

February 21, 2022

House Rules Committee

Subject: House Bill 4158, relating to covered electronic devices recycling

The electronics manufacturers that fund the E-Cycles program support the goal of keeping the same network of collection sites open through 2022. We want to see a stable Oregon E-Cycles system, and that includes continued service for the collectors proposed to be dropped by the state contractor program.

Currently there are two vendors carrying out the E-Cycles program in Oregon. One, MRM, is a private vendor managed directly by the manufacturers who pay into the program to ensure their products are recycled. The other, NERC, is a DEQ-hired and managed vendor. Both programs rely on DEQ to set accurate collections goals each year, but the pandemic has caused a change in behavior that has been hard to predict, and Oregon has exceeded its recycling goals by quite a bit in the last two years.

We have concerns about the way HB 4158 as written tries to solve this problem, but we believe the state and manufacturers can find a solution that can prevent the closure of collections sites on March 1.

Background on Oregon's e-Cycles EPR Program

Manufacturers have financed Oregon's electronics recycling system since implementation of this EPR program began in 2009 – collection, transportation, recycling, administration, and even DEQ's costs for oversight and enforcement are all covered by electronics manufacturers. That adds up to nearly \$100 million paid since 2009 by producers into the state and without any visible consumer fee.

The law underlying Oregon E-Cycles requires the following:

- *A state contractor program is run by a DEQ-hired vendor as a "default" recycling program for manufacturers who do not elect to comply through a manufacturer-run group program.* Manufacturers do not have a role in managing the state contractor program, and the vendor is hired by DEQ using standard procurement processes. During the early years of the program, more than half of the manufacturer obligation was administered through the state contractor program, but over the years more manufacturers have chosen to comply through the manufacturer-run group plan. In 2022 only 30% of the manufacturer obligation is discharged through the state contractor program.
- *DEQ sets an annual pounds recycling target by May 1 for the following calendar year.* No other state sets a manufacturer recycling target so early in the process, and even with exceptionally talented technical staff, it leads to disparities. Some years DEQ has set the target too high, some years too low. When the DEQ target is higher than what was collected, any private manufacturer-run program pays DEQ a shortfall fee – and over the years manufacturers have paid DEQ more than \$300,000 in shortfall fees when the target was not reached. The state contractor program does not have to pay this shortfall fee, but if the state contractor program

exceeds the amount collected/recycled beyond the target then manufacturers complying in the state contractor program are sent a bill the following year to cover the extra costs – and this has happened several times over the years as well, for a relatively small proportion of the total budget.

- *The number of pounds recycled has declined steadily since 2015.* While the collection system for Oregon E-Cycles has barely changed until the recent announcement of collectors to be dropped by the state contractor program, the amount recycled has declined from about 30 million pounds in 2015 to about 17 million pounds in pre-pandemic 2019 (and under 15 million pounds in pandemic year 2020). This is entirely due to electronics weighing less, as products have become flatter, thinner and smaller. We expect continued declines in recycling volumes on a weight basis for at least another 5 years before it flattens out.
- *For the past 2 years the DEQ recycling target was set too low.* This happens. DEQ sometimes misses on their target which is calculated and set 8 months before the ***beginning*** of the year to which it applies. And the pandemic did not make this task any easier for DEQ.
- *The state contractor program has nearly 3 million pounds of recycling credits already from collections above the DEQ-targeted amounts.* This compliance program set up and overseen by DEQ collected millions of pounds more than it was budgeted to do and is in a hole and trying to dig out before it collapses financially.

Oregon E-Cycles costs that are outside manufacturer control – but still borne by manufacturers – must be managed and budgeted ahead of time. Especially since this program is “cost internalized” and funding comes right off company bottom lines, manufacturers must be able to plan for and budget for this expense and not be surprised in the middle of a program year with significant additional costs. **HB 4158** resets the recycling target in April for the remainder of 2022, long after manufacturers have budgeted for and entered into recycling arrangements to comply with Oregon’s EPR requirements. **HB 4158 would establish a bad precedent for states changing costly EPR mandates on the fly.**

Language about requiring use of “willing” vendors is a concern. While CTA knows of no cause for concern about the performance of the collectors proposed to be dropped by the state contractor program, the open-ended direction to use any willing vendor currently participating in any way in the existing recycling/solid waste infrastructure is a concern. The history of bad apples operating in the region is not a short one, and any vendor supported with manufacturer funding – even vendors working outside of manufacturer control under the state contractor program – should be required to meet basic environmental and business performance standards. Examples of poor performance include unsafe packaging of scrap electronics for shipment, export to developing countries outside proper legal channels, and “off the books” skimming of more valuable computer equipment while giving the manufacturer-funded program only the expensive covered electronic devices.

This problem was created in part by the pandemic, and the state should step up in this emergency. The program needs a long-term fix, which we are committee to working on in the interim.

We remain committed to finding a solution to the immediate problem of dropped collectors, and to helping but HB 4158 is problematic. We also remain committed to finding consensus on updating the statute in the near future so that Oregon E-Cycles can accept and manage however much Oregon consumers recycle without arbitrary recycling targets.