

**Revised Statement of Reasons in Support of Amendments to  
Conn. Agencies Regs. § 22a-638-1**

As is noted below, on March 27, 2012 the Department of Energy and Environmental Protection (“Department”) proposed amendments to the e-waste regulations, Conn. Agencies Regs. § 22a-638-1 et seq. On May 10, 2012, the Department sent out a Statement of Reasons which contained the final wording of the proposed regulations, and a statement of the principal reasons in support and in opposition to the adoption of the proposed regulations as well as a response to any public comments received. Since the initial Statement of Reasons, the Department has decided to make some additional revisions to the proposed regulations for the purpose of simplicity and clarity. These additional revisions are as follows:

1. Sections 1, 3, 9 and 10 – The Department has decided to delete the proposed definition of the “domestic” including the occurrence of, and references to, this term in other portions of the proposed regulations.<sup>1</sup> Given the other revisions included with this rulemaking the Department has determined that proposed revisions are not necessary.
  
2. Section 3 – The Department had proposed certain revisions to subparagraph (G) of subdivision 22a-638-1(b)(3) that had proved unworkable. The Department had proposed changes to the provisions concerning the certification that must be included with the application submitted by a covered electronics recycler (“CER”). To better effectuate the Department’s intent and in light of the revisions noted above, the Department is revising subparagraphs (G)(iii) and (iv) of subdivision 22a-638-1(b)(3) to instead require that the applicant seeking to become a CER provide a certification that based upon reasonable investigation the facility a CER intends

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<sup>1</sup> The following revisions are being made: Section 1 – 22a-638-1(a), delete proposed subdivision (a)(9); Section 3 – 22a-638-1(b)(3)(G)(iv), delete “domestic”; 22a-638-1(b)(3)(G)(v), delete “or(e)(6)(D)”; 22a-638-1(b)(3)(G)(vi), delete “or (e)(7)(E)”; Section 9 - 22a-638-1(e)(6)(A), delete “domestic”; 22a-638-1(e)(6), delete subparagraph (e)(6)(D); 22a-638-1(e)(6)(E), delete “and D” and “With respect to non-domestic facilities, such facilities shall establish and maintain liability insurance for pollutant releases, accidents and other emergencies in connection with the recycling or disposal of CEDs or components of CEDs, as may be required by the government in which the facility is located or by any permit issued by a governmental entity for the facility”; Section 10 – 22a-638-1(e)(7)(A), delete “domestic”; and section 22a-638-1(e)(7), delete subparagraph (e)(7)(E).

to use for recycling or disposing of materials of concerns has the permits, licenses or governmental authorizations to do so and that the CER has provided any such facility with the standards established in subsections (c) to (e) of these regulations. As revised, this provision should prove more workable, while still ensuring that facilities recycling or disposing of CEDs for a CER not only have the necessary authorizations to do so, but have also been provided notice of the standards for the e-waste program. The Department also made an editorial change to the beginning portion of subparagraph (G)(iii) for grammatical reasons.

a. Subparagraphs (G)(iii) and (G)(iv) of subdivision 22a-638-1(b)(3) as proposed (additions underlined, deletions in brackets):

(iii) for each recycling facility that recycles materials of concern and each disposal facility that disposes of materials of concern:

(I) a list of all applicable permits, licenses or approvals, if any, issued by a municipality, state, the federal government or any other country, that are required and that have been or will be obtained to authorize activities undertaken pursuant to chapter 446n of the Connecticut General Statutes and this section; and

(II) a list of the plans in effect at the facility to ensure worker safety, emergency preparedness and prevention, including but not limited to, a contingency plan and emergency procedures, if required by the hazardous waste regulations, emergency response plans, and environmental, health and safety plans;

(iv) for each domestic recycling facility and each domestic disposal facility that either recycles or disposes of materials of concern, a certification signed by a responsible official from such facility, [stating] affirming that:

(I) such official has read and fully understands all of the standards established in subsections (c), (d) and (e), of this section, as applicable;

(II) based upon reasonable investigation, including inquiry of those individuals responsible for obtaining the information at the time the certification is executed, the facility has obtained or will obtain all permits, licenses or approvals needed to authorize activities undertaken pursuant to chapter 446n of the Connecticut General Statutes and this section;

(III) the facility is in compliance with all applicable standards regarding activities undertaken pursuant to chapter 446n of the Connecticut General Statutes and this section and that during all times that the facility recycles CEDs, or disposes of waste or residue from the

recycling of CEDs, reasonable efforts will be undertaken to ensure that the facility remains in compliance with such standards; and

- (IV) such responsible official understands that any false statement made in connection with this certification is punishable as a criminal offense under section 53a-157b of the Connecticut General Statutes and any other applicable law.

b. Subparagraphs (G)(iii) and (G)(iv) of subdivision 22a-638-1(b)(3) as finalized (additions underlined, deletions in brackets):

(iii) the following information only for each recycling facility that recycles materials of concern and each disposal facility that disposes of materials of concern:

(I) a list of all applicable permits, licenses or approvals, if any, issued by a municipality, state, the federal government or any other country, that are required and that have been or will be obtained to authorize activities undertaken pursuant to chapter 446n of the Connecticut General Statutes and this section; and

(II) a list of the plans in effect at the facility to ensure worker safety, emergency preparedness and prevention, including but not limited to, a contingency plan and emergency procedures, if required by the hazardous waste regulations, emergency response plans, and environmental, health and safety plans; and

(iv) [for each recycling and each disposal facility] a certification signed by [a responsible official from such facility] the applicant [stating] affirming that:

(I) [such official has read and fully understands all of the standards established in subsections (c), (d) and (e), of this section, as applicable;]

[(II)] based upon reasonable investigation, [including inquiry of those individuals responsible for obtaining the information at the time the certification is executed, the] that every facility for which information is being provided under subparagraph (G)(iii) of this subdivision has obtained or will obtain all permits, licenses or approvals needed to authorize activities undertaken pursuant to chapter 446n of the Connecticut General Statutes and this section; and

[(III)] (II) [the facility is in compliance with all applicable standards regarding activities undertaken pursuant to chapter 446n of the Connecticut General Statutes and this section and that during all times that the facility recycles CEDs, or disposes of waste or residue from the recycling of CEDs, reasonable efforts will be undertaken to ensure that the facility remains in compliance with such standards; and] the applicant has provided every facility for which information is being provided under subparagraph (G)(iii)

of this subdivision with a copy of the standards established in subsections (c) to (e), inclusive of this section.

[(IV) such responsible official understands that any false statement made in connection with this certification is punishable as a criminal offense under section 53a-157b of the Connecticut General Statutes and any other applicable law.]

3. Section 9: Similar to the discussion above, the Department had proposed revisions to subparagraph (A) of subdivision 22a-638-1(e)(6) since, in certain circumstances, the current requirements may apply when not needed or when compliance cannot practically be achieved. While the revisions noted above have been made, the Department is adding language to simplify clarify that there is an exception to the requirement to have insurance; namely when as a practical matter the required coverage is unavailable. For example, when it is not offered. This exception is not intended to apply in situations where insurance is in fact available, but an entity is denied coverage.

a. Subparagraph (A) of subdivision 22a-638-1(e)(6) as proposed (additions underlined, deletions in brackets):

(A) A CER shall ensure that the owner or operator of each domestic recycling facility and each domestic disposal facility, used to implement chapter 446n of the Connecticut General Statutes and this section, that [shreds circuit boards, recycles shredded circuit boards or receives CEDs or components of CEDs that contain or consist of circuit boards, CRTs, batteries, mercury-containing devices, or any materials containing polychlorinated biphenyls (PCBs), including but not limited to ballasts] either recycles or disposes of materials of concern shall [establishes and maintains] establish and maintain, at a minimum the following insurance coverage for each such facility:

(i) Commercial General Liability: \$1,000,000 combined single limit per occurrence with an annual aggregate of \$2,000,000 for bodily injury, personal injury and property damage. Coverage shall extend to independent contractors, products and completed operations, contractual liability and broad form property damage; and

(ii) Pollutant Releases, Accidents, and Other Emergencies (“Pollution Legal Liability”):

(I) for facilities where whole CEDs are dismantled, shredded, crushed or processed in a similar manner: \$3,000,000 combined single limit per occurrence with an annual aggregate of \$6,000,000 for on-site and off-site bodily injury, property damage or clean up costs including liability for

environmental damage resulting from sudden, accidental and gradual pollution in the operation, maintenance, or use of any motor vehicle for transportation of CEDs or any facility [operations] operation involving CEDs[.]; and

(II) for all other recycling or disposal facilities: \$1,000,000 combined and single limit per occurrence with an annual aggregate of \$2,000,000 for on-site and off-site bodily injury, property damage or clean up costs including liability for environmental damage resulting from sudden, accidental and gradual pollution in the operation, maintenance, or use of any motor vehicle for transportation of CEDs or any facility operation involving CEDs.

b. Subparagraph (A) of subdivision 22a-638-1(e)(6) as finalized (additions underlined, deletions in brackets):

(A) A CER shall ensure that the owner or operator of each recycling facility and each disposal facility, used to implement chapter 446n of the Connecticut General Statutes and this section, that [shreds circuit boards, recycles shredded circuit boards or receives CEDs or components of CEDs that contain or consist of circuit boards, CRTs, batteries, mercury-containing devices, or any materials containing polychlorinated biphenyls (PCBs), including but not limited to ballasts] either recycles or disposes of materials of concern shall [establishes and maintains] establish and maintain, at a minimum the following insurance coverage for each such facility, unless such insurance coverage is not offered or unobtainable, although this exception may not be used when insurance is in fact available, but an entity is denied coverage or chooses to not avail itself of such coverage:

(i) Commercial General Liability: \$1,000,000 combined single limit per occurrence with an annual aggregate of \$2,000,000 for bodily injury, personal injury and property damage. Coverage shall extend to independent contractors, products and completed operations, contractual liability and broad form property damage; and

(ii) Pollutant Releases, Accidents, and Other Emergencies (“Pollution Legal Liability”):

(I) for facilities where whole CEDs are dismantled, shredded, crushed or processed in a similar manner: \$3,000,000 combined single limit per occurrence with an annual aggregate of \$6,000,000 for on-site and off-site bodily injury, property damage or clean up costs including liability for environmental damage resulting from sudden, accidental and gradual pollution in the operation, maintenance, or use of any motor vehicle for transportation of CEDs or any facility [operations] operation involving CEDs[.]; and

(II) for all other recycling or disposal facilities: \$1,000,000 combined and single limit per occurrence with an annual aggregate of \$2,000,000 for on-site and

off-site bodily injury, property damage or clean up costs including liability for environmental damage resulting from sudden, accidental and gradual pollution in the operation, maintenance, or use of any motor vehicle for transportation of CEDs or any facility operation involving CEDs.

4. Section 10: Based upon its experience implementing the e-waste program, the Department had proposed revisions to the subdivision (7) of subsection 22a-638-1(e) to clarify how the closure plan, cost-estimates and financial assurance requirements would apply. With respect to financial assurance, the Department has determined that no material change is needed to clarify the applicability of the financial assurance provision. However, a minor unrelated revision is being added to subparagraph (D) of subdivision 22a-638-1(e)(7). With respect to closure plan and cost estimate, as a result of the revision noted above, the Department has decided to add a new subparagraph (C) to subdivision 22a-638-1(e)(7). This new subparagraph provides that compliance with the cost estimate and closure plan requirements can be met through other means acceptable to the Commissioner, including but not limited to, the participation in a governmental program that provides functionally equivalent protection. In making this revision, the Department has provided CERs with additional and more flexible methods of ensuring that these regulatory requirements have been satisfied.

a. New subparagraph (C) to subdivision 22a-638-1(e)(7) is added as follows:

- (C) The requirements of subparagraphs (A) and (B) of this subdivision may be met through other means acceptable to the Commissioner, including, but not limited to, a government program that provide the functional equivalent to compliance with these requirements.

As a result of this revision the Department is also redesignating subparagraphs (C) and (D) in subdivision 22a-638-1(e)(7) as subparagraphs (D) and (E), respectively.

The remainder of the May 10, 2012 previously issued Statement of Reasons, set forth below, is the same.

This Statement of Reasons concerns proposed amendments to the regulations regarding the collection, transportation, reuse, refurbishment and recycling of covered electronic devices

("CEDs") generated by households in Connecticut.<sup>2</sup> The regulations were initially adopted pursuant to Public Acts 07-189 and 08-35, codified at Conn. Gen. Stat. §§ 22a-629 et seq.

## **I. Introduction**

The Department proposes minor amendments to the regulations adopted in June, 2010, that implemented the statewide electronic waste ("e-waste") recycling program (the "Program"). Through this Program, televisions, computers, monitors and printers from households, referred to in the regulations as CEDs, have been recycled in an environmentally protective manner. The original regulations outlined the legal responsibilities of the members of the regulated community, including municipalities, manufacturers and recyclers and their local, national and international partners. The cost of the Program has been borne by electronics manufacturers based upon a product stewardship model. The amendments at hand do not compromise the principle of responsible recycling.

During the process of implementing the Program over the past year, the Department determined that some of the standards outlined in the original regulations were in effect more stringent than necessary. Therefore, the Department drafted these proposed amended regulations in an effort to clarify the regulatory requirements and to assist in the administration of the Program. Although relatively minor in nature, the proffered amendments are important as they simplify the Program requirements by reducing unnecessary administrative burdens on both recyclers and the Department. Additionally, these clarifications seek to entice and retain a robust and competitive pool of approved covered electronic recyclers ("CERs") in Connecticut.

The significant modifications made by these amendments include:

- Changes to terms previously defined in R.C.S.A § **22a-638-1(a)**. These proposed amendments intend to clarify the scope of the Program, including certain exclusions for activities that are incidental to transportation;
- Changes to the information that a CER must provide to the Department. The proposed amendments no longer mandate that a CER provide certain information to the

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<sup>2</sup> For purposes of the proposed amendments to the regulations, the term CEDs includes monitors, televisions, computers, and printers.

Department in the CER's application. For example, with regard to recycling disposal facilities that do not manage materials of concern, CER's are no longer required to demonstrate and document the level and degree of insurance and/or financial assurance possessed by such facility, the preparation of a closure plan at such facilities or to disclose certain information regarding transporters.

- Revisions to the insurance coverage required for certain downstream recycling and disposal facilities that do not dismantle, shred, crush or similarly process whole CEDs. The proposed amendments lessen the mandatory insurance requirements in such cases.
- Revisions to the insurance and financial assurance requirements for recycling or disposal facilities that handle higher risk "materials of concern" (e.g. mercury, lead, or PCBs); and,
- Other certain editorial or conforming changes.

## **II. Opportunity for Public Participation by Interested Parties**

Notice of the Department's proposed amendments to the regulations was published in the Connecticut Law Journal on March 27, 2012. Notice was also provided to members of a stakeholder group and current and prospective recyclers, manufacturers and municipalities. The Department accepted public comment on the proposed amendments of the regulations during the public comment period from March 27, 2012 to April 26, 2012 and held a public hearing for receipt of comments on April 26, 2012. This document summarizes the comments received by the Department during the comment period, including those in support of and in opposition to the amendments of the regulations, the Department's response to these comments, as well as the resulting amendments being made by the Department, if any, and the rationale for any such revisions. This document follows the order of the proposed amendments to the regulations.

## **III. Summary of Comments Received**

Comments were received by three commenters during the public comment period; two commenters submitted comments in writing and one commenter provided comment during the public hearing. Two comments suggested editorial revisions to the regulations. Another comment questioned the Department’s enforcement response. One comment opposed the current language of an exemption from the definition of CEDs.

**A. Comments during Public Hearing on Proposed Amendments to RCSA sections 22a-638-1 and Responses Thereto**

**Commenter** Lauren Dykes, Marketing Specialist, WeRecycle!

**Comment** The commenter seeks to understand the Department’s enforcement response for violators of the law or implementing regulations involving covered electronic recycler reporting obligations and collectors that are found conducting regulated activities that are not consistent with the applicable regulatory requirements.

**Response** The Department concludes that the commenter’s question is outside of the scope of the amendments being commented on, and thus, no changes to the amendments are warranted. However, the Department reserves the right to exercise its authorities to take enforcement action against any covered electronic recycler or other violator of any environmental law, implementing regulation or permit issued by the Commissioner.

**B. Comments on the Definition of Covered Electronic Device and Responses Thereto**

**Commenter** Frank Hileman, Government Affairs Representative, LKQ Corporation

**Comment** In section 22a-638-1(a), page 1, with respect to the definition of “covered electronic device” which was amended to clarify that components of CEDs are intended to be inclusive in the definition of CEDs. The commenter recommends changing the terms “an electronic device” to “all electronic devices” in the automotive exclusion (A) of the definition.

**Response** The Department concludes that the commenter’s request is outside of the scope of the amendments being commented on. Thus, no changes to the amendments of the regulations are warranted. However, the Department appreciates the commenter’s written statements and concerns relative to automotive aftermarket parts being excluded from the aforementioned definition.

**Commenter** Margaret Hall, Consultant and Former E-Waste Taskforce Member

**Comment** In section 22a-638-1(a), page 1, the definition of “covered electronic device” was amended to clarify that components of CEDs are intended to be inclusive in the definition of CEDs. The term “foregoing” was added to the definition of CEDs. The commenter recommends replacing the term “foregoing” with the term “following”.

**Response** The Department agrees with the commenter and has made the change.

As revised  
22a-638-1(a)(5) “Covered electronic device” or “CED” means a desktop or personal computer, computer monitor, portable computer, printer, CRT-based television and non-CRT-based television sold to consumers, but [do] shall not include any of the following, including any of their components:

### **C. Comments on Proposed Statement of Purpose and Responses Thereto**

**Commenter** Margaret Hall, Consultant and Former E-Waste Taskforce Member

**Comment** In the “Statement of Purpose” which follows the amendments to the regulations, in Section 1 – RCSA Section 22a-638-1(a) Definitions, the term “Recycling facility” contains a misspelled term. The commenter recommends changing the term “uncertain” to “uncertainty”.

**Response** While the Department did not seek comments on the Statement of Purpose, the Department appreciates the thorough review provided by the commenter. The Department also agrees with the commenter and has made the change. See underlined word in the revision below.

As revised

Statement of Purpose: “Recycling facility” – There is an existing definition of recycling facility. Consistent with the Department’s understanding of this term, the proposed modification clarifies that this definition includes facilities that store CEDs or components of CED and facilities that recycles components of CEDs. Also, there has been some regulatory uncertainty associated with whether certain facilities used during transportation are or are not recycling facilities. The proposed definition describes certain activities considered incidental to transportation and clarifies that facilities used for these purposes only would not be considered a recycling facility. Finally, the Department is making editorial changes to the other exclusion from recycling facility for facilities where CEDs are collected from residents.

7/12/12

Date

/s/ Mark Latham

Mark Latham

Environmental Analyst 3