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Testimony of Michele Nestor

Hearing Regarding Senate Bill 800 (Alloway)

Waste Electronic Equipment Recovery

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### SENATE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE

SENATOR GENE YAW, CHAIR

SENATOR JOHN T. YUDICHAK, MINORITY CHAIR

SENATOR CAMERA BARTOLOTTA, VICE CHAIR

SENATOR JOSEPH B. SCARNATI, III, EX-OFFICIO

*Michele Nestor is the Principal and President of Nestor Resources, Inc. Since 1996, the consulting firm, based in the Greater Pittsburgh area, has provided professional support to local governments and private sector service providers in Pennsylvania, and throughout the United States and Canada. Specializing in the economics and policy related issues of materials management and recycling, Michele has gained national recognition for her views and insights. She is a frequently requested keynote speaker and a regular columnist in the trade publication Waste360.*

*Ms Nestor currently serves in the following roles:*

- *Chair of the Solid Waste Advisory Committee and the Recycling Fund Advisory Committee.*
- *Board Chair of the Pennsylvania Recycling Markets Center*
- *Chair of the States' Recycling Organizations Council*
- *Board Secretary, Keystone Chapter, Solid Waste Association of North America*



1 Despite the good intentions that fostered the adoption of the Covered Device Recycling Act  
2 (CDRA), it's time to acknowledge an unfortunate truth. Almost from the start, the law has been  
3 problematic. The situation presents challenges for all stakeholders. In April, both the Citizens  
4 Advisory Council and the Solid Waste Advisory Committee sent an urgent plea to the Senate  
5 Environmental Resources and Energy Committee acknowledging that changes to CDRA were  
6 overdue. The opportunity to rectify the situation has come.

7 Senate Bill 800 (SB800) is currently presented for your consideration. Introduced by Senator  
8 Richard Alloway and co-sponsors, many from this Committee, SB800 was developed in  
9 conjunction with those actively engaged in collecting, transporting, and recycling waste electronic  
10 equipment, including local governments. It offers practical solutions targeted directly at the root  
11 causes of CDRA's weaknesses.

## 12 **Change is Overdue**

13 Fraught with ambiguities, and lacking an accompanying regulatory package, CDRA is open to  
14 broad and much debated interpretation. The conflicts have resulted at times in costly interference,  
15 lost business opportunities and undesirable customer service. It is inconceivable that any  
16 manufacturer would distribute its goods in a system lacking market saturation to the extent which  
17 masquerades as collection coverage under CDRA. An inability to reconcile reported data with  
18 actual operating practices has long cast doubt on the validity of recovery from collection points in  
19 the program.

20 The collection network has progressively eroded, and now bears little resemblance to the level of  
21 extended producer responsibility envisioned by CDRA's original supporters. Consequently, today  
22 consumers like those in Northeastern Pennsylvania, must pay as much as \$1.50 per pound to  
23 discard an old television (\$93 for an average tube television), while others, like those in  
24 Northwestern Pennsylvania, have but one spot in a seven-county area willing to accept all devices

25 without charges, as the law intended. Beginning in 2018, the few remaining full-service programs  
26 are now considering dramatic alterations to their practices. These will not be consumer friendly  
27 changes.

### 28 **SB800 is the Best Option**

29 Other proposed amendments to CDRA have been introduced since its inception. Each lacked  
30 support from local governments, consumers, and electronic recyclers, all who have been  
31 victimized by the unintended consequences of the law. They understand that spot fixes cannot  
32 correct the service inadequacies and disparities inherent in CDRA. The flaws are systemic and will  
33 resurface chronically without a comprehensive overhaul of the law.

34 We keep focusing on manipulating artificial quotas, contingency collections, and modifications of  
35 disposal bans, believing that a different formula, last minute recovery, or a temporary return to  
36 disposing of our vintage TV's will end all problems. Meanwhile, we ignore the reality that waste  
37 electronic equipment continues to grow, if not by weight, certainly by types, units, and volume.  
38 The industry already recognizes that newer flat panel screens, now entering the waste stream, are  
39 posing their own challenges.

40 If we are going to fix CDRA, then let's do it once and for all. We need to think beyond today and  
41 design a system capable of handling consumer demands throughout future decades. While we are  
42 at it, we could build a collection infrastructure prepared to address future, equally difficult to  
43 manage products, all paid for by the consumers it will serve. SB800 accomplishes that at every  
44 level.

### 45 **True Stakeholder Participation and Input**

46 Senator Alloway and his staff worked to seek solutions from every potential stakeholder group.  
47 The final benefit to the consumer was the utmost priority. Unlike previously frustrating exercises  
48 to amend CDRA, Senator Alloway's office welcomed and used feedback from those directly

49 affected. The participant majority concluded, if circumstances ever warranted repeal and replace  
50 as appropriate actions for an existing law, CDRA qualified. The revisions necessary to fix CDRA  
51 are so extensive that altering the language within the existing structure will only add to an already  
52 confusing situation. Instead SB800 takes a fresh approach by incorporating input from  
53 stakeholders experienced in the challenges of managing waste electronic equipment.

54 This fair and open process, reminiscent of the approach used for Act 101, brought to consensus a  
55 diverse alliance of environmental, waste management, and trade organizations. Operators of  
56 county and municipal programs, recyclers, retailers, and manufacturers were provided with  
57 ample opportunity to comment. All were asked to make concessions for the overall betterment of  
58 the system. Stakeholders who failed to offer substantive comments and constructive alternatives  
59 during the developmental phase cannot fault the process. Their objections now could be  
60 interpreted as purely obstructive.

### 61 **Goals and Objectives**

62 Undoubtedly, launching any new program is onerous. Mechanisms to alleviate the burden to DEP  
63 and to expedite the process were deemed vital. Moving forward, assuring fair compensation to  
64 local governments and service providers responsible for the delivery of collection and recycling  
65 services was thought to be crucial to their survival. Because manufacturers will have significant  
66 financial responsibility, a top objective was incorporating cost controls and monetary incentives  
67 throughout the system. Finally, but most importantly, ensuring to consumers in each county  
68 stable and universal access to outlets for all waste electronic equipment was the top goal.

### 69 **Comprehensive not Complicated**

70 At face value, SB800 is a sizeable, and detailed document. In contrast to CDRA, SB800 is  
71 definitive and explicit. It was purposefully crafted to have a regulatory feel, leaving minimal room  
72 for misinterpretation.

73 SB800 can be distilled into logical, practical segments. They interconnect to provide a workable,  
74 sustainable system for the long-term management of waste electronic equipment in Pennsylvania.  
75 The content is not overly complicated to understand nor unreasonable to implement. The  
76 suggestions, after all, come from local governments who shored up the system after it had failed  
77 the needs of their residents. The individuals in the field who have been performing the collections  
78 and recycling the equipment pointed to easily removable obstacles. While struggling to operate  
79 under the constraints of CDRA, they realized that a standardized, integrated network could  
80 eliminate the deficiencies characteristic of a system built on fragmented, inconsistent, collection  
81 points.

82 Thank you for this opportunity to share my views on current conditions and in support of SB800.  
83 The counties and municipalities with whom I work, my professional colleagues, and I feel  
84 confident that SB800 offers the best remedy for CDRA. We encourage and appreciate your  
85 favorable vote.

86 I would be pleased to answer your questions and address your comments.

87 **Attached is a brief outline which summarizes some of the basics of the system.**

# Senate Bill 800 – Basics of the Waste Electronic Equipment Recovery System

## FUNDING MECHANISMS, ROLES, AND RESPONSIBILITIES

- **Shares financial responsibility for the system – manufacturer, consumer, private enterprise.**
  - **Private investors** will continue to pay for the development of the transportation, recycling, and processing infrastructure.
  - **Manufacturers** will fund the operational costs of collecting, consolidating, transporting, recycling, processing, and final disposition of waste electronic equipment.
    - Registration fees for manufacturers have been eliminated.
  - **Consumers** will have an economic stake in the success of the system through a 0.5% fee assessed on the purchase price of new electronic equipment. (similar to tires and batteries)
    - Funds the development and maintenance of the collection infrastructure, the program administration and enforcement.
    - Retailers receive 1 cent per unit sold for their efforts in collecting and submitting the fees.
    - Online and brick and mortar stores will collect the fees in accordance with PA's sales tax Nexus rules.

## COLLECTION AND RECYCLING SYSTEM

**Establishes a uniform statewide collection and recovery system, (The State Default Plan) which is not vulnerable to annual collection goals or market conditions.**

- Creates well-organized and cost-effective access, collection, and recovery of waste electronic equipment for consumers, local governments, recyclers, and manufacturers.
- Convenience Centers would serve as the backbone of a reverse logistics network.
  - Convenience Centers are where waste electronic equipment would be collected consolidated, and prepared for transport for recycling and processing at no additional charge to the consumer.
    - Each county would have a Convenience Center (conditional exceptions apply).
    - Convenience Centers accept all types of waste electronic equipment in the law.
    - Municipalities who offer collections will deliver items to the Convenience Center.

## COMPENSATION TO SERVICE PROVIDERS

**Ensures fair compensation to local government and recyclers, processors and transporters.**

- Provides a funding mechanism for start-up costs or modifications to a Convenience Center. Initially, one Convenience Center is envisioned for each county.
- The cost of handling transporting and processing every piece of Waste electronic equipment collected under the Convenience Center network are covered.
  - Consumers and municipalities will not be charged for items delivered to the Convenience Center.
  - Counties will receive a pre-determined universal per pound fee as compensation for the cost of operating the Convenience Center, payable by the State Default Plan Account.
  - A competitive bidding process will determine the per pound cost of transportation, recycling and processing.
    - Multiple state contracts will be awarded throughout the Commonwealth based on geography, anticipated volume, and other logistics.
    - Contractors will be compensated by the State Default Plan Account via terms and conditions of a state contract.

## DETERMINING SYSTEM COSTS AND PAYMENTS

**Clearly defines how costs will be derived, how individual manufacturer financial responsibility will be calculated, and a schedule of payments to ensure positive cash flow.**

- Manufacturers will be responsible for the cost of collection, handling, transport, recycling/processing of all waste electronic equipment covered under the law and managed through Convenience Centers in the State Default Plan.
- Manufacturers will not be responsible for any costs associated with electronic equipment not covered under the law, nor for equipment, which is collected and managed outside of the Convenience Center network, whether the type of equipment is covered under the law or not. (i.e. Retail or manufacturer take-back programs, commercial businesses, other recyclers, collection events, etc.)
- An individual manufacturer's financial responsibility will be calculated using the manufacturer's market share percentage applied to the total combined cost of the State Default Plan. (no caps or quotas).
  - The total combined cost of the State Default Plan will be the sum of the costs for all Convenience Centers in the system. The cost per Convenience Center will be calculated using (the weight to be collected at the Convenience Center) x (the recycling cost per pound bidding price awarded for the Convenience Center plus the collection cost per pound to reimburse the county) = Total cost of the Convenience Center.

- Payments will be made in quarterly installments of descending value to the State Default Plan Account.
- Fourth quarter adjustments will be applied for increases/decreases in anticipated weight collected, penalties, and discounts from performance based monetary incentives available in the law.

#### **ADMINISTRATION AND ENFORCEMENT**

- Allows DEP to manage staffing levels by contracting with industry experts to establish a turnkey statewide system for DEP to manage and/or manage parts of the program that are not compliance or enforcement oriented.
  - Contractors would be paid by the Waste Electronic Equipment Fund.
- Streamlines the data management process.
  - Reconcilable data provided through the invoices of 67 Convenience Centers and their recyclers assigned through the competitive bidding process.
  - Verifiable market data provided through retailers' submission of point of purchase fees.
  - Facilitates DEP's ability to provide accurate annual report to General Assembly.
- Compliance
  - Significantly reduces the number of manufacturer plans to review, approve and enforce
  - Creates a network of 67 permanent collection sites with consistent operating criteria.
  - Eliminates compliance issues regarding quotas, charge models, etc.

#### **ENVIRONMENTAL CONCERNS**

- Disposal Ban remains in effect.
- Establishes standards for recyclers within the State's permit rather than third party certification program.
  - Eliminates vulnerability to conditions established by third parties beyond the control of the Commonwealth.
  - Recycler is more closely scrutinized by state regulators.
- The State Default Plan reduces a manufacturer's environmental liability.
  - The State contracts with and pays the recycler/processor, not the manufacturers.
  - Contractors must meet strict standards to be considered qualified bidders.
  - Contractors will carry performance bonds, as well as pollution prevention liability protection.

- Waste electronic equipment scrap processors will have greater flexibility to manage waste glass remaining after processing and recycling waste electronic equipment.