

E-Waste Regulations Advisory Committee
Conference Call Minutes

Date: November 14, 2007

Topic: Standards for Covered Electronic Recyclers

Participants/Affiliation:

Tom Metzner - DEP Moderator

Gabrielle Frigon – DEP

Ross Bunnell – DEP

Carey Hurlburt – DEP

Kevin Sullivan – DEP

Mark Latham – DEP

Carmen Holzman – DEP

Nick Ammann – Apple

Jeff Kuypers – HP

Clifford Bast – LLC

Jonathan Bilmes – Bristol Resource Recovery Facility Operating Committee

Heather Bowman – HP

Mike Bzdyra – Connecticut Resources Recovery Authority

Phyllis Cheatum – 3M

Gina Chiarella – WeRecycle

Carole Cifrino Maine DEP

Mike Conklin – Town of Wilton

Alexandra Degher – HP

Patty Dillon – Northeast Recycling Coalition

Janice Ehle-Meyer – Connecticut River Estuary Regional Planning Agency

Eric Gilbert – Gateway

Peg Hall – Connecticut Recyclers Coalition

Jim Hogan – WeRecycle

Josh Hughes – Hughes & Cronin

Barbara Kyle – Computer Take Back Campaign

Jason Linnell – NCER

Joe Nardone – ECO International

Valerie Rickman - ITI

Pamela Roach – Town of Hamden

Irene Rodrigues – Robinson & Cole

Tom Sipher – Thomson

Paul Swoveland – Lexmark

Joe Walkovich – Walkovich Associates

Mike Watson - Dell

Karen Weeks - Bristol Resource Recovery Facility Operating Committee

DEP opened the call with the introduction of participants and identified that the topic for discussion would be the standards for covered electronic recyclers. DEP noted that there are many standards out there from which we can draw, however, at a minimum, we must include the requirements from EPA's "Plug-In to eCycling Guidelines for Materials Management" as required by Connecticut's E-Waste Law.

Comment: There is a group working on putting together a set of standards for an industry certification program. However, finalization of those standards is still months away. Washington uses a set of “preferred standards” in addition to minimum regulatory requirements.

Comment: Oregon is close to following Washington’s approach which cross-referenced the Canadian guidance document. Since Maine did not wait for R2 standards there may be a disconnect between the two. The standards should require that recyclers must comply with all applicable laws and regulations for approval.

DEP: What standards above and beyond the R2 standards will we want? How did Maine develop its standards?

Comment: Maine used existing EPA guidance and tried to come up with standards that made sense for Maine. However, the standards are not very specific and Maine did not address the prison labor issue.

DEP: For purposes of today’s discussions, we will use the Table of Contents from Washington’s standards.

1. Data Security.

DEP: The legislature had concerns about personal data being stolen from discarded computers. What standards might we want to include to address this issue?

Comment: Data security is very important for reuse and redeployment of CPUs. There are federal standards (DOD) for security which include wiping.

DEP: Do CPUs have to be physically destroyed?

Comment: Most computers in Connecticut will be recycled and physical destruction is best for recycling. Wipes are not always completely effective. However, for computers that can be reused, wipes may be the only option.

Comment: It can depend on the customer. Some customers want wipes (sometimes multiple), others are OK with hydraulically punching the hard drive and others want shredding.

Comment: DOD is the industry accepted standard which includes shredding and approved software for wiping. Punching holes in the hard drive is not a DOD approved method.

DEP: We could incorporate the DOD standards. Is getting the software a problem? Is using the DOD software to wipe hard drives labor intensive?

Comment: Wiping is labor intensive.

Comment: Requiring destruction is not a bad thing.

Comment: Is Connecticut focusing on recycling?

DEP: Yes. Manufacturers do not have to pay for units being reused.

Comment: Then destruction should be required for units being recycled.

Comment: Data security is also an educational issue. Information should be provided to the consumer at the time of drop off concerning what will happen to the computer.

Comment: Consumer is taking a chance when dropping off computers which become the property of the recycler.

DEP: The legislative intent is to provide effective data security and this issue needs to be addressed at the recycling facility. Is physical destruction a standard we want to apply to hard drives?

Comment: Do not limit physical destruction to shredding. To destroy a hard drive, we punch four holes in it.

DEP: Physical destruction is an acceptable form of destruction for data security. We will look into options for computers to be reused.

Comment: Reuse is the higher priority.

DEP: Does shredding leave components available for reuse?

Comment: Shredding results in uniform pieces.

2. Insurance/Surety

DEP: Should the insurance limit of 1 million dollars be higher or lower? What about pollution liability insurance?

Comment: Washington, R2, general contracts require \$1 million, but this is very low.

Comment: \$1 million for commercial general liability should be \$5 million which is becoming the standard.

DEP: Washington does not specify any amount—only that coverage needs to be adequate.

Comment: A town stated that they look for \$1 million per occurrence, a \$5 million umbrella and a CA9948 or equivalent (such as a MCS90) Endorsement in their contracts.

Comment: We need to establish a minimum standard but don't get too detailed because it could limit opportunities to participate in the program.

Comment: What is HP comfortable with?

Comment: This is something that is always evolving based on market conditions but would suggest \$5 million.

DEP: What about closure plans and surety?

Comment: In Connecticut, the facility's permit covers closure and surety. Should have comparable standards for out-of-state facilities.

DEP: Establishing surety requirements is the responsibility of the state in which the facility is located. Connecticut cannot regulate facilities in other states.

Comment: New York and Pennsylvania do not require surety for facilities located outside their state.

Comment: Having requirements that apply to in-state facilities but not to out-of-state facilities creates an inequity that puts in-state facilities at a disadvantage.

Comment: A recycler stated that they have operations in other states and they operate all of the facilities at high level in accordance with accepted BMPs.

Comment: Connecticut cannot restrict out-of-state recyclers.

DEP: Connecticut cannot require a permit for an out-of-state recycler. However, we can look at what facilities have in place to rank how well they are doing.

DEP: We can make requirements such as closure and surety conditions for approval.

Comment: Why are we looking at different standards for CEDs vs. other solid wastes that are recycled?

DEP: CEDs are hazardous wastes. While we can't require conditions on out-of-state recyclers, we can weigh it against them in the approval process.

Comment: Is that process subjective?

DEP: We will create standards and then use those standards to make our decision.

Comment: DEP needs to discuss this issue with their legal counsel to see what the limitations are related to the interstate commerce clause.

DEP: Connecticut's E-Waste Law requires that, at a minimum, the standards we set meet the requirements found in the Plug-In to eCycling Guidelines. We will discuss this issue with the department's legal counsel.

Comment: Washington had issues with the commerce clause. That is why they went with a preferred set of standards-things they would like to see done but can't require. This will be a recurring issue.

3. Exports

DEP: We are looking for information to make an informed decision regarding export requirements. What is possible, practical and legal?

Comment: Washington learned that states do not have the authority to ban exports. They used the Plug-In to eCycling Guidelines which indicates that while it is not illegal to export CEDs, it is illegal for most countries to import them. So far, there have been no legal challenges made in states that use this approach. The challenge here is how do you know a recycler is not breaking the laws.

DEP: How do we certify overseas facilities?

Comment: It is simpler than that. Import/export laws apply to the country as a whole and not to a specific facility in that country. The importing country would provide documentation of compliance with the law.

Comment: The reuse exemption creates a major loophole that leads to sham recycling.

Comment: Are the units tested? A unit should be tested and it should be documented that it is working order prior to export. Untested units are a problem. Dismantling all units prior to export would solve the sham recycling problem.

DEP: Can we legally require demanufacturing of all CEDs?

Comment: We should look at EPA's CRT rule. It takes care of much of the demanufactured material and includes exemptions for recycling.

Comment: California requires CRTs to be "canceled" before being sent out the state. "Canceling" renders the unit unusable (venting, puncturing and removing yoke). Once cancelled it becomes a commodity so a waste is not being exported. Therefore, there is precedence for requiring processing before it leaves the state.

Comment: Maine has a certification process. Units to be reused must be tested to certify that the unit is operable before being shipped overseas. Only one recycler does this in Maine.

Comment: What is the procedure for testing?

Comment: Maine does not have one. The recycler in Maine does follow a procedure but we don't know exactly what it is.

Comment: We don't want to short circuit potential reuse of units where it makes sense.

Comment: EPA has standards that can be referenced for ensuring appropriate testing.

Comment: Connecticut's regulations should reference testing procedures.

Comment: There should be a cut-off date for when a unit is considered obsolete. All units that are not obsolete should be tested, even those that are not shipped overseas.

DEP: Is it feasible to include a requirement to submit a plan for units that are going to be reused.

Comment: It involves two issues: 1) testing to confirm it is working and 2) where is the unit going.

Comment: A working computer can be resold anywhere. Manufacturers do not pay for any unit being resold. But we do need to minimize the potential for wastes to be sold or shipped as a product. R2 standards include good language concerning testing equipment and disguising waste as reusable when it should be dismantled.

4. Agreements between recyclers and manufacturers

DEP: Are there any comments on manufacturers having the option of establishing agreements with recyclers to separate the manufacturer's units so that they can send them to a recycling facility of their choice?

Comment: None

5. "OSHA"-Type Requirements

Comment: Maine and Washington requires compliance with all applicable state and federal laws. Connecticut should not go beyond OSHA requirements.

6. Prison Labor

There was a consensus that the use of prison labor should not be allowed.

7. Facility Security and Access

Comment: Pennsylvania doesn't require this. This would be burdensome to small recyclers and potentially exclude them from participating in the program.

Comment: Everyone should be able to secure their facility. What does the department envision as acceptable security? Washington's security requirement is a preferred standard-not a regulatory one.

Comment: Security should be comparable to the operation you are running but you have to ensure that you can control access. We need minimum criteria based on size and scope of the business. Basic capabilities should include things such as restricting access, ability to detect theft, etc.

DEP: Since CEDs are a hazardous waste, we need to protect human health and the environment. Also there is value to the waste being kept at the facility. It is common sense to provide security. Security measures needed also depends on the location of the facility.

DEP: We could just require a demonstration—nothing prescriptive.

Comment: Providing adequate security is also important for protecting personal data. Units at a facility that have not yet been wiped or physically destroyed must be kept secure.

8. Reporting/Recordkeeping

Comment: Maine's regulations refer to the requirements in their universal waste rule.

DEP: What about reporting the tonnage of CEDs accepted from specific municipalities? Is this OK?

Comment: None

Comment: Due to confidentiality concerns, there was an objection to submitting contracts to DEP.

DEP: The recycler can claim that the information is proprietary and therefore confidential. Also, a recycler can redact confidential information in the contracts it submits.

Comment: Even though CRRA is a public agency, we understand the proprietary concerns private businesses have.

**Next Conference Call: November 28, 2007
1:30 to 3:00 p.m.**

- Topics:**
- a) conclude discussion of the standards for recyclers**
 - b) annual fees to be charged to manufacturers to cover the cost of administering the program**