

Summary of October 29, 2019 E-waste Stakeholder Meeting

Roles and Responsibilities (slides 9-10)

The New Jersey Department of Environmental Protection (DEP): To include weight reported by an Authorized Recycler (AR), the AR must be registered AND included in an approved manufacturer plan. Approved Collection Plans must include a list of anyone who handles the material including all registered ARs, transporters, handlers, subcontractors, etc. For the weight from an event to count, manufacturers must be able to demonstrate that the event was held in New Jersey.

Stakeholders: Many different players are involved in the movement of material including collectors and transporters and these entities change frequently depending on several factors including pricing, which leads to tracking and reporting issues. Some stakeholders suggested that DEP should define these different entities. Other stakeholders suggested that DEP should not require transporters to be included in the collection plan.

Stakeholders: Reporting forms could be revised to ensure that everyone who “touches” the weight supplies information to AR and manufacturers to ensure the route the weight takes is clear.

DEP: DEP does not regulate these entities, but perhaps DEP should define them and their responsibilities as “Subcontractors” when referring to the “middle men” collectors and transporters. Include as Subcontractors anyone who “touches” electronic waste between the collection site and the AR. The problem is that occasionally collection sites reported data that differed from AR reported data for that same site.

Stakeholders: How will DEP handle mail-back programs to out-of-state facilities?

DEP: Manufacturers must be able to demonstrate that the weight comes from the State.

Stakeholder: Is registration required for companies who pick up weight in the State to bring to another state as part of a mail-back program (e.g., FedEx as a transporter)?

Stakeholders: How will DEP handle refurbishers?

DEP We may change the forms to accommodate those exclusively engaged in refurbishing. We will count weight that can clearly be demonstrated to be from the consumers of the State. We'll revise the reporting form to provide for manufacturers to demonstrate that weight came from the State. Refurbishers will be required to register and submit semiannual reports to track weight but may not be required to pay a registration fee. We can call the form AR/Refurbisher form.

Convenience Standards (slides 11-12)

DEP: DEP listed the criteria used when conducting the county-by-county evaluation when determining if the collection network is “sufficient” and “convenient.” These factors include but are not limited to the following:

- Number of municipalities in each county
- Population of each town/county
- Size of county
- Population density
- Number of sites in each category (e.g. LGU or event, private, retailer) and each site's limitations
- Local feedback from municipal and county recycling coordinators
- DEP experience

Stakeholders: Does DEP look at the manufacturer the same, regardless of obligations?

DEP: No, DEP considers the obligation.

Stakeholders: Does DEP evaluate the convenience standard as individual or in aggregate?

DEP: DEP evaluates both. DEP evaluates each individual plan proportionate to the obligation and the network sufficiency overall.

Stakeholders: Guidelines are helpful, and we should come to a consensus. Guidelines should explain convenience of individual versus aggregate. There is a need for clarity on the term convenience.

Stakeholders: Some collection sites are highly coveted; how do Group Plan Administrators (GPAs) know which sites are already covered? Can DEP provide a list of covered collection sites to GPAs and ARs?

DEP: The DEP website already shows where collection sites are located. If necessary, you can call DEP for details. DEP will point the Group Plan Administrators in the right direction.

Stakeholders: Due to the convenience standard, some sites are contracted and locked up. GPAs know where they have coverage, but do not know where other coverage exists or is lacking. Information is not publicly available on that. Can coverage switch year to year?

There are also item specific coverage issues. For example, there is good municipality coverage for TVs, but they are not always open on weekends. Where can TVs go on weekends?

DEP: Coverage can change year to year. Send DEP an email if you want to know areas needing coverage. The DEP website already shows where collection sites are located. Feel free to compare that to a list of all the local government units in the state.

DEP: How many events are equal to one permanent site? DEP proposed that four events open state-wide could equal one permanent site.

Stakeholders: There are several issues with answering this question as follows:

- Counties may be better able to address this question.

- Events happen 12 - 16 months in the future, so it is not possible to provide details to DEP in collection plans.
- Events are never state-wide, always county-wide.
- There are some counties where every municipality doesn't have coverage. Some feel county events provide sufficient coverage. Not really any non-public events in their county. Municipalities do not want material coming from another county.

DEP: DEP has and will continue to accept best estimates for dates. That said, actual dates need to be provided in advance of events. How far in advance and what type of advertising is done for events? DEP requires some type of outreach, but the DEP's intention is to not be prescriptive.

Stakeholders: Events have been conducted in Newark for six years and have been unable to find any type of advertising which helps. Local representatives have been put on notice and local reverends have been notified to put the event on their listserversus

DEP should not "require" something specific. One size does not fit all. Requiring a type of advertising often becomes overburdensome. It's a management nightmare to track ads, dates, logistics, etc. Things like mailers work as advertising.

Counties and municipalities do the majority of advertising. Press releases, ads in newspaper, "impressions" on the State.com, Facebook posts, tweets, etc. are popular advertising methods.

Counties also share info with their municipalities and the municipalities put the word out. Ask collection sites to let the county know how the announcement of the event is being done. DEP should require them to explain how it is done, but maybe not put specific requirements on them.

DEP: How do you ensure collection sites are aware that they are in an approved plan?

Stakeholders: The GPAs inform municipalities when they contract with them.

DEP: What are other states, such as Illinois, doing about setting up sites to meet a convenience standard?

Stakeholders: Illinois standards differ because they come from the statute. It may be appropriate to look to Local Government Units (LGUs) to answer some questions about convenience.

Illinois has a more stable program. Illinois may reduce churn of manufacturers switching GPAs which may result in a more stable program, but it is a matter of statute.

Some stakeholders disagreed, as Illinois shifted about 60% of counties in Illinois plan.

Counties in Illinois don't have a choice of who services them. It is NOT based on where they want a site, but rather making sure people are looking for that service. In New Jersey, it takes time to build relationships.

DEP: If you use Geographic Information Systems (GIS) mapping to locate collection sites, would you mind sharing your tools with DEP?

Stakeholders: ERI has shared their tools. No response from others.

Class D facilities (slides 13-17)

DEP: Defined Class D and noted that if acting as an AR, they must register and submit appropriate certifications, but do not have to pay a registration fee. DEP then described three scenarios for Class Ds involved with E-waste:

- Class D only collecting/transporting but not recycling.
- Class D acting as a drop off location and recycling all the collected program weight as an AR.
- Class D acting as a drop off location and recycling some of the collected program weight as an AR and sending some weight to another AR.

Stakeholders: No comments.

DEP: Should Class Ds acting as ARs be allowed to charge a fee to some towns? The statute requires manufacturers to implement and finance a system that provides free service to recycle all covered electronic devices (CEDs). We are focusing on municipalities that are still paying to have weight collected.

Stakeholders: Class Ds and ARs offer additional services to LGUs and charge fees, they maintain that this continue to be acceptable.

Stakeholders: How many Class Ds are there? Are the certified Class Ds all being used in approved collection plans?

DEP: Not all Class Ds are being used as ARs. DEP keeps a list on its website of all ARs who are in collection plans, including Class Ds. DEP said it will share the link. Please see below.
<https://www.nj.gov/dep/dshw/ewaste/authorizedrecycler.pdf>

Stakeholders: Manufacturers use national electronic recycling companies rather than local Class Ds because they work nationwide and take advantage of economies of scale. Suggestion to clarify terms we use, e.g. transporter and collector.

Reporting and tracking (slides 20-21)

DEP: There are too many intermediaries in the State E-waste stream. Better clarity and transparency in tracking weight is needed. What information should be on a form to enable easier tracking?

Stakeholders: Perhaps DEP should focus on custody rather than physical tracking. DEP showed a flow diagram of the Connecticut program. There seemed to be disagreement about the ease of reporting in Connecticut. Some say more entities touch the material than is shown on slide.

Others disagree and say it is much smoother - boils down to fundamental differences in the laws. Clarity was suggested, on who exactly is a transporter or collector. It was also suggested that NJ has a wider generator base.

DEP: How can we improve tracking and clarity?

Stakeholders: Rather than record each load, other states require quarterly or totals collected. Other states also have an online system that provides simpler evaluation and checks for errors. DEP needs to keep in mind that reporting is expensive. The need and purpose of data comes into question. The responsibility is on municipalities to verify the amount of weight but essentially, they must rely on their end-market. Consumer Technology Association (CTA) acknowledged that the reporting issue is a tough one and CTA is willing to sponsor periodic audits and suggested establishing a subgroup to work through this issue.

Verifying reported weight (slide 22)

DEP: There is a lot of discrepancy between weight reported and weight collected. If weight cannot be verified it cannot be counted toward a manufacturer's obligation. What is a transparent method to report weight? What change in the Semiannual Report (SAR) might improve reporting?

Stakeholders: What is the purpose of reporting requirements? Many commented that Wisconsin electronic reporting system is excellent. Wisconsin incorporates financial transactions into the reporting forms. Many of the issues are a result of timing. The stakeholders do not negotiate contracts based on DEP's statutory/regulatory schedule.

DEP: Reporting content and deadlines are statutory and are the bases for establishing collection obligations.

DEP: DEP is considering restricting one collection site per collection plan.

Stakeholders: It would be better to have one AR per collection site. Shared sites allow for necessary flexibility. Sites are selected 6-8 months ahead of time, and contracts change between when plans are due and the date when plans are implemented. It is difficult to fulfill weight obligation. Shared sites may be because ambiguity of what is considered adequate coverage. Some entities will never work with one another.

Stakeholders:

Verifying Reported Weight (slide 23)

DEP: If weight cannot be verified, then it cannot be counted. DEP needs to be able to validate the weight. If non-eligible weight gets counted, then it is an issue for everyone. It inflates obligations and hurts everyone who plays by the rules. Why would there be discrepancies? Aren't you being billed for and billing for the same amount of weight? The source of small business weight is ambiguous and a concern as well.

Stakeholders: Clearing up discrepancies would help with weight verification. One reason the numbers may not match is because ARs/GPAs are concerned with meeting their contractual obligations and the ARs may collect more weight than they sell. There is agreement amongst stakeholders that if weight cannot be verified it should not count. There may be naiveté on the part of LGUs in that transporters may under report to LGUs to re-sell some of the “excess” weight elsewhere. There can be weight discrepancies between pallets and gaylords, it may be best to use standardized weights. The stakeholders acknowledged that small business weight may be problematic, but they offered no solution. Calibrated scales are a requirement of R2 certification.

Verifying reported weight (Slide 24)

DEP: DEP solicited suggestions for making weight verification more transparent. What information can DEP obtain; what information is available versus not practical to obtain? Why don't ARs and intermediaries already have this information? Would standardizing bills of lading (BOL) help in the tracking and reporting of weight?

Stakeholders: The latest round of SARs was an improvement. Start simpler and ask for more information if there are discrepancies. Initial reports should represent every 6 months' total not by load, as it is easier to find issues that way. BOLs are worthless, useless, the numbers are estimated because collection sites do not have scales. Having more involved entities certified (R2 or eSteward) within the system would help overall.

Out-of-System weight (slide 25)

DEP: The goal is to eliminate Out-of-System (OOS) weight. What are the obstacles? DEP stated how it intends to use OOS weight to calculate total collected in a program year. Should Manufacturers be allowed to purchase OOS weight?

Stakeholders: Stakeholders' calendars and yearly contracting schedules do not align with the statutorily established due dates. Why do Local Government Units (LGUs) pay for the recycling of CEDs? Much has to do with LGUs burned in the early years and they are hesitant to change vendors even if they are paying. Outreach to LGUs can help with this.

DEP: LGUs are under no obligation to collect.

Stakeholders: Private sites can be an issue because there is so much turnover and change. How much OOS weight is out there?

DEP: A small percentage of the weight collected is OOS. Also, there needs to be more emphasis on underserved communities.

Stakeholders: Manufacturers would incorporate underserved communities into collection plans if they knew about them.

True-up process (slides 26)

DEP: There are two steps to the true-up process:

- Calculating the total weight of CEDs actually collected based on SARs
- Calculating manufacturers actual obligation using the program year's total weight collected and determining whether the manufacturers under-collected, met, or exceeded their obligations.

Stakeholders: There were no comments on this specific slide, however, there were miscellaneous comments throughout the stakeholder meeting. Stakeholders asked if OOS weight would be included in the true-up? The law says DEP may conduct a true-up, not shall conduct a true-up. If there is uncertainty regarding the data, then DEP should not perform a true-up, which is consistent with the statutory wording ("may").

DEP: DEP is committed to performing Step 1 of the true-up. Step 2 will be at the DEP's discretion. DEP will define OOS weight.

Credit tracking and trading (Slides 27-32)

DEP: Credit tracking and trading process being considered by DEP:

- Credits are weight collected in excess of a registrant's obligation.
- 45-day trading period during which all trades must be submitted.
- Registrants must use trading form provided by DEP.
- Trading period for the program year begins April 1, program year plus 1 (after second SAR is due and true-up completed).
- DEP will issue a credit statement to manufacturers showing their actual obligation, previous program year's credits applied amount, a list of manufacturers with credits, the weight collected and if the manufacturer has a shortfall or surplus, what that shortfall/surplus is.

Stakeholders: Manufacturers were not overly concerned about generating credits. The stakeholders suggested DEP should retire pounds to avoid the hassle of true-up. Are manufacturers required to sell credits? Can they charge different amounts? Price gouging is a concern for all involved. Can the DEP force manufacturers to sell credits? Manufacturers are required by statute to continue collecting even if they have met their estimated obligation.

DEP: Manufacturers are not required to sell credits. Manufacturers might charge each other different amounts for credits. DEP will not, at this time, speculate on a credit market. DEP may choose to institute credit trading.

Stakeholder: Illinois does not require manufacturers to sell credits. What would trigger not doing credit trading?

DEP: If the weight cannot be verified due to poor reporting and large amounts of unverifiable weight, DEP may not institute credit trading.

Stakeholders: DEP should consider defining “required” market share in weight obligation. Recommended tiered noncompliance fee (sliding scale based on percent of obligation collected).

DEP: Tiered system would require legislative change.

Compliance and Enforcement (slides 33-34)

DEP: The noncompliance fee is a statutory requirement and is imposed on the entire obligation. This is a fee, not a penalty.

Stakeholders: In regards to penalties, the statute says some things that are explicit, but other things (like convenience standards) are not clear. When will DEP be enforcing the “may” provisions?

DEP: DEP will be predictable and flexible when enforcing the “may” provisions. DEP’s goal is to achieve compliance, not issue monetary penalties and fees. We are shifting from compliance assistance to an enforcement-driven stance. The program is very time frame specific, and DEP is considering issuing Notices of Violation (NOVs) to encourage timely compliance.

Stakeholders: CTA will prepare a legal argument on how the regulations may include a definition of noncompliance fee. There is concern among the stakeholders about the application of the noncompliance fee, especially for those who collected at least ½ of their obligation. Stakeholders suggested that a sliding scale would be appropriate.

DEP: DEP understands and appreciates this feedback, however the noncompliance fee is statutorily established.

Grace Period (slide 35)

DEP: For minor violations, DEP will not assess a penalty if compliance is achieved within a regulatorily set time frame. For non-minor violations, DEP will assess a penalty regardless of whether compliance is achieved within the regulatorily set time frame. This penalty assessment aligns with the elements of the Grace Period Law, which has been codified in rule. This approach is consistent with other DEP programs.

Stakeholders: The State’s E-waste program is unusual because the regulated entities (manufacturers) are so far removed from the collection network/system. Some actions may be unable to be completed within grace period time frames. Manufactures may be unable to correct violations because some of their contracted entities do not respond quickly. Consistency in DEP’s compliance and enforcement approach is needed.

Certification requirements (slide 36)

DEP: We are adding language to the rules to clarify who may sign certifications:

- Corporation

- Limited Liability Company
- Partnership
- Sole Proprietorship
- Local Government Unit
- Duly Authorized Representative

Stakeholders: Yearly submission granting authority from Responsible Official to Individual with Direct Knowledge is difficult and overburdensome.

DEP: Upon a change of designation of authority for an entity, a new form must be sent to the DEP.

General discussion

DEP: A goal of the stakeholder meeting is to get consensus and address issues so that we can consider them during the proposal process.

Stakeholders: Will slides be issued? Are you considering other issues in the regulations that have not been discussed here? What is the timing of the final proposal? Any short-term changes or will changes not be made until rules are promulgated? Suggestion for another stakeholder meeting or subgroups be held before formal rule making. We would like DEP to clarify definitions.

DEP: Yes, the slides from today's presentation will be posted on DEP's stakeholder website. The rule proposal will address those matters for which we have statutory authority to address. DEP intends to include clarifying language in the definition section of the rules. DEP anticipates filing the proposal by the end of 2020. Because the statute is already in effect, DEP may issue guidance (credits, semiannual report forms, voluntary registration) in the interim. DEP agrees that holding future stakeholder subgroup meetings is a good idea.

DEP: DEP is still experiencing administrative difficulties in reviewing collection plans, as many collection plans are not comprehensive, and are often deficient, containing mistakes from previous year collection plan submissions. In addition, information in and submission of SARs could be improved.

Stakeholders: Increased frequency and additional methods of communication (webinar, conference calls, subgroups) would be appreciated.

DEP: Yes, continued dialogue with the regulated community is encouraged.