

# WEEE Evidence

**It's a new world, but there's only one way forward - proof over trust, and separation of responsibility to avoid doubt.**

**By Derek Morgan**

There is significant movement against some of the provisions of the UK's Draft WEEE Regulations currently available for public consultation. In particular, the issue of "evidence" is attracting the most attention of the various lobby groups, many of whom are determined to remove the requirement for a "two-tier" evidence system.

Let's be crystal clear, the producers can't be trusted, and the waste management industry itself doesn't have a sparkling track record. The tiers, as proposed, address that reality.

As DEFRA's Waste Strategy consultation described earlier this year, the preference is firstly for self-regulation and only where that fails, for industry specific regulation. In the case of electrical and electronic equipment (EEE), the need for regulation has been firmly established. Without new rules and enforcement, old behaviours are unlikely to change and our health and that of the environment are set to suffer.

In the Draft WEEE Regulations, producers are obliged to join a scheme, which acts collectively on behalf of its members to interact with the various Agencies of the Environment and with Accredited Treatment Facilities, Authorised Reprocessors and Authorised Exporters.

Without putting too fine a point on it, producer schemes can't be trusted. However, approval of the better ones is absolutely essential. As "producer responsibility" bites, it is vitally important that various agencies; local authorities; transport, treatment and recycling operators; have a manageable number of new entities with which they now need to interact. Rather than dealing with all 5,750 producers, the Draft Regulations suggest instead a handful of approximately 30 new intermediary schemes instead.

The purpose of these schemes is to provide a vehicle for producers to discharge their obligations, not to avoid them. Which brings us to the issue of evidence...

For the UK Government to meet its own obligations, the WEEE Directive is clear. The UK government must setup monitoring systems to track, by Category, information about the weight of electrical and electronic equipment put on the market in the Community and the rates of collection, reuse (including as far as possible reuse of whole appliances), recovery/recycling and export of WEEE.

Per Article 7, producers have to meet specific targets for a) the rate of recovery and b) component, material and substance reuse and recycling. Specifically, Article 7 calls on Member States to ensure that, for the purpose of calculating these targets, producers or third parties acting on their behalf keep records on the mass of WEEE, their components, materials or substances when entering (input) and leaving (output) the treatment facility and/or when entering (input) the recovery or recycling facility.

Note three key measurement points in the extracts above. What goes on the market; what enters (and potentially leaves) a treatment facility; and, what enters a recovery or recycling facility.

In the UK's Draft Regulations implementing this...

1. The producers are obliged to share their market and sales data (via their scheme) with the Agencies of the Environment in order to derive their "fair share" of the WEEE burden.
2. The new Authorised Treatment Facilities are required to measure input weights of material delivered to them by the schemes, and deduct key outputs such as components recovered for reuse. This detail is reflected on a "part 1" evidence note and that evidence note is provided back to the scheme, and is available for inspection and validation by the Agencies of the Environment.
3. The new (upgraded) Authorised Reprocessors and Exporters, in turn, are required to measure input weights delivered to them by the Authorised Treatment Facilities. This detail is reflected on a "part 2" evidence note and that evidence note is provided back to the scheme, and is available for inspection and validation by the Agencies of the Environment.

These three sets of data, provided independently by legally distinct entities, creates a self-reinforcing audit trail that removes the need for trust from the equation. This data is essential for monitoring the progress towards ever increasing recovery and recycling targets as society grapples with the environmental cost of its past behaviours. Current targets are set to be revised upwards by the end of 2008.

For the reprocessors and recyclers this information chain does something else. It encourages innovation. It creates the framework for reporting exceptional performance and recycling efficiency. This allows scope for competitive advantage within the industry by allowing better practices to justify and attract premium pricing for their services.

Responsible, individual producers do care about the relative performance of their suppliers and it is important that such critical performance data be collected consistently and shared publicly. By contrast, amorphous schemes operating on behalf of an aggregate collective simply have no interest in any cost burden associated with either administering or supporting anything other than the legal minimum of process effectiveness. As one scheme representative stated passionately at a recent industry council meeting, "Why should my members pay for 71% when 70% will do." Unfortunately it's a view that's widely held.

To the consultation: The Draft Regulations do a good job of addressing the requirements of the WEEE Directive, but as always, we've over-engineered and introduced a few special twists. These are already having unintended consequences.

Firstly, in the UK, evidence is a tradeable commodity and schemes which can secure the "cheapest" supply of them can hold other schemes hostage. Secondly, those schemes which can't easily sell their evidence will find that the costs are subject to

super-inflation once they enter the proposed annual clearance mechanism, i.e. the WEEE Exchange. Absolutely no one wants to get caught needing spare evidence notes at the end of a compliance period. Third, there is an increasing argument about who owns the waste, and subsequently the potentially valuable recyclate arising from treatment, recycling and recovery.

Net result, irrespective of the individual producer's status as a responsible business, their compliance schemes are going to be commercially driven to abuse the treatment, recovery and recycling fraternity. This is further complicated as while on one hand we move towards cradle-to-cradle manufacturing, on the other there is no defined boundary at which producer responsibilities stop. This confuses and fudges the different business models associated with the new least cost pre-treatment facilities and the established value optimisation recovery and refining operations. It can't be a case of in with the new at the expense of the little infrastructure we already have.

In the current void of an ATF network, and in the desperate drive to create new facilities to fulfil the various roles envisaged by the WEEE Directive, the schemes collective negotiating power is immense. Indeed, in paragraph 69 of the Draft Guidance, collective bargaining practices are even encouraged. These untrusted and unproven 3-man+fax organisations are already flexing their borrowed muscles and creatively dictating terms to our industry. This is hurting needed investment in new facilities and better practice... more so than any previous government delays.

Without the three-tier evidence system, and associated cross validation, this abuse will become entrenched and the UK Government will not meet either its processing or reporting obligations to Europe, or, more importantly, to its own citizens.

The lobbying effort to simplify all of this to a "one-tier" evidence system is understandable, but misguided. I certainly wouldn't trust the schemes to produce their own evidence, and I wouldn't trust the authorised treatment facilities either. Neither exists in law yet and both will have issues associated with immaturity.

Transparent checks and balances all the way please.

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