



Guidance on E-Cycle Wisconsin manufacturer shortfall fees and fee waivers

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Purpose

This document provides guidance to registered manufacturers on shortfall fees and lays out criteria and the process for reviewing requests for shortfall fee waivers from registered manufacturers.

Background

Under Wisconsin's electronics recycling law, manufacturers of consumer video display devices, consumer computers and desktop printers must register annually with the Department of Natural Resources to sell their products to Wisconsin households and schools. Each year, a registered manufacturer has a recycling target (in pounds) based on its sales of covered electronics to households and schools. Only eligible electronics collected by registered collectors and processed by registered recyclers count toward a manufacturer's recycling target.

Each registered manufacturer must annually complete the E-Cycle Wisconsin registration form and report the total weight recycled (or paid to recycle) during the previous program year. The manufacturer's reported weight is compared with its recycling target for that program year. If the manufacturer recycles less than its target weight, it must pay a shortfall fee of 30, 40 or 50 cents per pound, as shown in Table 1, to remain in compliance with program requirements. The DNR does not take additional enforcement action against a registered manufacturer that fails to meet its target but is otherwise complying with the law. The DNR does not publish a list of manufacturers that meet or fail to meet their targets.

E-Cycle Wisconsin covered devices

- Computers (desktop, laptop and tablet)
- Desktop printers (desktop printers, including those that scan, fax and/or copy and 3-D printers)
- Video display devices (TVs and monitors) with a screen size of at least 7"

E-Cycle Wisconsin eligible devices

- All covered devices
- Computer peripherals (mice, keyboards, scanners, etc.)
- Digital video players/recorders
- DVD players
- Fax machines
- VCRs

For complete definitions, refer to s. 287.17(1), Wis. Stats.

Table 1: Shortfall fee amounts per pound short of recycling target

% of recycling target met	Shortfall fee per pound
<50%	\$0.50
50 to 90%	\$0.40
>90%	\$0.30

Shortfall fees are used to help fund the DNR's administration of the E-Cycle Wisconsin program, including the E-Cycle Wisconsin Electronics Collection Grant program.

Shortfall fee waiver requests

Section 287.17 (4) (g), Wis. Stats., provides a process for a registered manufacturer to request relief from a shortfall fee if it has failed to meet its recycling target.

Section 287.17 (4) (g) *Relief from shortfall fee.*

1. Instead of paying a shortfall fee under this subsection in a year, a manufacturer may submit, with its registration, a request for relief from the shortfall fee in that year along with information showing that the manufacturer has made good faith progress toward meeting its target recycling weight under s. 287.17 (4) (d) 1, Wis. Stats.
2. If the department determines that a manufacturer that makes a request under subd. 1. in a year has made good faith progress toward meeting its target recycling weight, the department shall waive the requirement that the manufacturer pay the shortfall fee in the year. If the department determines that the manufacturer has not made good faith progress toward meeting its target recycling weight, it shall notify the manufacturer and the manufacturer shall pay the shortfall fee within 60 days after receiving the notification.

Minimum requirements for an acceptable waiver request

For the DNR to consider a shortfall fee request, it must meet three basic requirements from the statutory language:

1. The request must be from a specific manufacturer (shortfall fees do not apply to brokers or recyclers).
2. The manufacturer must submit the request with its annual registration (the form on which the shortfall fee was calculated), unless it did not learn of the shortfall fee until after submitting the registration. For example, this might happen if the DNR discovered during its review of submittals that a recycler made an error when reporting eligible weight.
3. The request must include information showing that the manufacturer has made good faith progress toward meeting its target recycling weight.

Any manufacturer considering submitting a shortfall fee waiver request should contact the DNR E-Cycle Wisconsin team at DNRe-cycling@wisconsin.gov. DNR staff may be able to work with the manufacturer to identify other sources of eligible weight, which could potentially eliminate or reduce the shortfall fee. Once a manufacturer has paid a shortfall fee, it cannot request a waiver for it.

Demonstrating “good faith progress”

The DNR will evaluate each waiver request on a case-by-case basis. The following are examples of evidence that can show a manufacturer made “good faith progress.”

- The manufacturer has met a substantial portion, as determined on a case-by-case basis, of its recycling target.
- The manufacturer had a contract or other written agreement, or can provide documentation demonstrating unsuccessful attempts to contract, with one or more recycler(s) or broker(s) **before the end of the program year** to meet its full target weight.
- Once it learned of the potential shortfall, the manufacturer (or a broker or recycler working on its behalf) contacted DNR E-Cycle Wisconsin staff to discuss options.
- If it knew before the end of the program year that it might be short, the manufacturer (or a broker or recycler working on its behalf) took actions such as:
 - establishing additional registered collection sites or events;
 - increasing collection at existing sites and events through advertising, reducing fees or other methods;
 - purchasing additional recycled weight from other recyclers/brokers; or
 - purchasing credits from other manufacturers.

- The manufacturer provides a plan to address the issues that led to the shortfall and avoid having a shortfall in the future.
- The manufacturer did not learn of the shortfall until after the end of the program year (e.g., the shortfall was the result of an error or other problem, or a recycler/broker did not notify the manufacturer of the shortfall until after the end of the program year).
- The total recycled weight available for manufacturers to purchase for the program year was less than the total recycling target. For example, the total target for all manufacturers was 25 million pounds, and only 24 million eligible pounds were recycled. A manufacturer should ask the DNR to provide this information.

A manufacturer may also submit documentation of similar, alternative or additional actions that it believes demonstrate good faith progress. When providing evidence of good faith progress, the manufacturer should also state the actions it will take to correct the issues that contributed to the shortfall to ensure it will meet its recycling target in future years.

DNR process for reviewing shortfall fee waiver requests

When the DNR receives a request to waive a shortfall fee, E-Cycle Wisconsin staff confirm whether it meets the three minimum basic requirements for an acceptable waiver request listed above and acknowledge the request.

If the request does not meet the three minimum basic requirements, staff will contact the manufacturer and explain what is needed to make a viable request.

If the request meets the three minimum basic criteria, E-Cycle Wisconsin staff will review the details provided and determine whether the request demonstrates good faith progress. Staff may request additional information or documentation to demonstrate good faith progress.

If the DNR determines the request **does not establish “good faith progress,”** the DNR will notify the manufacturer in writing of its decision not to grant the waiver and explain why the request was not granted.

If the DNR determines the request **establishes “good faith progress,”** and there are no other factors that lead the DNR to believe the manufacturer did not make “good faith progress,” the DNR will notify the manufacturer in writing of its decision to grant the waiver and will provide an updated invoice, if applicable.



Bureau of Waste and Materials Management
 Wisconsin Department of Natural Resources
 P.O. Box 7921, Madison, WI 53707-7921
DNRwie-cycling@wisconsin.gov
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