

UNIFORMITY SUB-GROUP

The uniformity subgroup was established to identify areas of a national program where operations would need to be uniform throughout all of the states in order to ensure a smooth, cost effective and environmentally beneficial system to collect and recycle products. The group was also charged with identifying methods and language that would achieve the uniformity goals that were identified. The group has completed the first half of the task, which was to identify the areas of the system where uniformity would be required. These are listed in **Table I** and include the reasons we identified for the uniformity. The table also includes a determination as to whether the method to achieve this would be via legislation (PREEMPTION, either explicit or by “occupying the field”) or by modifying the regulatory scheme found in an existing Federal statute (LIABILITY LIMITATION).

The group next looked at the methods to achieve the uniformity and the issues to be addressed. After several attempts it was agreed that the only way this could be accomplished would be upon receiving the final NEPSI financing model from the larger NEPSI Group. However, the group did agree to develop the position of each stakeholder on the 6 areas identified, along with the issues to be resolved. These appear in Table II. As you can see, the stakeholder positions are not included in this table, as we have not received input from all of the groups at this time. We hope to receive this shortly and will forward to Cat the completed table.

Upon completing the table, the group will then begin discussion how to resolve the issues for each of the 6 areas. This document will then be brought out to the full NEPSI Group for final discussions and approval.

TABLE I

ISSUE AREA	PURPOSE FOR UNIFORMITY	PREEMPTION OR LIABILITY LIMITATION?
FEE	Prevent multiple front-end fees, and ensure a level playing field.	PREEMPTION
LABELING	Ensure a uniform, educational and motivational program for the products	PREEMPTION
SUPERFUND RELIEF	To prevent the TPO, manufacturers and others that direct or control the product from Superfund liability for improper handling or disposal by recyclers selected by the TPO provided that there was no gross negligence on the part of TPO in selecting/certifying the recycler.	LIABILITY LIMITATION
ANTI TRUST RELIEF	To develop uniform language that allows ARF to be set by TPO and manufacturers without violating anti-trust law.	LIABILITY LIMITATION
TRANSPORTATION	To ensure that products transported for recycling in program are uniform nationally from the collection point to the processing facility.	PREEMPTION
PRODUCT LIST EXPANSION	To develop a system that is fair to all stake holders for expanding the NEPSI product list	PREEMPTION

TABLE II

ISSUE AREA	INDUSTRY POSITION	STATE POSITION	NGO POSITION	POTENTIAL SOLUTIONS	ISSUES TO RESOLVE
FEE				Uniform fee set by TPO. Fee is set to cover certain variables that represent “typical costs.” Back-end fees or other mechanism covers any costs above TPO.	Although national in scope, could states apply it as needed?
LABELING				States agree to preemption if there is a national uniform label that achieves goal of consumer notification.	Would it be needed? What form or forms would it take? What information would it contain?
SUPERFUND RELIEF				Would apply to any TPO or other entity that directs product to a recycler provided that the party performed due diligence in evaluating recyclers. Would also apply to manufacturers whose only action is transfer of funds to TPO. Look to current provisions for help in crafting exclusion.	The details/limits of the relief must be made clear.
ANTI TRUST RELIEF				Would apply to manufacturers and TPO as required to set and modify ARF Would this become a Federal-only option? Would states be permitted based on National criteria? How will the financing mechanisms adapt?	The details/limits must be made clear
TRANSPORTATION					
PRODUCT LIST EXPANSION					