

## Summary of the California Electronic Waste Recycling Act As Amended by SB 50

As originally enacted by Senate Bill 20, the California Electronic Waste Recycling Act of 2003 ("the Act") established requirements for manufacturers and retailers of electronic products that contain cathode ray tubes and liquid crystal display panels. Since July, we have been reporting on provisions of the Act in the *e-Waste Recycling Bulletin*.

On September 29, 2004, Senate Bill 50 ("SB 50") was enacted, amending some provisions of the Act. This *Bulletin* summarizes the major amendments.

The Act has been amended twice in its short life -- by Assembly Bill 901 and SB 50. Both "clean-up" bills altered the Act's compliance schedules, and the amendments in SB 50 supercede some of the regulations already promulgated to implement the Act. The agencies responsible for implementing and enforcing the Act, the Department of Toxic Substances Control ("DTSC") and the California Integrated Waste Management Board ("IWMB"), anticipate further clean-up legislation to rectify remaining discrepancies in the amended Act and simplify certain requirements. In the meantime, the agencies will continue to promulgate regulations to implement the amended Act.

The next *Bulletin* will address the incorporation of certain provisions of European Union law into the Act, and is the final scheduled issue in this series. We will, however, continue to publish updates on the Act as important developments occur.

### ► A New Definition of Covered Electronic Devices

The Act regulates certain discarded electronic devices with video displays, referred to in the Act as "covered electronic devices." The phrase "covered electronic device" was previously defined by the Act as "a cathode ray tube, cathode ray containing device, flat panel screen, or any other similar video display device with a screen size that is greater than four inches in size measured diagonally and which the department

#### ■ Contact Info

##### *San Francisco:*

**Stanley W. Landfair**

415.267.4170

**Ann G. Grimaldi**

415.267.4104

**Chris Volz**

415.267.4108

**Shannon L. Fagan**

415.267.4114

##### *Washington, DC:*

**Charles A. O'Connor**

**III**

202.496.7586

**Robert Matthews**

202.496.7737

**Michael Boucher**

202.496.7729

##### *Los Angeles:*

**Charles Pomeroy**

213.243.6256

**Robert Schuda**

213.243.6136

**Ryan Landis**

213.243.6212

##### *Brussels:*

**Koen Van Maldegem**

32.2.278.1215

**Ursula**

**Schliessner**

32.2.278.1224

**Claudio Mereu**

32.2.278.1265

##### *Atlanta:*

determines, when discarded or disposed, would be a hazardous waste ..." Cal. Pub. Res. Code § 42463(f)(1) (prior to amendment).

**James D. Levine**  
404.527.4090

SB 50 amends the definition of "covered electronic device," adding video display devices that use plasma and digital light processing technology to the products covered by the Act. The Act now defines "covered electronic device" to mean a discarded video display device with a screen size greater than four inches measured diagonally. A "video display device," a previously undefined term, is defined as:

an electronic device with an output surface that displays, or is capable of displaying, moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion, including, if applicable, a device that is an integral part of the display, in that it cannot be easily removed from the display by the consumer, that produces the moving image on the screen. A video display device may use, but is not limited to, a cathode ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image projection technology.

See Cal. Health & Safety Code § 25214.10.1(a)(2) and Cal. Pub. Res. Code § 42463(f) (defining "covered electronic device"); Cal. Health & Safety Code § 25214.10.1(a)(1) (defining "electronic device") and Cal. Pub. Res. Code § 42463(t) (defining "video display device").

SB 50 requires DTSC to adopt regulations identifying the "covered electronic devices" subject to the Act's requirements. See Cal. Health & Safety Code § 25214.10.1(b). In June 2004, DTSC promulgated regulations that more specifically identified covered electronic devices under the previous version of the Act. See 22 Cal. Code Regs. § 66261.126, Appendix X, subdivision (c). DTSC has not yet drafted regulations on the amended definition of covered electronic devices, but is expected to do so beginning in December 2004. In the meantime, the amendments specifically recognize the continued validity of the existing DTSC regulations, as SB 50 retains the Act's application to devices that were identified "in regulations adopted, on or before July 1, 2004, by the department." See Cal. Health & Safety Code § 25214.10.1(d).

### ▶ **The Definition of Electronic Devices Not Covered by the Act is Expanded and Clarified**

Changes to the Act include additional, and more specific, product exemptions. The law previously excluded "an automobile or a large piece of commercial or industrial equipment, including, but not limited to, commercial medical equipment, that contains a cathode ray tube, cathode ray tube device, flat panel screen, or other similar video display device that is contained within, and is not separate from, the larger piece of industrial or commercial equipment" Cal. Pub. Res. Code § 2463(f)(2) (prior to amendment).

SB 50 expands and further defines the products excluded from coverage. The following are not subject to the Act's requirements:

a video display device that is a part of a motor vehicle ... or any component part of a motor vehicle assembled by, or for, a vehicle

manufacturer or franchised dealer, including replacement parts for use in a motor vehicle; a video display device that is contained within, or part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment; a video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier.

Cal. Pub. Res. Code § 42463(f)(2).

### ▶ **Manufacturer Notification Requirement**

Prior to SB 50, the Act required manufacturers of electronic devices sold in the state of California to notify retailers as to which of the manufacturer's products were subject to the Act's recycling fee. The deadline for notification to retailers was April 1, 2004.

SB 50 sets forth the following new notification schedule. For products identified by regulation prior to July 1, 2004, the manufacturer must notify the retailer by October 1, 2004; for products identified by regulation by December 31, 2004, the manufacturer must notify retailers by April 1, 2005. Thereafter, the manufacturer has a duty to notify retailers on or before April 1 of each year following the year in which regulations are promulgated. See Cal. Health & Safety Code § 25214.10.1(c). The amendments require the manufacturer to send a copy of each retailer notification to the State Board of Equalization, to which SB 50 assigns the power to collect and administer a recycling fund.

DTSC regulations that became effective June 7, 2004 identified the following covered electronic devices: cathode ray tube (CRT) containing devices; CRTs; computer monitors containing CRTs; laptop computers with liquid crystal display (LCD) screens; LCD containing desktop monitors; and televisions containing CRTs. See 22 CCR § 66261.126, Appendix X, subdivision (c).

Products that may be presumed to fit the new statutory definition of covered electronic devices -- such as plasma televisions with screens over four inches measured diagonally -- will not be subject to notification requirements, or other requirements of the Act, until DTSC promulgates regulations identifying such products. DTSC plans to add plasma and LCD televisions to the list of covered electronic devices in a regulatory package to be released in December 2004. The agency says that at this point, there are no immediate plans for regulations on digital light processing technology, a new technology used in televisions, home theater systems and business projectors.

### ▶ **New "Retailer" Definition**

SB 50 also changed the definition of "retailer." The prior law defined "retailer" as "a person who sells a covered electronic device in the state to a consumer but who did not manufacture the device." Public Resources Code 42463(o) (prior to amendment). Now, the term means "a person who makes a retail sale of a new or refurbished covered electronic device." Cal. Pub. Res. Code § 42463(r). The meaning of "retail sale" under the Act now conforms with the Tax Code definition, which means "a sale for any purpose other than resale in the regular course of business in the form of tangible personal property." Cal. Pub. Res. Code § 42463(s) and Revenue and Taxation Code § 6007. Because the meaning of "retailer" now includes a person who

sells a refurbished covered electronic device, the Act contains the following definition for "refurbished": "a device that the manufacturer has tested and returned to a condition that meets factory specifications for the device, has repackaged, and has labeled as refurbished." Cal. Pub. Res. Code § 42463(q).

As before, the definition of retailer also includes a manufacturer of a covered device who sells the device directly to a consumer, whether through a catalog, the internet or other electronic means. See Cal. Pub. Res. Code § 42463(r).

### ▶ **Amendment of Retailer Fee Collection Schedule**

The original Act imposed a fee collection requirement on retailers of covered electronic devices beginning July 1, 2004. Emergency "cleanup" legislation (AB 901) postponed the fee collection deadline until November 1, 2004. Under the law as amended by SB 50, the retailer fee collection requirement commences January 1, 2005 for covered electronic devices identified by regulation prior to July 1, 2004. For devices identified by regulation from July 1, 2004 through December 31, 2004, the fee collection deadline is July 1, 2005. Fees for covered devices identified subsequent to December 31, 2004 are due July 1 of each year following the year in which the regulation is promulgated. See Cal. Health & Safety Code § 25214.10.1(d)(2).

Beginning January 1, 2005, the covered electronic devices listed at 22 Cal. Code Regs. § 66261.126, Appendix X, subdivision (c) are subject to the fee collection requirement, because they were identified in DTSC regulations prior to July 1, 2004. As previously stated, covered electronic devices added to the Act by SB 50 will not be subject to fee collection or other requirements of the Act until DTSC identifies such products by regulation.

The amount of the fee collected under the Act remains unchanged: six dollars for each device with a screen size of less than 15 inches measured diagonally; eight dollars for each device screen size greater than or equal to 15 inches but less than 35 inches measured diagonally; ten dollars for each device with a screen size greater than or equal to 35 inches measured diagonally. The retailer may keep three percent of the fee to cover collection costs, and may elect to pay the fee on behalf of the consumer. Cal. Pub. Res. Code § 42464(c) and (d).

### ▶ **Board of Equalization**

SB 50 gives the State Board of Equalization ("the Board") responsibility for collecting recycling fees, which retailers must pay to the Board on or before the last day of the month following each calendar quarter. See Cal. Pub. Res. Code § 42464.2 and 42464.4. Retailer registration forms are available on the Board's website: [www.boe.ca.gov/sptaxprog/ewaste.htm](http://www.boe.ca.gov/sptaxprog/ewaste.htm).

Fees will be deposited into the Electronic Waste and Recovery and Recycling Account, which the Board will use to pay authorized electronic waste collectors and recyclers, and to pay manufacturers who take back covered products from California consumers for recycling. See Cal. Pub. Res. Code § 42476

### ▶ **Penalties for Unlawful Sales**

Prior law made it unlawful to sell a covered electronic device in California beginning July 1, 2004, unless the DTSC or IWMB determined the manufacturer was in compliance with the Act. As amended by SB 50, the law now prohibits sales of a new

or refurbished covered electronic device in the state as of January 1, 2005 if either agency determines that the manufacturer is not in compliance. Cal. Pub. Res. Code § 42465. The penalties for prohibited sales are unchanged (see Cal. Pub. Res. Code § 42474), but the amended Act waives penalties for a retailer who unknowingly sells a covered device without collecting a fee if it was due to the Board of Equalizations' failure to inform the retailer that the device was subject to the fee. Cal. Pub. Res. Code § 25214.10.1(f).

### ▶ **Manufacturer Reporting Requirements**

Under SB 50, other manufacturer duties, including labeling and reporting requirements, remain largely unchanged from the prior law. However, SB 50 postpones the deadline for manufacturers to label their covered products until January 1, 2005 (see Cal. Pub. Res. Code § 42465.1), and manufacturer reporting responsibilities now begin on or before July 1, 2005 (at Cal. Pub. Res. Code § 42465.2). Manufacturer reporting requirements were treated at greater length in the last issue of the *Bulletin* (No. 04-VII), which discussed the impact of SB 50 on those requirements.

SB 50 changed some of the requirements relating to manufacturer compliance with standards contained in European Union legislation (Directive 2002/95/EC), which restricts the use of certain hazardous substances in electronic equipment. Those provisions will be discussed in the next issue of the *e-Waste Recycling Bulletin*, which will address the European Directive and its application in California under the Act.

### ▶ **Concurrence Procedure**

SB 50 provides a procedure for a manufacturer to request a concurrence from the DTSC that a given product is not subject to the Act. See Cal. Health & Safety Code § 25214.10.1(e).

### ▶ **Export Notification Requirements**

Prior to SB 50, the law required an exporter of electronic waste to comply with notification and handling requirements adopted by the Organization for Economic Cooperation and Development ("OECD"). The amendments require exporters to comply with notification requirements and make specified demonstrations in accordance with OECD guidelines. See Cal. Pub. Res. Code § 42476.5. DTSC indicates, however, that the export notification provisions are likely to be amended further in clean-up legislation, most likely to require exporters of covered waste to simply notify DTSC of such export rather than to certify compliance with OECD rules.

#### ■ **About Us**

McKenna Long & Aldridge LLP is a full-service law firm of approximately 350 lawyers and public policy advisors. The firm provides business solutions in the areas of corporate law, government contracts, intellectual property and technology, complex litigation, public policy and regulatory affairs, real estate, environmental, energy and finance.

#### ■ **Subscription Info**

If you would like others to receive future mailings of the *e-Waste Recycling Bulletin*, please email their contact information to us at [nmacleay@mckennalong.com](mailto:nmacleay@mckennalong.com)

If you would like to be removed from our *e-Waste Recycling Bulletin* mailing list, please email [nmacleay@mckennalong.com](mailto:nmacleay@mckennalong.com)

---

\*This **e-Waste Recycling Bulletin** is for informational purposes only and does not constitute specific legal advice or opinions. Such advice and opinions are provided by the Firm only upon engagement with respect to specific factual situations. This message is intended as a transactional message for clients of the Firm. If you are not a client of the Firm, you have received it for informational purposes only and should not consider it an advertisement or solicitation.

• Atlanta • Brussels • Denver • Los Angeles • Philadelphia • San Diego • San Francisco • Washington D.C.

© 2004, McKenna Long & Aldridge LLP, One Market, Spear Tower, Suite 3500, San Francisco, CA 94105

---