

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

CONSUMER ELECTRONICS ASSOCIATION,
INFORMATION TECHNOLOGY INDUSTRY
COUNCIL, and ITAC SYSTEMS, INC.,

09 Civ. 6583 (WHP)

Plaintiffs,

**DECLARATION OF JAY
SHEPARD**

-against-

CITY OF NEW YORK, MICHAEL R. BLOOMBERG, in
his official capacity as Mayor of the City of New York,
NEW YORK CITY DEPARTMENT OF SANITATION,
JOHN J. DOHERTY, in his official capacity as the
Commissioner of the Department of Sanitation, and
ROBERT LANGE, in his official capacity as Director of
Waste Prevention, Reuse and Recycling of the Department
of Sanitation,

Defendants.

----- x

DECLARATION OF JAY SHEPARD,
WASHINGTON STATE DEPARTMENT OF ECOLOGY

1. I am the sustainability policy advisor for the Washington State Department of Ecology (“Department”) Waste 2 Resources Program. I have held this position since August, 2001. In this capacity, I was closely involved in the development of Washington’s Electronic Product Recycling program (“E-Cycle Washington”), and I remain involved in the policy oversight of that program.

2. In 2006, the Washington State Legislature adopted the laws governing the Electronic Product Recycling program, finding that “a convenient, safe, and environmentally sound system for the collection, transportation, and recycling of covered electronic products must be established,” and that “the system must encourage the design of electronic products that

are less toxic and more recyclable.” The legislature also found that “the responsibility for this system must be shared among all stakeholders, with manufacturers financing the collection, transportation, and recycling system.” Revised Code of Washington (“RCW”), Electronic Product Recycling Law, § 70.95N.010.

3. Under the Electronic Product Recycling law, since January 2009, manufacturers have been responsible for providing recycling services for computers (including laptops), computer monitors, and televisions to at no additional cost to households, small businesses, schools, and charities, among other entities.

E-Cycle Washington Implementation

4. Manufacturers have two options for complying with their obligations to recycle electronic waste. First, the Legislature established a public authority, the Washington Materials Management and Financing Authority (“WMMFA”), to handle the recycling of materials covered by E-Cycle Washington. All manufacturers are initially members of the Authority that is governed by a board of directors made up of manufacturers and at least one retailer. There are ex-officio non-voting seats for two state agencies. WMMFA coordinates collectors, transporters, and processors to recycle covered electronic products, and then bills participating member manufacturers for the costs, in what is known as the “standard plan.” RCW, § 70.95N.030(1).

5. Alternatively, manufacturers may develop and implement an “independent plan,” subject to the review and approval of the Department of Ecology. *Id.* Manufacturers proposing an independent plan must represent at least a five percent “return share” of covered electronic products. RCW, § 70.95N.060(2)(a). The return share is the percentage of covered electronic products, by weight, identified for an individual manufacturer, as determined by the Department. This five percent minimum can be from one manufacturer or a combination of two

or more manufacturers in order to represent at least five percent of the return share. “Each group of manufacturers submitting an independent plan must designate a party authorized to file the plan with the department on their behalf. A letter of certification from each of the manufacturers designating the authorized party must be submitted to the department together with the plan.”

RCW, § 70.95.050 (4) (b).

6. In either case, the law encourages manufacturers “to collaborate with electronic product retailers, certificated waste haulers, processors, recyclers, charities, and local governments within the state in the development and implementation of their plans.” RCW, § 70.95N.030(3).

7. Manufacturers must register with the Department of Ecology, and must notify the Department of whether they intend to participate in the standard plan or to submit an independent plan for approval. RCW, § 70.95N.040(1). Participation in the standard plan is considered the default option, and manufacturers are assumed to be participating in that plan unless they submit an independent plan and it is approved by the Department.

8. In the first year of E-Cycle Washington, all manufacturers participated in the standard plan; none submitted proposed independent plans. However, two groups of manufacturers have notified the Department that they intend to submit independent plans for approval for the 2010 program year.

9. One group consists of Toshiba, Sharp, Panasonic and Samsung. CRT Processing, LLC would act as the authorized party for the Manufacturers Independent Plan representing this group. A second group includes Sony and ViewSonic whose proposed plan, the Manufacturer Interstate Takeback System (“MITS”), will be coordinated by E-World Online, with direction from Sony Electronics, for purposes of complying with Washington’s Electronic Products Recycling Program.

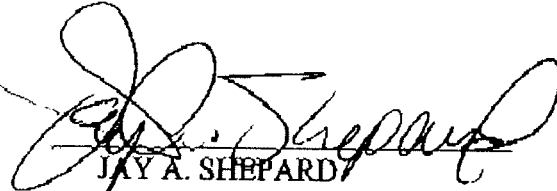
E-Cycle Washington: Success to Date

10. On March 1, 2010, and every year thereafter, the WMMFA and all independent plans will be required to submit annual reports to the Department including the total weight in pounds of covered electronic products collected and recycled, by county, during the preceding program year, among other information. While annual reports for the first program year have yet to be submitted, the information we have received so far from the MMFA suggests that E-Cycle Washington is meeting expectations.

11. From January through September of 2009, approximately 26 millions of pounds of electronic waste have been collected for recycling. Based on this, it is anticipated that between 36 and 40 million pounds will be collected through the end of the year, which represents an estimated annual collection rate of 5.4 to 6 pounds of electronic waste per capita.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of Oct. 2009.



JAY A. SHEPARD