

FINAL
Washington State Department of Ecology
Solid Waste Advisory Council Subcommittee on Electronics Waste
August 29, 2005

The Solid Waste Advisory Council (SWAC) Subcommittee on Electronic Products (E-waste) met on Monday, August 29, 2005 in Federal Way, Washington.

SWAC Subcommittee Members Present: Vicki Austin, Washington Refuse and Recycling Association; Dennis Durbin, Stevens County; Jan Gee, Washington Retail Association; Eric Hulscher, Tacoma Goodwill; Sego Jackson, Snohomish County; Larry King (alternate), AeA; Craig Lorch, Total Reclaim; Mo McBroom, Washington Environmental Council; Suellen Mele, Washington Citizens for Resource Conservation; Grant Nelson, Association of Washington Businesses; Jay Shepard, Washington State Department of Ecology; Bill Smith, City of Tacoma Solid Waste; Cullen Stephenson, Washington State Department of Ecology; Frank Warnke, Advocates, Inc. Also present were members of the Agreement Dynamics facilitation team: Dee Endelman, facilitator, and Ginny Ratliff, notetaker.

Attachment #A to these notes is a list of all participants, including audience members, many of whom are members of the Technical Team.

Group Reports: After an agenda review (see Attachment #B) and group introductions, two reports were made by groups who had held telephone conferences to discuss performance goals and research performance standards.

Performance Goals: Suellen Mele reported that the group's discussions centered around how to measure whether the proposed program is working effectively, and ensures a level playing field among different manufacturers' plans that will be presented to Ecology. She acknowledged those who had participated in the telephone conference calls: Frank Dick, Larry King, Grant Nelson, Butch Teglas, Frank Warnke, Mo McBroom, Jerry Smedes, David Stitzhal, Craig Lorch, Jay Shepard, and herself.

Suellen explained that, although the group had had good discussions, it had not come to a joint recommendation regarding goals. Some members of the group felt it is difficult, if not impossible, to hold manufacturers responsible for meeting specific recycling goals when those goals are dependent upon consumers properly turning in their electronic products.

Some group members indicated it would be good if the legislation were prescriptive, requiring recycling of covered products and ensuring there were convenient sites and good public education about proper handling of

electronic products. Some group members preferred a target recovery rate rather than a prescriptive program.

The group also discussed how plans could include continuous improvement elements, evaluation, and review. They cited ISO 14001 and pollution prevention plans as models for their recommendation.

Suellen explained the group had agreed that setting goals is okay but there are lingering questions about how to set those goals, ensure a level playing field for manufacturers, and whether goals should include enforcement. They also agreed that if manufacturers do not submit plans they couldn't do business in Washington State. She explained that there was a lot of interest in including continuous improvement proposals in the plans.

She asked other group members to comment. Grant Nelson thanked Suellen for taking the lead on the discussions. He noted agreement among the group that the program needs to work for everyone, but that how to measure, achieve accountability, and enforce performance goals has not yet been resolved satisfactorily.

Performance Standards: Dale Swanson presented research done by himself, Craig Lorch, Jay Shepard, Sarah Westervelt, Larry King, Jay Sternoff, and Billy Johnson (see Attachment #C). Ha Tran compiled environment/human health, economic, ethic, export, labor, and worker health and safety standards from Washington intermediate solid waste recycling as well as electronic waste recycling standards from California, Maine, Hewlett Packard, and NEPSI.

August 24 Option Review: Jay Shepard outlined the latest option (see Attachment #D) section by section and SWAC Subcommittee and audience members commented.

Section 1: Definitions – Jay explained that this Section set forth definitions for various terminology used throughout the proposal and noted that wherever “electronic product” was used, it meant “covered electronic product.”

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- Does a retailer have to be a certified collection service provider? (Yes, if they choose to be a collection center.) The example was raised of one-time collection events at Best Buys where HP would use a Best Buy parking lot for collection. (Jay noted the need to clarify that.)
- The Retailers Association met and agreed that if a foreign-manufactured product, not part of a U.S. company, is brought into the state to sell by retailers, retailers are willing to take that on as a manufacturer

responsibility, similar to their own private labels. Therefore, under the definition of manufacturer, that should be included. The group noted that this addresses the concern of responsibility for imports, which has been raised by manufacturers and environmental groups.

- Some solid-waste facilities are not open seven days a week. (Ecology is trying to ensure convenience, yet current practice differs from place to place.)
- Under the “Manufacturer” subsection, every collector may not be under contract and will that preclude new business start-ups? How would a new processor come into the state? Reuse and resale are not included as part of a manufacturer’s plan.
- Costco has a liberal take-back program, because they have their own refurbishing center. Would they not be able to do that? They would deliver end waste to HP, Panasonic, etc. (They would need to be certified.)
- Definition of process or processing should have language on hazardous waste.
- What’s motivation for “unwanted products,” why not just say “covered products?” (The group decided on this wording at the last meeting.)
- There may be a need for definitions to be added.
- In the definition of covered electronic products, computers that are part of vehicles and medical devices need to be excluded.
- To cover Internet sales, it may be helpful to add “regardless of the selling technique used including distance or remote sale” to definition of manufacturer.

Section 2: Requirements: This Section is the basis for the rest of the proposal. All covered electronic products, that are no longer wanted, will go through the processing system: By-pass and residual materials, with no recycling market, may be disposed at legally permitted disposal facilities after processing. This places the onus on the consumer to participate; they can’t just drop covered electronics into a landfill or transfer station unless they are collection stations. Enforcement of this rule will be on the consumer.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- Garbage haulers need to be free from liability if a consumer puts their covered electronic waste in the bottom of a garbage can and it’s unknowingly picked up and disposed. (Vicki and Jay will develop language to that affect for the proposal. Also, when a covered product is visible, a sticker should be placed on it explaining the proper disposal options to the consumer.)
- There should be a ban on non-lined landfills.
- There was agreement that the onus should be on the consumer, and it was suggested to add language that, “All covered products made available by the consumer...”

- It's improbable that e-waste will reach a 100% recycling threshold. For example, in a mandatory recycling environment, like Seattle, they still haven't achieved 100% recycling.
- Consumers must utilize recycling facilities for all unwanted covered electronics products. (The intent is that consumers are responsible to recycle.)
- Making a requirement to recycle is the same as a ban on lined landfills. A ban on lined landfills is opposed by the solid waste industry, but having a review of this matter after 2-3 years put into the legislation would be acceptable to the industry. There needs to be language included allowing for safe disposal. (The purpose of recycling electronic waste is for resource and energy conservation as well as safety and human health. Nowhere in the proposal is it requiring 100% recycling, rather it's getting materials into the processing system. It also doesn't create a ban on landfill disposal.) Despite this explanation from Ecology, the solid waste industry representatives maintained their concern with the current language.
- Vicki, Suellen, Mo, Sego, Jerry, Jay and Craig will work on language for the proposal that will maximize the amount of recycling while at the same time not result in an immediate de facto landfill ban.
- It was suggested to put a ban on lined landfills 2-3 years into the future to allow time to implement the change.
- One SWAC member stated her opposition to electronics in any landfills. She noted that discussions have centered around the difficulty of setting goals because product recycling is based on consumer behavior. She cited the need to require recycling as a way to influence consumer behavior.
- With local bans going into affect on electronics going into landfills, and with the new recycling program going into affect, there will be data generated that can be used for the look-back comparison noted above.
- Does this proposal preclude reuse?

Section 3- Costs to be Borne by Manufacturers Through the Sale of Their Products: The cost of the program for collection, transportation and processing of covered electronics will be paid to the manufacturers as part of the wholesale cost of the product charged to the wholesaler or retailer.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- One member noted that from her retailer and manufacturers' perspectives the embedded fee concept is preferable to a first possession tax. This is simpler, and creates a level playing field.
- The use of the term "collect" implies to some readers that the money is collected at the point of sale. (Jay suggested adding, "Fee shall not be collected at retail.")

- Concerns were expressed that covered products will arrive in the state without the fee having been collected at the wholesale level. Related also, is the fact that wholesalers may be purchasing products from manufacturers for larger distribution than just Washington State. How will manufacturers and wholesalers implement fees that only apply to Washington State? (It's covered in the licensing and registration Sections later. Without a license, products cannot be sold into the state.)
- One participant noted that a fee should be visible at retail because it's educational, and such fee puts pressure on system to keep costs low as possible.
- One member acknowledged that every state has various and/or different fees for doing business there, and those costs are absorbed and embedded in the overall cost of the products.
- The group acknowledged the differences that exist among them about whether the fee should be paid at the retail or the wholesale level or paid directly by the manufacturer.
- One SWAC Subcommittee member raised concern that assigning financial responsibility based on market share is a disincentive to build long lasting machines in order to achieve the program's goals. He also cited a fairness issue because if market share changes, and another manufacturer is no longer in business, he will be responsible for paying for the other manufacturers' waste.
- Other SWAC members supported the market share approach, versus the return share approach.
- Is there a formula that's between return share and market share, so the difference is split between the two? One member suggested that the cost of orphan waste be based on market share, while historic waste should be based on return share.
- One method suggested to reduce orphan waste is to add a clause that if one manufacturer purchases an interest in a U.S. manufacturer, they assume financial responsibility for orphan waste.
- Another member expressed concerned about new market entrants and whether or not they'd be able to handle their return share in the long run.
- One SWAC Subcommittee member noted that NEPSI was not able to resolve the market-share versus return share differences among this group. He suggested that Ecology should take stakeholder input and put the different options in the report.
- One manufacturer noted that a wholesale fee would be more acceptable if manufacturers were automatically deferred to the TPO so that fees would be automatically collected from them.

Section 4- Manufacturer Registration and Licensing: This Section requires that any manufacturer who wants their covered electronic products sold in Washington will have to register their intent to sell, submit a plan, and get a license to distribute.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- What is value added in licensing and registration? (Licensing will ensure that each distribution site is in compliance with the law.)
- Does the license only apply to manufacturers? (It applies to anyone who falls under the definition of manufacturer in Section 1 and could apply to manufacturers, wholesales, and/or retailers.)
- What's the purpose of the license? Couldn't we roll it into one? (Registration is notification to Ecology, while the license is from the Department of Licensing and gives permission to sell in Washington.)
- How is this being enforced on Internet sales? (The Department of Revenue has experience and expertise in this area. However, Jay encouraged others to provide suggestions on this matter.)
- Can we put language in that licensing of manufacturers, for purpose of this act, does not create nexus for any taxation in the state? There is progress on the federal level to create a streamline sales tax.

Section 5- Plans: This Section has not been amended much since the last meeting, except the level of service formula has been expanded.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- Is there an end of life fee? (No.)
- Regarding the third bullet, there has been a lot of discussion on units versus weight. Is the responsibility assigned by industry or one lump sum? Are we going to look at units or weight? (Bifurcating the system—separating computers from TV's—may be one way to do this.)
- Target recovery rate by types covers that.
- Regarding level of service, is the number of sites the number of stores? Why that number? What's the reason behind having manufacturers submit financial assurance plans? (That's where funding comes from for programs, so it's rolled into this Section.)
- By weight provides incentives for manufacturers to design lighter units, which is better for the environment, and since transportation cost is by weight, that would create consistency across the board.
- How close are we to the goal of one site per 11,000 people? (From Snohomish County data, where the consumer pays an end-of-life fee, within the first year there were 20 private collection sites, which is 1 site for 32,000 people. In a high incentive system like the one proposed, it should be easy to achieve a greater number of sites.)
- Are big box or Radio Shacks participating in the Snohomish County system? (No, it's mostly other retailers and small repair shops.)
- WCRC is working to expand the take-it-back network into other counties. The initial exploration is with 5-6 retailers in Yakima and Island Counties.

In Island County, that number is close to matching the formula. The important difference is that these centers have end-of-life fees.

- How will curbside collection be figured in this formula? (Curbside collection would be considered equivalent to other methods that provide convenience to the consumer.)
- Waste haulers noted the possibility of a combination of curbside and take it back approaches. (The intent was to create flexibility, yet we needed a base to start from.)
- We need to clarify equivalencies: Does a location constitute a site? (If a plan says we'll collect our units in the state it needs to be throughout the state. Equivalency needs to be fairly distributed.)
- Can collection events as well as mail back be used for rural areas?
- How do collection sites get allocated amongst various plans?
- There needs to be a provision differentiating urban versus rural. Otherwise it's possible that if curbside collection is done in cities, the ratio would be met, and that could result in a loophole where no collection would occur in rural areas.
- CRT units cannot be accumulated for more than 180 days. That may result in the need to collect when there is less than a truckload. That may not be cost effective, which is one of our criteria for success of this program.
- Is there an ability to opt out of the wholesale fee if one desires to do one's own collection program? (Yes, you'll have to write that into your plan noting how you'll pay for it.)
- There's a loophole for consumer address sales when you include the broader list of small businesses, small governments and charities. (The recommendation is to roll them into the plan.)
- How do we address anti-trust violation? (The difference is between voluntary versus mandatory.)
- Anti-trust is a non-issue; you're purchasing a service that you roll into the cost of doing business. (Jay will get clarification from the Attorney General on state and federal anti-trust law. If necessary, language can be added to create assurances.)
- Suellen has language on anti-trust, which she'll send to the group.
- We need to modify Section 3 to read, "Manufacturers will finance the program."
- Can curbside collectors be considered drop off collections, if there's an additional fee for consumers? How do you make that distinction?
- The facilitator asked the group if they wanted to have options for plan development and implementation whether individually, as a group of manufacturers or in a private-public TPO. Only one SWAC member opposed the multiple option approach out of concern for level playing field. An audience member stated that this approach could not be implemented and it was too confusing.
- Some gave the opinion that the market will drive everyone to the lowest cost system for collection, transportation and processing.

Section 6- Government Electronic Products Recycling and Procurement Practices:

This Section was not discussed.

Section 7- Existing Collection, Transportation, and Processing Services to Be Used: This Section isn't to preclude new business, but to use the existing services to extent we can.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- Does requiring the use of in-state services result in a problem from the Attorney General's perspective? (Jay will check.)
- One audience member noted that using the language, "... shall assure that existing... services within the state are used," might be more demanding than Ecology necessarily wants.
- A SWAC member indicated that haulers appreciate this language because there is a privately run system in place and it's more economically viable for everyone to use that system.
- One audience member stated his desire to take back product to his factories that are out of state. (The proposal doesn't preclude that; it just needs to be written as such in the manufacturers' plan.)

Section 8- Registration of Collectors, Transporters and Processors:

This Section requires that anyone who provides collection, transportation, or processing be registered with the Department of Ecology to ensure compliance with state law.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- What if we're collecting our own product (e.g., retailer, HP, or Sharp)? Do we still have to register? (Yes, the Department wants to know the system being used.)
- This Section calls for rates charged and service areas covered. That is proprietary information.
- Doesn't the non-disclosure clause in this plan cover that issue?
- From a competitive standpoint, area covered could be problem. (Jay asked if the group wanted to engage in a "chain of custody" discussion. He noted the need for local governments to have assurances that proper processing is taking place.)
- One audience member noted that we already have a recycling rule that creates confidentiality. Could this proposal be expanded into the existing recycling survey?

- The purpose of disclosing the “area covered” is to help manufacturers find partners to work with. If your company provides statewide services, that would be your geographic area, but if you’re a hauler who only serves a certain area, then manufacturers would know whether they could rely on your services based on the area you serve.
- Registration requirements should be different for collectors than for transporters and processors. If a small retailer is a collector only, these requirements are too onerous.
- This is the Section where we need to look at recycling standards, export, minimum wage, and prison issues. Prisons are exempt from minimum wage issues, so we might need different language to preclude the use of prison labor. Also, it might be useful if Ecology did rule making on these issues.
- This Section is an enforcement and accountability tool that we think is critical. We have an obligation to ensure that collectors, transporters and processors are complying with the law.
- Are there fees levied in this Section? Small retailers aren’t going to pay a fee. (Fees are for fixed collection sites.)
- Are collectors liable for where the covered electronics products ultimately end up? (Not if they were drawn from the approved Ecology list.)
- In California, the Department of Toxic Substances is inspecting all collection facilities and this appears to be working well. At this point, there have been no audits yet. An audience member noted that the system is well funded, and there’s no reason to ship off shore.
- With CRT glass, our only U.S. option is to send to lead smelters, which are superfund sites. Can I ship CRT glass off shore and recycle it or do I have to disassemble in WA? (There’s no intention to preclude shipping offshore, as long as the country that is receiving it is compliant with international law.)
- Shipping e-waste and CRT glass to non-OECD countries for recycling is not allowed under the Basel Convention; equipment shipped there can be only for reuse.

Section 9 – Green Track Label:

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- This is a great concept, but the reality is manufacturers don’t participate in these programs on a state-by-state basis.
- This is a nice carrot for manufacturers and is probably one of the strongest design standard incentives. It may or may not result in more product sales.
- Could we tie preferential buying by the State for manufacturers whose products achieve this certification?
- There are “green buyers” and this will help them make informed choices.
- Does this cost money? How much? Is this something you’ll pay for with funds collected? This is a question the Legislature is going to ask.

- The Green Track Label should be based on a standard, not on improvement.
- If we include this voluntary provision, one participant noted that, at some point, someone would attempt to make Green Track a regulatory requirement and we should safeguard to prevent that.
- Are there programs like this that exist somewhere else? One audience member noted Germany's Green Dot Program, but said it's not successful in terms of cost. (Jay noted that Germany's program is very different from the one proposed here).
- The EPEAT program was a voluntary effort, put together by EPA and stakeholders. EPA would like to use that as a national procurement process. It's better to focus on a national effort than a state effort.

Section 10 – Confidentiality, Exception

This Section was not discussed.

Section 11 – Misbranding: The purpose of this Section is to ensure that units sold are labeled appropriately.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- Language needs to be written in to protect retailers in case a manufacturer mislabels a product. The suggestion was made to include the words, "knowingly distribute."
- It was also suggested that Ecology give notification to retailers about this new proposal and give them an opportunity to clear their existing inventory.
- Does this dovetail with the registration process? One SWAC member noted that he has a computer he ordered in the mail from Florida that has no label on it.

Section 12 – Reuse of Covered Electronic Products: The 2488 Legislation mandated we look at reuse. There's not a desire to preclude or discourage reuse. However, the concern is how to ensure a reused product is not paid for or counted multiple times in the system and that the collection, transportation, and processing system doesn't pay for the reuse infrastructure. If a unit or parts of a unit are refurbished and made more useable, that would be part of recycling. However, if it's just cleaned up and resold, it shouldn't count.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- We want to encourage reuse. If a recycler sorts out and sells a used computer (reuse), that recycler is not being paid by the manufacturer for recycling. Does this discourage processors from selling for reuse?
- The reuse marketplace needs to stand on its own. If it costs more to refurbish a product than it can be sold for, the product should be recycled.
- How can the reuse marketplace differentiate between products sold in Washington versus another state or another country?
- Goodwill in California culls out reusable products and is paid only for pieces going into recycling.
- Charities in California are all registered on the Waste Board's website. And, depending upon the item donated, a charity may receive more for reselling it than placing it in recycling.
- Perhaps as part of education campaign, we should encourage consumers to donate their better or newer equipment to charity.
- Let's create incentives to make the reuse program work. We might try implementing an approach where reuse with contracted partners does count toward recycling goals, but there is no financial reimbursement required.
- Reuse is preferred over recycling, and we don't want to discourage it. (Recycling law considers reuse as a higher use, too.)
- What percent of the equipment in our waste stream could be reused? HP said it's about two percent at collection events. Total Reclaim noted it depends upon where the products come from.
- Washington is implementing new energy efficiency standards. Older equipment won't be as energy efficient. Won't this be contradictory?

Section 13: Consumer Information – This Section requires manufacturers to inform consumers about how to recycle their covered electronics; this information must be provided to the original purchaser and available to the owner at the end-of-the-product's life.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- Is there a role in education for retailers? What would work? One idea would be an informational flyer included when a covered electronic product is sold. (Information could also be provided in the warranty statement.)
- It's important that information be given to the consumer when they purchase their new computer because at that time they will be ready to discard their old one.

Section 14: Waste Reduction, Recycling and Litter Control Tax – The Litter Control Tax already exists in Washington, and manufacturers, wholesalers and retailers of covered electronic products would be added to

the group of industries required to pay the tax, which supports waste reduction, recycling and litter control.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- Every manufacturer, retailer, and restaurant in the state is taxed so as to provide education and litter pick up along the roads. It's been expanded to include recycling of paper, plastic, and glass. Adding covered electronics to this tax would be a major expansion of the law.

Section 15: Managing Existing Products –This Section provides for the collection, transportation, and processing of covered electronic products that were either purchased prior to the effective date of this act or were bought out of state and brought here when the consumer relocates to Washington.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- Change the reference to the formula contained in Section “15” to Section “3.” Isn't this unnecessary if the program is based on current market share?
- Change the title of the section to “Managing orphan, migrated and historic products.”

Section 16: Identification Labeling –This Section requires a label on each major piece of a covered electronic product, including both the CPU and monitor if they can be unplugged from each other.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- To make the language clearer, replace “cannot be removed,” with “permanently affixed label.”
- June 30, 2006 seems too near term for manufacturers to respond if they are not already labeling their products.
- Fry's is selling a lot of shelf products that you can buy and assemble your own computer. (We're trying to address this here.)

Section 17: Restrictions on Hazardous Substances – This Section requires manufacturers who sell products in Washington to comply with the European Union's directive restricting use of certain hazardous substances in electrical and electronic equipment. Most manufacturers in the world will be complying with that directive in order to sell products to Europe.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- What is the purpose of this Section? (To discourage the use of certain hazardous substances in computers sold in Washington.)
- California included the same requirement.
- This is extremely important because it sends an important message about the values contained in the legislation.
- Jay will get the Attorney General's opinion on referencing rules and legislation from "other countries."
- It was suggested that an alternative would be to simply reference California law instead.
- There will likely be a concern about delegation of legislative authority. Jeff Olsen and Jay will work together to address this.
- Several participants noted that everyone will have to comply with EU standards, at some point, to compete in the international market.

Section 18: Deferral to National Program –This Section sets forth the precedence and voidance of this legislation if a national electronic product recycling system is passed by Congress.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- It was suggested to remove the language for Congress to provide funding and add language that "meets the goals of this act and includes a mechanism for funding."
- Change the wording, "1 through 16" to "1 through 29."

Section 19: Financial Assurance –This Section requires manufacturers to provide a financial assurance mechanism for any potential liability costs associated with the clean up of sites used for collection, transportation, and processing of covered electronic products.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- Some participants said that transporters, collectors, and processors should provide financial assurance as part of being registered and receiving their license. (Doesn't include retailers.) The manufacturer shouldn't have to provide financial assurance.
- Put the responsibility on the manufacturers to ensure that the people that they contract with do have finance assurance.
- However, there may be financial assurance on the day a contract is signed for these services, but who is ultimately responsible if that assurance becomes no longer valid?
- Can we distinguish between small collectors, like in the prior language?
- There's no reason for a collector to stockpile product until it goes in the system.

Section 20: Penalties – This Section sets forth the penalties for failure to register as a manufacturer, collector, transporter, or processor of covered electronic products. It also carries penalties for selling equipment without a label, for failing to submit a plan, and for the unapproved disposal of electronic products.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- Put language in that exempts small retailers.
- Delete “Each manufacturer of illegally disposed electronic products shall be assessed a fine of not less than \$100 for each of their brand labeled products.”
- Shouldn’t there be penalties for failure to comply with approved plans?

Sections 21-27: Materials Management and Financing Authority –These Sections set forth a quasi-public/private Materials Management and Financing Authority (third party organization or TPO) that is run by a board of directors who has the authority to set fees and use the funds to create a program for the collection, transport, and processing of covered electronic products for members of the TPO. Like manufacturers, the TPO must register with the state, develop a plan for processing electronic products, and collect and disburse fees to pay for these services for its members. In addition, the TPO can issue bonds, make low-interest loans to private industry for economic development, and will hold the state harmless for financial liability. Membership in the TPO is voluntary and manufacturers may opt to use these services or not.

Comments, questions, concerns (and Ecology responses) regarding this Section included:

- An initial concern about the TPO is its complexity. Several participants suggested that small retailers (who sell under their own brand) will likely use it while big retailers (who sell under their own brand) will likely create a separate TPO in collaboration with other manufacturers.
- Does this authority only implement one plan that they negotiate with their members? (Yes).
- One audience member noted that he had set up a manufacturer’s TPO with three companies, and it took two and one-half years. Having an established, government TPO as a model, such as the one described in this option, would have been helpful.
- SWAC Members recommended adding a member of the public sector and a recycler to the governing board. In response to a concern raised about conflict of interest for recyclers, a technical advisory panel was

recommended that would include haulers and other key players in the collection, transportation, and processing system.

- One member expressed concern that this TPO should be manufacturer driven and that it needed only one member of the public on the Board.
- In response to the facilitator's question regarding whether manufacturers would find the TPO attractive, several manufacturers opined that they would examine each of the options and decide which would best benefit their business.

Final Meeting Discussion and To-Do List: Before adjournment, SWAC members listed additional areas still to be discussed and created a to-do list:

- Vicki, Suellen, Mo, Segó, Jerry, Craig, and Jay (convener) will develop language banning unlined landfills, maximizing recycling, not creating "de facto" lined landfill ban (knowing consumers may not comply 100% with recycling), and incorporating a revisiting of the issue in a few years.
- Vicki and Jay will work on language allowing garbage haulers to be free from liability if a consumer puts their covered electronic waste in the bottom of a garbage can and it's unknowingly picked up and disposed of.
- Suellen will convene another conference call on performance goals.
- Jay will get clarification from Attorney General's Office on state and federal anti-trust law around manufacturers agreeing on fees for collection, processing, etc. of e-waste products; Jay may need to add language to increase manufacturers' comfort level on this issue.
- Suellen has language on anti-trust, which she'll send to the group.
- Jay will check with the Attorney General's office regarding Section 7 requirements for in-state use of collection, processing, etc. companies. Is this an issue from their standpoint?
- Jay will get an AG opinion on Section 17, rules/legislation from "other countries." It was suggested that if the AG has a problem, you could reference California law instead. Jeff Olsen will work with Jay to address it.
- Jay needs to make language consistent throughout that electronics are "covered electronics."
- Ginny needs to find a new location for the October 7 meeting. Laquinta is booked.

Also, the group noted two areas needing further conversation:

- How to incentivize reuse.
- Performance goals.

Timeline and Process: The group discussed how to deal with areas where there is still disagreement. Ecology will describe what the differences are in the report that accompanies the proposal and will make recommendations for resolution of those disagreements. SWAC Subcommittee members will have an opportunity to clarify their positions.

It was agreed that by September 9, Jay would get a draft of the proposed option out to the SWAC Subcommittee for comments. The Committee needs to get their comments back to him by September 23. By September 27, Jay will complete a draft of the report to accompany the proposal and will circulate it to the SWAC Subcommittee for review. The purpose of the final meeting will be to review the draft proposal and celebrate the Subcommittee's accomplishments.

Meeting Date Change: The final meeting of the SWAC Subcommittee on Electronics Waste has been moved from October 4, 2005 to Friday, October 7, 2005. (Dale Swanson will serve as Frank Warnke's alternate at that meeting.)

The meeting adjourned at 3:00 p.m.

Attachment #A
Participants in August 29, 2005 Meeting

Vicki Austin
Terry Byington
Dan Coyne
Frank Dick
Kim Ducote
Dennis Durbin
Dee Endelman
Ric Erdheim
Art Fitcher
Jan Gee
Vinay Goel
Tiffany Hatch

Eric Hulscher
Sego Jackson
Larry King
Craig Lorch
Frank Marella
Mo McBroom
Suellen Mele
Grant Nelson
Jeff Olsen
Ginny Ratliff
Lisa Sepanski
Jay Shepard

Jerry Smedes
Bill Smith
Doug Smith
Rita Smith
Cullen Stephenson
Jay Sternoff
Dale Swanson
David Thompson
Ha Tran
Frank Warnke

Attachment #B

Agenda
Washington State Department of Ecology
Electronic Product Recycling and Reuse Project
Meeting # 5: August 29, 2005
La Quinta Hotel, Federal Way, WA

Overall Project Goal:

Develop recommendations for implementing and financing an electronic product collection, recycling, and reuse program for Washington State.

Meeting Purpose: To complete the discussion of financing options and to talk about the final meeting

Desired Outcomes:

- Record of the group's comments on the option provided
- Plan for final meeting

Time	Topic
8:30 a.m.	Informal Gathering Time—coffee and light refreshments available
9:00 a.m.	Welcome, Introductions and Agenda Review
9:10 a.m.	Report from Task Groups <ul style="list-style-type: none">❖ Performance Group: How can we know if the e-waste recycling system is working?<ul style="list-style-type: none">○ Report of discussions○ Q & A❖ Accountability Group: What should recycling standards be?<ul style="list-style-type: none">○ Report of discussion○ Q & A
10:00 a.m.	Review of August 2005 Option <ul style="list-style-type: none">❖ Background: Presentation of the current option, based on stakeholder comments .❖ Discussion of August 2005 Option ratings<ul style="list-style-type: none">○ What are the areas of agreement?○ What are the areas of disagreement?○ What will it take for this option to be acceptable? Can you find support among the group for your suggestion?
10:30 a.m.	Break
10:40 a.m.	Review (continued)
Noon	Lunch
1:00 p.m.	Review of August 2005 Option (continued) <ul style="list-style-type: none">❖ Summary of conclusions from today's discussion❖ Next steps
1:30 p.m.	Issues from Members: An opportunity to bring issues and new information to share with the full group.
2:00 p.m.	Break
2:15 p.m.	Meeting 6 Preparation Next Steps <ul style="list-style-type: none">❖ Ecology: Process for drafting final report to the legislature and content of Meeting 6.❖ Confirm Date: October 4, 2005❖ Desired Outcome: Review of Ecology Draft Report❖ Schedule
3:00 p.m.	Adjourn

Attachment #C

**Performance Standards Research –
See Materials for 8/29/05 Meeting on Ecology's Website**

Attachment #D

Electronic Product Recycling Proposal August, 2005

Purpose: Create and finance a collection, transportation and processing system within the state that will assure recycling of unwanted electronic products.

Section 1. Definitions

Terms used in this chapter have the meaning given to them in this chapter unless the context clearly indicates otherwise.

"Brand" means a term, design, or trademark used in connection with the distribution and sale of one or more electronic products.

"Certified collection, transportation and processing systems and service provider" means:

- Any entity licensed and permitted under all required state and local laws to provide collection, transportation or processing services in the state; and
- Are registered with and certified by the department as a company authorized to provide collection, transportation and processing services under this act.

"Cover electronic product" means Desktop or personal computers, computer monitors, portable computers, and televisions. The universe of products covered includes historic, orphan and migrated units that are in the state. Only products owned by current residents within the state of Washington are included.

"Current resident" means any one living within the geographic area of Washington state at a location that is a residential address and is verified by a valid Washington state driver's license or other legally acceptable form of identification.

"Collection location" means a location in the state that accepts from consumers at no cost, unwanted electronic products. Collection locations must be staffed, in operation every day of the year, except state legal holidays, and be permanently established. Collection locations may only be operated by a certified collection service provider under contract with a manufacturer in accordance with the manufacturer's approved plan. Collection locations do not include temporary collection locations, short-term collection events, or other locations that are not permanently established, routinely available and conveniently accessible. Collection services may be provided in association with retail stores provided that the retailer commits to participation in the plans required herein and is a certified collection service provider.

"Manufacturer" means any one that sells new to the public a brand of electronic product in the state of Washington and includes:

- Original Equipment Manufacturers whose products are sold under brand names owned by the manufacturer, its subsidiaries and related companies;
- Assemblers of covered electronic products that use parts manufactured by others and sold under the assemblers brand names owned by the assembler, its subsidiaries and related companies;
- Retail establishments that sell covered electronic products under their own brand names, its subsidiaries and related companies that are assembled for them by others; and
- Retailers that assemble and sell covered electronic products directly to the public.

"Processed" or "processing" means disassembling or dismantling products to recover materials contained therein and prepare those materials for refining or reuse in new products. It may also include salvaging parts to be used in new products.

“Unwanted product” means covered electronic product that has no value to its owner to perform the functions for which it was designed.

Section 2. Requirements

All covered electronic products will be processed by certified processors as required in section 8 of this act, through the approved systems established by manufacturers, in order to recover materials and prepare them for recycling markets. By-pass and residual materials with no recycling market may be disposed at legally permitted disposal facilities after processing.

Only covered electronic products owned by current residents of the state of Washington are included.

Section 3. Costs to be born by manufacturers through the sale of their products

There shall be a fee paid to manufacturers as part of the wholesale price of the product charged to the wholesaler or retailer. The fee may be recovered at the point of sale as part of the retail price of electronic products. Fees collected will be used to pay for the services necessary for the collection, transportation and processing of electronic products within the state of Washington. When the retailer is the manufacturer, that retailer will provide its own funding to support its planned collection, transportation and processing services.

At the end of each calendar year, the total quantity of unwanted products processed will be calculated and processed percentages will be apportioned to each manufacturers plan. Percentage of financial responsibility will be based on the market share of new product sales within the state from the previous year based on reports required in section 4, C.

Section 4. Manufacturer Registration and Licensing

All manufacturers must register with and be licensed by the state of Washington for the privilege of selling their products in this state.

A. Registration

Within 90 days of the effective date of this act, all manufacturers must register their intention to sell covered electronic products into the state of Washington by submitting notification to the department of that intent. The notification must include:

- Name of Manufacturer;
- Product brand names that the manufacturer intends to sell within the state;
- Methods of sale used; and
- Name of the highest level individual within the manufacturers organization responsible for the sales of the manufacturer's products within the United States and Washington state with associated contact information and signature of those individuals.

In order to receive a license to sell electronic products, manufacturers must first submit a plan that demonstrates how they will provide an electronic product collection, transportation and processing system within the state with a timeline for implementation for approval from the department.

B. Electronic Products Distribution License

1). No manufacturer may distribute, or have distributed on its behalf, an electronic product in this state until a license to distribute has been obtained by that manufacturer. An annual license is required for each out-of-state or in-state distribution location that distributes electronic products in Washington state. An application for each location shall be filed on forms provided by the master license system and shall be accompanied by an annual fee of five hundred dollars per location. The license shall expire on the master license expiration date.

2). An application for license shall include the following:

- (a) The name and address of licensee;
- (b) A registration certification from the department certifying compliance with the requirements of this act; and

(c) Any other information required by the department by rule.

3). The name and address shown on the license shall be shown on all labels, pertinent invoices, and storage facilities for electronic products distributed by the licensee in this state.

4). If an application for license renewal provided for in this section is not filed prior to the master license expiration date, a delinquency fee of three hundred dollars per week of delinquency shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued. The assessment of this delinquency fee shall not prevent the department from taking any other action as provided for in this chapter. The penalty shall not apply if the applicant furnishes an affidavit that their products have not been distributed subsequent to the expiration of the prior held license.

C. Maintenance of certification and licenses to do business in the state of Washington – Reporting requirements

All manufacturers that wish to have the privilege of selling their branded electronic products into the state to consumers shall report the number and type of products sold into the state by brand name. Sales information shall be collected by the seller of electronic products to the consumer. Seller reports will be given to each manufacturer of each brand and to the Department, annually on a calendar year basis. Manufacturers shall summarize sales data for all of their products reported sold into the state of Washington and submit that report to the department. Manufacturer reports must be received by the department no later than February 15th of the year following the reporting period. Failure to submit reports to the department will result in the revocation of the privilege of selling products into the state.

Section 5. Plans

A. Plan requirements

Plans will demonstrate how the manufacturer(s) will provide services for the collection, transportation and processing of unwanted covered electronic products conveniently, permanently and continuously, with no additional cost to the consumer. Plans must be written in a manner that will assure ongoing process improvements in order to continually seek opportunities to increase recovery of unwanted electronic products and reduce overall costs.

Manufacturers may write individual plans or may participate as a member of a group plan in collaboration with other manufacturers. Manufacturers may also elect to participate as a member of the Materials Management and Finance Authority established in sections 21 through 27 of this act. Manufacturers that choose to participate as a member of the Authority will opt into a standard program plan, designed and operated by the authority, with the full and active participation of member manufacturers.

Manufacturers are encouraged to collaborate with electronic product retailers, certified collectors, transporters and processors, certificated waste haulers, recycling businesses, and local government solid waste management planning jurisdictions in the development of their plans.

Plans must contain the following elements:

- Collection, transporting and processing systems that will be utilized;
- Collection, transportation and processing service providers;
- Target recovery rates by type and number of units that will be collected;
- Use of funds collected;
- Accounting and reporting systems that will be employed to track progress toward meeting target recovery rates and document product sales within the state;
- Timeline including startup and implementation with associated progress mile stones with anticipated results;

- A financial assurance plan for cleanup of sites related to collection, transportation or processing of unwanted electronic products per section 19 of this act; and
- Public information campaign to promote the continued use and reuse of covered electronic products and end of life management of the products by the final users. Manufacturers will work in collaboration with the department and local governments in the development and implementation of this public information campaign.

The plans will be designed to build upon and utilize existing infrastructure and businesses in the state to the extent practicable and result in the most cost effective approach for collecting, transporting and processing for the citizens of the state.

B. Level of Service

1). Collection Sites

Plans must assure that covered electronic products collection services are available to all citizens of the state currently residing within its geographic boundaries. The services must be at a level as least as convenient to purchase electronic products. The number of collection locations required in the state will be based on the most recent U. S. Census Bureau Economic Census of Retail Trade in Washington, combining the number of warehouse clubs and superstores, computer electronics stores and radio, television and other electronics stores. According to the 2002 Economic Census there were 536 such stores in the state. Therefore, there shall be at least one location for every 11,200 people in the state and distributed evenly across the state based on county populations. The number shall be upgraded with each subsequent Economic Census so as to keep pace with the growth of the state over time.

Collection service providers may offer collection services in forms different than collection sites if those alternate services can be demonstrated to provide equal or better convenience to the citizens of the state at equal to or less than the same cost and will realize increased recovery of unwanted electronic products. The alternatives must be permanent and continuous so as to assure the consumer the opportunity to return unwanted electronic products any day of the year, except state recognized legal holidays.

Rural areas without commercial centers, unincorporated communities, or areas with widely dispersed population may be served by collection services at the nearest commercial centers where electronics are sold in the same or neighboring county or by mail-back systems. All collection service providers must be registered pursuant to section 8 of this act.

Except as provided in section 6, this level of service will be provided to:

- Private individuals;
- Small businesses;
- Government;
- School districts;
- Institutions of higher education; and
- Charities.

Plans will be updated periodically based on performance measures established in the plans so as to continuously improve opportunities to recycle unwanted electronic products within the state, and to accommodate changes in products and in response to new collection, transportation and processing technologies that improve efficiency and effectiveness and reduce overall costs. Plans will be updated as prescribed in the plans and at least every four years.

The state solid waste management plan and local government solid waste management plans must be reviewed, and updated as necessary, to assure compatibility with this act.

Section 6. Government Electronic Products Recycling and Procurement Practices

A. State government, first class cities¹, class A and AA counties² and the state institutions of higher education will establish, operate and maintain a method to collect and prepare for reuse or sale for reuse or recycling, unwanted electronic products that have been purchased and were used in the course of doing their business. Other governmental entities within the state may participate in this program.

For all state and local governments and political sub-divisions, the Department of General Administration shall establish the system under chapter 43.19.1919 RCW related to surplus properties management and RCW Chapter 43.19.1919 RCW Surplus computers and computer-related equipment -- Donation to school districts or educational service districts, and will make that system available to use by all state government agencies, counties, cities, school districts and all other political sub-divisions within the state.

The Department of General Administration will assure that their surplus and unwanted electronic products, other than those sold as individual units to private citizens, are managed only by registered transporters and processors. They will further assure that their products are directed to legal secondary materials markets by requiring a chain of custody record that documents to whom the products were initially delivered through to the end use manufacturer.

This section does not apply to covered electronic products that are leased or purchased through contracts containing manufacturer take-back requirements.

Covered electronic products that are collected, transported and processed may not be included in meeting manufacturer target recovery rates.

B. Beginning in fiscal year 2007, all state government, first class cities³, class A and AA counties⁴ and the state institutions of higher education that procure electronic products shall incorporate manufacturer product take back requirements within all bid requests, purchasing contracts and purchasing agreements, regardless of quantity purchased. Instructions on end of life management and return to manufacturers will accompany all equipment throughout its useful life. Any governmental entity in possession of electronic products at the end of useful life shall follow return instruction explicitly. All units purchased under these requirements shall not be sold or released in anyway to a private citizen for personal use. Should any part of the returned units be utilized in new or refurbished products, all identifying marks, labels and information, including digitally recorded information, related to previous governmental ownership shall be removed and destroyed.

Section 7. Existing collection, transportation and processing services to be used

Manufacturers shall assure that existing collection, transportation and processing systems and services within the state are used, in order to minimize costs. This use of existing services is not intended to preclude new entrepreneurial activity or growth and development of new businesses within the state. Rather, the intent is to use existing services to maximum extent practicable in order to provide the most cost effective systems for recycling of electronic products to the citizens of Washington State.

Section 8. Registration of Collectors, Transporters and Processors

Each collector, transporter and processor of covered electronic products in the state of Washington shall register with the Department. The registration shall include all identification requirements for licensure in the state of Washington, geographic area of the state that they serve, and rates charged for services.

¹ Aberdeen, Bellingham, Bremerton, Everett, Richland, Seattle, Spokane, Tacoma, Vancouver, Yakima

² King, Pierce, Snohomish, Clark, Yakima, Benton, Spokane

³ Aberdeen, Bellingham, Bremerton, Everett, Richland, Seattle, Spokane, Tacoma, Vancouver, Yakima

⁴ King, Pierce, Snohomish, Clark, Yakima, Benton, Spokane

A registered service provider list will be assembled by the department and will be made available to manufacturers required to write plans upon their request.

Registration will be renewed annually and must be accompanied by a report containing:

- Manufacturer(s), governments and businesses with which they have contracted for services; and
- Quantities of covered electronic products and to whom the products or recovered materials were delivered foreign or domestic, by number of units and weight and what the materials were used for, separately accounted for by the TPO operated program, independent plan programs, all covered electronic products collected from governments and from large businesses.

All registered collectors, transporters and processors receiving certification of registration from the department must be in and remain in compliance with all state and federal regulations governing wages including compliance with the state minimum wage, worker safety and health requirements and environmental regulations. All shipments must comply with all state and federal environmental, import and export laws, all applicable laws of receiving countries and all applicable international laws and agreements. Failure to be in full compliance with these regulations will result in the denial or revocation of certification.

Section 9. Green Track Label

Each manufacturer that demonstrates product improvements that lead to improved product recyclability, use of recycled materials in the production of new products and design changes that eliminate toxicity of materials contained in the products, shall be recognize as on the Green Track and will be provided with a label from the department which they may use in advertising and promotion of their products. The department will create rules that will establish the qualification requirements. Green Track is voluntary. Applications for Green Track – Electronics Manufacturer, will be accepted from any manufacturer that is in compliance with this act.

Section 10. Confidentiality, exception.

It shall be a misdemeanor for any person to divulge any information provided under this section that would reveal the business operation of the person making the report. However, nothing contained in this subsection may be construed to prevent or make unlawful the use of information concerning the business operations of a person in any action, suit, or proceeding instituted under the authority of this chapter.

Section 11. Misbranding

No person may distribute misbranded or non-branded electronic products. An electronic product shall be deemed to be misbranded if it is:

- a. Bears any statement, design, or graphic representation relative thereto which is false or misleading;
- b. Distributed under the name of another electronic product; or
- c. Labeled in a manor as to render it unlikely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Section 12. Reuse of Covered Electronic Products

There will be no effort to direct or control free markets for reuse of covered electronic products. Every effort shall be made to encourage continued use of covered electronic products with remaining functional value. Product reuse will not be included as part of the recovery rate established as a standard or share of responsibility.

Section 13. Consumer Information

Manufacturers must inform consumers about how to recycle their covered electronic products at end of life. This information must be provided to the original purchaser and be available to the owner of the product at end of life.

The Department of Ecology, in collaboration with manufacturers, wholesalers and retailers of covered electronic products and local governments, will promote covered electronic product recycling and product stewardship by:

- Posting information where to recycle unwanted electronic products on the internet;
- Providing information about recycling covered electronic products through a toll free telephone service;
- Listing certified collection, transportation and processing service providers on the internet; and
- Carrying out an advertising campaign to raise public awareness of covered electronic product recycling issues and opportunities.

Section 14. Waste Reduction, Recycling and Litter Control Tax

Manufacturers, wholesalers and retailers of covered electronic products within the state are added to the group of industries required to pay the waste reduction, recycling and litter control tax established in RCW 70.93.

Section 15. Managing Existing Products

Products that have moved into the state after being purchased in another state by their owner when their owner was a resident of another state will be treated as a product sold in the state when they become unwanted products.

Unidentifiable products and products sold prior to the effective date of this act will be managed as products sold in the state when they become unwanted. Costs for collection, transportation and processing of these products will be paid for through cost sharing in accordance with the distribution formula contained in section 15 of this act.

Section 16. Identification Labeling

As of June 30, 2006, all covered electronic products sold into the state of Washington shall be brand labeled by the manufacturer of the products. Manufacturer brand labels shall be affixed in such a way that they cannot be removed. These labels will include brand and name of manufacturer.

The label will be placed on the main unit of each product. A CPU, computer monitor or television set are each considered main units.

Section 17. Restrictions on Hazardous Substances

Electronic products sold into the state of Washington must comply with the European Union's directive, "restriction of the use of certain hazardous substances in electrical and electronic equipment," (RoHS).

Section 18 Deferral to national program

Sections 1 through 16 of this act become void upon the establishment of a national electronic product recycling system established by and funded through an act of Congress.

Section 19 Financial Assurance

Each manufacturer will establish a financial assurance mechanism to provide funding to cover costs of, and any potential liability costs associated with, cleanup of sites used to provide required contracted collection, transportation and processing services. This financial assurance can be in the form of insurance policies, fund accounts, investments or other mechanism that will assure funds immediately, if needed.

Section 20 Penalties

Failure to register as an electronic product collector, transporter or processor Any person that collects, transports, processes or disposes of covered electronic products in ways not approved within the plans or is not registered with the department as authorized to provide such services is in violation of the act and will pay a penalty of \$10,000 for each violation and \$100 for each covered electronic product handled.

Failure to register as a covered electronic products manufacturer Any manufacturer that has not registered with the department as a manufacturer selling covered electronic products within the state and sells covered electronic products within the state will be assessed a penalty of not less than \$200 per each unit sold upon first citation of infraction and \$1,000 per each unit sold upon the second and each subsequent citation of infraction.

Sale of non-brand label equipment prohibited Any manufacturer, wholesale or retail business selling non-branded covered electronic products within the state after June 30, 2007 shall be in violation of this act and will be assessed a penalty of not less than \$200 per each unit sold upon first citation of infraction and \$1,000 per each unit sold upon the second and each subsequent citations of infraction.

Failure to submit a plan Any manufacturer that has not submitted and received approval from the department, a plan shall be in violation of this act and will be penalized on the basis of \$1,000 for each covered electronic product sold into the state.

Unapproved disposal of covered electronic products prohibited No person shall dispose of covered electronic products within the state of Washington outside of the systems established within the approved plans. Any person disposing of covered electronic products in ways other than those listed in the plans shall be found in violation of this act and will be assessed a fine of not less than \$100 for each unit. Each manufacturer of illegally disposed electronic products shall be assessed a fine of not less than \$100 for each of their brand labeled product. Funds collected under this provision shall be used to supplement manufacturers' consumer education programs.

Sections 21 through 27 of this act constitute a new chapter within title 70 of the revised code of Washington - these sections will be known as the MATERIALS MANAGEMENT AND FINANCING AUTHORITY

Section 21 Purposes -- Construction.

Economic development and environmental protection are dependent upon each other. Society relies upon environmental resources for the materials of commerce. Society also depends upon the free services of the environment that are important to sustaining all life, such as healthy water, air and safe surroundings. Society must live within the capacity of the environment to provide both.

It is essential to the health, safety, and welfare of all Washington citizens that material resources, once extracted from the environment for commercial use, remain commercially available and usable within the economic system. Beyond the associated environmental benefits, doing so would provide meaningful business and employment opportunities.

It is the primary purpose of this chapter to establish a materials management authority to act as business management organization on behalf of the citizens of the state to manage financial resources and contract for services for materials collection, transportation and processing of secondary materials derived from electronic products, without using state funds or lending the credit of the state or local governments.

It is also a purpose of this chapter to encourage the employment and retention of Washington workers at meaningful wages and to develop innovative approaches to improve materials management efficiency in order to assure and increase the use of secondary material resources within the economy. This chapter is enacted to accomplish these and related purposes and shall be construed liberally to carry out its purposes and objectives.

Section 22 Definitions.

As used in this chapter, the following words and terms have the following meanings, unless the context requires otherwise:

(1) "Authority" means the Washington materials management and financing authority created under this act or any board, body, commission, department or officer succeeding to the principal functions of the authority or to whom the powers conferred upon the authority shall be given by law;

(2) "Fees" means funds collected on new electronic products sold into this state at the first point of possession within the state, returned to manufacturers participating in the standard program and paid to authority established under section 3 of this act.

(3) "Manufacturer" means any one that sells new to the public a brand labeled covered electronic product in or into the state of Washington. Manufacturers include:

- Original Equipment Manufacturers whose products are sold under brand names owned by the manufacturer, its subsidiaries and related companies;
- Assemblers of covered electronic products that use parts manufactured by others and sold under the assemblers brand names owned by the assembler, its subsidiaries and related companies;
- Retail establishments that sell covered electronic products under their own brand names, its subsidiaries and related companies that are assembled for them by others; and
- Retailers that assemble and sell covered electronic products directly to the public.

(4) "Existing collection, transportation and processing systems and service provider" and herein shall be referred to as service provider, means:

- Any entity licensed and permitted under all required state and local laws to provide collection, transportation or processing services in the state; and
- Are registered with the department as a company authorized to provide collection, transportation and processing services under this act.

(9) "Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation and processing services, in whole or part, that will be provided to the citizens of the state within service areas as described in approved manufacturers plans..

(10) "Service area" means an area of any size where collection, transportation and processing services will be provided

(11) "Plan" means the general business plan of the authority;

(12) "Economic development" means projects owned and operated by the private sector for recovering and using secondary materials in manufacturing production and assembly of products;

(13) "Cover electronic products" means personal computers, computer monitors and televisions.

(14) "Financing agreements" means, and includes without limitation, a contractual arrangement with a manufacturer of covered electronic products that will assure funds collected under the financing section herein, are provided to the authority in sufficient amount and timeliness that the authority remains solvent of debt at all times.

Section 23 Materials Management and Financing Authority created -- Membership.

The Materials Management and Financing Authority is established as a public body corporate and politic, with perpetual corporate succession, constituting an instrumentality of the state of Washington exercising essential governmental functions. The authority is a public body within the meaning of RCW 39.53.010.

The authority shall be governed by a board of directors as follows:

The state treasurer, three public members, one representative from each manufacturer that has a financial agreement with the authority or a single representative for a multi-party consortium of manufacturers submitting a plan to the Department of Ecology as required under RCW XXX and one representative from the retail industry in the state. The public members shall be residents of the state appointed by the governor on the basis of their interest or expertise in sustainable economic development, business financing and law and environmental protection. One of the public members shall be appointed by the governor as chair of the authority's board of directors and shall serve as chair of the board at the pleasure of the governor. The board may select from its membership such other officers as it deems appropriate. The directors of the department of community, trade and economic development and the department of Ecology shall serve as ex-officio members.

The term of the persons appointed by the governor as public members of the authority, including the public member appointed as chair, shall be four years from the date of appointment. Public members may be reappointed to consecutive terms. There are no term limits on representatives of manufacturers.

In the event of a vacancy on the board due to death, resignation or removal of one of the public members, or upon the expiration of the term of one of the public members, the governor shall appoint a successor for the remainder of the unexpired term.

Any member of the authority may be removed by the governor for misfeasance, malfeasance or willful neglect of duty after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing by the affected member.

The state agency directors serving in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Such designations shall be made in writing in such manner as is specified by the rules of the authority.

The members of the board shall serve without compensation but shall be entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter.

A majority of the board shall constitute a quorum.

Section 24 Scope of authority's powers

Set fee level.

The authority shall set annual fees, assess charges to participating manufacturers and collect fees directly to fund the activities identified in the following section. The authority may adjust the fees in order to assure that all costs associated with the identified activities are covered. Should the fees collected not cover costs, the authority shall charge participating manufacturers the difference in what had been collected and the total cost, pro rated as devised by the authority.

Use funds.

The authority shall use any funds legally available to it for any purpose specifically authorized by this chapter PROVIDED, That no funds of the state shall be used for such purposes and, that no

funds available to the authority are used to duplicate the infrastructure already available through private industry in the state, to:

- (1) Contract and pay for collecting, transporting and processing of covered electronic products and other services as identified in approved manufacturers plans;
- (2) Pay for the expenses of the authority including, but not limited to, salaries, benefits, operating costs and consumable supplies, equipment, office space and other expenses related to the costs associated with running such an organization;
- (3) Reimburse costs incurred by the Department of Ecology for reviewing and approving plans and carrying out its enforcement responsibilities; and
- (4) Establish a financial assurance fund to provide funding to cover costs and any potential liability costs associated with cleanup of sites used to provide required contracted collection, transportation and processing services. This financial assurance can be in the form of insurance policies, fund accounts, investments or other mechanism that will assure provide funds immediately, when needed. The Department of Ecology, the authority and all potentially liable parties will work in full cooperation to avoid the creation of contaminated sites, cleanup sites that inadvertently become contaminated and restore the sites to usable condition. The full enforcement authority and role of the department related to hazardous contamination and clean up of sites is not effected by this section.

All funds collected by the authority under this act, including interest, dividends and other profits, are and will remain under the complete control of the authority and its board of directors and be fully available to achieve the intent of this chapter.

Adopt general operating plan.

(1) The authority shall adopt a general operating plan of procedures for the authority. The authority shall also adopt operating procedures for individual programs as they are developed for collecting funds from participating covered electronic manufacturers and for providing funding for contracted services. These operating procedures shall be adopted by resolution prior to the authority operating the applicable programs.

(2) The plan shall include, but are not limited to: (a) Appropriate minimum reserve requirements to secure the authority's financial stability; (b) appropriate standards for contracting for services; and (c) strict standards for performance of service providers against established target recovery rates for covered electronic products

(3) The plan shall include how the authority will coordinate and implement approved manufacturer's plans.

At least one public hearing shall be conducted by the authority on the plan prior to its adoption. The plan shall be adopted by resolution of the authority board of directors no later than DATE. The authority may periodically update the plan as determined necessary by the authority board of directors and no less than every four years. The plan or updated plan shall include a report on authority activities conducted since the commencement of authority operation or since the last plan was reported, whichever is more recent, including a statement of results achieved under the purposes of this chapter and the plan. Upon adoption, the authority shall conduct its programs in observance of the objectives established in the plan.

Section 25 Additional powers authorized.

In addition to accomplishing the specifically authorized in this chapter, the authority may:

- (1) Maintain an office or offices;
- (2) Sue and be sued in its own name, and plead and be impleaded;

- (3) Engage consultants, agents, attorneys, and advisers, contract with federal, state, and local governmental entities for services, and hire such employees, agents and other personnel as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (4) Make and execute all manner of contracts, agreements and instruments and financing documents with public and private parties as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (5) Acquire and hold real or personal property, or any interest therein, in the name of the authority, and to sell, assign, lease, encumber, mortgage, or otherwise dispose of the same in such manner as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (6) Open and maintain accounts in qualified public depositories and otherwise provide for the investment of any funds not required for immediate disbursement, and provide for the selection of investments;
- (7) Appear in its own behalf before boards, commissions, departments, or agencies of federal, state, or local government;
- (8) Procure such insurance in such amounts and from such insurers as the authority deems desirable, including, but not limited to, insurance against any loss or damage to its property or other assets, public liability insurance for injuries to persons or property, and directors and officers liability insurance;
- (9) Apply for and accept subventions, grants, loans, advances, and contributions from any source of money, property, labor, or other things of value, to be held, used and applied as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (10) Act as an agent, by agreement, for federal, state, or local governmental entities to carry out the programs authorized in this chapter;
- (11) Establish, revise, and collect such fees and charges as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (12) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority in carrying out the provisions of this chapter: PROVIDED, That expenditures with respect to the financial obligations of the authority shall not be made from funds of the state;
- (13) Establish such reserves and special funds, and controls on deposits to and disbursements from them, as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (14) Give assistance to private and public bodies contracted to provide collection, transportation and processing services by providing information, guidelines, forms, and procedures for implementing their financing programs;
- (15) Prepare, publish and distribute, with or without charge, such studies, reports, bulletins, and other material as the authority deems necessary, useful, or convenient to accomplish its purposes;
- (16) Delegate, through contract, any of its powers and duties if consistent with the purposes of this chapter;
- (17) Adopt rules concerning its exercise of the powers authorized by this chapter; and
- (18) Exercise any other power the authority deems necessary, useful, or convenient to accomplish its purposes and exercise the powers expressly granted in this chapter.

Section 26 Restrictions on authority's activity.

Notwithstanding any other provision of this chapter, the authority shall not:

- (1) Give any state money or property or loan any state money or credit to or in aid of any individual, association, company, or corporation, or become directly or indirectly the owner of any stock in or bonds of any association, company, or corporation;
- (2) Issue bills of credit or accept deposits of money for time or demand deposit, administer trusts, engage in any form or manner in, or in the conduct of, any private or commercial banking business, or act as a savings bank or savings and loan association other than as provided in this chapter;
- (3) Be or constitute a bank or trust company within the jurisdiction or under the control of the director of financial institutions, the comptroller of the currency of the United States of America or the treasury department thereof;
- (4) Be or constitute a bank, broker or dealer in securities within the meaning of, or subject to the provisions of, any securities, securities exchange or securities dealers' law of the United States of America or the state; or
- (5) Financing any venture, investment or capital improvement not otherwise authorized by this act.
- (6) All sales data from individual manufacturers will be held confidentially. Freedom of information act requirements do not apply.

Section 27 Staffing, restrictions -- Authority not to receive appropriated state funds.

The authority shall receive no appropriation of state funds. The authority shall employ a chief executive officer, to be appointed by the board with concurrence of the governor, and a chief financial officer as well as professional, technical and support staff, appointed by the chief executive officer, necessary to carry out its duties. Employees of the authority are not classified employees of the state, exempt from state service regulations and shall receive compensation only from the authority at rates competitive with state service. The authority will retain its own legal counsel. The departments of Ecology and Community, Trade and Economic Development shall provide start up support staff to the authority for its first twelve months of operation, or part thereof, to assist in the quick establishment of the authority. Expenses for these staff will be paid for through fees and funds collected by the authority and will be reimbursed to the departments from the authority's financial resources within the first twenty-four months of operation.

The authority can generate revenue from two sources. 1). Fees collected from manufacturers of covered electronic products for the purposes of paying for operating costs and contracted services; and 2). Grants, contributions and other sources that do not obligate the state or the authority to secure debt.

Section 28 Severability

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Section 29 Emergency

This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Notes:

The Materials Management and Finance Authority is modeled after Chapter 43.163 RCW - ECONOMIC DEVELOPMENT FINANCE AUTHORITY

The Washington State Constitution permits the expenditure of public funds only for public purposes. Const. art. 7, § 1 (amend. 14).1/

In a recent opinion, the State Supreme Court quoted and then applied the following explanation of a public municipal purpose:

[T]he public purposes for which cities may incur liabilities are not restricted to those for which precedent can be found, but the test is whether the work is required for the general good of all the inhabitants of the city. But it is not essential that the entire community, or even a considerable portion of it, should directly enjoy or participate in an improvement in order to make it a public one. . . . [T]he test of a public purpose should be whether the expenditure confers a direct benefit of reasonably [[Orig. Op. Page 4]] general character to a significant part of the public. . . .