

E-Waste Regulations Advisory Committee
Conference Call Minutes

Date: November 28, 2007

**Topics: Standards for Covered Electronic Recyclers (continued)
Establishing Manufacturer Fees to Cover DEP's Administrative Costs**

Participants:

Name	Affiliation
Tom Metzner	CT DEP
Kevin Sullivan	CT DEP
Carmen Holzman	CT DEP
Mark Latham	CT DEP
Ross Bunnell	CT DEP
Valerie Bodner	CT DEP
Jonathan Bilmes	Tunxis Recycling
Heather Bowman	Hewlett Packard
Gina Chiarella	We Recycle
Carole Cifrino	Maine DEP
Jean Cronin	Hughes and Cronin
Ric Erdheim	Phillips Electronics
Joseph Fainer	Environmental Management Consultants, Inc.
Kenneth Glick	General Electric
Peg Hall	Connecticut Recyclers Coalition
James Hogan	We Recycle
Mike Conklin	Town of Wilton
Jeff Kuypers	Hewlett Packard
Jason Lennell	National Center for Electronics Recycling
Frank Marella	Sharp
Joe Nardone	Eco International
Paul Nonnenmacher	CT Resources Recovery Authority
Kristyn Rankin	ERM
Cheryl Reedy	Housatonic Resources Recovery Authority
Valerie Rickman	Information Technology Industry Council
Irene Rodrigues	Robinson & Cole
Marianick Simon	General Electric
Lori Vitagliano	Regional Water Authority
Joseph Walkovich	Walkovich Associates
Karen Weeks	Kowalski Group
Doreen Zaback	Town of Wallingford

DEP opened the call with the introduction of participants. Call participants were informed that draft notes from the 11/14/07 meeting would be e-mailed to everyone following the meeting and that corrections had been made to the manufacturer's registration form. The revised form had been posted on the department's website but it was acceptable if a manufacturer registered using the older version.

DEP: The purpose of this meeting is to conclude the discussion of standards for covered electronic recyclers and to discuss establishing manufacturer fees for covering the department's costs for administrating the program.

Standards for Covered Electronic Recyclers

1. Auditing

DEP: With regards to auditing recyclers, as required by the law, DEP must at a minimum establish standards equivalent to EPA's Plug-In to E-cycling guidelines. We are also looking at Oregon's and Washington's requirements. How did Maine develop their auditing requirements?

Comment: Recyclers are providing a service to the manufacturers. Maine's regulations require a recycler to allow a manufacturer to conduct an on-site audit during normal working hours provided the manufacturer provides a 24 hour notice.

DEP: Are there any comments or objections?

Comment: There have been no objections to Maine's audit requirements even though it is not included in Maine's e-waste law.

DEP: Do Maine's regulations allow for the state to audit the facility or is it just for the manufacturers?

Comment: Maine already has the right to audit in-state facilities through other state laws. It would not be a bad idea to include allowing the state to audit out-of-state facilities in the E-waste regulations.

DEP: Have there been audits of out-of-state facilities?

Comment: No. But manufacturers have audited facilities in Maine and, so far, all the facilities have opened their doors.

DEP: Are there any recyclers who have a problem with this provision?

Comment: No problem with the audit requirement. Are a manufacturer's audit results reported to the state of Maine?

Comment: A manufacturer has no obligation to report their audit findings to the state. However, the state would hear from the manufacturer if a problem was discovered.

DEP: Is there anything else we should consider? Are there any out-of-state audit concerns?

Comment: No issue with being audited by another state but wonders about the validity of such an audit.

DEP: If an approved recycler has a contract with another party for recycling services, should the contract state that that party is subject to auditing also?

Comment: All facilities should be subject to the auditing requirements. Third-party audits should be required and R2 certification standards should be met.

Comment: Don't understand the third-party auditor. Do not want to see this limit someone's ability to continue business in Connecticut.

Comment: ISO 14001 audit standards include a credible third-party auditor.

Comment: A manufacturer can choose to hire a third party to do the audit.

Comment: But a manufacturer doesn't have to hire a third party – it can do the audit itself.

Comment: Yes, but manufacturers want the flexibility to be able to use third-party auditors.

Comment: Concur.

DEP: Are audits in Maine done by the manufacturer or by third-party auditors?

Comment: Both.

Comment: What about billers that aren't recycling facilities? How do we assure that there is no double billing?

DEP: Law does not limit approvable covered electronic recyclers to recycling facilities. A review of information required to be submitted for the approval process with regards to all relationships the applicant has with transporters, recycling facilities, etc. and auditing will help to avoid double billing. In addition, all involved parties will have to comply with our standards for a covered electronic recycler. What records should be included in an audit?

Comment: In Maine, any records related to Maine's E-waste law can be audited.

Comment: Have there been any objections to that?

Comment: There have been no known objections.

DEP: Other than Connecticut's E-waste standards, is there anything else the audit should cover?

Comment: The purpose of the audit is to ensure that recycling is being done in accordance with all applicable laws and in a responsible manner.

DEP: Which would include training, health and safety plans etc.

Comment: The regulations would not have to be that specific. An auditor should use a checklist or other document to help make compliance determinations.

DEP: Are you comfortable with Maine's audit requirements?

Comment: Yes.

Comment: Third-party auditors should be an option—not a requirement.

Comment: Non-recyclers approved as a covered electronic recycler is an issue. If the approved entity cannot do the counts than it can't put together a bill. Transporters should not be approved as a covered electronic recycler. The approved entity should be able to bill a manufacturer directly.

Comment: So everyone who handles a CED can bill a manufacturer.

DEP: No. But a group of entities can establish a relationship to work together. It is possible for a transporter to be an approved covered electronic recycler.

Comment: DEP is correct to leave this option open.

Comment: Not comfortable with a transporter being an approved electronic recycler.

2. Closure and Surety

DEP: EPA guidelines require electronic recyclers to have a closure plan and surety for closure. During our last call there were issues raised concerning requiring out-of-state facilities to comply with this requirement. It is our intention to require any facility participating in this program to have a closure plan and provide surety even if not required by the state they are located in. Are there any comments?

Comments: None.

DEP: This concludes our discussion of standards for recyclers. There will be additional opportunities to comment on these requirements in the future.

Comment: When will draft regulations be available to review? After the last face to face meeting in January?

DEP: We will try to have a draft out to the group before our face to face meeting on January 14.

Manufacturer fees to cover DEP's cost to administer the program

DEP: An e-mail was sent out discussing the provisions of the law regarding administrative costs including outreach and education. At this point we do not have a budget for 2009 because we are still determining required staffing levels and the scope of our education and outreach. We need to discuss market share because that is what a manufacturers fees is based on. Since televisions and computers are two different markets we will need to divide the administrative costs between the two. How do we do this?

Comment: Other states have faced various challenges in trying to determine market shares. National numbers may not include the smaller manufacturers. With regard to establishing fees other states have used a tiered structure. For example, a manufacturer with greater than 1% market share would pay a certain fee, a market share of .1 to 1% would pay a lesser fee and a market share of less than .1% would pay an even lesser fee. This allows you to use market share but in a more simple way.

DEP: In the tiered approach, how do we get around the TV vs. computer issue?

Comment: In the tiered approach TV vs. computer is not a big issue. You avoid having to divide them up.

Comment: We are comfortable with a tiered approach but not with the tiers mentioned above. Washington used 1%, 5% and 10%.

Comment: We are not comfortable with this type of tiered approach. It creates huge steps in the fees. For example: if a manufacturer had 499 units he would pay \$1,000 and if he had 500 he would pay \$5,000. This is inconsistent with the law that requires a sliding scale.

Comment: We support a tiered structure, however, there would have to be a greater number of tiers to avoid huge steps and to create more of a sliding scale.

Comment: How does this approach get us away from counting?

DEP: We will need assistance with identifying sources for market share data. If there are enough tiers to eliminate large steps of fees, is the tiered approach acceptable?

Comment: Yes.

DEP: Even using a tiered structure, how do we end up with no greater than 100% of the administrative costs when adding up all of the manufacturer's shares. It seems a TV manufacturer should pay its percentage of the television share only and not 10% of the total cost.

Comment: First the department's budget would have to be determined.

Comment: Calculating fees based on percentages sets up a complicated yearly analysis. Tiers get around that.

DEP: So if the department's budget is \$100,000, someone in the 5-10% tier would pay a percentage of that \$100,000?

Comment: Everyone in a certain tier would pay a fixed amount, not a percentage.

DEP: Does Washington include TVs and computers?

Comment: Yes.

Comment: Does the department envision different administration costs for TVs and computers?

DEP: No.

Comment: Our problem is that this is an abstract discussion. We need to know the department's budget and the number of tiers to understand how this will work

DEP: How does Washington avoid collecting more than 100% of their total administrative costs?

Comment: They collect a fixed amount from each tier.

Comment: We are not necessarily recommending Washington's approach—it is complicated.

Comment: How do you apportion market share at 100%? Can you look at the number of units and get a percentage of TVs vs. computers?

Comment: Scope of the products is not the same.

DEP: We could use weight of previous year's returns. If TVs are 60% of weight than 60% of the administrative costs will be paid by the TV manufacturers.

Comment: CEA collects data on the TV side.

Comment: How will you get data for small manufacturers and custom manufacturers?

DEP: Anyone with less than 1% of the market share will not pay an administrative fee.

Comment: Or fewer than 100 units?

DEP: We will try to get the best information on national market share data.

Comment: Not sure we need to split administrative costs by waste type if we use number of units and not weight.

Comment: Simply get data for each manufacturer (both TV and computer) for the number of units sold, add all the manufacturers numbers together, then divide each manufacturer's number by that total to determine their percentage and tier.

DEP: So if tiers are based on the number of units sold the % of market share is not relevant?

Comment: That is correct.

Comment: Washington purchased NPD and E-forecast data for market information. In addition, manufacturers voluntarily submitted sales data for the state.

DEP: Our law says we must use national sales data, but we could extrapolate to the state level if available. What about keeping track of business vs. residential markets? Can the data be that specific?

Comment: Market research firms will ask for information regarding business vs. residential.

DEP: If there is a data source manufacturers agree on, that would be very helpful.

DEP: The law identifies outreach and education as part of the department's administrative costs. What should this entail? What form should it take? What do the towns think it should be?

Comment: CRRA already has a recycling education program. DEP should partner with CRRA to take advantage of their existing infrastructure.

Comment: Some of the costs should be incorporated through the requirements on retailers.

DEP: The law requires DEP to develop the information retailers must pass along to consumers, so that cost should be rolled into the department's administrative costs. Do the towns have any input?

Comment: At a minimum explain the law to residents and advertise how the program will work.

DEP: Should the information provided be town specific or general?

Comment: Information about the law should be general and information about how the program will work should be specific to the town.

Comment: Education about the law does not provide information about how the program will be implemented and is therefore outside of the scope of the law.

DEP: Outreach is undefined and we need to define what it will entail.

Comment: Information for the retailers and general information for the towns is the limit to what manufacturers will fund to make sure the program is up and running. Education and outreach funding cannot require an open checkbook.

DEP: We will be responsible in our education and outreach efforts. We don't see this requirement as an open checkbook.

Comment: TROC does a lot with education and outreach and can provide regional assistance.

DEP: Yes. Much of the educational program will be cooperative.

Comment: In CT, recycler's permit requires them to provide education and outreach.

DEP: We do not want to duplicate efforts.

DEP: Previously, did we hear that there needs to be a distinction between outreach for CEDs and the recycling of non-CEDs? Is that right?

Comment: Did not think of it that way. However, education should not be outside the scope of the law—it should be specifically designed for this program. It should not be about the fact that the law was passed. It should be about what we are doing about it. A central database should be created where people can go to find out what options are available to them for recycling their CEDs.

DEP: The department has to come up with a budget for 2009. It will include a line item for education and outreach. The department is sensitive to the fact that we are spending someone else's money and we will take advantage of current infrastructure and outreach. With regard to sales data services, do you have to pay for that?

Comment: Yes. Washington did pay for it through their administrative fees.

DEP: Are they national?

Comment: Yes.

Comment: Could we go over the decision to divide TV market shares and computer market shares for calculating fees?

DEP: We are considering a tiered approach where a manufacturer's tier is determined by dividing the number of units a manufacturer sold by the total number of TV and computer units sold. Using this approach, TVs and computers would not have to be separate.

DEP: Regarding insurance requirements for approved recyclers, Maine's minimum thresholds for commercial general liability insurance for accidents and emergencies is \$1 million/\$1 million. What about 1 million/2million?

Comment: If something went wrong at a recycling facility, who is ultimately liable? There is a concern that it would fall back to the manufacturer.

DEP: In the case of the computers being dumped in a lake in Minnesota, the generator had to pay some of the clean-up costs.

Comment: Under this program, we won't know the generator. Since manufacturers can't choose the facility it is doing business with, the manufacturer should not be liable for any problems. Does the law provide for that? Minimum limits of \$1 million/\$2 million are lower than what manufacturers look for.

DEP: \$1 million/\$2 million is only for commercial general liability insurance. For pollution liability coverage with 3rd party risk for transporters and for on-site and off-site coverage at facilities, the minimum amounts would be \$3 million/\$6 million.

Comment: Branford requires \$1 million with a \$5 million excess umbrella on transportation with pollution liability on top of that.

DEP: We can set minimum standards but the market could dictate higher amounts.

Comment: The recycler assumes generator status.

Comment: That is only true as long as the facility is in business and there is a contract in place.

DEP: Rather than prescribing a number should we use terms such as "adequate" and "sufficient"?

Comment: You can use either one provided a town has the flexibility to impose higher thresholds.

Next Conference Call: December 12, 2007

1:30 to 3:00 p.m.

Topic: Additional devices to be included in the definition of covered electronic devices