee based on total sales, by weight – or on a specific percentage of sales different from that derived from the above state recycling rate calculation. However, fees would still be based on sales, rather than on materials collected at the end-of-life.

3) Agency Responsibility (Section 8): The state agency would manage all funds and administer statewide collection and recycling programs. States could opt, however, to have the agency designate a third-party organization (TPO) to provide those services, depending on the inclination of each particular state. The agency would also be authorized to participate in the establishment and implementation of a regional, multi-state organization or compact to do the same.

C. Disposal Ban (Section 13): The legislation calls for a ban on disposal of CEDs in a municipal solid waste landfill two years following enactment. Some participants favored shortening the period from two years to as few as 90 days.

D. Phaseout of Toxic Constituents: Some legislative participants felt that the legislation should require a phaseout of toxic constituents. Participants discussed the possibility of mandating compliance with the provisions of Directive 2002/95/EC of the European Parliament on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS Directive), as is required in California's e-waste legislation, established by passage of SB 20 in 2003. RoHS would ban the use of certain hazardous substances in electronic equipment, with some important exemptions.

However, many participants were uncomfortable with the notion of requiring compliance with an EU directive. In addition, it is generally believed that, since all manufacturers who sell their products in the European Union must comply with RoHS when it takes effect in mid-2006, major electronics producers will be compelled to phase out their use of toxins in the coming months regardless of U.S. state mandates.

The compromise decision, therefore, was for the model legislation to remain silent on this issue.

III. Next Steps

The final legislative proposal represents the best efforts of a broad group of state participants from the Northeast region to reach consensus on a coordinated legislative proposal governing end-of-life electronics management. It is our hope that this proposal will serve to inform and guide state officials and their staff as they continue to address the complexities of this critical policy issue going forward.