NYS ELECTRONIC EQUIPMENT RECYCLING & REUSE ACT

Development of Draft Regulations (Part 368-1)

October 4, 2016

Division of Materials Management

Bureau of Waste Reduction & Recycling

NEW YORK STATE OF OPPORTUNITY | Department of Environmental Conservation

Agenda

- Introductions
- Program Overview and Update
- Program Performance
- Electronic Waste Rulemaking
- Lunch
- Dialogue/Q&A

The “Act”

- NYS Electronic Equipment Recycling and Reuse Act – May 28, 2010
- Progressive State E-waste Law
- Broad range of covered electronic equipment
- Wide range of covered consumers
- Comprehensive convenience standards & performance goals & environmental standards

Goals and Objectives of the Act

- Waste stream diversion & resource conservation
- Shift to shared responsibility
- Increase e-waste recycling & reuse
- Develop & implement a streamlined e-waste management program
- Enhance recycling/reuse infrastructure

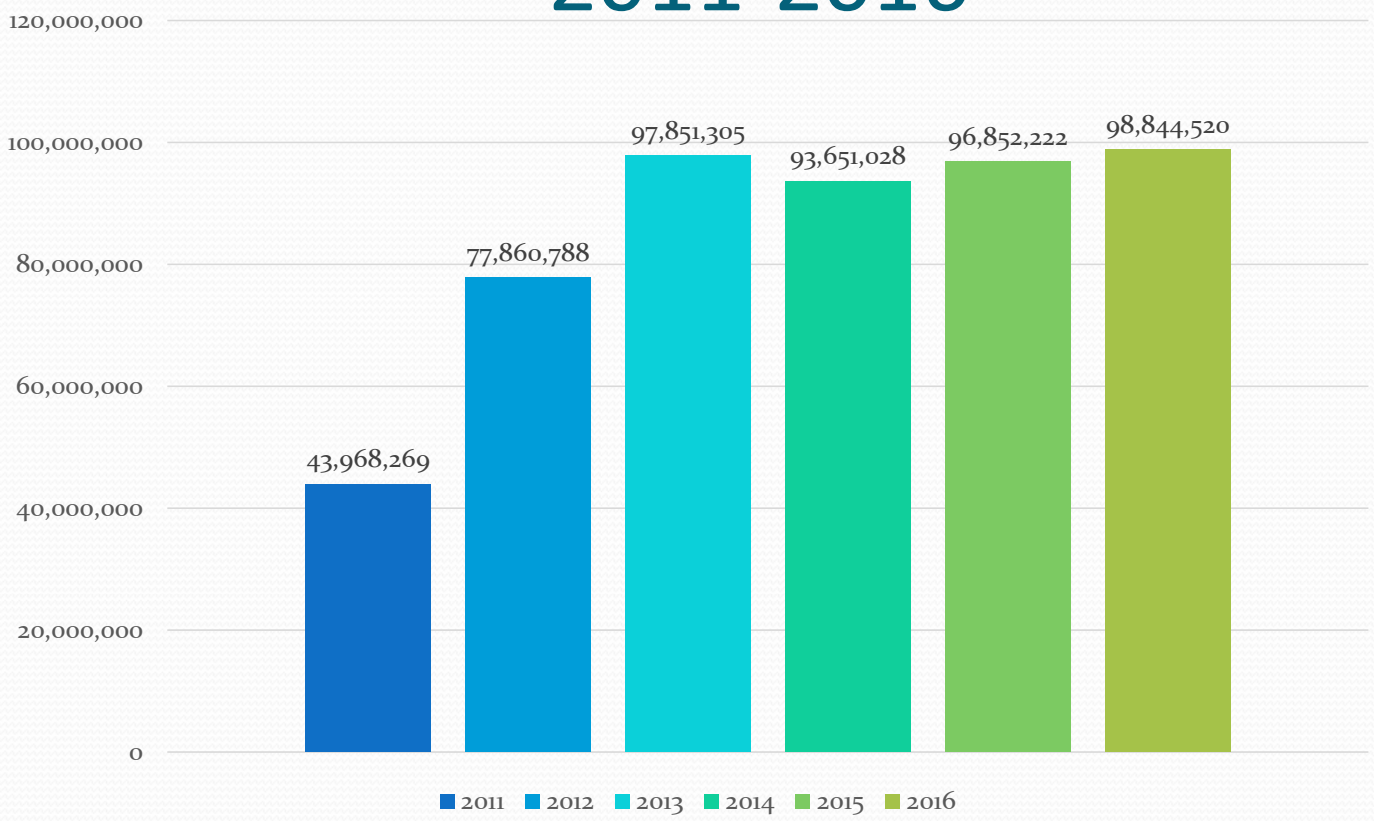
Covered Electronic Equipment

- **Computers**
  (including laptops, desktops, tablets and e-readers)
- **Computer Peripherals**
  - Monitors
  - Electronic Keyboards
  - Electronic Mice or Similar Pointing Devices
  - Facsimile Machines
  - Document Scanners
  - Printers
- **Televisions**
- **Small Electronic Equipment**
  - VCRs
  - Digital Video Recorders
  - Portable Digital Music Players
  - DVD Players
  - Digital Converter Boxes
  - Cable or Satellite Receivers (including digital media receivers)
  - Electronic or Video Game Consoles
- **Small Scale Servers**

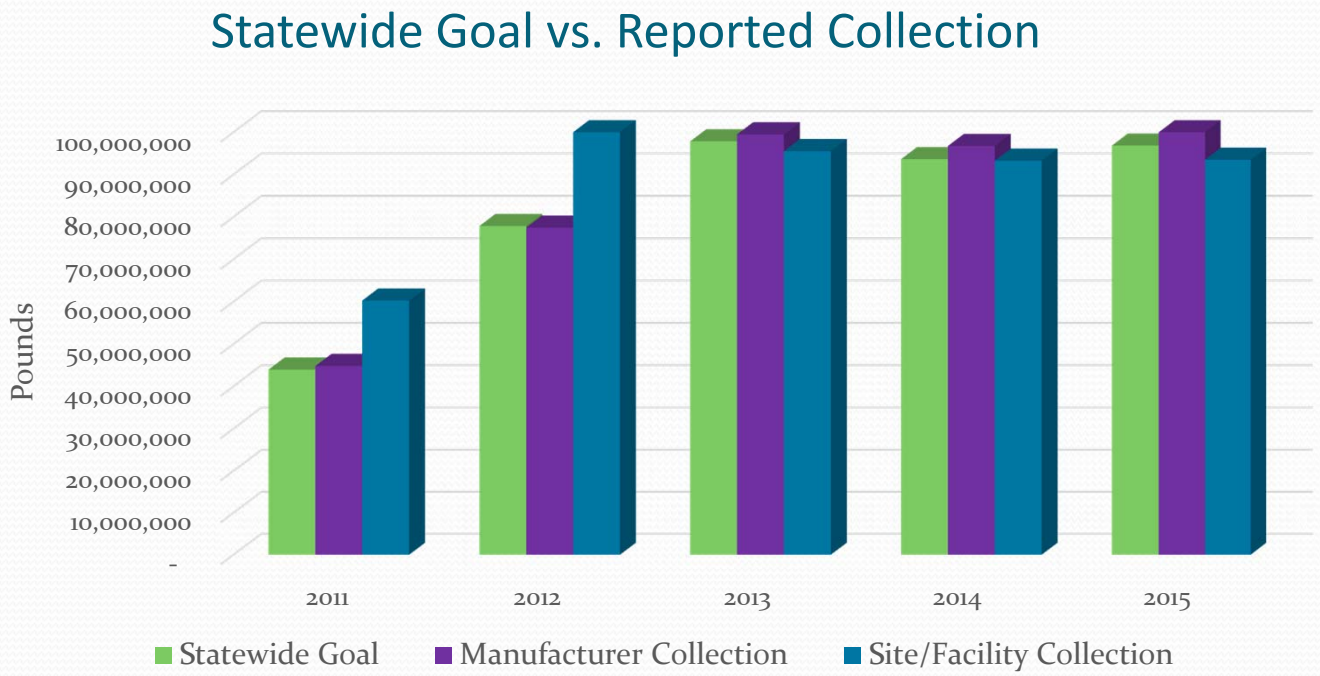
Stakeholders

- Manufacturers
- Collective Organizations
- Recycling Facilities
- Consolidation Facilities
- Collection Sites
  (private and municipal)
- Retailers
- Waste Haulers/Transporters
- Waste Management Facilities
- Consumers
- NYSDEC

Statewide Recycling & Reuse Goal in Lbs. 2011-2016

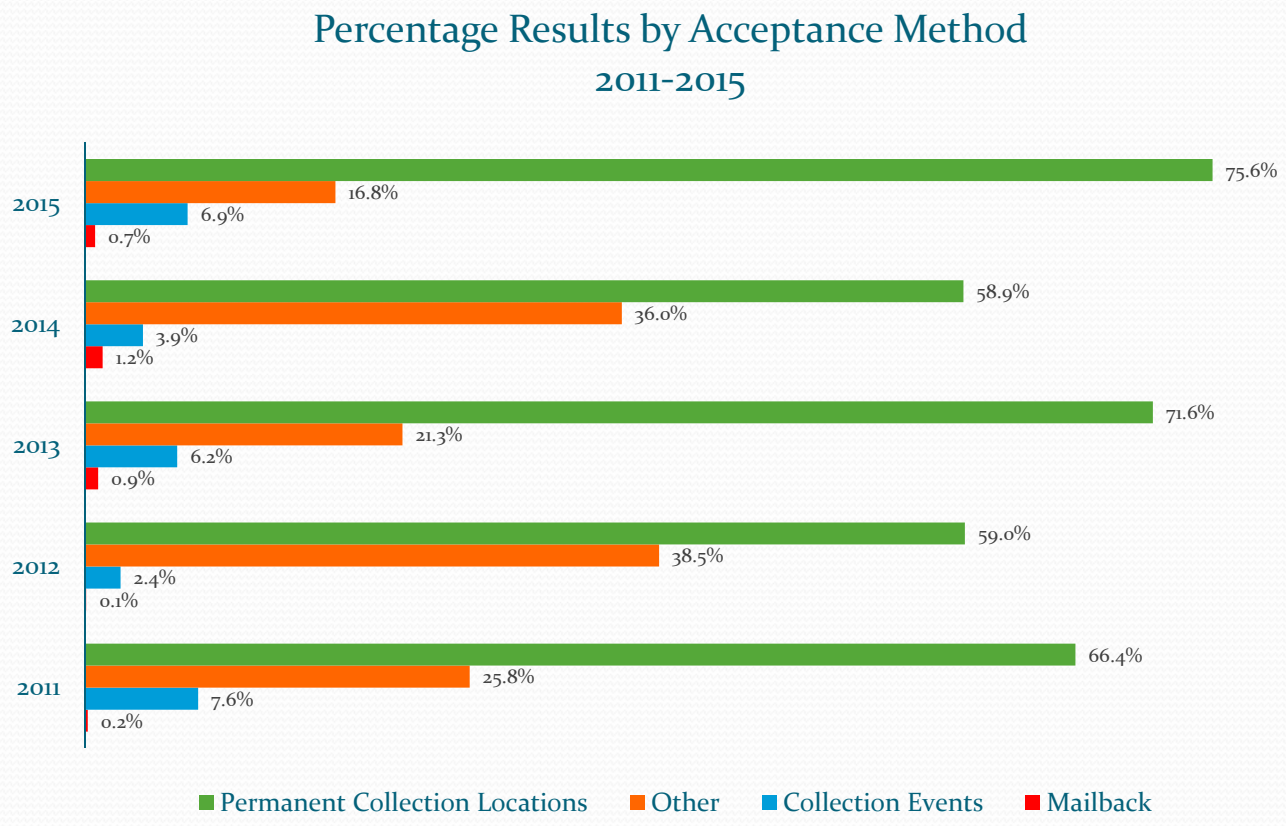


Program Performance (2011-2015)



Total reported collected through manufacturers' programs for years 2011 – 2015 was approximately **420 million pounds**.

Program Performance (2011-2015)



Recycling Surcharges (2012 - 2015)

Program Year	2012	2013	2014	2015
Manufacturers	10	9	10	10
Pounds under-collected	90,512	466,461	523,512	139,605
Surcharges issued	$41,922.30	$176,536.50	$242,848.70	$67,747.90
Surcharges paid	$41,922.30	$176,536.50	$239,571.20	$53,356.40

Recycling Credits (2014 - 2016)

- Program Year 2014:
  - 24 manufacturers generated over 5 million credits
- Program Year 2015:
  - Only two manufacturers used approximately 6,200 credits
  - No manufacturers sold or purchased credits
  - 23 manufacturers generated approximately 4.4 million credits
- Program Year 2016:
  - 30 manufacturers have approximately 9.4 million credits available for use

Program Updates

- E-waste Online Registration & Reporting System
- Electronic Waste Assistance Grants
  - For more information: http://www.dec.ny.gov/chemical/8778.html
- Statewide recycling facility inspections
- Compliance Activities
  - NOV's for non-reporting
  - Manufacturer program reviews

* Slide added after presentation.

E-Waste Rulemaking Objectives

- Provide clarity to the existing provisions of the Act for all participating stakeholders
- Strengthen existing provisions to improve overall program performance

E-waste Program Challenges

- It appears that many manufacturers are not covering all costs associated with the implementation of their acceptance programs, often resulting in a financial hardship for contracted partners, municipalities and, indirectly, consumers.
- Many manufacturer acceptance programs are only meeting minimum acceptance standard collection requirements, which:
  - limits the weight contracted for with recycling facilities and other program partners;
  - limits the Statewide Goal, which is calculated based on weight reported to have been collected in the state; and
  - ultimately results in fewer free and convenient acceptance opportunities for NYS consumers.
- Many manufacturer/collective programs do not actively accept CEE continuously throughout the program year and simply "purchase pounds" which was not the intent of the Act.

* Slide added after presentation.

E-waste Program Challenges (continued)

- Most mailback programs are:
  - Ineffective, under-utilized (due in part to public education program insufficiencies), and are so inconvenient that consumers are discouraged from using them;
  - not completely free to consumers and therefore non-compliant (charges for packaging, etc.); and
  - only in place to meet the Act's convenience requirements.
- The Act sets forth minimum and general public education requirements, which has resulted in inadequate consumer awareness. Information regarding manufacturers' and collectives' programs is generally not kept up-to-date.
- CRTs are costly to process and under-collected by manufacturer and collective acceptance programs.
- Out-of-state entities collecting weight from NYS consumers do not report to the Department – therefore, the weight collected does not contribute to a potential increase in the Statewide Goal.

* Slide added after presentation.

Key Areas of Focus

- Definitions – new and revised
- Manufacturer's Electronic Waste Acceptance Program – continuous, convenient, effective
- Methods of Acceptance - Mail back, pay for shipping, packaging, reasonable expenses and track collections to determine effectiveness
- Public Education and Outreach – requirements for an effective public education program
- Notification to Retailers – Registration and registered brands
- CRT Management - Minimum CRT collection requirement by manufacturer, must pay surcharge on CRT shortfalls
- Surcharges/Waivers/Credits

Key Areas of Focus (continued)

- Voluntary Withdrawal/Revocation
- Cost and Compensation -Reasonable, fair and adequate compensation to recyclers and collectors
- Collective Requirements
- Retailer Requirements
- Landfill Facilities/Transporter Requirements – annual notifications
- Business Confidentiality

Definitions

- Act
- Acceptance Program
- Business Consumer
- Electronic Waste
- Collection Events
- Collection Sites
- Collectives
- Consolidation Facility
- Manufacturer Brands, Ownership, Transfer, Liability
- Premium Services
- Small Electronic Equipment

Manufacturer's Program Requirements

- Brand collection
- One-for-one
- Continuous, convenient and effective
- Implemented with no charge to consumers

Not a purchase pounds program

Acceptance standard is a floor, not a ceiling

Manufacturer's Acceptance Program

- Continuous
  - Must collect year round without limitation of acceptance standards
- Convenient
  - Provides one acceptance method in each county and each municipality with a population of 10,000 or more.
  - Must not exclude CEE offered for sale by the manufacturer without offering an effective and convenient alternative to the consumer that is acceptable to the Department.
- Effective
  - Must meet continuity and convenience requirements without exceptions
  - Must be viable – methods offered by program are being utilized by consumers
  - Must not discourage consumer use

Methods of Acceptance

- Mailback
- Collection events
- Collection sites

In the case where a method proposed/employed is found to be ineffective, the Department may establish additional requirements to ensure convenient collection from consumers.

Mailback

- Mailback requirement for all acceptance programs:
  - Must cover all expenses, including: shipping, packaging materials, and professional packaging when required
- Manufacturers using a mailback-only acceptance program to meet the requirements of the law in an area:
  - Must not be implemented to discourage consumer use
  - Must be considered effective, convenient and appropriate for the type(s) of CEE involved
  - Set target to achieve prior to start of the program year and track collection quarterly
  - If target is not being attained, must supplement with additional acceptance methods

Collection Events

- May be used individually or in conjunction with other acceptance methods
- Minimum of two collection events required when used offered as an option with other methods making it convenient for the majority of the population
- Minimum of three collection events, when used as the only acceptance method offered
- Minimum of two radio announcements and two newspaper ads 15 days prior to the event
- No charge to the consumer.

Public Education and Outreach

- Expand and clarify public education requirements
  - Easily accessible information website/webpage
  - Toll-free number available at all times with voicemail ensuring calls are returned within 72 hours
  - Written information included in or with the product manual providing information on how to to return and recycle CEE at no charge
  - Two advertisements, at a minimum, in newspapers providing statewide coverage informing consumers of methods/options available for collection and recycling

Surcharges and Waivers

- An annual report submitted without a recycling surcharge, unless permitted otherwise, may be considered incomplete
- A manufacturer may request a waiver from the recycling surcharge on a form prescribed by the Department
- The waiver request form shall include information such as
  - Details of the acceptance program
  - How acceptance program meets the continuity, convenience, and effective requirements
  - Actions taken by the manufacturer to track and forecast collections
  - Correctives steps - collection methods and/or physical locations
  - Surcharge will be due immediately upon the Department's determination

Credits

- Each pound of excess collection is equivalent to one credit. Fractions are rolled back to the whole number.
- Credits earned, used, sold or bought must be reported in annual report.
- Credits may be transferred to a new owner in the case of a brand sale
- Credits may not be purchased or sold to satisfy an acceptance standard in the same program year in which they were generated.

Credits (Continued)

- No more than twenty-five percent of a manufacturer's obligation for any program year may be met with recycling credits generated in a prior program year.
- Credits must be applied to any surcharge in a first-in, first-out order.
- Credits purchased in a program year must be used in the same year
- A manufacturer’s acceptance standard should be met with total weight collected applied first, then available credits, then credits purchased

Voluntary Withdrawal/Revocation

- In case of voluntary withdrawal
  - Manufacturer must continue to meet the reporting and collection requirements for at least two program years after the date withdrawal is formerly accepted by the Department
  - No annual reporting fee is required for the two program years after the year of withdrawal from the program
- Revocation
  - Department can revoke registration in the case of continued violations
  - Manufacturer must stop selling CEE immediately upon revocation

Collective Requirements

- New Definition/Requirements Proposed:
  "Collective" means an organization established to fulfill all manufacturer electronic waste acceptance program requirements under the Act.
- Must Register /$10,000 Registration Fee
- Registration requirements:
  - Apply to register form provided (currently online)
  - Thirty days before start of operation
  - Acceptance program with a list of participating manufacturers
  - Acceptance program must be effective and meet continuity and convenience requirements
  - Must submit annual report
  - In the case of voluntary withdrawal, must submit the annual report for the year

CRT Collection

- Manufacturer responsible for brand names of CRTs, televisions and monitors or CRT-containing covered electronic equipment:
  - Must collect an equivalent of (undecided) % of its acceptance standard for a continuous period of five years beginning January 1, 2017.
  - Must pay a surcharge on any shortfall from the CRT target, even when acceptance standard has been met

Costs and Compensation

- A manufacturer is responsible for **ALL COSTS** associated with its electronic waste acceptance program.
- A manufacturers is expected to provide **reasonable and adequate** compensation to collection, consolidation and recycling facilities
  - A manufacturer must elaborate in its acceptance plan how it intends to collect and recycle all CEE, including CRTs, while paying a reasonable and fair price to recyclers and collectors
  - A manufacturer's acceptance program must establish a method to determine a reasonably fair compensation to be offered for each type of CEE.
  - The following methods may be considered reasonably fair:
    - the average of three representative bids;
    - published rates;
    - and/or any other method or process deemed reasonable by the manufacturer and/or necessary by the Department.
  - The manufacturer must provide a certification, duly signed by an authorized representative of the company, stating that the they have done their due diligence in determining and providing reasonably fair compensation for the services of recycling, consolidation and collection facilities employed in the acceptance program to meet the requirements of the law.
- Agreements offering and accepting compensation for collection below cost may be subject to government or private right of action as per provisions of anti-trust and unfair trade practices regulations.

Retailers

- Retailers must make available a current list of covered electronic equipment manufacturers and brands offered for sale in the state upon request by the Department or its authorized agents.

Transporter & Waste Disposal Facility Requirements

- Proposed language to exempt management of electronic waste as hazardous waste
- Proposal involves mandated public education information from transporters and waste facility operators to be provided

Other Clarifications

- Expand and clarify requirements when reporting changes to historical sales data previously submitted.
  - Must be reported to the Department within 30 days of such determination by the manufacturer.
  - Would impact only the manufacturer whose numbers are being revised.
  - Would not lower manufacturer's percentage share of electronic waste.
  - May be considered to re-calculate surcharges for up to three preceding program years.
- Collection obligation when changing from collective to an individual program
- Must provide a process to facilitate collection of broken or damaged televisions, monitors, cathode ray tubes
- Propose a label to be placed carrying a clearly visible universal recycling or "no disposal" symbol at an accessible location on the covered electronic equipment

Contact Information

- Comments, questions and suggestions to:

  New York State Department of Environmental Conservation

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- Information on the E-waste Law can be found at: http://www.dec.ny.gov/chemical/65583.html