

RESPONSIVENESS SUMMARY

PROCEDURE FOR THE ENVIRONMENTALLY SOUND MANAGEMENT OF ELECTRONIC DEVICES (PROCEDURE)

The revised Vermont Procedure for the Environmentally Sound Management of Electronic Devices (Procedure) was posted for public comment on September 2, 2016 with a deadline for comments on October 4, 2016. A conference call was held September 15, 2016 with collectors and interested parties to address any preliminary clarification questions prior to the comment deadline.

Initial modifications were made to the Procedure and it went back out for public comment March 24, 2017 with a deadline for public comments of April 6, 2017 and extended to April 13, 2017 by request. On April 10, 2017, the deadline was extended to April 21, 2017 by request.

Additional calls and meetings were also held as follows:

- April 10, 2017 – Conference Call held with Collectors & Transporters
- April 14, 2017 – Additional Conference Call held with Collectors & Transporters who couldn't make the first call (2:00 to 3:00 pm)
- April 14, 2017 – Conference Call held with Recyclers (10:00 to 11:00 am)
- May 1, 2017 – Conference Call held with Robin Ingenthron, Good Point Recycling
- June 2, 2017 – In-person Meeting held at the request of Robin Ingenthron and Nathan Hill, Good Point Recycling
- July 11, 2017 – In-person Meeting and Tour of Good Point Recycling in Middlebury, hosted by Robin Ingenthron and attended by Emily Boedecker, DEC Commissioner; Rebecca Ellis, DEC Deputy Commissioner; Chuck Schwer, DEC Waste Management & Prevention Division Director; Cathy Jamieson, DEC Solid Waste Program Manager; Josh Kelly, DEC staff member; and Senator Chris Bray and Representative Robin Scheu.

Comments were received from the National Center for Electronics Recycling (NCER), Chittenden Solid Waste Management District (CSWMD), Good Point Recycling, Solid Waste Alliance Communities (SWAC), WinCycle, Steve Reigle, and Northeast Kingdom Waste Management District (NEKWMD). The following is a summary of the comments received and responses to comments, along with changes made to the revised Procedure. The comments are organized by the section topics in the revised Procedure.

§ 3. DEFINITIONS

1. **COMMENT:** Suggestion to add a definition of store/storing.

RESPONSE: Agree. The following definition has been added. “‘Storage’ means the actual or intended containment of electronic devices or parts of electronic devices, either on a temporary basis or for a period of time; in such a manner, as not to constitute disposal of such devices.”

2. **COMMENT:** Question if the definition for “container” intended to just include Gaylord boxes or would it also cover mobile container units for storing pallets/gaylords and/or trailers?

RESPONSE: The container definition was intended to include gaylord boxes, but not trailers. No new changes were made to this definition.

3. **COMMENT:** Suggestion to add a definition for release.

RESPONSE: Agree. The following definition was added. “‘Release’ means any intentional or unintentional action or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying,

dumping, or disposing of potentially hazardous materials into the surface or groundwater, or onto the lands in the state, or into waters outside the jurisdiction of the state when damage may result to the public health, lands, waters, or natural resources within the jurisdiction of the state.

4. **COMMENT:** Multiple comments and questions were received seeking clarity of what is meant by a broken device.

RESPONSE: A definition was added for “broken electronic device” to clarify §4(e)(5) §4(g)(5) and §6(e)(5) as follows: “‘Broken electronic device’ or ‘breakage’ means an electronic device or a component part of an electric device containing focus materials that shows evidence of leakage, spillage, or damage that has or is likely to cause a release or worker injury under reasonably foreseeable conditions. Broken electronic device does not refer to a device that is simply not working. Examples of broken electronic devices include: broken CRT, monitor, television screen glass; broken fluorescent bulbs in televisions or monitors; leaking or bulging batteries, or leaking coolant from projection televisions. “Broken electronic device” or “breakage” does not include electronic devices or component parts that are merely not operational, or broken plastic or wood encasements, broken knobs, and other such superficial damage.”

5. **COMMENT:** Suggestion to include all banned electronic devices somehow into the definition with electronic device to broaden the scope of management of all banned devices.

RESPONSE: Legislation requires that the Agency establish guidelines for “the environmentally sound management of consumer electronics”. Although consumer electronics is not specifically defined, the remainder of 10 V.S.A. Chapter 166 is focused entirely around computers, monitors, printers, televisions, device containing a cathode ray tube, printer, television, and computer peripherals. The electronics banned from landfill disposal are outlined in 10 V.S.A. Chapter 159 6621a. The Agency’s authority to set management standards for banned materials (other than the electronics listed above) would be governed by VHWMR and Solid Waste Management Rules (SWMR) as applicable.

6. **COMMENT:** Suggestion to add definition for “domestic reuse”.

RESPONSE: Agree. The Procedure’s definition for “local reuse,” which is defined as reuse within the United States was changed to “domestic reuse” for clarity. In addition, “non-local reuse” was also changed to “foreign reuse” for continuity between terminology.

7. **COMMENT:** Concern that the definition of “recycler” includes others that are not currently recyclers, but are not required to adhere to the more stringent standards of those required for a recycler.

RESPONSE: Disagree. The definition of “recycler” in E-Cycles statute states, “A person who takes products solely for reuse, refurbishment, or repair is not a recycler.” Collectors do not dismantle. Refurbishers may collect electronic devices solely for repair and reuse; but, they are prohibited from selling parts either individually or in bulk and may only use parts for the purpose of repair/refurbishment. A person that dismantles devices to sell parts is a recycler.

8. **COMMENT:** Concern that the definition of “electronic waste” is only a computer, monitor, printer, television, or computer peripheral sold to a covered entity and therefore if they are not “sold” to a covered entity there should not be any management standards.

RESPONSE: The definition changed when the law was amended on July 1, 2012 from “sold” to “from” a covered entity. Therefore, this comment no longer reflects the language in the E-Cycles statute.

9. **COMMENT:** Concern that the definition of “covered electronic device” included only those devices that should have management standards.

RESPONSE: The definition of covered electronic devices is utilized to identify the manufacturers that must supply market share data on the sale of a computer, computer monitor, device containing a

cathode ray tube, printer or a television (i.e., covered electronic devices) sold into the state. The Procedure regulates the environmentally sound management of consumer electronics.

10. **COMMENT:** Concern that the definition for sell or sale identifies that devices sold for reuse are not required to have any management standards.

RESPONSE: The terms sell or sale are to add clarity to the manufacturer's responsibilities and requirements and are not intended to eliminate responsibility for the proper management of electronic devices being pulled for reuse.

§ 4. STANDARDS FOR COLLECTORS

General

1. **COMMENT:** Suggestion to remove standards for collectors (and collection events) and put them into the State Standard Plan because ANR doesn't have authority to write standards for all collectors across the state.

RESPONSE: E-Cycles statute under 10 V.S.A. 166 §7559(7) identifies that the Agency "In consultation with interested parties, establish guidelines for the environmentally sound management of consumer electronics including specific requirements for collectors, transporters, and recyclers." Those guidelines are for all collectors, transporters, and recyclers in the state of Vermont. This statute gives ANR the authority to establish requirements for collectors, including collection events, for the environmentally sound management of consumer electronic devices. In addition, some collectors operate under the State Standard Plan and Opt Out Plan. The management standards need to be consistent for all collectors of electronic devices to protect public health and the environment.

2. **COMMENT:** In Section (d) suggest using the term collector in lieu of registered collector so that requirements would apply to any collector even when they have not registered.

RESPONSE: Agree. Sections (d) and (e) have been changed to remove the words "registered".

3. **COMMENT:** ANR does not have the authority to establish "procedures" for "prohibited activities" for all state collectors. Cannot impose new or change any of the existing regulations governed under 40 CFR 260.

RESPONSE: 40 CFR 260 is a Federal Regulation. See response to comment number 1 above under §4. Standards for Collectors.

§4(c) Prohibited Activities

1. **COMMENT:** Suggestion to remove the "prohibited activities" section from the "collector" requirement because "cutting cords" should only be prohibited for those collectors under the SSP.

RESPONSE: Disagree. Any opportunity for repair of reuse beyond the collector should be kept as an option. If all cords are cut, that opportunity no longer exists.

2. **COMMENT:** Suggestion to add Canada as a possible allowed destination for collectors.

RESPONSE: Agree. Canada has been added as an acceptable destination for reuse of electronic devices. Canada has an established recycling infrastructure for the proper management of end-of-life electronics.

§4(d) Facility Management Standards

1. **COMMENT:** Concern that the language in this section [§4(d)(1)] is more restrictive than this statement "...in no case shall the regulatory requirements of this Procedure be more restrictive than 40 C.F.R. Part 262 Subparts E or H" and has identified standards governing "items not classified as waste".

RESPONSE: Disagree. The federal citation listed above is relating to exports and transboundary movements of hazardous waste, not specifically what items may be regulated as waste.

2. **COMMENT:** Suggestion to add “employees should be trained or familiar with this written procedure” in §4(d)(3).

RESPONSE: Agree. Added language and included volunteers (for collection events).

§4(d)(4) – Collection location and data security information

1. **COMMENT:** Facility management standards to restrict access, train employees, display collection locations and data security information/signs are very specific to state managed e-cycles programs and cannot be enforced on private businesses.

RESPONSE: Agree only to the extent that signage is required by both the State Standard Plan and Opt-Out Plans. However, all other management standards in §4(a)-(f) are applicable to all collectors in the State regardless of if they are operating within the State Standard Plan or an approved Opt-Out Plan, or outside of any plan.

2. **COMMENT:** Suggestion to be clearer about what is meant by “visible to public”.

RESPONSE: Disagree. The language in the Procedure is sufficiently clear and states that, “Signs must be posted in a location visible to the public so as to inform the public what devices are accepted in the Program, who can drop off electronic devices, and that the collection location is not responsible for the security of any data that may not have been removed from the device.”

3. **COMMENT:** Suggestion in §4(d)(4) to also allow for collectors to provide their own signage to be approved by the Secretary and/or the sign provided by the Secretary no larger than 11x17 as publicly visible space is a premium.

RESPONSE: Agree. Language added to allow collectors to provide their own signage as approved by the Secretary.

§4(e) Materials Management Standards

§4(e)(1) through (3) - Storage

1. **COMMENT:** Suggestion that terminology in sections §4(e)(1) & (2) is not clear in the phrase “materials or contents of materials” especially as it refers to electronics being stored on the ground.

RESPONSE: Agree. Made minor changes to clarify.

2. **COMMENT:** Suggestion to reinsert the phrase “impervious surface” to section 4(e)(1)

RESPONSE: Disagree. The terminology “impervious surface” was purposefully removed and replaced with language that clarifies what types of surfaces would suffice for the storage of electronic devices.

3. **COMMENT:** Question – what is a “transportation unit” in (e)(2)? A trailer or mobile storage unit?

RESPONSE: Agree. A transportation unit could be either a trailer or some storage unit that also doubles for the transport of the same devices. “Mobile storage” was added in §4(e)(2) for clarification.

4. **COMMENT:** Suggestion that saying storage outside a container isn’t allowed implies actual “storage”, when it may also mean allowing the public to deposit electronic devices outside which is drop-off not storage.

RESPONSE: Agree. Clarity was added to §4(e)(2) for electronic waste that is both dropped off and abandoned. Also, outside storage is referring to storage that is being allowed or arranged by the collector. A definition of storage has been added to the Procedure for further clarification.

5. **COMMENT:** Suggestion in 4(e)(1) to give examples of flooring options that would be acceptable to meet the requirements.

RESPONSE: Agree. Added examples of acceptable and un-acceptable flooring.

§4(e)(4) – Package

1. **COMMENT:** Suggestion to add the words “and when necessary” [package] for storage and handling. This allows collectors to place electronic devices on carts or on the ground before attendant places them into a container.

RESPONSE: Disagree. Electronics should be packaged at all times to prevent breakage. However, language was added to clarify that large electronic devices that are too large to be safely lifted into a gaylord or onto a pallet may be stored and transported as an individual item but must have an individual label on the device the same as is required for labeling a gaylord or a pallet.

2. **COMMENT:** Suggestion to define the term “overfilled”. Another suggestion to delete the language due to its ambiguity.

RESPONSE: Clarifying language was added to the section.

§4(e)(5) – Broken Electronic Device

1. **COMMENT:** Suggestion to refer to VHWMR for breakage guidance.

RESPONSE: Disagree. ANR believes the guidance in the Procedure is adequate and relays simple instructions for the specific management of electronic devices. This simpler instruction can help improve collector compliance.

2. **COMMENT:** Breakage guidance is different in Recycler section than in Collector and Transporter section.

RESPONSE: Agree. Language for breakage is now consistent for all sections with specific caveats for recycler activities such as during handling and disassembly.

3. **COMMENT:** “Damaged” is a very broad term and can apply to much of what is dropped off. Suggestion to define or eliminate the word damaged in §4(e)(5). Note: this would apply to the same sections within §5, and §6.

RESPONSE: Agree. The word damaged has been removed and language modified to add clarity.

4. **COMMENT:** Suggestion to reword §4(e)(5), (g) (5) §5(e)(3) to mirror VHWMR and state “Place any electronic devices that show evidence of breakage, leakage, spillage, or damage that could cause the release.....”

RESPONSE: Agree. Similar language has been added to §4(e)(5), §4(g)(5), §5(e)(3), and §6(e)(6) and for further clarity the definition of broken electronic devices was added.

5. **COMMENT:** Question as to whether a “closed container” could be a plastic bag closed inside a box or on a pallet when suitable.

RESPONSE: A closed container could be a plastic bag in certain circumstances with certain compatible wastes. A definition of “container” has been added to allow flexibility.

6. **COMMENT:** Suggestion to allow reasonable options for large electronic devices that are too large to be containerized.

RESPONSE: Agree. The following language was added for collector and collection events: “If a broken electronic device is too large to containerize; collectors shall package and handle the device to prevent further breakage or release to the environment, such as taping, shrink wrap or other methods of containment.”

§4(e)(6) – Accumulation

1. **COMMENT:** Suggestion to remove the time limits for storage from collector section.

RESPONSE: Disagree. As with other solid wastes, large quantities of electronic devices could prove costly to remove and pose a risk to public health and the environment. To ensure electronic devices are routinely removed from the collection location for proper recycling and management, the one year time limit will remain.

§4(e)(7) - Label

1. **COMMENT:** Suggestion to either include labeling provisions for collectors in the State Standard Plan contract or allow collectors to label according to VHWMR.

RESPONSE: Disagree. By allowing the use of “used electronics” or “electronic waste” as a collector’s labeling options in the Procedure, collectors are in compliance by labeling gaylords containing CRT mixed with other electronic devices without the requirement to sort out CRT waste and label as “universal waste CRTs” or another such term required in VHWMR.

2. **COMMENT:** Suggestion to require containers to be labeled when first put into use.

RESPONSE: Agree. Language added.

3. **COMMENT:** Collectors are not able to make a waste determination. Suggestion to restore the term “used electronics” as an option for labeling.

RESPONSE: Agree. This term has been restored.

§4(g) Record keeping

1. **COMMENT:** A request to add Canada to the list of opportunities for reuse.

RESPONSE: Agree. Canada has been added.

§4(g) Collection Events

General

1. **AGENCY COMMENT:** This section contained redundant requirements to those identified in the Collector section. The term “and collection events” was added to Collector sections where the same standards were required for both collectors and collection event. The remaining language in the collection events section only pertains to collection events.

2. **COMMENT:** Suggestion to require a time requirement that the event is registered at least 30 days in advance of the event.

RESPONSE: Disagree. Such information could be included in collector event instruction, discussed on collector’s calls, and recommended that it be placed in training slides and any upcoming newsletters. Although the suggestion is valid, it would be difficult to enforce.

3. **COMMENT:** Suggestion to add reuse options for electronic waste collected by collection events similar to reuse options for collectors.

RESPONSE: Agree. Language added in § 4(g)(8)

§ 5. STANDARDS FOR TRANSPORTERS

1. **AGENCY COMMENT:** Minor changes were made to the transporter section to mirror packaging and storage requirement changes made to the collector section.

§ 6. STANDARDS FOR RECYCLERS

6(c) Prohibited activities

1. **COMMENT:** Section does not allow for shipment of electronic devices to private parties within the United States.

RESPONSE: Agree. Language was added to allow recyclers to sell for reuse within the U.S.

2. **COMMENT:** Statement that R2 exceeds the statutory authority of the Agency (i.e., prison labor-governed under a procurement contract) but that the Agency does not give authority over prison labor.

RESPONSE: Disagree. First, this requirement that recyclers document that they are not using prison labor is not in the “Procedure” but is identified in the State Standard Plan document. The Agency is given authority to adopt a Plan for the collection of all electronic waste in the state under 10 VSA §7552. Provisions outlined in the State Standard Plan document have authority in the State of Vermont for the implementation of the State Standard Program.

6(d) Facility management standards

§6(d)(2) – Minimum Insurance

1. **COMMENT:** Suggestion to have recycler add the Secretary as an additional insured and provide certificate of insurance to the Agency.

RESPONSE: Disagree. This is a good suggestion; however, the Agency feels this section’s minimum insurance requirements provides adequate protection.

§6(e)(3)-(7) – Facility Closure

1. **COMMENT:** Suggestion to add a description in §6(d)(3)(A) of how the final closure of the facility will be conducted, by whom, and the source of adequate financial resources to implement.

RESPONSE: Disagree. The closure plan must include how the final closure is conducted, but it is difficult to know who the available contractors will be at the time of closure. The financial instrument provides assurance of adequate financial resources to complete the closure plan.

2. **COMMENT:** Concern that §6(d)(5)(C) may not incorporate any salvage value that could be realized with the sale of electronic devices, facility structures or equipment, land, or other assets associated with the facility at the time of closure. Since there is likely to be salvage value there should be an allowance for this by having the recycler demonstrate the criteria for the estimated salvage value that could be part of the financial estimate.

RESPONSE: Disagree. A closure cost estimate must be based on the worst-case scenario as recycling markets, (as we have seen), fluctuate significantly over time. What may have value now, may be costly to recycle in the future. Therefore, the cost estimate relating to recycling and clean-up, may not incorporate any salvage value or assume a zero-cost as the value.

3. **COMMENT:** Concern that statements in 6(d)(5)(C) where closure cost estimate may not incorporate “a zero cost as electronic devices might have an economic value” contradicts the statement that the closure cost estimate “may not incorporate any salvage value”. If salvage value cannot be included, there must be an assumption that everything has a negative cost. Where the first highlight implies that electronic devices might have an economic value.

RESPONSE: Agree. This section has been modified to clarify that closure cost estimates may not incorporate either salvage value or assume a zero-cost as the value.

4. **COMMENT:** Concern that §6(d)(5)(B) does not specify whether the costs are based on managing the devices/components for recycling, or whether landfill disposal (hazardous) would be eligible for the cost estimate.

RESPONSE: We agree that this section benefits from clarification. The following language has been added to identify the how the materials must be managed upon closure: “Recycling facilities must be closed in a manner that: ensures materials are managed in accordance with 10 V.S.A. 6621(a)(8) and prioritizes recycling of all materials or other methods of treatment approved by the Secretary...”

5. **COMMENT:** What is meant by anniversary date in §6(d)(6)? Is that annually or every two years as referenced in the new section §6(d)(5)(D)?

RESPONSE: This section was unclear and was redrafted to be more consistent with the Solid Waste Rules and Salvage Yard Rules, which require closure cost estimates to be adjusted every two years for market conditions. Now this section requires closure costs be adjusted every year for inflation and every two years for market conditions and changes to the closure plan. In addition, the “Notice of Adjustment” section requires facility operators notify the Secretary of adjusted closure cost estimates, “...30 days prior to any adjustment, or 60 days prior to the expiration date of the establishment of the financial instrument...”

6. **COMMENT:** Suggestion that requiring a financial instrument in §6(d)(8) is appropriate, but the term should also be defined.

RESPONSE: Disagree. §6(d)(8) refers to the Vermont Solid Waste Management Rules which clearly identify what types of financial instruments are acceptable without the need to define the term. Pointing to these rules also allows for any future changes to the financial assurance in the Rule without the need to modify the Procedure.

7. **COMMENT:** No other state requires an update to a closure plan nor does any other type of facility that requires a closure plan require an update.

RESPONSE: Disagree. Given the constant changes in e-scrap recycling markets, updating the closure plan for market conditions ensures that the costs are current. This is the same standard required of other solid waste facilities.

8. **COMMENT:** Suggestion that electronics recycling facility closure plan should be the same as that for a salvage yard. Circuit boards are frequently sold to salvage yards in other states (where recycling procedures separate by hazardous and non-hazardous, but not by automobile and electronic).

RESPONSE: Disagree. As stated earlier the closure plan section was redrafted to be similar to the Salvage Yard Rules, however electronics recyclers are not salvage yards. The E-Cycles statute under 10 V.S.A. 166 §7559(7) identifies that the Agency “In consultation with interested parties, establish guidelines for the environmentally sound management of consumer electronics including specific requirements for collectors, transporters, and recyclers.”

9. **COMMENT:** Concern that ANR does not require a performance bond for out-of-state recyclers collecting State Standard Program (SSP) material and require the same closure plan language.

RESPONSE: Disagree. The Procedure does not require a ‘performance bond’ for in-state recyclers but instead requires a financial instrument that will cover the cost of the closure cost estimate in the recycler’s closure plan. The contract for the implementation of the SSP requires the contractor to only utilize recyclers that “agrees to conform to the requirements of the Procedure.” This provision in the contract requires in-state and out-of-state requirements to comply with the same requirements (e.g., maintaining a financial instrument).

6(e) Materials Management Standards

1. Management Standards applied to materials received and processed

COMMENTS:

- Concerns with standards that apply to sorting table, testing table, de-manufacturing table. Was that level of instruction intended by the legislature?
- Suggest adding the words “unprocessed” or “incoming” material as an exemption to all materials management standards for the recycler.

RESPONSE: Agree. Section 6(c)(4) relating to packaging has been modified to exempt packaging requirements during “disassembly and handling.” Accumulation and labeling requirements are no longer applicable for focus materials (except for CRTs with regard to no accumulation longer than one year), provided the recycler is maintaining an inventory or only keeping devices on site for less than one year.

2. ANR Regulatory Authority, VHWMR Regulations, & Waste determination

COMMENTS:

- In-state recyclers may obtain out-of-state electronics for their own reuse programs. Request to restore the term “used electronics” as an option for labeling.
- Suggest that all materials with focus materials are “waste” as indicated in §6(e)(7). Procedure should allow for maximum reuse and recycling while protecting the environment.
- Electronics sent for de-manufacturing, sent to another recycler, or segregated for testing for waste determination all should follow VHWMR guidelines not Procedure.
- Concern that the Procedure does not allow for the flexibility as does VHWMR to make a waste determination and to only have management standards on items the recycler deems as “waste.”
- Comment that definitions of “electronic waste” and “recycler” would not regulate items purchased from other states that are not electronic waste (i.e., not from covered entities).
- Suggestion that management standards already exist in VHWMR and developing a separate Procedure is redundant.
- No authority to require packaging electronic devices for reuse or non-CRT export for reuse devices when the devices are not waste.
- Concern that management standards will place undo restrictions on electronic devices that are being sold for reuse at the recycler level.
- Suggestion that the exemption for reuse in §6(e) and §6(e)(1) and (2) be reconsidered as materials removed for reuse should also be managed in such a way as to prevent the release of focus materials into the environment including all storage requirements.
- Concern that devices being held for reuse, received from other states (non-E-cycles materials), devices being traded between non-covered entities, items being held for private sale, etc. are regulated for management standards.
- Concern that out-of-state electronics should not be subject to regulation.

RESPONSE: We agree with some, but not all of these comments. Other than labeling “broken electronics” or “broken used electronics,” labeling requirements have been removed from the Procedure for recyclers. To further add flexibility and maximize reuse and recycling, the Procedure has been edited to apply management standards only to those electronic devices that contain focus materials and further to exempt certain recycler requirements like packaging, during handling and disassembly; and to exempt recycler accumulation limits for devices removed for domestic reuse. In this way recycling can still be prioritized while protecting public health and environment.

In addition, as requested by a recycler, the Procedure has been modified to include reference to Vermont Hazardous Waste Management Regulations (VHWMR) (Subchapter 9 requirements for Universal Waste) for the management of CRTs. However, both VHWMR and the E-Cycles statute apply and have jurisdiction over the environmentally sound management of consumer electronics. Further, E-

Cycles statute and the Procedure apply to the recycling of consumer electronics, whether brought into Vermont from out-of-state, or produced from within.

3. Reuse – Accumulation Restrictions

COMMENTS:

- Concern that recyclers who place electronics into a repair inventory, items intended for reuse, or export for reuse may have a problem with the one-year accumulation limit.
- Concern that a legal RCRA standard allows mass balance (incoming and outgoing shipments) to govern speculative accumulation.
- Concern that there may be a challenge regarding management standards for incoming materials from out-of-state which may sit for a period of time prior to being processed for final disposition.

RESPONSE: Disagree in part. The revised Procedure does limit accumulation of CRTs to one-year, however, this accumulation limit does not apply to CRTs removed for domestic reuse (within the U.S. for the same purpose for which it was originally manufactured). For all other electronic devices that contain focus materials other than CRTs, a recycler must utilize one of two management options:

- (A) Maintain an inventory record of the total weight of electronic devices and components that are within the facility at any one time, not to exceed the maximum weight in the closure plan; or
- (B) Not accumulate electronic devices or components of electronic devices that contain focus materials for longer than one year from the date the electronic device is delivered to the facility, unless approved by the Secretary. This section does not apply to devices removed for domestic reuse, provided the devices, containers, or storage areas are marked for domestic reuse.

Vermont shares the concern held across the country for the unnecessary accumulation of electronic devices, specifically CRTs. Because of that concern and limited markets for CRTs, the Procedure limits CRTs on-site accumulation to one year, unless they are for domestic reuse as stated above. Federal RCRA standards for management of CRTs require states to either follow the CRT exemption standards outlined by federal regulation or states have the option to impose stricter standards for materials managed in the state. The federal RCRA CRT exemption allows for a type of mass balance relating to speculative accumulation; however, Vermont's RCRA standards under VHWMR are more stringent and as classified as universal waste, does not allow for speculative accumulation of waste CRTs for longer than one year. All other electronic devices (non CRTs) have an option under the Procedure for accumulation to either maintain a detailed inventory as outlined above or may utilize the same option of limiting on-site accumulation to one year. This allows flexibility and the opportunity for the reuse of devices that may have potential value.

4. Procedure authority (how a recycler is regulated)

COMMENTS:

- The Procedure is intended for universal waste collectors and handlers not final recyclers.
- Suggestion to include management standards for recyclers in the State Standard Plan and Opt Out Plans to be regulated by contract by such things as Bill of Lading or scale receipts.
- Suggestion that R2 and eStewards certifications are adequate to address all the environmental health and safety management concerns.

RESPONSE: Disagree. The E-Cycles statute under 10 V.S.A. 166 §7559(7) identifies that the Agency "In consultation with interested parties, establish guidelines for the environmentally sound management of consumer electronics including specific requirements for collectors, transporters, and recyclers." The Procedure fulfills those guidelines for all collectors, transporters, and recyclers in the state of Vermont.

5. Fairness of management standards between in-state collectors/refurbishers/consolidators and out-of-state recyclers

COMMENTS:

- Concern that other facilities (e.g., refurbishers, consolidation locations, repair shops) in the state meet the definition of “recycler” but aren’t being regulated as such.
- Concern that management standards for broken electronic devices are already set for collector and it would be “redundant and unnecessary” to impose the same requirements on the recycler.
- Concern that Vermont Procedure creates an unlevel playing field for Vermont recyclers to compete with out-of-state recyclers.
- Suggestion to include same management standards for out-of-state recyclers who manage State Standard or Opt-Out Plan materials.

RESPONSE: Disagree. The E-cycles law contains the following definitions:

“Recycler” means a person who accepts electronic waste from covered entities and collectors for the purpose of recycling. A person who takes products solely for reuse, refurbishment, or repair is not a recycler.’

“Recycling” means the process of collecting and preparing electronic wastes for use in manufacturing processes or for recovery of useable materials followed by delivery of such materials for use. Recycling does not include destruction by incineration; waste-to-energy incineration, or other such processes; or land disposal.’

“Collector” means a public or private entity that receives electronic waste form covered entities or from another collector and that performs any of the following:

- (A) arranges for the delivery of the electronic waste to a recycler;
- (B) sorts electronic waste;
- (C) consolidates electronic waste; or
- (D) provides data security services in a manner approved by the Secretary.’

All of these definitions serve to identify who fits into what category and how they are ultimately regulated. Clearly, by definition, a refurbisher who solely takes products for reuse, refurbishment, or repair is not a recycler. Also, a collector is allowed to consolidate; however, the purpose of their collection is not recycling because the definition of recycling means that they would need to prepare the electronic waste for recovery of useable materials.

Management standards as outlined in the Procedure are specifically for collectors, transporters, and recyclers and they must adhere to those standards as the electronic devices move down the chain of custody.

6. General Comments

COMMENT: Concern that by requiring recyclers to place damaged devices in a closed container, the recycler would never be able to disassemble, bale, or process the damaged device for recycling. Suggestion that recyclers cannot manage items that are broken. The language in the Procedure speaks to anything that has damage and materials that arrive damaged or broken could not be processed by the recycler but would need to be sent out-of-state for recycling.

RESPONSE: Agree. Language in the Procedure has been modified to address specific management of broken devices once received on site from a collector so that a recycler may properly process a broken device as well as dismantle for proper disposal/recycling.

COMMENT: RCRA defines circuit boards as non-hazardous waste.

RESPONSE: Disagree. VHWMR provides a conditional exemption for circuit boards that do not contain batteries, mercury, or other hazardous constituents. Circuit boards where any hazardous components are still attached are affixed would be subject to a hazardous waste determination under VHWMR. The

Procedure's definition of focus materials as it relates to circuit boards, also does not require management standards if the circuit board is free of hazardous constituents.

COMMENT: Suggestion instead of referring to focus materials throughout the Procedure, the Agency should use the term hazardous or universal wastes.

RESPONSE: Disagree. The Agency has utilized the term "focus materials" that is defined in R2 certification; the same certification that is being utilized by many recyclers. Using the term hazardous or universal waste would be specifically applicable to CRTs and other electronic device components managed under VHWMR and not to the other electronic devices and consumer electronics regulated by the E-Cycles Procedure.