

County of Santa Clara
Department of Agriculture and Environmental
Management
Integrated Waste Management




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DATE: June 21, 2011

TO: Board of Supervisors

FROM: 
Kevin O'Day
Director of Agriculture & Environmental Management

SUBJECT: e-Stewards Recycling Ordinance

RECOMMENDED ACTION

Introduction and preliminary adoption of Ordinance No. NS- 517.79 adding Chapter XVIII to Division B11 of the Santa Clara County Ordinance Code relating to Establishing Minimum Standards for Electronic Device Recycling. (Roll Call Vote to waive reading, Roll Call Vote to adopt)

FISCAL IMPLICATIONS

There is no impact to the General Fund as a result of this action.

REASONS FOR RECOMMENDATION

On December 14, 2010, Supervisor Kniss requested that the Board direct the Administration to prepare an ordinance for consideration by the HLUET Committee requiring all electronic waste (e-waste) collection activities taking place in unincorporated Santa Clara County, including curbside and drop-off recycling, utilize only e-waste haulers and recyclers that are

participants, certified, or pledged in the e-Stewards Initiative (Attachment 1).

A draft ordinance regulating e-waste collection activities in the unincorporated portions of Santa Clara County is attached for Board consideration (Attachment 2). The draft ordinance requires that:

1. No person, partnership, corporation or other entity shall collect any electronic device from any electronic device recycling event in the unincorporated territory of the county unless the electronic device is delivered for recycling to an e-Stewards recycler, regardless of that recycler's location.
2. No electronic device recycler within the unincorporated territory of the county shall accept an electronic device collected from an electronic device recycling event conducted within the unincorporated territory of the county unless that electronic device recycler is an e-Stewards recycler.

This item was on the May 25, 2011 Housing, Land Use, Environment and Transportation Committee agenda and HLUET voted to forward the draft ordinance to the full Board for consideration.

California Environmental Quality Act (CEQA)

The proposed ordinance is categorically exempt from CEQA because it is an action to protect or enhance the environment pursuant to CEQA Guidelines §§ 15307 and 15308 – Class 7 and Class 8 Categorical Exemptions.

Furthermore, the proposed ordinance is exempt pursuant to the common sense exemption to CEQA pursuant to CEQA Guidelines § 15061(b)(3) because it can be seen with certainty that there is no possibility that the ordinance may have a significant effect on the environment.

BACKGROUND

In 2003, the California Legislature passed SB20 and SB50, the Electronic Waste Recycling Act and Covered Electronic Waste Payment System. This legislation established a funding system for the collection and recycling of specific electronic wastes.

The list of covered electronic devices includes those containing cathode ray tubes (CRT) and/or liquid crystal displays (LCD), such as computer monitors, laptop computers, some televisions and DVD players. When purchasing a covered electronic device, the consumer pays a disposal fee (often included in the cost of the device) that helps facilitate the proper disposal of the device at the end of its useful life.

When a consumer deems that the covered electronic device is no longer useful, the device is given away for reuse (depending on its condition), discarded in an inappropriate manner, or collected through an e-waste recycling event. Because of the State's disposal fund, non-profit organizations, schools and churches often use e-waste recycling events as a means of fundraising.

Other electronic devices – those with both a printed circuit board and a power source – are e-waste as well, but are not eligible for State payment. These devices contain components that are valuable and are thus typically dismantled for their metals and other materials.

Once e-waste has been collected by groups or individuals, it is then either self-hauled or transported by a contracted hauler to an e-waste recycler. The recyclers will process the e-waste in different ways (disassembling, smelting, shredding) and may ship waste to a number of destinations depending upon market conditions.

If improperly processed, e-waste can contaminate the solid waste stream, pollute ground water, and expose handlers to harmful working conditions. There is also the potential that e-waste is sent to a developing country where it may be deposited into landfills, incinerated, or disassembled in a manner that threatens workers, public health and the environment.

Proposed Ordinance

The purpose of the draft ordinance is to give the County a means to ensure that all electronic waste disposed of in unincorporated Santa Clara County is responsibly managed and to encourage similar action in other jurisdictions.

Under the draft ordinance, *collectors* may only deliver e-waste from unincorporated Santa Clara County to an e-Stewards certified recycler, regardless of that recycler's location. The ordinance also requires *recyclers* in unincorporated Santa Clara County to be e-Stewards certified in order to accept e-waste collected from unincorporated Santa Clara County.

Many community groups and organizations (e-waste collectors) raise funds through e-waste collection events in unincorporated Santa Clara County. Once e-waste has been collected by groups or individuals, it is then either self-hauled or transported by a contracted hauler to an e-waste recycler. Based upon data from the California Department of Resources Recycling and Recovery (CalRecycle), there are currently no e-waste recyclers in unincorporated Santa Clara County. Thus, the ordinance would only directly affect e-waste *collectors* in unincorporated Santa Clara County, but would likely generate more business for certified recyclers in the cities of the County.

Outreach

In anticipation of the Board of Supervisors' consideration of the proposed e-Stewards ordinance, staff conducted telephone outreach to each e-waste collector/recycler approved by CalRecycle and based in Santa Clara County. Staff also identified additional recyclers and collectors through an internet search and local telephone listings and spoke directly with over 25 of these businesses to describe the proposed ordinance and answer questions.

Each collector and recycler received letters regarding the proposed ordinance and staff met with a local e-Stewards certified recycler in Gilroy. In addition, staff spoke with representatives from the Silicon Valley Toxics Coalition and the e-waste certifying organization "R2".

e-Stewards Certification Program

The e-waste recycler, *not the collector*, is the entity responsible for the ultimate disposition of the e-waste and is eligible to go through the process of acquiring e-Stewards certification. The e-Stewards Initiative is a program created by the Basel Action Network (BAN), which is a 501(c)(3) non-profit, charitable organization. All e-Stewards recyclers are committed to using best practices for the disposal of e-waste in an environmentally sound manner – no disposal in landfills or incinerators; environmentally safe working conditions; no prison labor; and no export to developing nations where e-waste is either dumped in landfills, incinerated, or dismantled and handled by the young, the elderly and the socioeconomically disadvantaged.

To become e-Stewards certified, recyclers must attain International Standards Organization (ISO) 14001 certification, maintain an annual licensing agreement with BAN, which includes payment of a licensing fee based upon a sliding scale calculated on the volume of material recycled on an annual basis, and undergo an annual verification audit done by an independent auditing agency with associated charges. There are four independent auditing agencies nationwide qualified by BAN to conduct e-Stewards certification audits.

Recyclers who join the e-Stewards Initiative are designated as “pledged” until they complete all requirements to become “certified.” However, as of August 31, 2011, the e-Stewards “pledged” designation will no longer be recognized and pledged e-Stewards recyclers must become e-Stewards certified by that date in order to remain in the e-Stewards program.

The direct cost to businesses to become e-Stewards certified varies depending upon the size and complexity of the operation. As previously stated, there are no e-waste recyclers in unincorporated Santa Clara County, so there would be no recycling businesses in the unincorporated area affected by this ordinance. Nevertheless, the County’s commitment is that e-waste generated directly by the County or collected at one of the County's Household Hazardous Waste events would be sent to a certified recycler.

The recycler used for the County’s Household Hazardous Waste (HHW) Program is investing approximately \$37,500 per facility to complete the e-Stewards certification process for each of its eight recycling facilities. This recycler expects to spend approximately \$19,000 per facility annually to maintain that certification.

Certification costs can be broken down into the following three categories:

1. Internal preparation costs;

2. Costs to contract with a certifying body for conducting audits; and
3. Marketing and licensing fees required to use the e-Stewards brand.

Requiring e-Stewards certification in unincorporated Santa Clara County would encourage more responsible business practices, but it may also result in indirect costs. In order to comply with a requirement that prohibits the shipment of e-waste to developing countries, for example, recyclers may need to identify other markets for the e-waste.

Currently, the costs to the environment and public health from improper e-waste management are “externalized” costs. Externalized costs are negative impacts associated with economic transactions that concern parties outside of those transactions, meaning that neither the buyer nor the seller bears the burden of the costs. This proposed ordinance would more directly tie the actual cost of e-waste management to those involved in the transaction. It is consistent with the County’s public policy position with respect to “extended producer responsibility,” as described later in this transmittal.

The adoption of this proposed ordinance as well as similar ordinances by other local agencies would require e-waste collectors to direct their e-waste to certified recyclers. The ordinance would also encourage other recyclers to become certified as more collectors direct their e-waste solely to certified recyclers. It is encouraging that local e-waste recyclers are initiating actions to become certified ahead of any ordinance because it implies that they believe the economic rewards of becoming certified exceed the associated cost.

Other E-Waste Certification Programs

BAN’s e-Stewards Initiative is not the only e-waste recycling certification program promoting environmentally safe practices and requiring third party verification. Responsible Recycling Practices, or R2, is a voluntary program implemented by the American National Standards Institute – American Society of Quality National Accreditation Board. A third program is the Recycling Industry Operating Standard (RIOS) Certified Electronics Recycler.

One concern about R2 is that it allows whole intact units to be sent to other countries for re-use on the premise that the units are working and capable of being productively utilized. Because the units are not tested and certified, this may not always be the case. Frequently, the devices do not work and are beyond repair. As such, these devices may become e-waste in another country subject to the same concerns as any other non-functioning electronic waste. Conversely, the e-Stewards process requires that electronic equipment be thoroughly checked prior to being sent out of the United States for reuse.

e-Steward requirements are more stringent than the R2 and RIOS requirements. While the cost of any certification program may appear high, it is important to acknowledge that the improper disposal of e-waste already imposes a significant environmental and human cost. Certification provides an assurance that e-waste will be properly managed through reuse, responsible recycling or appropriate disposal.

E-Waste Management in Santa Clara County

According to CalRecycle, there are 38 approved collectors of e-waste in Santa Clara County. There is an undetermined number of collectors operating the County who are not approved by CalRecycle.

While there are four approved e-waste recyclers in Santa Clara County, none are located in the unincorporated area.

The four approved e-waste recyclers in Santa Clara County are Metech Secure Recycling (Gilroy), ECS Refining (Santa Clara), M-Cubed (Sunnyvale), and Danny Ewaste LLC (Santa Clara). Metech recently achieved e-Stewards certification. ECS and M-Cubed are e-Stewards "pledged." Danny Ewaste is neither e-Stewards "pledged" nor certified.

In unincorporated Santa Clara County, one franchise waste hauler servicing two different garbage districts collects e-waste curbside as a value-added to its agreement. This hauler takes County unincorporated e-waste that is collected curbside to ECS Refining. The garbage haulers servicing the remaining six garbage districts in unincorporated Santa Clara County do not currently provide curbside e-waste collection services.

E-Waste Management in County Government

Board Policy 7.13 (adopted 2-28-06) addresses the procurement and disposal of electronic devices used by County agencies and departments. The purpose of this policy is to prevent the export of hazardous e-waste to developing countries that may have inadequate environmental standards. Under the policy, the County selects a recycler -- whenever feasible -- that processes hazardous e-waste in developed countries. Selected recyclers agree to provide documentation defining the downstream disposition, including hazardous e-waste handled by intermediaries.

Documentation includes management methods and final disposition of hazardous e-waste to ensure the protection of public health and the environment both here and abroad.

E-waste generated through the Procurement Department's property disposal process is sent to ECS Refining, an e-Stewards "pledged" recycler in the City of Santa Clara. The County's agreement with ECS Refining expires on June 14, 2013. Procurement's agreement with ECS permits the County to terminate the agreement with at least thirty days written notice. It is proposed that the ordinance take effect on January 1, 2012, which would provide ECS with six additional months to complete the certification process, as well as provide to Procurement sufficient time to identify other options, including a Request for Proposals process to select a certified vendor.

The Department of Environmental Health's Household Hazardous Waste Program collected approximately 170,000 pounds of e-waste in FY 2010. The Program also grants "Designated Approved Collector" status to a limited number of non-profit charitable organizations, such as HOPE Services. This designation reduces the charity's documentation requirement, but the charitable organization must adhere to the Board's policy on handling of e-waste.

Currently, e-waste collected from county-sponsored events and by Designated Approved Collectors is sent to Electronic Recycling International (ERI) for disposition. ERI is a recycler in Fresno, California that recently became e-Stewards certified. The Household Hazardous Waste Program's contract with ERI expires in June 2013.

City of San Jose

The City of San Jose's Transportation and Environment Committee is currently studying a requirement that all e-waste recyclers operating in the City obtain e-Stewards certification (Attachment 3). The report identified two primary concerns: 1) the difficulty in identifying e-waste collectors as many operators do not register with the State; and 2) the high cost of securing e-Steward certified status. As such, the City's report does not recommend requiring all e-waste recyclers in San Jose to obtain e-Stewards certification at this time.

Extended Producer Responsibility

The Department of Agriculture and Environmental Management and the Department of Environmental Health advocate for a cradle-to-cradle life-cycle that includes Extended Producer Responsibility (EPR). With regard to e-waste, EPR means the manufacturer is responsible for the management of the electronic waste at the end of its useful life. When manufacturers become responsible for managing e-waste, it will motivate them to create electronic devices that are easier to upgrade, last longer, and contain fewer toxic components.

EPR, supported by the Board through a Resolution adopted on May 22, 2007, reinforces the concept that the financial and physical responsibility for end-of-life management for electronic waste is primarily borne by the manufacturers.

EPR has the potential to advance cleaner and less toxic products as manufacturers seek to manage their end-of-life electronics ethically and responsibly.

Precedents Relating to Third-Party Certification

The draft e-Stewards ordinance requires local businesses in the unincorporated areas to obtain third-party certification of their operating processes. There is precedence for such action. In February 2006, the Board adopted Policy Resolution #06-03 endorsing Green Building Principles and using the U.S. Green Building Council's Leadership in Energy & Environmental Design (LEED) certification rating system. Like e-Stewards certification, LEED certification requires an independent third party auditor to complete the certification process at varying cost levels beginning at approximately \$100,000 for certification and escalating for higher levels of certification.

The County has also initiated action on a number of important policy matters, such as single-use carryout bags and menu labeling. Such County-led initiatives can lead to similar legislation in other jurisdictions which, in turn, leads to broader public health and environmental benefits. Indeed, last year, menu labeling was incorporated into the national healthcare reform law.

Staff Recommendations

The Administration recognizes the initial and ongoing costs to recyclers associated with e-Stewards certification, but three of the four approved recyclers in the county have initiated the certification process, including one that is now certified. While enforcement of the ordinance would be challenging, it would have the effect of encouraging collectors to use certified recycling facilities. Therefore, the Administration recommends adoption of the ordinance. As the process of becoming certified is lengthy, the Administration recommends establishing an ordinance implementation date of no earlier than January 1, 2012.

In addition to the proposed ordinance, the Administration recommends consideration of the following actions for managing e-waste at the local, regional, and state levels:

1. Local Action:

- Include information about responsible e-waste recycling in hauler bill inserts and newsletters. The information would contain the specifics of proper management of e-waste at the end of its useful life.
- When negotiating future franchise garbage agreements (current agreements expire in 2014), franchise agreements would require that haulers collecting garbage, recyclables and yard waste from unincorporated Santa Clara County businesses and residences also collect e-waste curbside. The new agreements would also require haulers to maintain records demonstrating that unincorporated e-waste disposal conforms to the proposed ordinance.

2. Regional Action:

- Request that the Recycling and Waste Reduction Commission of Santa Clara County consider developing a policy statement for consideration by local jurisdictions regarding end-of-life disposition of e-waste with a strong advocacy for Extended Producer Responsibility as the best way to manage e-waste.

3. Statewide Action:

- Consider supporting voluntary efforts by manufacturers to properly manage their products when the products have reached the end of their productive life.
- Consider supporting legislation at the state level that mandates the proper end-of-life management of e-waste through Extended Producer Responsibility or some other means.

CONSEQUENCES OF NEGATIVE ACTION

The Board would not have the opportunity to consider the draft e-Stewards Recycling ordinance.

ATTACHMENTS

- Attachment 1 - Board Referral and Transmittal
- Attachment 2 -- E-Waste Ordinance
- Attachment 3 - City of San Jose Staff Report -- E-Waste
- Comments Relating to Proposed Ordinance