

**Comments on the Midwest states discussion document entitled:
“An Act Providing for the Recovery and Recycling of Used Electronic Devices”**

An informational meeting held in Chicago on November 18, 2005 brought representatives from Minnesota, Michigan, Illinois, Wisconsin, Ohio, Indiana, and Iowa to discuss solutions for managing discarded electronics in these states. INFORM strongly supports the development of legislation that engages manufacturers to help ensure effective, environmentally sound recycling or reuse of discarded electronics, and we are pleased to provide the following analysis of the discussion document developed before the November 18th meeting.

Key elements of the model legislation

1. As described in the addendum to the legislation, individual responsibility provides a manufacturer, or group thereof, the freedom to collect and recycle a share of discarded electronics without having a fee assessed on their new devices

The addendum has the necessary language to promote the development of effective, sustainable take-back programs by individual manufacturers or groups of manufacturers. It also prevents them from being forced to pay fees to and participate in the Corporation’s program. As noted in the addendum, reporting systems will be needed to track the progress towards reaching collection and recycling targets as they are defined in legislation.

Today’s companies have forged partnerships to collect electronics with social enterprises and retailers, and many have their own take-back and asset recovery programs in place. Reuse programs are developing, for example, with a partnership between Dell and Goodwill Industries of Central Texas, San Francisco, and now Michigan where they are carrying out computer take-back pilots. Using the donations infrastructure from the non-profit Goodwill, along with Dell’s added experience in recycling, a community-based solution is taking place. Retailers are also getting involved; for example, Staples partnered with ten manufacturers that helped finance a 27-store, five-state computer take-back initiative for six weeks. Also, Good Guys, a subsidiary of CompUSA whose stores are located in the Northwest, sponsored take-back of televisions for four weeks with the support of six manufacturers.

2. The Option A financing mechanism where fees are collected from manufacturers – rather than at the first point of sale as proposed in Option B – gives incentives for them to design products that are less wasteful, easier to recycle, and less toxic

Option A uses market-based incentives that allow manufacturers to reap future financial benefits when more efficient recycling technologies are developed, and when products are:

- Designed for recycling – optimized to recover economic value in materials
- Designed for disassembly – because of the direct link to labor costs
- Free of hazardous substances – lowering risks for workers and increasing end material value

Option B places the responsibility on the first seller into the state, and is likely to take the form of an Advanced Recycling Fee (ARF). In January 2005, California retailers had to begin collecting from customers an ARF at the point of purchase, ranging from \$6-10 for each electronics product covered under the law. The funds are then managed by the state and a fixed payment per pound is made to a recycler who then pays collectors a portion. The drawback to this approach is that a tax at the point of sale fails to effectively involve manufacturers and continues to externalize the costs of environmentally sound management of discarded electronics. Further, the tax must be collected at thousands of retailers that sell into California, both in-state and out-of-state (including internet sales), not mention the changing of SKUs.

The Midwest states will face the same difficulty when they attempt to collect these fees. This Option B system would continue to externalize the costs of environmentally sound management of discarded electronics. Whereas Option A and individual responsibility, as described in the addendum, would internalize those costs. INFORM’s research has demonstrated that the cost-internalization approach taken in Option A is preferable to the approach outlined in Option B.

3. The legislation's performance standards, that rely on a per capita collection goal, will help the State measure performance and encourage an effective collection program

A performance standard is essential to ensure that manufacturers provide consistent, convenient collections throughout the state, and Section 9(9) establishes these requirements for manufacturers to provide adequate collection opportunities. Section 9(10) is important because it requires reporting on amounts collected and recycled as well as a breakdown on where the money is spent. Without collection targets there will be nothing to urge manufacturers to divert more of these hazardous products from our landfills and incinerators to be recycled – recycling reduces the environmental burdens of resource extraction and encourages companies to eliminate hazardous content from their products.

4. There are certain provisions in the Discussion Document that if removed in subsequent versions, will greatly weaken the legislation, and INFORM strongly recommends that these items be retained in any new draft:

- A definition of a “consumer” that includes individuals, businesses, government agencies, and non-profits;
- A sales prohibition and labeling requirements as found in Sections 3 and 4, respectively;
- A requirement that manufacturers provide estimates of state sales of electronics as found in Section 6(1)(a);
- A requirement that retailers provide information available on collection programs, and manufacturers support a public information campaign as found in Sections 7(1) and 9(7);
- A stipulation that no fees would be charged to consumers at the time of discard, as found in Section 10;
- A requirement for manufacturers to be in compliance Europe's Reduction of Hazardous Substances (RoHS) Directive for lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBB), and polybrominated diphenyl ethers (PBDE), as found in Section 12; and,
- Retention in full of Section 13: Reimbursements for activities associated with collections, Section 14: Environmentally Sound Management requirements, Section 15: Disposal ban, Section 16: Enforcement measures, and Section 20: Severability clause.

INFORM's recommendations on a financing mechanism

Maine's law, which comes into effect in January 2006, demonstrates that system financing from manufacturers or brand owners in relation to what percentage of covered electronics are actually discarded in the state is viable. The approach solves a number of fairness issues that upfront fees do not address such as: market saturation, product longevity, reuse/remanufacturing efforts, and leasing. Manufacturers will estimate new sales into Maine, but no fees will be applied on new products, so companies will finance only their share of returns by brand. One challenge has been to identify brand owners of the devices discarded in the US, and will now be an ongoing process in Maine. According to Maine's Department of Environmental Protection, they have received plans from 60 manufacturers representing 88.5% of the discarded television stream and 77.4% of the discarded computer monitor stream. Ten percent of televisions and 13% of monitors have been identified as orphans and will be shared by the participants.

If Europe's Waste Electrical and Electronic Equipment (WEEE) Directive will be implemented according to its provisions, all 25 countries will have this same approach in the future – to finance systems based on what is actually coming back from each brand owner.

There will be other risks involved with upfront fees. For example, in California's SB50, there is a provision that allows manufacturers of an electronic device, with concurrence of the Department of Toxic Substances Control, to no longer be subject to an advanced recycling fee, if when discarded, the device would not be a hazardous waste. Therefore, if manufacturers solve the toxicity concerns through new product designs, there is a possibility that they will seek to stop the payment of up-front fees.

Sweden has a system that is comparable to the one proposed in the Act, but it has around 50 different fees for the products covered by the Corporation's activities. The \$10 fee in both Option A and Option B in the Discussion Document would subsidize other product categories; however, no manufacturer gets a “free ride” in a return-based system. In the system based on returns, market signals will likely be the determinate for what level a manufacturer contributes. To address the initial inequities of this system, financial assurance mechanisms can be put in place by industry, where new market entrants – those companies that will not have products returned for many years – will be addressed. Standards need to be set regarding how companies will pay for future recycling or leave funds available if they exit the market.