

## Manufacturer Reporting Requirements of the California e-Waste Recycling Act

California's Electronic Waste Recycling Act of 2003 ("the Act"), established a series of requirements for manufacturers and retailers of electronic products that contain cathode ray tubes ("CRTs") and Liquid Crystal Display ("LCD") panels. When all of these requirements are fully implemented, California will have a comprehensive recycling and disposal program for CRT and LCD products that are sold in California, and will impose European standards banning the sale of CRT and LCD products containing certain substances. Each requirement will have a ripple effect on manufacturers around the world.

The Act, originally enacted as Senate Bill 20 ("SB 20"), established several reporting requirements for manufacturers of covered electronic devices. Senate Bill 50 ("SB 50"), enacted into law on September 29, 2004, amended the reporting requirements and other provisions of the Act.

Earlier *e-Waste Recycling Bulletins* summarized key provisions of the Electronic Waste Recycling Act, the duties of manufacturers and retailers, and the possibility for private enforcement of the Act through California's Unfair Competition Law. This bulletin summarizes the reporting requirements imposed under the Act, as amended by SB 50.

### ▶ Reporting Requirements of the Original Act That Remain Unchanged Under SB 50

On or before July 1, 2005, each manufacturer of a covered electronic device that sells its device in California must submit an annual report to the California Integrated Waste Management Board ("IWMB") detailing:

- (1) an estimate of the number of covered devices sold by the manufacturer in California during the previous calendar year;
- (2) baseline amounts of mercury, cadmium,

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lead, hexavalent chromium, and polybrominated biphenyls (“PBBs”) used in covered electronic devices manufactured by the manufacturer in that year and any reduction in the use of those materials from the previous year;

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(3) baseline amounts of recyclable materials contained in covered electronic devices sold by the manufacturer in that year and the increase in the use of those recyclable materials from the previous year; and

(4) efforts to design covered electronic devices for recycling and initiatives for future increases in recycling design efforts.

*Cal. Pub. Res. Code. § 42465.2(a)(1).*

Reported information that is proprietary in nature or a trade secret shall be subject to protection under state laws and regulations governing that information. *Cal. Pub. Res. Code. § 42465.2(b).*

### **Sales and Materials Data**

Under the emergency regulations at 14 Cal. Code Regs. § 18660.41, each manufacturer shall report information by brand name. The report must include sales data that identify the screen size and product category for covered devices. *14 Cal. Code Regs. § 18660.41(b).* Data on mercury, cadmium, lead, hexavalent chromium, their alloys and compounds, and PBBs must be in the form of an estimated average amount and range in milligrams, broken down by covered device and component parts by product category. Estimates may be based on either physical testing or maximum tolerance levels of the material in product design specifications, and the report must include an explanation of the methods used to estimate the data. *14 Cal. Code Regs. § 18660.41(c).*

The regulations authorize manufacturers to submit a “collective” report for these data, combining the required information for multiple manufacturers, as long as the collective report:

(1) contains all required information;

(2) lists all manufacturers whose data are reported in the collective report, along with their contact information; and

(3) includes individual manufacturer certifications under penalty of perjury that the information provided for the collective report is true and correct.

The IWMB may request an individual report from any manufacturer included in the collective report. If requested, the individual report must be provided within 10 days. *14 Cal. Code Regs. § 18660.41(i).*

### **Recycling Data**

Manufacturers must report estimates of the amount, in tons, of recyclable content materials (e.g., plastics, glass, and metals) in the covered devices, the increase from the previous year in the use of recyclable materials and an explanation of the

methods used to estimate recyclable content. *14 Cal. Code Regs. § 18660.41(d)*. Manufacturers also must describe their current activities and future plans on the design of covered devices, including difficulty in disassembly, identification of resin types and improved materials efficiency through reduction in hazardous materials or other approaches. *Id.*

## **Other Requirements**

Each manufacturer must include samples of its consumer recycling information (discussed in *Bulletin 04-VI*) with its annual report. Each manufacturer must retain a copy of the annual report and all supporting documentation for three years after the report is submitted. Upon request, the manufacturer must submit the supporting documentation to the IWMB or the California Department of Toxic Substances Control ("DTSC") within 10 days. Each manufacturer also must certify under penalty of perjury that the information in the report is true and correct. *14 Cal. Code Regs. § 18660.41*.

### **▶ Requirements That Were Eliminated, Changed or Imposed Under SB 50**

SB 50 eliminated a requirement to submit data on polybrominated diphenyl ethers ("PBDEs"). SB 50 also altered the scope of the reporting requirements by incorporating the provisions of European Union ("EU") Directive 2002/95/EC, which sets forth restrictions on the use of certain hazardous substances in electrical and electronic equipment. To comply with the reporting requirements at Public Resources Code § 42465.2(a)(1), a manufacturer may report on only those covered electronic devices that include applications of mercury, cadmium, lead, hexavalent chromium, and PBBs that are exempt from EU Directive 2002/95/EC as long as (1) the manufacturer provides written verification to DTSC that demonstrates the manufacturer is in compliance with Directive 2002/95/EC for those covered electronic devices omitted from the report; and (2) DTSC certifies that compliance. *Cal. Pub. Res. Code § 42465.2(b)(1)*. At a combined IWMB/DTSC public workshop on October 7, 2004, DTSC stated that it had not started drafting regulations to implement this provision, and did not indicate when it would do so.

Under SB 50, manufacturers must also include in their annual report a complete list of retailers to which the manufacturers provided notice of their covered electronic devices. *Cal. Pub. Res. Code § 42465.2(b)(1)*. Draft revised emergency regulations will require the retailer's address, contact person, phone number and email address, and the list of covered products contained in the report. *14 Cal. Code Regs. § 18660.41(f) (proposed)*.

## **Draft Revised Emergency Regulations**

Changes to the IWMB emergency regulations necessitated by SB 50, including changes to the reporting requirements, were the topic of discussion at the IWMB/DTSC public workshop on October 7, 2004. Public comments on the draft revised emergency regulations that were submitted by October 8, 2004 will be considered by the IWMB and voted on in November 2004. Once the IWMB has approved the regulations, they will be submitted to the Office of Administrative Law ("OAL") for approval.

### **▶ Penalties for Reporting Violations**

Reporting violations may be considered failures to comply with the Act. As a result,

manufacturers that do not comply with the annual reporting requirements may be subject to \$25,000 in civil penalties, imposed by the IWMB.

Readers should take note that under SB 50, compliance with EU Directive 2002/95/EC is determined by DTSC, yet compliance with the annual reporting requirements is evaluated by the IWMB. DTSC has not yet issued draft regulations on how it will certify compliance. Unless there is some confirmation of compliance or coordination between the agencies, a company may find itself unable to prove its compliance with the EU Directive or in violation of the Act due to a breakdown in communication between the agencies. In a recent discussion with the IWMB, this problem was identified. The IWMB acknowledged that this discrepancy must be reconciled.

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