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Electronic Waste — New Developments

Manufacturers, consumers, and retailers can expect to find a growing patchwork of state laws governing electronic waste in the coming year. Compliance with these myriad laws will be challenging.

At least seven states have now banned the landfill disposal of various types of electronic waste. Four states have passed comprehensive recycling legislation and, among these states, program requirements vary widely. More states are expected to pass electronic waste legislation in 2007, with proposals already in the legislatures in more than half of the states. Although consensus is growing that a uniform, national system is needed, federal legislation dealing with electronic waste is not expected to pass in the near future. For now it appears that members of the regulated community will need to carefully consider the electronic waste laws of all jurisdictions in which they operate in order to determine their compliance responsibilities, and monitor the status of any proposed legislation.

The disposal of electronic waste, or “e-waste,” in ordinary landfills is a growing problem. E-waste includes end-of-life computers, monitors, televisions, VCRs, DVD players, audio and stereo equipment, cellular phones, digital cameras, and other electronic devices. E-waste is a rapidly growing waste stream, with over 100 million computers, monitors, and televisions becoming obsolete each year. State and federal regulators have become concerned with the appropriate disposal of this waste stream because it contains valuable resources, including gold, platinum, and silver, but also contains hazardous substances, including lead, mercury, and chromium. When e-waste is disposed of in an ordinary landfill, the resources are lost, and the hazardous substances have the potential to contaminate soil and groundwater. Currently, only a small fraction of e-waste is recycled because disassembling the waste and disposing of hazardous components is expensive, and federal law currently allows most e-waste to be disposed of in landfills either because it does not meet the criteria for “hazardous waste” under federal law, or because it is considered “household waste.”

In the absence of federal legislation, states have begun to address the issue by adopting their own e-waste legislation. Binding state e-waste requirements have taken the form of disposal bans and comprehensive recycling legislation.

Disposal bans have been adopted in at least seven states, including Arkansas, California, Maine, Massachusetts, Minnesota, New Hampshire, and Rhode Island. The bans in Arkansas, New Hampshire, and Rhode Island will not go into effect until later in 2007 and 2008. These laws ban the landfill disposal and/or incineration of various types of e-waste, ranging from very specific items, as in “CRTs,” to very broad bans, as in “electronic devices.” Several other states have proposed landfill bans in 2007, including Illinois and Michigan.

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At least four states have adopted comprehensive e-waste recycling legislation, with the goal of establishing financing systems to make e-waste recycling convenient and inexpensive. This legislation is of two main types. In an advanced recovery fee system, the consumer pays a fee at the time of purchase, which is used to fund recycling programs. In an extended producer responsibility system, producers are responsible for the costs of recycling.

California has adopted an advanced recovery fee system. The California law requires consumers purchasing televisions, laptops, and monitors in California to pay a \$6-10 fee at the time of purchase. The state then disburses this fee to registered recyclers to fund recycling, helping to make it free and convenient for the consumer. At the time of disposal, the consumer takes the product to a registered recycler.

At least three states have adopted extended producer responsibility systems. In Maine, after consumers take e-waste to collection points, the waste is sorted by manufacturer, and manufacturers must either physically take back their products or pay for the recycling costs. In Maryland, producers pay a fee to a state recycling fund, counties set up recycling programs, and these county programs may apply to the state fund for reimbursement. In Washington, producers are required to either create their own take-back program, or participate in a centralized system.

The number of states adopting comprehensive recycling legislation is expected to grow. At least 16 states and New York City have proposed legislation in 2007 to adopt either an advanced recovery fee system or an extended producer responsibility system. Regional efforts to draft and adopt model legislation are in

place in the Northeast and Midwest. Model legislation has also been put forward by electronics manufacturers. According to one estimate, achieving compliance with these varying state law requirements will cost manufacturers, retailers, and consumers \$25 million more per year than if a national e-waste program were in place. However, since federal e-waste legislation is not expected to pass in the near future, manufacturers, retailers, and consumers will need to continue to ensure compliance with the various e-waste laws of all jurisdictions in which they operate, and continue to monitor the status of proposed state and federal legislation.

In addition to these mandatory state programs, voluntary initiatives to encourage e-waste recycling have been growing. For example, through the Resource Conservation Challenge Program, the U.S. Environmental Protection Agency has been conducting outreach, providing training and technology assistance, and forming partnerships with industry, states, and environmental groups in order to increase the national e-waste recycling rate.

Nationwide, a number of companies provide electronics end-of-life management. These services may provide a practical solution for businesses taking electronics out of service, but close attention should be paid to data management and their recycling, reuse, and waste management practices. Voluntary standards for best practices are emerging, including the Electronics Recycler's Pledge of True Stewardship promulgated by the Silicon Valley Toxics Coalition and the Basel Action Network.

For more information about these or other sustainability initiatives, contact Foley's Environmental Practice.