

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: April 9, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) DFP Division of Water and Waste Management
601 57th Street, S.E.
Charleston, WV 25304
(304) 926-0499

LEGISLATIVE RULE TITLE: ~~Covered Electronic Devices Takeback Program~~

1. Authorizing statute(s) citation §22-15A-29

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
December 19, 2008

b. What other notice, including advertising, did you give of the hearing?
NONE

c. Date of Public Hearing(s) *or* Public Comment Period ended:
January 15, 2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

April 9, 2009

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Kathy Cosco, Communications Director

601 57th Street, S.E.

Charleston, WV 25304

Phone: (304) 926-0499 ext. 1331 Fax: (304) 926-0447

Email: kathy.cosco@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f',** please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

Gary Rogers, Environmental Resources Specialist

601 57th Street, S.E.

Charleston, WV 25304

Phone: (304) 926-0499 ext. 1115 Fax: (304) 926-0481

Email: gary.w.rogers@wv.gov

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
BRIEFING DOCUMENT**

FILED

2009 APR -9 PH 2: 18

Rule Title: Covered Electronic Devices Takeback Program (33 CSR 11)

OFFICE WEST VIRGINIA
SECRETARY OF STATE

A. AUTHORITY:

W. Va. Code § 22-15A-29

B. SUMMARY OF RULE:

This Rule establishes procedures for manufacturers of covered electronic devices to register their brands with the State and pay the required annual registration fee. This Rule also establishes the Covered Electronic Device Grant Program, which allows counties and municipalities to receive grants to stage electronic takeback events or establish long term takeback/recycling programs.

C. STATEMENT OF CIRCUMSTANCES WHICH REQUIRE RULE:

By the terms of S.B. 746, passed during the last Legislative session, W. Va. Code § 22-15A-29 directs the agency to promulgate emergency and legislative rules to implement the provisions of W. Va. Code §§ 2215A-24 through 22-15A-28 by January 1, 2009.

D. FEDERAL COUNTERPART REGULATIONS – INCORPORATION BY REFERENCE / DETERMINATION OF STRINGENCY:

There is no federal counterpart regulation; thus, no determination of stringency is required.

E. CONSTITUTIONAL TAKINGS DETERMINATION

In accordance with W. Va. Code §§ 22-1A-1 and 3(c), the Secretary has determined that this Rule will not result in taking of private property within the meaning of the Constitutions of West Virginia and the United States of America.

F. COUSULTATION WITH THE ENVIRONMENTAL PROTECTION ADVISORY COUNCIL:

At its meeting on December 9, 2008, the Environmental Protection Advisory Council discussed the proposed Rule. The minutes of that meeting will be filed separately.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Covered Electronic Devices Takeback Program

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Department of Environmental Protection

Address: 601 57th Street, S.E.
Charleston, WV 25304

Phone Number: 304-926-0499 ext 1115 Email: gary.w.rogers@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

West Virginia Code §22-15A-25 creates a new fund, the Covered Electronic Devices Takeback Fund, which is expected to collect approximately \$500,000 the first year the takeback program is implemented and approximately \$250,000 each year thereafter. All costs associated with operating the takeback program is expected to be paid from the Covered Electronic Devices Takeback Fund and is not expected to affect any current budgets already established by the State.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	500,000.00	250,000.00	250,000.00
Personal Services	38,000.00	38,000.00	38,000.00
Current Expenses	32,000.00	32,000.00	32,000.00
Repairs & Alterations			
Assets	5,000.00		
Other	425,000.00	180,000.00	180,000.00
2. Estimated Total Revenues	500,000.00	250,000.00	250,000.00

Rule Title: _____

Rule Title:

Covered Electronic Devices Takeback Program

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

During the first year of the program, the initial registration fee is \$10,000 per manufacturer that has not implemented a takeback program in West Virginia. The expected revenue, which was based on Maryland's program that is virtually identical to that of West Virginia's, is \$500,000 during FY2009. The fee for all subsequent years for the nonparticipating registered manufacturer is \$5,000. Therefore the expected revenue for all subsequent years is approximately half of the revenue collected during the initial year.

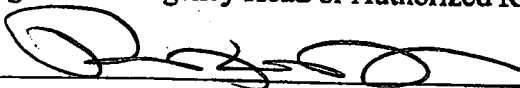
MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

None.

Date: November 20, 2008

Signature of Agency Head or Authorized Representative



TITLE 33

FILED

LEGISLATIVE RULE

2009 APR -9 PM 2:18

DEPARTMENT OF ENVIRONMENTAL PROTECTION

WASTE MANAGEMENT

OFFICE WEST VIRGINIA
SECRETARY OF STATE

SERIES 11

COVERED ELECTRONIC DEVICES TAKEBACK PROGRAM

§33-11-1. General.

1.1. Scope and Purpose – This legislative rule establishes procedures for covered electronic device manufacturers to register their brands with the state and sets out guidelines for municipalities and counties to apply for and receive grants for the purpose of conducting electronic collection events and programs. The funding available for grants is established by the registration fee imposed on all covered electronic device manufacturers that conduct business in West Virginia.

1.2. Authority – West Virginia Code §22-15A-29.

1.3. Filing Date –

1.4. Effective Date –

§33-11-2. Definitions.

2.1. “Brand” means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

2.2. “Computer” means a desktop, personal computer or laptop computer, including a computer monitor. Computer does not include a personal digital assistant device, computer peripheral such as a mouse or other similar pointing device, a printer or a detachable keyboard.

2.3. “Consumer” means, for the purpose of this rule, a natural person or resident, corporation, firm, partnership, agency, association, organization or society or any other

entity that resides in West Virginia and has legally purchased or is in legal possession of a CED.

2.4. “County” means any county commission or solid waste authority within the state.

2.5. “Covered electronic device (CED)” means a television, computer or video display device with a screen that is greater than four inches measured diagonally. “Covered electronic device” does not include a video display device that is part of a motor vehicle or that is contained within a household appliance or commercial, industrial, or medical equipment.

2.6. “Department” means the Department of Environmental Protection.

2.7. “Manufacturer” means a person that is the brand owner of a covered electronic device or television sold or offered for sale in West Virginia by any means, including transactions conducted through retail sales outlets, catalogs or the internet.

2.8. “Municipality” means a community incorporated through the West Virginia Secretary of State’s Office.

2.9. “Person” means a natural person, corporation, firm, partnership, association or society and the plural as well as the singular.

2.10. “Recyclable Materials” means those materials that would otherwise become solid waste for disposal in a refuse disposal system and which may be collected, separated or

processed and returned to the marketplace in the form of raw materials or products.

2.11. "Television" means any telecommunication system device that is designed to receive moving pictures and sound broadcasts over a distance and includes a television tuner or a video display device peripheral to a computer in which the display contains a television tuner.

2.12. "Secretary" means the Secretary of the Department of Environmental Protection.

2.13. "Video display device" means an electronic device with an output surface that displays or is capable of displaying moving graphical images or visual representations of images sequences or pictures that show a number of quickly changing images on a screen to create the illusion of motion. Video display device includes a device that is an integral part of the display and cannot easily be removed from the display by the consumer and that produces the moving images on the screen. A "video display device" may use a cathode-ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, other image projection technology or imaging display technologies.

2.14. Other definitions in West Virginia Code §22-15A-2 are adopted for use, where applicable, in this rule.

§33-11-3. Manufacturer Registration.

3.1. The registration and fee requirements of this rule apply to manufacturers that manufactured an average of more than one thousand covered electronic devices per year in the three-year period immediately preceding the initial registration required by this section.

3.2. Manufacturers that sold or leased covered electronic devices in 2008, on or after June 6, 2008, shall register with the Secretary no later than January 1, 2009, using a registration form prescribed by the department.

3.3. Manufacturers commencing the sale or lease of covered electronic devices after

December 31, 2008, shall register with the Secretary prior thereto. Registration shall be made on a form prescribed by the department.

3.4. All registrations, regardless of the date submitted, expire on December 31 of the registration year and shall in no case be effective for more than one year.

3.5. The registration form shall contain the following:

3.5.1. Legal name of the manufacturer;

3.5.2. Contact person regarding the registration;

3.5.3. Address of manufacturer;

3.5.4. Telephone number of manufacturer;

3.5.5. All brand names under which the manufacturer sells, leases, or offers for sale covered electronic devices or televisions in West Virginia;

3.5.6. Whether the manufacturer has implemented a takeback program for its covered electronic devices or televisions or both;

3.5.7. A toll free telephone number and website that the manufacturer has established to provide detailed information about the takeback program, if any, and the procedures for returning covered electronic devices;

3.5.8. The Secretary may request additional information necessary to further the goals of the program.

3.6. Any changes to the registration information during the year shall be reported to the department within thirty days of its occurrence.

3.7. Any registration that does not meet the requirements of this section will be considered incomplete. The manufacturer shall

submit a revised registration within sixty days of being notified of the deficiency.

§33-11-4. Registration Fees.

4.1. Annual registration fees shall be paid by manufacturers to the department. The amount of the fee shall be based on whether an approved covered electronic device takeback program has been implemented in West Virginia by the manufacturer. The fees are structured as follows:

Initial Registration: Did not implement an approved program in WV the previous year	\$10,000
Initial Registration: Did implement and maintain an approved program in WV the previous year	\$3,000
Subsequent Registration: Did not implement an approved program in WV the previous year	\$5,000
Subsequent Registration: Did implement and maintain an approved program in WV the previous year	\$500

4.2. Registration fees are due to the department no later than the first day of January of the year to which they apply and shall accompany the required registration form described in section 3.5. The registration fees shall be paid in full, are nonrefundable, and shall not be pro-rated for the year.

4.3. A program shall be considered implemented during the year for which the manufacturer has submitted a complete performance report approved by the department.

4.4. Notwithstanding the lack of a complete performance report, a manufacturer that demonstrates to the satisfaction of the department that a takeback program for its brands was implemented and maintained in West Virginia during 2008 shall be subject to the initial registration fee of \$3,000.

§33-11-5. Performance Reports.

5.1. All manufacturers that have implemented a covered electronic device takeback or recycling program shall submit a performance report to the department on or before February 15th detailing the programs methods and results for the previous year.

5.2. The department shall prescribe the annual performance report form to be used by manufacturers.

5.3. The department shall review all submitted performance reports and make a determination whether the program meets the minimum requirements of a takeback program.

5.4. The performance report shall include, at a minimum, the following information:

5.4.1. The total weight of covered electronic devices received by the program from West Virginia during the reporting year;

5.4.2. The total number of covered electronic devices from West Virginia that were recycled or refurbished and reused during the reporting year, either by actual count or by using average product weights;

5.4.3. A detailed description of the processes and methods used to collect, recycle or refurbish and reuse the covered electronic devices received from West Virginia;

5.4.4. Any significant changes to the program that the manufacturer plans to make in the current year;

5.4.5. Any additional information the Secretary deems appropriate to further the goals of the program.

§33-11-6. Required Elements of a Manufacturer's Takeback Program.

6.1. A manufacturer's takeback program must meet the following requirements to be approved by the department:

6.1.1. The takeback program shall enable a consumer to recycle covered

electronic devices without paying a separate recycling fee at the time of recycling or collection;

6.1.2. The takeback program shall implement a method of collecting covered electronic devices that have reached the end of their useful lives and are labeled with the manufacturer's brand;

6.1.3. The takeback program shall implement a method of recycling, refurbishing or reusing the covered electronic devices collected or provide evidence that the recyclable materials were delivered to an electronic device recycling market;

6.1.4. The collection process of the covered electronic devices shall be reasonable, convenient, and available to the consumers of West Virginia and designed to meet the collection needs of those consumers.

6.1.4.a. Convenient systems of collection include mail-in recycling at no charge to the consumer, drop off centers, or collection events;

6.1.4.b. Manufacturers who use existing collection infrastructure for collecting covered electronic devices, such as public or private recycling centers and recycling organizations, or who establish a system of collection and recycling managed by a group of manufacturers, shall be deemed to meet the convenience requirement of this section.

6.1.5. The takeback program shall include information for the consumer on how and where to return the manufacturers covered electronic devices.

6.1.6. The takeback program shall include a method of maintaining a current and accurate record of all manufacturer's covered electronic devices collected and recycled or refurbished and reused.

6.2. If more than one person is a manufacturer of a certain brand of covered electronic devices, any of those persons may

assume responsibility for and satisfy the obligations of a manufacturer for that brand.

6.3. A takeback program implemented with the use of state grant funds, whether wholly or in part, shall not be considered a takeback program implemented by a manufacturer.

6.4. The department may require the takeback program to comply with any environmental management standards adopted, approved, or established by the United States Environmental Protection Agency that ensure safe and proper handling of electronic devices.

§33-11-7. Public List of Manufacturers.

7.1. The department shall maintain a current list of registered covered electronic device manufacturers and their brands and shall publish the list on the internet to provide retailers access to the manufacturers authorized to sell or lease their products in West Virginia.

7.2. No manufacturer shall be considered registered that has not complied with all the requirements of this rule.

7.3. Retailers are responsible for reviewing the public list of manufacturers periodically to ensure the brands they are selling are registered.

§33-11-8. CED Recycling Grant Program.

8.1. CED Recycling Grants are available to counties and municipalities for the purpose of establishing CED recycling or takeback programs, CED collection events, and CED recycling education programs.

8.2. CED Recycling Grants are limited to a maximum amount of \$40,000.

8.3. Applications for CED Recycling Grants shall be submitted to the department on forms prescribed by the department.

8.4. CED Recycling Grants shall be awarded on a tiered matching basis. The first \$20,000 of a grant shall not require the grantee to provide matching funds. Any amount over

the first \$20,000 of a grant shall be matched by the grantee on a dollar-to-dollar basis. (Example: A grant in the amount of \$32,000 would require a \$12,000 match from the grantee. The total grant of \$32,000 less \$20,000 equals \$12,000. The grantee would be required to match the \$12,000 for a total project cost of \$44,000).

8.5. All matching funds provided by the grantee shall be actual funds expended from sources other than funds provided by the department. In-kind costs and estimated costs shall not be considered matching costs.

8.6. At least fifty percent of the monies credited to the Covered Electronic Device Takeback Fund in the previous fiscal year shall be used for grants for the current year.

8.7. Applications must be postmarked no later than August 31 for consideration in the next grant period.

§33-11-9. General Conditions Applicable to Grant Applications.

9.1 The following general conditions apply to all applications for funding under the CED Recycling Grant Program:

9.1.1. The project shall be designed to affect a significant and measurable amount of covered electronic devices in the area to be served;

9.1.2. The project shall be designed to involve all or a substantial percentage of the residents located in the project area and should include a plan to provide public education regarding CED recycling.

§33-11-10. Authorized Uses of Grant.

10.1. Authorized use of grant funds in an approved CED recycling program may include the following:

10.1.1. Operational costs incurred in the implementation of the program;

10.1.2. Costs associated with the production and distribution or placement of advertising in newspapers, radio, or elsewhere, such costs being related to the development and implementation of the program;

10.1.3. Purchase of equipment and supplies that will specifically serve to fulfill the program objectives;

10.1.4. Costs associated with promotional items that serve to create public awareness of the program;

10.1.5. Public informational and educational programs that increase public awareness or solicit public support for promoting citizen responsibility toward CED recycling;

10.1.6. Other relevant costs upon approval of the department.

§33-11-11. Unauthorized Uses of a Grant.

11.1. The grantee shall not use a grant to replace funds currently budgeted or used to maintain and operate a CED recycling program during the grant period.

11.2. The grantee shall not use a grant for expenditures not substantially related to CED recycling.

11.3. Grant funds shall not be used for the following:

11.3.1. Land acquisitions;

11.3.2. Office furniture or equipment, or to decorate or renovate an office;

11.3.3. Entertainment costs;

11.3.4. Alcoholic beverages, meals, and gratuities;

11.3.5. Beautification costs;

11.3.6. Any type of lobbying expenses;

11.3.7. Landfill operations or management.

§33-11-12. Departmental Review of Applications.

12.1. The department may reject any and all applications that do not meet eligibility and submission requirements established by the department and this rule.

12.2. If the total request for funding for the year exceeds the amount of funding available for grants, the department may reject applicants that received a CED recycling grant the previous year.

12.3. The department shall review all applications and submit those applications recommended for funding to the Secretary for final approval and awarding.

12.4. Applicants shall be notified in writing of approval or denial of a grant within a reasonable time after award recommendations have been approved by the Secretary.

§33-11-13. Requirements of a Grant Recipient.

13.1. All CED recycling grants are for the twelve-month period beginning the first day of October and ending the last day of September of the following year.

13.2. Grant funds will be disbursed at the time a completed grant agreement and all required documents necessary to initiate the grant are received by the department.

13.3. The grantee shall retain and make available upon request by the department, for a period of five years, all financial records, supporting documents, statistical records, and all other records and data as they relate to the application, acceptance and use of the grant.

13.4. The grantee shall deposit the grant immediately upon receipt in a separate account.

13.5. If, through any cause, the grantee fails to fulfill in a timely and proper manner the obligations imposed in the grant agreement or violates any provision of this rule, the department may terminate the grant and the

grantee shall immediately return the grant, in its entirety, to the department.

13.6. The grantee shall comply with all federal, state, and local laws, codes, ordinances, rules and regulations.

13.7. The grantee shall solicit sealed bids, by public notice as a Class II legal advertisement in compliance with the provisions of West Virginia Code §59-3-2, for all purchases that have an estimated cost of five thousand dollars or more. Any attempt to segregate the purchase into sections to circumvent the bidding requirement shall be cause for termination of the grant.

13.8. The grantee shall reimburse the department any amount of the grant used for unauthorized expenditures. Authorized expenditures are those outlined in the budget of the approved application and that have sufficient supporting documentation.

13.9. The grantee shall return any unexpended grant funds remaining at the end of the grant period to the department. If the grantee expends any grant funds after the grant period specified on the grant agreement, those expenditures shall be considered unauthorized.

13.10 The grantee shall submit a final report to the department within 30 days following the last day of the grant period. The report shall contain:

13.10.1. A complete accounting of the grant expended during the period;

13.10.2. Documentation supporting all grant expenditures, including without limitation, invoices, checks, titles and purchase orders;

13.10.3. All bank statements of the grant account;

13.10.4. All bidding information for expenditures costing \$5,000 or greater, including copies of the legal ads, bids received, and authorization to purchase;

13.10.5. An evaluation of the total operating costs and community support for the project;

13.10.6. An evaluation of successes and failures encountered in implementing the original application's work tasks;

13.10.7. Program information as described in section 5.4 of this rule; and

13.10.8. An analysis of the project including: the estimated cost per ton to recycle that volume and the estimated revenue per ton of recycled material.

13.11. The department shall return an incomplete report to the grantee for completion. A grantee shall resubmit a completed report within thirty days of notification that the report is incomplete.

§33-11-14. Department Site Visits.

14.1. The department shall periodically conduct site visits with grantees. These visits shall be conducted to provide assistance, to review progress, to discuss any problems encountered in project implementation, or to review financial compliance and clarify any discrepancies found in the final report.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL PROTECTION
OF THE STATE OF WEST VIRGINIA

IN THE MATTER OF PROPOSED
LEGISLATIVE RULE 33-CSR-11

TRANSCRIPT OF PROCEEDINGS had at the public hearing in the above-entitled action on the 15th day of January, 2009, commencing at 6:00 p.m., and concluding at 6:15 p.m., at the Office of the Department of Environmental Protection, 601 57th Street, S.E., Charleston, Kanawha County, West Virginia, pursuant to Notice or all interested parties.

NANCY W. MCNEALY
CERTIFIED COURT REPORTER
P.O. BOX 13415
CHARLESTON, WEST VIRGINIA 25360-0415
304-988-2873

APPEARANCES:**DEP STAFF PRESENT:**

Diana Haid, DEP PIO
Allie Spangler, DEP
Ginny DiFrancesco, DEP PIO
Gary Rogers, DEP
Greg Rote, DEP REAP
Sandy Rogers, DEP REAP

I N D E X

Reporter's Certificate Page 5

1 **MS. HAID:** Good evening. My name is Diana
2 Haid, and I am with the Public Information Office.
3 Welcome to the DEP and the public hearing on the
4 proposed legislative Rule 33-CSR-11.

5 This Legislative Rule establishes
6 procedures for covered electronic device
7 manufacturers to register their brands with the
8 state and sets out guidelines for municipalities and
9 counties to apply for and receive grants for the
10 purpose of conducting electronic collection events
11 and programs.

12 The funding available for grants is
13 established by the registration fee imposed on all
14 covered electronic device manufacturers that conduct
15 business in West Virginia.

16 Please make sure you have signed in and
17 have indicated whether you're going to make
18 comments. Comments shall be limited to the proposed
19 rule.

20 Copies of the rules are available from
21 the Secretary of State's office or from the DEP web
22 page at www.wvdep.org. Click "Citizen Information"
23 and select "2009 Proposed Rule Changes".

9 The floor is open for comments;
10 however, we have no one that has shown up to give
11 comments for this session. This concludes the
12 public hearing for the proposed Rules 33-CSR-11.
13 The Agency will review all comments and prepare a
14 written response, which will be filed when the final
15 rule is filed with the Secretary of State.

18 (WHEREUPON, the public hearing
19 was concluded at 6:15 p.m.)

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to-wit:

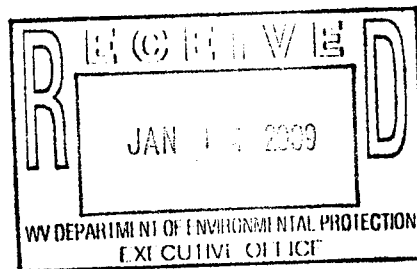
I, JOHN T. BERKHOUSE, Certified Court Reporter, Subcontractor Reporter for NANCY MCNEALY, Certified Verbatim Reporter, Official Reporter for the West Virginia DEPARTMENT OF ENVIRONMENTAL PROTECTION, do hereby certify that the foregoing is, to the best of my skill and ability, a true and accurate transcript of all the proceedings as set forth in the caption hereof.

Given under my hand this 1st day of February, 2009.

My Commission Expire March 10, 2010.

A handwritten signature in cursive script, reading "John T. Berkhouse", written over a horizontal line.

Certified Court Reporter
Notary Public



January 12, 2009

West Virginia Department of Environmental Protection
Public Information Office
Attn: Ms. Kathy Cosco
601 57th Street, S.E.
Charleston, WV 25304

RE: Proposed Rules for the Covered Electronic Devices Takeback Program

Dear Ms. Cosco:

The Environmental Leadership Council at ITI represents many leading manufacturers of computers, televisions, printers, and other electronic equipment. Our member companies have long been leaders in innovation and sustainability. Many of our members go beyond requirements on environmental design and energy efficiency, and lead the way in product stewardship efforts. As a result, such prestigious indices as the Dow Jones Sustainability Index, the Financial Times Sustainability Index, and the Global 100 have consistently recognized numerous ITI members for their concrete environmental and sustainability achievements.

ITI's comments address the proposed rules for West Virginia's Covered Electronic Devices Takeback Program. ITI would like to thank the Department for the opportunity to comment on this important public policy issue.

1. Please Clarify Apparent Discrepancies

In the initial registration process, the Department has interpreted the law as requiring that all manufacturers register with the Department and pay a fee, regardless of the type of user (business or consumer) of the manufacturer's covered electronic devices. ITI agrees that the legislation does not make it clear which manufacturers are supposed to pay registration fees to the state under this new law. In contrast, other states' electronics recycling laws clearly state the entities eligible for recycling under this type of law. Despite the lack of clarification in the legislative language, several passages in the legislation indicate that the legislature intended to simply include covered electronic devices from consumers¹ and consequently only the manufacturers of devices sold to consumers:

- §22-15A-2 (Definitions) - The definition of 'video display device' includes, "...Video display device includes a device that is an integral part of the display and cannot easily be removed from the display by the (emphasis added) consumer and that produces the moving image on the screen."
 - §22-15A-26 (Manufacturers' takeback programs) includes the following subsection, "The takeback program shall enable a (emphasis added) consumer to recycle covered electronic devices or televisions without paying a separate recycling fee at the time of recycling..."
- Additionally, the term consumer is used several more times in §22-15A-26 (c) - (1) (2) and (3).

¹ The West Virginia Consumer Protection Code defines consumer as, "Consumer" means a natural person to whom a sale or lease is made in a consumer transaction and a "consumer transaction" means a sale or lease to a natural person or persons for a personal, family, household or agricultural purpose. Please note that the term 'person' in the Consumer Protection Code is not defined as it is in the West Virginia Electronics Recycling Law (SB 746).

Additionally, §33-11-9 (9.1.2) of the proposed rules, in describing the conditions grant applicants must meet, states that "the project shall be designed to involve all or a substantial percentage of the residents² located in the project area and should include a plan to provide public education regarding CED recycling."

ITI believes that since individual manufacturer plans and grantees only have to provide recycling services to consumers/residents, only manufacturers of devices sold to consumers/residents should be required to register under this law. Due to existing requirements for business entities for the management of end of life electronics, such as RCRA requirements, tax incentives, contractual obligations with manufacturers, and lease agreements, ITI does not believe that business sales should be covered under electronics recycling laws.

2. Commercial, Industrial or Medical Equipment Exemption

The Covered Electronic Device Takeback Law contains an abbreviated exemption for covered electronic devices contained within commercial, industrial, or medical equipment. This abbreviated statutory exemption language introduces ambiguity to an exemption that is otherwise consistently interpreted across other jurisdictions. ITI requests that the Department provide clarification to manufacturers in the rules through the inclusion of expanded exemption language, which is used in many other state electronics recycling laws. The expanded exemption language offered by ITI does not change the intent or the meaning of the language contained in the statute, rather, it provides clarification for both the Department and covered manufacturers.

The language recommended by ITI reads as follows:

"A covered electronic device that is functionally or physically a part of, or connected to, or integrated with a piece of equipment or system designed and intended for use in an industrial, governmental, commercial, research and development, laboratory, or medical setting, including but not limited to diagnostic, monitoring, control or medical products (as defined under the Federal Food, Drug, and Cosmetic Act), or equipment used for security, sensing, monitoring, anti-terrorism, emergency services purposes or equipment designed and intended primarily for use by professional users."

The Department has indicated to ITI that while they are willing to make this clarification, abbreviated exemption language is preferred. ITI's members urge the Department to adopt the above language, which provides great degree of clarity; however, if the Department must use more concise language, we recommend the following:

"A covered electronic device that is functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial, government, or medical setting, including diagnostic, monitoring, or control equipment."

3. ITI Requests Clarification for the Products Covered by the Video Display Device Definition

It is essential that the Department provide guidance to manufacturers on this definition and examine the intent of the legislature. ITI believes that the intent of the legislature is clear: to cover those products that are most prevalent in the waste stream and are already covered by other state electronics recycling laws. These products are desktop and laptop computers, computer monitors and televisions. Unfortunately, the

² The West Virginia Code defines "resident of this state" as, an individual who: (1) Maintains a bona fide full time primary place of abode in this state; (2) is not registered to vote in any other state; (3) if licensed to drive, holds a valid driver's license in this state and does not hold a current driver's license issued by any other state; (4) timely filed personal income tax returns as a resident of this state for the four preceding calendar years (determined by including any authorized extension of time for filing the return); and (5) does not claim to be a resident of any other state for any purpose whatsoever.

definition of video display device, as written in the law, could include many other devices, which are sold for much lower prices, in lesser quantities in the state and are also new to the portfolio and thus not showing up in the waste stream. After the Department reviews the intent of the legislature, it should issue guidance to manufacturers with an explicit list of the products covered by the definition.

If you have any questions regarding these comments or would like further information, you can contact me at vrickman@itic.org or 202-626-5729. We look forward to further engagement on this important emerging bill and welcome the opportunity to provide more information or background for your additional consideration.

Regards,



Valerie Rickman
Environmental Affairs Analyst
Information Technology Industry Council (ITI)
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Washington, DC 20005
202.626.5729
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ABOUT ITI

The Information Technology Industry Council (ITI) represents the nation's leading high-tech companies and is recognized as one of the most effective advocacy organizations for the tech industry in Washington and internationally. ITI helps member companies achieve their policy objectives through building relationships with Members of Congress, Administration officials, and foreign governments; organizing industry-wide consensus on policy issues; and working to enact tech-friendly government policies.

Kodak

COPY

January 14, 2009

West Virginia Department of Environmental Protection
Public Information Office
Attn: Ms. Kathy Cosco
601 57th Street, S.E.
Charleston, WV 25304

RE: Proposed Emergency Rule for the Covered Electronic Devices Takeback Program

Dear Ms. Cosco:

Eastman Kodak Company (Kodak) would like to thank the Department for the opportunity to comment on this important public policy issue. Kodak is not a producer of computer or television equipment, which has been the historical target of other state take-back programs. Our consumer equipment portfolio is focused on imaging products, such as cameras, printers and the relatively new digital picture frames. Digital picture frames are desktop devices whose primary function is to display still photographic images. Some of these devices have the capability to display video images as well.

Kodak finds the recently enacted e-waste law and subsequent proposed rulemaking to be very confusing in terms of scope of covered products. The definition of a 'covered electronic device' (§33-11-2.4) includes the term 'video display device' (§33-11-2.12) which suggests that any 'video-enabled' product could also be considered a covered electronic device. This could potentially broaden the scope of products beyond what other states are currently regulating as covered electronic devices.

Kodak believes that it was the intent of the legislature to cover those products that are most prevalent in the waste stream and are already covered by other state electronic recycling laws. These products are desktop and laptop computers, computer monitors and televisions. It is our understanding that the legislature did not intend to include products such as digital picture frames or the many other types of video-enabled products.

Kodak requests clarification of the products covered by the video display device definition. Specifically, does the Department considered video-enabled products such as some digital picture frames and other similar devices to be covered by the rulemaking?

If you have any questions about the products in question, please do not hesitate to contact me at 954-857-4571. Thank you in advance for your consideration to this important issue.

Sincerely,



Michael G. Anderson
Senior Environmental Engineer

/mga

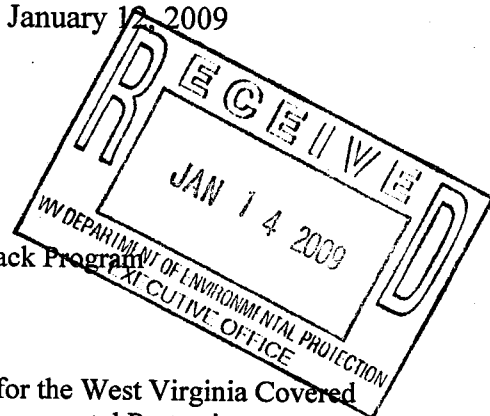


3M Touch Systems, Inc.

501 Griffin Brook Park Drive
Methuen, MA 01844
978-659-9000 Office
978-659-9100 Fax

January 14, 2009

West Virginia Department of Environmental Protection
Public Information Office Attn: Kathy Cosco
601 57th Street SE
Charleston, WV 25304



Re: West Virginia Proposed Rule on Covered Electronic Devices Takeback Program

Dear Ms. Cosco:

Thank you for the opportunity to submit comments on the proposed rule for the West Virginia Covered Electronic Devices Takeback Program, issued by the Department of Environmental Protection.

3M Company is a member of the Information Technology Industry Council (ITI), and supports the comments that ITI is submitting to the Department. In addition, 3M Company has the following comments on the proposed rule.

3M Touch Systems asks that the proposed West Virginia e-recycling rules be revised to clarify the industrial/commercial exemption in the proposed law.

1. Institutional, Commercial, and Industrial Exemption

The West Virginia proposed rule, section 33-11-1, defines "Covered Electronic Device" as follows:

"Covered electronic device (CED)" means a television, computer or video display device with a screen that is greater than four inches measured diagonally. "Covered electronic device" does not include a video display device that is part of a motor vehicle or that is contained within a household appliance or commercial, industrial, or medical equipment.

ITI was informed that the exemption language needed to be short. 3M does not believe that limiting the text in an exemption to facilitate brevity rather than making the law clear is the intent of the rule.

It appears that the West Virginia definition of "covered electronic device" and its commercial/industrial exclusion language is very similar to the California e-recycling law's version of the same. California's law, however, is the only advance recovery fee (ARF) system that has been adopted by a US state. Under the California version, retailers collect the consumer fees and manufacturers typically do not have direct responsibility; plus it is based on a per-unit fee. In addition, California's e-recycling law was one of the first to be adopted by a state, and was adopted several years ago. Since that time, the states that have adopted manufacturer responsibility-based programs for consumer/household electronic recycling have included increasingly more detailed and specific exemption language, because they have recognized that the household waste e-recycling programs are not intended to cover specialized commercial, industrial, medical, monitoring and security equipment (and the fee structure for manufacturers does not make sense when applied to small volume, specialized equipment). Minnesota and Rhode Island are a few examples of states that have adopted more detailed commercial/industrial exemptions.

3M Touch Systems-branded touch monitors are designed and marketed for business, industrial, medical, educational and governmental usage. The touch enabled design is for use with larger equipment such as customer check out in retail stores, POS stations, hospitality, and kiosk self-service applications. Other US States that have electronics recycling laws imposing manufacturer responsibility, such as Oregon, Connecticut, Minnesota and Rhode Island, have found 3M Touch Systems monitors out of scope and in

order to maintain uniformity between states allowing interstate commerce we would like to confirm that 3M Touch Systems branded monitors are out of scope for this legislation.

3M Touch Systems monitors are not sold to any electronics retailers to be resold to general consumers for in-home use. Our monitors are designed and marketed only to businesses for inclusion as a component in their overall equipment system. Examples of applications where our products are used are industrial machine automation, retail point of sales terminals, and informational kiosks. We do not sell to retailers for consumer use.

The monitors are sold by 3M Touch Systems to distributors, and it is possible that they might make them available for sale over the internet (we cannot control their sales). However, the specialized nature of this equipment (they are touch screen monitors), the distribution methods we use, and the price point, which is significantly higher than typical household computer monitors, make it very unlikely that they would be purchased by households.

Typical Microsoft applications like Word and Excel are not easily used with a touch screen. Application software tends to be specialized to take advantage of touch input and is created by OEMs for use with their equipment in the previously mentioned applications. It is almost certain that they would be purchased for the specialized industrial/commercial uses described in the West Virginia exclusion language.

Two of our monitor products are designed for easy integration into kiosks, industrial enclosures and other installations where compact, touch-integrated displays are needed. These monitors consist of a rugged metal enclosure that provides mounting stability for public access environments. An example of this is the 3M Library Systems equipment that incorporates 3M Touch Monitors that are sold to libraries. The equipment allows library patrons to check-in and check-out their own materials, without the help of a library employee. The library system is a complete turnkey system, with the LCD computer monitor hooked up to the printer, computer and controllers, and the scanner mounted on the equipment. The LCD monitor cables are connected through a small opening in the cabinet to the computer and power supply. The monitor cables are always run into the SelfCheck cabinet so they do not show and the monitor could not be easily removed without some disassembly or cutting connectors off the monitor cable.

In order to grant further clarity to the West Virginia definition of "covered electronic device," 3M asks that West Virginia use additional language to explain and provide examples of the equipment used in industrial, research and development or commercial settings, including security, anti-terrorism and medical equipment. The following exemption language has been agreed upon by the industry and is a recommended alternative to the language in the proposed rule. This language is also similar to language used in Minnesota and Rhode Island. Other states that have adopted e-recycling laws such as Virginia and New Jersey have also adopted more specific language than West Virginia's proposed rule. 3M asks that West Virginia clarify that a "covered electronic device" does not include the following:

A covered electronic device that is functionally or physically a part of, or connected to, or integrated within a larger piece of equipment or system designed and intended for use in an industrial, governmental, commercial, research and development, or medical setting, including but not limited to diagnostic, monitoring, control or medical products (as defined under the Federal Food, Drug, and Cosmetic Act), or equipment used for security, sensing, monitoring, anti-terrorism, emergency services purposes or equipment designed and intended primarily for use by professional users.

This language is consistent with the intent of the West Virginia law. For example, the language in Section 6 of the proposed rule (specifically, subsections 6.1.1, 6.1.4, 6.1.4.a and 6.1.5) repeatedly refers to consumers and specifies how the takeback and collection system should be designed to meet the needs of consumers. All of this language points to household consumers as the focus of the proposal, not industrial and commercial equipment. The above detailed language makes clear that products that are

supplied to businesses and are intended for commercial, industrial, monitoring, security and medical applications are not included.

2. Language for State Website Regarding Exclusions for Industrial/Commercial Equipment

The proposed rule includes language requiring the State to maintain a website with information on manufacturers that have registered with the State as follows:

"The department shall maintain a current list of registered covered electronic device manufacturers and their brands and shall publish the list on the internet to provide retailers access to the manufacturers authorized to sell or lease their products in West Virginia."

This language does not inform prospective purchasers that there are products that may be excluded from the law, and therefore could lead to confusion for these purchasers (as well as potentially the State agency administering the law). Purchasers may assume that only products from manufacturers listed on the website are acceptable, and that they may not purchase products from manufacturers that sell industrial or commercial equipment simply because those manufacturers are not listed.

3M asks that the law be revised to include language similar to the Minnesota law, which makes clear that any state websites listing manufacturers must also reference the possibility that industrial/commercial equipment is exempt, and therefore manufacturers selling that equipment need not be listed.

Here is Minnesota's language, from 115A.1312 Subd. 2(g):

(g) The agency must maintain on its Web site the names of manufacturers and the
5.12manufacturers' brands listed in registrations filed with the agency. The agency must
5.13update the Web site information promptly upon receipt of a new or updated registration.
5.14The Web site must contain prominent language stating, in effect, that sections 115A.1310
5.15to 115A.1330 are directed at household equipment and the manufacturers' brands list is,
5.16therefore, not a list of manufacturers qualified to sell to industrial, commercial, or other
5.17markets identified as exempt from the requirements of sections 115A.1310 to 115A.1330.

3. Add a Small Volume Exclusion to the Proposal

3M asks that the Department clarify the small volume exclusion in the proposed rule. Because the proposed rule currently includes definitions that may pull in small volume equipment, and because the initial fees, annual reporting fees, and other costs of the program would be excessive given the small volume of products, it makes sense for the Department to recognize a small volume exemption.

A small volume exemption would allow items such as specialty devices for the impaired to enable them to use computers or view screens on monitors. Without this exemption, the cost of registration would be prohibitive for these types of devices.

The West Virginia law has a large initial fee, with no graduated fee scale. This type of fee structure may make sense for large-volume computer monitor manufacturers, but does not make sense for manufacturers of much lower volume, specialized commercial/industrial equipment. Because the sales volume for this specialized Touch Monitor equipment is so low (especially relative to the high volume household/consumer computer monitors), the fees paid by 3M Touch Systems might even exceed the actual net profit on estimated sales of these monitors to ultimate users in West Virginia—*industrial/commercial users* in the State. (This is based on estimates—because the monitors are sold through distribution, we do not have point of sale information on the location of ultimate sales by the distributors). Under the State of Washington's e-recycling program, which has a graduated fee scale based on estimated market share, 3M Touch Systems' estimated market share percent by weight rate has been determined at 0.00%. This low market share demonstrates that the Touch Screen monitors are not high-volume consumer/household products.

Moreover, industrial/commercial users have systems for recycling their used/waste computers and monitors. It is very possible that if West Virginia determines that 3M Touch Monitors are not exempt, 3M Touch Systems would pay these large fees and no Touch monitors would be returned through the State's system as household waste. In essence, 3M Touch Systems would be paying for recycling of other manufacturers' household computers and monitors.

The West Virginia section on manufacturer registration in the proposal states in Section 33;-11-3, Subsection 3.1, as follows:

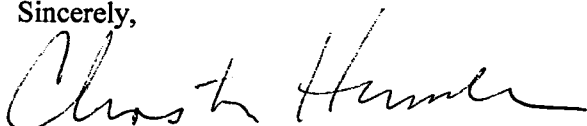
The registration and fee requirements of this rule apply to manufacturers that manufactured an average of more than one thousand covered electronic devices per year in the three-year period immediately preceding the initial registration required by this section.

3M asks that this be clarified to refer to 1000 units sold in the state of West Virginia; otherwise this language might be interpreted as based on global manufacturing. A company may make many thousands of products, almost all exported to another country and/or distributed to other states. This could mean that this manufacturer may have a sale of 1 or 2 products in West Virginia. This would cost \$10,000 to register for a single product. Because a number of products go through distributors, the manufacturers may not have control of or easily be able to determine just how many units of a specific product are sold into a specific state. Volumes of 1000 or more, however, would be much easier to estimate, based on a percentage of U.S. sales (a figure that manufacturers track).

"Small volume" can be defined as sales of a particular category of equipment at less than 1,000 units/per year or less than 1000 pounds/year in West Virginia. The Department could specify that in order to qualify for this exemption, a manufacturer must notify the state agency by the appropriate date of each year, and provide the following information: "West Virginia sales or prorated US Sales (% of total US sales) of the device, and/or unit weight times actual or estimated sales in units from the previous year." The Department could also make clear that manufacturers would be able to request confidentiality for submitted sales data by following the procedures that provide for protection of confidential business information.

Thank you again for the opportunity to comment on the proposed rule. If you have questions or would like additional information, please do not hesitate to contact me at 978-659-9022.

Sincerely,



Christine Hannula
Product Responsibility Liaison
3M Touch Systems – ECB
300 Griffin Brook Park Drive
Methuen, MA 01844

978.659.9022 phone
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RESPONSE TO COMMENTS – 33CSR11

The comment period for the Covered Electronic Devices Takeback Program rule, 33CSR11, closed January 15, 2009. Written comments were received from the Information Technology Industry Council (ITI), 3M Touch Systems, Inc. (3M), and Eastman Kodak Company (Kodak). A public hearing was held January 15, 2009, to accept oral and written comments. No one from the public attended the hearing.

COMMENT A:

ITI stated that the legislation does not make it clear which manufacturers are supposed to pay registration fees to the state under this new law.

RESPONSE A:

Section 3.1, 3.2 and 3.3 of the proposed legislative rule 33CSR11 specify the two primary criteria that must be met before a manufacturer is required to register in West Virginia. Those criteria are: 1) the manufacturer must have manufactured an average of more than one thousand covered electronic devices per year in a three year period immediately preceding the initial registration, and 2) the manufacturer desires to sell or lease covered electronic devices in West Virginia.

COMMENT B:

ITI stated that several passages in the legislation indicate that the legislature intended to simply include covered electronic devices from consumers and consequently only the manufacturers of devices sold to consumers.

RESPONSE B:

Manufacturers of covered electronic devices ordinarily do not sell their products directly to the general public, but to distributors and retailers. As a consequence, manufacturers cannot wholly control the ultimate destination of the CEDs manufactured. The Department of Environmental Protection (DEP) agrees that there may be some confusion regarding the term “consumer” as it is applied in the WV Code with regard to the Covered Electronic Devices Takeback Program. The term “consumer” is used interchangeably with the term “person” throughout the statute. Therefore, a definition of “consumer” will be added to the proposed legislative rule stating that for the purpose of this rule, a consumer is “a natural person or resident, corporation, firm, partnership, agency, association, organization or society that resides in West Virginia and has legally purchased or is in legal possession of a CED.”

COMMENT C:

ITI and 3M state that the Covered Electronic Device Takeback Law contains an abbreviated exemption for CEDs contained within commercial, industrial, or medical equipment. ITI and 3M believe the exemption language introduces ambiguity to the exemption or is not extensive enough to be clear. Both ITI and 3M offer the same corrective language that more extensively explains the exemption.

RESPONSE C:

DEP believes that ITI and 3M are referring to the definition of “covered electronic device” in §22-15A-2 (6) of the WV Code. The exemption language offered by ITI and 3M is based on the design and intended use of a CED, regardless of whether it meets the physical characteristics defined in the WV Code. DEP has interpreted the definition’s exemption to be based on the physical characteristic of the CED, not the use of the CED, and presented merely as an example of which items may be considered exempt. DEP believes the words “contained within” sufficiently imparts that only those CEDs that are too bulky or cumbersome to be reasonably transported to a takeback center or mailed back to the manufacturer are exempt.

COMMENT D:

ITI requests clarification for the products covered by the “video display device” definition. ITI believes the definition could include many devices other than computers, monitors, laptops, and televisions.

RESPONSE D:

The proposed legislative rule 33CSR11, states in section 2.12, in summary, that a video display device is an electronic device with an output surface (*a screen*) that displays or is capable of displaying moving graphical images, regardless of the technology used to attain those images. DEP believes the definition’s intention is to accommodate future changes in technology and not intended to be strictly bound to a few specific products.

COMMENT E:

3M suggests language for the state website regarding exclusions for industrial/commercial equipment.

RESPONSE E:

DEP agrees that the website should indicate that certain items do not meet the qualifications of a CED and therefore their manufacturers are not required to register. DEP will also state on the

website that CED manufacturers that manufacture less than 1000 units, on average, over a three year period are exempt from the registration process.

COMMENT F:

3M asks that a small volume exclusion be added to the proposed rule.

RESPONSE F:

The WV Code, and the proposed rule, currently allow for a small volume exclusion. The registration requirements do not apply to manufacturers that manufacture an average of less than 1,001 CEDs per year in a three year period immediately preceding the initial registration.

COMMENT G:

Kodak has asked whether the DEP considers digital picture frames and other similar devices to be covered by the rulemaking.

RESPONSE G:

If a digital picture frame has a screen greater than four inches, measured diagonally, and displays or is capable of displaying moving graphical images, then it meets the criteria of a covered electronic device and the manufacturer is subject to the registration requirements if the quantity threshold is satisfied and the product is sold in West Virginia.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

AMENDMENTS TO PROPOSED RULE

Rule Title: Covered Electronic Devices Takeback Program

A. AMENDMENTS MADE TO PROPOSED RULE AS A RESULT OF COMMENTS OR OTHER INFORMATION RECEIVED.

A definition of “consumer” was added to the rule under §33-11-2.

B. REASONS FOR THE AMENDMENTS.

The commenters expressed some confusion as to the exact definition of a “consumer”, which may have a direct effect as to whether a manufacturer was required to register their brands with the State.