



October 31, 2008

Deputy Commissioner for Legal Affairs  
New York City Department of Sanitation  
125 Worth Street, Room 710  
New York, New York 10013

Re: Proposed Rules Governing Electronic Equipment  
Collection, Recycling And Reuse

Dear Deputy Commissioner:

This letter and the attached comments are being submitted on behalf of the Information Technology Industry Council (ITI) in response to the “Proposed Rules Governing Electronic Equipment Collection, Recycling And Reuse” (Proposed Regulations) issued by the Department of Sanitation (DSNY). ITI is a trade association for the nation’s leading high-tech companies. ITI’s Environmental Leadership Council represents numerous leading manufacturers of IT equipment, televisions and other consumer electronics devices that are subject to the City’s electronics recycling ordinance.

ITI and our member companies support reasonable efforts to promote the safe and appropriate recycling of used electronics products to help meet the important environmental goal of increasing resource conservation and recovery. However, the City’s electronics recycling program represents a sharp departure from typical programs and from how the City treats other “special wastes.”<sup>1</sup> The City is placing the burden of collecting, handling, and recycling the City’s obsolete electronics entirely on manufacturers. Further, ITI and its member companies are deeply concerned at the extraordinary breadth and scope of the program, as envisioned in the

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<sup>1</sup> These special wastes, which are discussed in further detail below, include household and automotive batteries, used motor oil, motor oil filters, fluorescent bulbs and tubes, latex paint, mercury thermometers and thermostats, and tires.

The New York State Department of Environmental Conservation (DEC) has designated used electronics as a “special waste” that can require special handling procedures and disposal methods to protect human health and the environment. (<http://www.dec.ny.gov/chemical/8480.html>). Other wastes that DEC considers special waste include asbestos, creosote, fluorescent and HID lamps, lumber treated with chromated copper arsenate, regulated medical waste, used oil and used tires.

The United States Environmental Protection Agency (EPA) has designated certain wastes such as batteries, pesticides, mercury-containing equipment and lamps as “universal wastes.” EPA’s universal waste regulations “govern the collection and management of these widely generated wastes, thus facilitating environmentally sound collection and proper recycling or treatment.” (<http://www.epa.gov/osw/hazard/wastetypes/universal/index.htm>). Similarly, EPA has established a rule for Cathode Ray Tubes (CRTs) that “streamlines management requirements for recycling of used CRTs and glass removed from CRTs . . . . The rule is intended to encourage recycling and reuse of used CRTs and CRT glass.” (<http://www.epa.gov/waste/hazard/recycling/electron/crt.htm>).

Proposed Regulations. Our concerns over the unprecedented costs and logistical burdens associated with this program are heightened as the economy delves into recession.

Under the program, manufacturers are not merely called upon to fund the collection of covered electronics. Manufacturers must actually collect, handle, and recycle covered devices from end users once they have decided to discard the equipment. Moreover, manufacturers are prohibited from charging fees to offset the enormous costs of the program (except in one limited circumstance).<sup>2</sup>

ITI is deeply concerned with the law itself, and some of these concerns are noted in this submission for the record. However, the Proposed Regulations go even further by imposing additional and unreasonable burdens on manufacturers that ITI believes calls in question the legality and enforceability of the entire program. Specific comments on the Proposed Regulations are attached. More general comments are provided below.

**A. The Program's "Convenience" Requirements Are Arbitrary, Lack Any Factual Basis, And Are Contrary To Prior Conclusions Drawn By DSNY**

The "convenience" requirements of the Proposed Regulations are of particular concern to ITI and its members. ITI recognizes that DSNY, in issuing the Proposed Regulations, is constrained by the provisions of the Electronic Equipment Collection, Recycling and Reuse Act (the Act) adopted by the City Council. However, neither the City Council, in enacting the law, nor DSNY, in issuing the Proposed Regulations, offered any logical reason or basis as to why obsolete electronics products could not or should not be collected, handled, and recycled in the same manner as other special wastes, even if the responsibility of doing so falls on manufacturers.

The City has sought to place the entire burden of this particular special waste on manufacturers. ITI repeatedly expressed its concerns to City officials that this burden should not fall entirely on manufacturers. ITI's concerns were ignored. Now, through DSNY's Proposed Regulations, the City seeks to implement the electronic waste program in a manner that is arbitrary, unreasonable, unfairly burdensome on manufacturers, unsupported by any assessment or analysis to justify imposing such an extraordinary burden on manufacturers and inconsistent with prior conclusions by DSNY concerning the collection of electronic waste. It is with this background in mind that ITI offers the following comments on the Proposed Regulations:

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<sup>2</sup> A manufacturer must submit an electronic waste management plan to the DSNY within 60 days of publication of the final regulations. The plan must lay out the methods by which a person can "return" covered electronics to the manufacturer, often without regard to whether that manufacturer actually produced or sold the original equipment. The Proposed Regulations require manufacturers to provide "convenient" collection methods. For "small items," defined as digital music players, laptop computers, televisions under ten pounds, and electronic mice and keyboards, "convenient" collection is defined as a mail-back or retail store drop-off program. For "large items" such as televisions over ten pounds, desktop computers, monitors, and CPUs, however, DSNY has construed the term "convenient" to mandate the inclusion of direct collection from residents in the City. Furthermore, all materials necessary to effectuate mail-back or drop-off collection must be provided to the purchasers by the manufacturers.

*DSNY's "Convenience" Requirement Is Arbitrary, Lacks Any Rational Basis, and Fails to Consider The Cost To Manufacturers*

DSNY's application of the "convenience" requirements, as set forth in the Proposed Regulations, is completely at odds with the Act and its legislative history. The City's electronics recycling law requires only that "[a]n electronic waste management plan shall include . . . the methods by which a person can return to the manufacturer such covered electronic equipment and orphan waste. Such methods shall be convenient for residents of the city." Proposed Regulations § 16-423(d). The law does not require manufacturers to collect covered electronics "directly from residents"<sup>3</sup> in order to satisfy the "convenience" requirement. In fact, the City Council considered requiring residential pick-up in an earlier draft of the electronics recycling legislation but ultimately rejected that requirement in favor of the current language. See Testimony of Carmen Cagnetta, New York City Council, Sanitation and Solid Waste Management Committee, Oct. 21, 2008 DSNY public hearing. ITI believes that DSNY cannot, regardless of any purported rationale, require direct collection from residents given the legislative history of the Act. If DSNY's convenience standard is adopted, ITI believes the Proposed Regulations, if challenged, will be rendered unenforceable.

Moreover, ITI is not aware of any assessment or analysis conducted by DSNY regarding the impacts, costs or logistical burdens of imposing such a requirement. It has been estimated that New York City's program, in its proposed form, will cost manufacturers anywhere between approximately \$65 million and \$220 million annually merely to collect covered electronics. Recycling activities could easily double those costs. DSNY has arbitrarily failed to offer any justification as to why a less costly, less burdensome alternative is not more appropriate to meet the "convenience" requirements of the law.

*DSNY Has Failed To Justify Its "Convenience" Requirements In Light Of Its Own Prior Conclusions Regarding Electronics Collection*

Even DSNY has previously concluded that that direct residential collection of E-waste is unwarranted and too costly. The Department's website includes information responding to several questions regarding E-waste. Prior to a recent alteration to the website, the following questions were posed:

**Why doesn't New York City collect electronic equipment from our homes?** Why doesn't the city hold more electronics recycling events and why aren't these events closer to my home? (emphasis added)

DSNY provided the following response:

**Electronics comprise only .64% (or 1.24% when including appliances) of New York City's residential waste stream (See**

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<sup>3</sup> ITI has been verbally informed that "direct collection" will encompass in-home collection as opposed to street collection.

**What's in NYC's Waste?**. Due to high labor and transportation costs, it is cost prohibitive to collect these items directly from homes. The DSNY Bureau of Waste Prevention, Reuse and Recycling tries to hold electronics events at convenient locations throughout the City. However, it is very difficult to find venues for these events that provide enough space and are easily accessible for everyone. . . . (emphasis added)

DSNY therefore viewed drop-off locations as a sufficiently “convenient” means of collection given the extraordinary burdens associated with direct residential collection. DSNY understood that resident convenience must be balanced against costs and logistical difficulties of implementing the program. Yet DSNY now seeks to impose that very same, “cost prohibitive” burden on manufacturers. DSNY’s prior acknowledgement of the enormous burden of direct collection is particularly striking in light of the fact that many manufacturers have no physical presence in the City, making the burden faced by manufacturers even greater than those DSNY would face if it implemented direct collection of covered electronics.<sup>4</sup>

ITI raised this admission by DSNY with City officials in an effort to convince the City to appropriately consider the burdens of the program as it attempted to define the proper scope of the term “convenience.” Rather than address ITI’s legitimate concern, DSNY simply deleted the bolded language quoted above from its official website without any further explanation.

DSNY’s own conclusions regarding the prohibitive costs and logistical challenges of providing convenient residential collection of electronics are all the more striking given the Department’s large size, ubiquitous presence and expansive capabilities. DSNY has been in existence for over one hundred and twenty five years, and touts itself as “the world’s largest [sanitation department], collecting over 12,000 tons of residential and institutional refuse and recyclables a day.” (<http://www.nyc.gov/html/dsny/html/about/about.shtml>).

DSNY has nearly 10,000 employees and serves the City “out of 59 Districts, using approximately 5,700 vehicles” including, among others, 2,230 collection trucks, 275 specialized collection trucks, and 2,360 various other support vehicles. *Id.*

Despite all its staff, expertise and resources, the Department has concluded that residential electronics collection is “cost prohibitive” and that “it is very difficult to find venues for these [electronics] events that provide enough space and are easily accessible for everyone.” (It is also noteworthy that the Department has permanent facilities in the City and presumably has access to other City property where it could operate electronics collection events. Manufacturers have neither of these advantages.)

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<sup>4</sup> These manufacturers will be forced to amass an enormous new workforce, either itself or through a third party, to retrieve the items, lease or purchase commercial space in which to store the collected electronic equipment, and acquire vehicles with which to transport the electronic equipment. The costs of creating whole new organizational units responsible for collection, handling, and recycling of electronic equipment will be tremendous and the planning and execution of this new business component will seriously tax the resources of manufacturers.

Yet the Department now plans to direct manufacturers, most of which have no physical presence in New York City, to accomplish what it itself has publicly stated cannot be done.

*DSNY's Proposed Regulations Are At Odds With How It Treats Other Special Wastes*

DSNY's "direct collection" requirement for covered electronics is completely inconsistent with how the City treats other special wastes, including household and automotive batteries, used motor oil, motor oil filters, fluorescent bulbs and tubes, latex paint, mercury thermometers and thermostats, and tires. As noted above, despite its presence in 59 districts throughout the City, DSNY has already recognized its own difficulty in finding venues for special waste collection. Thus, there is only one "Self-Help Special Waste Drop-off Site" in each borough. Further, each household may visit a Special Waste Drop-off Site only six times per year. The Special Waste Drop-off Sites "operate on a 'do-it-yourself' basis."<sup>5</sup> DSNY requires residents to empty their special wastes themselves and directs them to wear appropriate clothing and bring any necessary tools.  
([http://home2.nyc.gov/html/nycwasteless/html/at\\_home/special\\_waste.shtml](http://home2.nyc.gov/html/nycwasteless/html/at_home/special_waste.shtml)).

Thus, the City has determined that, for other special wastes, it is acceptable to operate one site per borough on a "do-it-yourself" basis for residents; yet it is now requiring electronic equipment manufacturers to develop, fund, and operate a parallel, City-wide residential direct collection system solely for covered electronics. DSNY has failed to offer any analysis or reasoning as to why that burden (both from a cost and logistical standpoint) should require "direct collection" from residents in light of how the City deals with other special wastes.

*DSNY's Has Failed To Assess Other Less Burdensome and Effective Alternatives*

DSNY has ignored numerous examples of more reasonable electronics recycling programs that would achieve the same goals while imposing far fewer costs and burdens on manufacturers. These alternatives are being successfully applied in high-density urban areas, including Los Angeles, Houston and Minneapolis/St. Paul. Other U.S. states, for example, have

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<sup>5</sup> While some special wastes, such as fluorescent bulbs and tubes may be lighter than certain categories of covered electronics, these items nevertheless can be bulky. DSNY has nevertheless deemed one "drop-off" site per borough for these wastes sufficiently convenient for City residents. Further, waste tires are not light. Yet, DSNY merely offers the same drop off sites for tires. Notably, DSNY's website correctly does not assume that residents have vehicles to deliver these wastes to the drop-off locations.  
([http://home2.nyc.gov/html/nycwasteless/html/at\\_home/special\\_waste.shtml](http://home2.nyc.gov/html/nycwasteless/html/at_home/special_waste.shtml)).

Residents also may, but are not required to return used auto batteries, motor oil, transmission fluid, and car tires to retailers that sell them. *Id.* In other words, even if the location is different, residents are still required to drop off these items. ITI understands that "rechargeable batteries" are required to be returned to retailers under the administrative code. Rechargeable battery manufacturers are then required to arrange for the collection, transportation and recycling of batteries collected by retailers. Thus, in this instance where the City has sought to include manufacturers in the scope of special waste regulation, (1) direct collection was not required, and (2) retailers were also included in the scope of the regulatory program. *See* Administrative Code § 16-405. Here, however, manufacturers are required to undertake direct collection of covered electronics and retailers are completely exempted from any obligations for products they sold.

electronics recycling laws that require “convenient” management of obsolete devices, yet none of these programs require manufacturers to retrieve electronics directly from residents.

The European Union (EU) has also created a regime that governs the management and recycling of obsolete electronics, including in cities comparable to New York such as London, Paris, Berlin and Rome. And yet the EU program does not require manufacturers to retrieve used electronic products directly from end users in these major metropolitan areas.

Rather, the EU’s Waste Electrical and Electronic Equipment (WEEE) Directive imposes explicit collection obligations on distributors of electronic equipment, which are defined to include retailers. In summary, when retailers sell a covered product to a residential customer in the EU, they are required to offer free take-back of a similar product.<sup>6</sup>

The contrast in the New York City ordinance is striking. Section 16-422(b) of the ordinance states that a “manufacturer must accept for collection, handling and recycling or reuse on a one-to-one basis with the purchase of the same type of covered electronic equipment other than orphan waste that is offered for return by any person in the city, and has been assembled, manufactured or imported by persons other than such manufacturer, or has been sold under the brand name of a person other than such manufacturer.”

In other words, the City has imported the requirement from the European Union WEEE Directive, with the important alteration that it is now the manufacturer – not the distributor or retailer making the final sale to the consumer – that must offer to collect a similar obsolete product. The significant majority of covered devices sold in the City are sold to residents by retailers, not by manufacturers. As detailed below, numerous covered devices in the City are also delivered and installed by distributors and retailers, often for an additional fee.

Unlike in the EU, however, the distributor/retailer has no obligation under City law to collect a similar unit to the one they sold (and perhaps delivered and installed). The resident is thus left to make separate arrangements with the manufacturer (or manufacturers) of his/her obsolete equipment, while the retailer delivery team is allowed to leave empty-handed and drive away in the truck. This will require, in many cases, manufacturers to send a fleet of trucks back to these same locations, thereby increasing traffic congestion, fuel consumption and air pollution. It is difficult to conceive of a less environmentally sound approach to addressing covered electronic equipment that is being discarded by end users.

This outcome not only imposes an extraordinary burden on manufacturers but actually significantly decreases the level of consumer convenience by forcing the resident to separately seek out the program(s) offered by the manufacturer(s) of their obsolete equipment. ITI raised this exact point during our testimony at the January 14, 2008 electronics recycling hearing held by the Sanitation Committee of the City Council.

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<sup>6</sup> Additional information concerning the WEEE Directive is included as an attachment to this submission.

Nor is it acceptable for the Department – as it has already done – to suggest that manufacturers simply enter into agreements with retailers to collect obsolete equipment. This places manufacturers at the mercy of whatever terms the retailers want to dictate, since the City has decreed that manufacturers hold the full legal and financial obligation to operate the program. This will do nothing but inflate already unreasonable program costs, and result in further price increases to consumers for new products.

For example, section 17-03(h)(2)(i) of the Proposed Regulations states that manufacturers can satisfy the convenient collection requirement for small items by establishing a “retail store drop-off program” that operates “at multiple retail store locations throughout the City.” The Department ignores the fact that retailers have no legal obligations under the ordinance and that manufacturers cannot compel retailers to participate at all, let alone at multiple, City-wide locations. (Some retailers do have obligations as manufacturers, since they own brands of covered products. However, they are acting as manufacturers in this regard and have no separate requirements as retailers.)

To try and satisfy our obligations in the most cost-effective manner, manufacturers will thus be compelled to make artificially inflated payments to retailers – who have no incentive to negotiate a fair price – in order to secure their participation.<sup>7</sup> Other alternatives are less efficient and, as noted above, far less convenient to residents.

The approach the City has elected will significantly increase compliance costs, and the costs to consumers for new products, without delivering any additional level of service. In fact, it will yield a system that is less convenient for residents than other more reasonable and rational approaches.

*Cost Comparisons Demonstrate that the DSNY Approach is Unduly Expensive and Burdensome in Relation to Other Similar Programs*

On September 16, 2008, the State of California lowered the Standard Statewide Combined Recovery and Recycling Payment Rate to \$0.39 per pound for covered electronic devices. This is the rate that authorized collectors and recyclers in California receive for their services. (From the inception of the program in 2005 until this July, the rate was \$0.48 per pound. It was lowered in two stages: to \$0.43 per pound in July and then to \$0.39 per pound in September.) This amount covers all costs associated with the program, from collection through transportation, consolidation and recycling.

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<sup>7</sup> New York City retailers that also qualify as manufacturers will be in a uniquely strong position to dictate the terms of providing “retail drop-off” services on behalf of other manufacturers, such that they could either incur no additional costs themselves or in fact profit from the arrangement. The fact that retailer/manufacturers can easily fulfill their own legal obligations under this program through their existing operations provides them with an unfair advantage relative to most manufacturers.

By comparison, data from the first two years of the electronics recycling in the state of Maine demonstrate that costs average \$0.33 per pound. Maine also has a capped rate of \$0.48 per pound. Data from the EU indicate total program costs are around \$0.19 per pound.

By contrast, the door-to-door program in New York City is estimated to cost between \$0.90 and \$3.17 per pound *just for the collection*. The costs to transport, consolidate and recycle these units are not even factored into this estimate. For comparison, California's Standard Statewide Combined Recovery and Recycling Payment Rate of \$0.39 per pound breaks down to \$0.16 per pound for recovery (collection and transportation to an approved recycling facility) and \$0.23 per pound for recycling.

In fiscal year 2006-2007 (the last full year for which data is available), the California program properly recycled over 150 million pounds of electronics at a cost of approximately \$75 million. Under the New York City approach, manufacturers would pay between \$135 million and \$475 million just to collect an equivalent volume. The costs to transport these covered devices to authorized recyclers and pay for proper recycling would more than double the final price. Under the New York City approach, it will at a minimum cost over three-and-a-half times more to collect, transport and recycle a pound of covered electronics. At the high end, it could cost almost thirteen times as much. (It is also important to note that California's program is administered by the state, and that state overhead costs are between 11-14% of the total program costs.)

When compared to other established programs, the New York City approach imposes extreme and seemingly punitive burdens on manufacturers. What's more, our industry is operating under diminishing margins, making it increasingly difficult to absorb these excessive costs in an already difficult economic environment. If this approach were to be replicated in other U.S. states and cities, it could easily drive a number of manufacturers toward bankruptcy or out of the industry.

Finally, we also understand that private commercial recyclers are not allowed to operate on City streets during regular business hours in order to minimize disruptions to traffic. If this is to be the case under the electronics recycling program, costs will escalate even further as manufacturers will have to pay extra for crews to operate in the evenings and on weekends.

In summary, DSNY's interpretation of the convenience requirements – and the lack of any required participation by other entities that are better-positioned to provide convenient and cost-effective collection services – will result in a program that costs multiples of similar, established programs. The City is imposing an unnecessarily costly and burdensome program on manufacturers.

*DSNY Has Exacerbated the Cost and Convenience Issues by Making an Arbitrary Distinction Between "Large" and "Small" Covered Electronics*

DSNY's failure to consider reasonable alternatives is compounded by the arbitrary and legally unsupported distinction the agency makes between "large" and "small" items. Under the Proposed Regulations, televisions of nine (9) pounds or less can be mailed back or returned to

retail stores. But a television set weighing just one (1) pound more must be collected by the manufacturer directly from a resident. The Proposed Regulations offer no logical reason why 10 pounds is the appropriate criterion by which to make such a distinction. Furthermore, this 10-pound weight threshold applies only to televisions; for other equipment, weight apparently is irrelevant.

*Regardless of Cost and Reasonableness, DSNY has Failed to Consider Whether Direct Collection Is Even Feasible*

Most manufacturers simply do not have the infrastructure in place to provide direct collection services to residents. Indeed, as noted above, most manufacturers have no physical presence in New York City. As a result, these manufacturers are forced to seek third parties to provide such services. ITI and a number of its members have already attempted to identify a company (or companies) that could provide such services. To date, no company capable of offering the level of service required for this program has been identified. DSNY, in mandating direct collection for large electronics items and knowing that most manufacturers have no presence in New York City, was obligated to first establish that there were companies in a position to actually provide direct collection services on the scale required to implement this program.

*DSNY Has Failed To Consider the Significant Liability Exposure It is Placing on Manufacturers*

The Proposed Regulations open up manufacturers to significant liability risks that they do not currently face. "Direct collection," ITI has been verbally informed by City officials, means in-home collection. City officials also informed ITI that any goods or possessions left on the sidewalk in New York City become the legal property of DSNY. The result seems to be that manufacturers must access private property to fulfill their obligations.

In-home pick-up creates situations in which agents of the manufacturers risk exposure to property damage and possible personal injury claims that otherwise would not have occasion to arise. DSNY apparently has given no thought to the liability risk it seeks to impose on electronic equipment manufacturers or the additional funds manufacturers may be required to expend to insure against this liability. The City Council has also expressed similar concerns during oral testimony at the public hearing. *See* Testimony of Carmen Cagnetta.

**B. The Program Raises Serious Concerns with Respect to its Legality and Impacts on Interstate Commerce and the Rights of Manufacturers**

Given its mandates on manufacturers and impacts on the stream of commerce as a whole, ITI requests that the City properly assess the program's legal (and even Constitutional) implications. ITI recognizes that some of the following comments, in part, reach beyond the Proposed Regulations to the Act itself. However, ITI also believes that it is important to address these issues now, as opposed to waiting until the program is on the eve of implementation.

*The Program Effectively Re-Writes the Terms Under Which Manufacturers Sold Their Electronic Equipment*

When manufacturers sell their electronic equipment into the stream of commerce, title to that equipment passes to other entities (typically to retailers or wholesalers) or to the general public (in the minority of instances where a manufacturer is selling directly to the consumer). At that point in time, the equipment does not constitute “waste.” It becomes E-waste only after the end user (who may or may not have been the initial purchaser of the equipment) decides to discard it. At the time of the initial sale, manufacturers have no expectation that they will be required to take title to the equipment after it becomes discarded. The City is re-writing the terms of the agreement under which the equipment was originally sold. The City effectively is transforming a sale of property into something analogous to a lease arrangement. The law goes even further. It requires, in several instances, manufacturers to take title to equipment it never manufactured, assembled, owned, licensed or sold (*e.g.* “orphan waste”).

*The City Needs to Address the Legal Basis for the Program’s Retroactivity*

ITI requests that DSNY address the legality of the program’s retroactive application. In particular, ITI seeks clarification on several issues. First, in light of the prior point, ITI questions whether the City may properly require manufacturers to take title to equipment that was sold into the stream of commerce before the law was even enacted. In many instances, the equipment was sold decades ago. DSNY needs to address the law’s retroactive application both generally and in light of the specific burdens imposed under the Proposed Regulations.

*The Program Has Not Been Designed to Reasonably Minimize the Burden on Interstate Commerce and Market Participants*

The program as laid out in the Proposed Regulations is unworkable, impractical, and unduly onerous. For the reasons explained above and in the attached comments, the requirement that manufacturers collect used products directly from residents is a logistical nightmare. At the same time, the City has offered no rational basis for the complete omission of retailers from the program, even though DSNY now proposes to include retail store drop-off as an option for “small” covered electronics. Manufacturers (certainly those with no physical presence in the City) are now prone to a government-mandated economic disadvantage as they try to convince retailers to cooperate with their individual recycling proposals. This is an untenable position. The exclusion of retailers from the program is particularly striking since, under most circumstances, retailers, not manufacturers, sell electronic equipment to end users and already have a physical presence in the City to enable them to more reasonably participate in the electronics recovery program. The exclusion of retailers from the program is also perplexing because retailers, as a potential drop-off site, have been required to collect and handle other special wastes. *See* Rechargeable Battery Program. Unlike the City, manufacturers cannot force retailers to agree to such an option.

ITI believes the City has failed to adequately consider the law’s impact on interstate commerce. As noted above, ITI questions whether the program, in its current form, can be legally implemented given the City and DSNY’s failure to consider the burdens placed on

manufacturers, or justify the additional benefits of direct collection from residents when weighed against the additional burdens of that option. The City has failed to consider less restrictive alternatives that would reasonably accomplish the same goals while imposing far less burdens on electronic equipment manufacturers. More particularly, the City has not adequately considered the fact that the program places a far greater burden on manufacturers that have no physical presence in the City. Thus, out-of-state, out-of-city manufacturers will face significantly greater burdens than in-state, in-City manufacturers.

For example, Best Buy is considered a manufacturer because it sells electronic equipment under its own brand name, Insignia. Best Buy has stores located throughout the City. Similarly, Target, which also has multiple store locations in the City, sells its own brand of electronic equipment, Tru-Tech. Thus, both of these stores, which also happen to be retailers, already have a physical presence in the City.<sup>8</sup> The fact that certain “manufacturers” covered by the New York City law have multiple permanent retail locations, fleets of trucks, and delivery and installation teams provides them with an unfair advantage over those manufacturers and brand owners that lack a presence in the City or this type of infrastructure. This discriminatory effect is further solidified by DSNY’s mandate that manufacturers be required to conduct direct collection services to residents for “large” covered electronics.

In sum, ITI questions the fundamental fairness of the proposed program and respectfully asks that the City and DSNY reconsider their position with respect to this program. As always, ITI is willing to meet with DSNY and other City officials to discuss the foregoing concerns so that an equitable, reasonable and cost effective electronics recycling program can be properly implemented.

Sincerely,



Richard E. Goss  
Vice President of Environment & Sustainability

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<sup>8</sup> For a fee, Best Buy will deliver and install equipment. Except for televisions, delivery includes free recycling on a one-to-one basis. Target also offers delivery for a fee.