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Pa.'s Impending Landfill Disposal Ban on Certain Electronic Devices

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Special to the Legal

Electronic devices are everywhere these days. In our offices, we have multiple computer screens, CPUs, keyboards, telephones, smartphones and digital photo frames. At home, we have televisions, iPads, laptops, e-readers, cable boxes, appliances, video game systems and, for most, a stockpile of older and even obsolete versions of these devices.

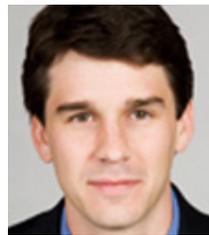
Do you know what your options are for disposing or recycling these devices when they can no longer be used? Months from now, Pennsylvanians may have no choice but to recycle certain used electronic devices. On Jan. 24, 2013, a landfill disposal ban on "covered devices" goes into effect pursuant to the Covered Device Recycling Act, 35 P.S. §6031.101 (CDRA). This article provides a broad overview of the CDRA and discusses the potential impact of this impending disposal ban.

BACKGROUND ON ELECTRONIC WASTE

"Electronic waste" (or "e-waste") is a broad term that covers all types of discarded electronic devices regardless of the user of the device (e.g., residential, commercial) or the ultimate destination of the device (e.g., landfill, recycling, resale). E-waste can present an environmental risk because many electronic devices contain small amounts of heavy metals like lead, silver, barium, cadmium, chromium and mercury. These metals serve an important purpose in the proper functioning of the device; however, when the device is ready for end-of-life management, some components can



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potentially exhibit the toxicity characteristic set forth at 40 CFR §261.24 and may therefore be regulated as a hazardous waste if not subject to any exemptions (e.g., household hazardous waste).

Yet, despite the potential environmental and legal risks and the many recycling and donation opportunities, electronic devices are still ending up in landfills. According to the U.S. Environmental Protection Agency, in 2009, approximately 2.37 tons of electronic products were ready for end-of-life management (i.e., disposal or recycling). Of this amount, only 25 percent was collected for recycling. The other 75 percent was sent for disposal or incineration.

To encourage recycling and discourage the landfilling or incinerating of used electronic devices, nearly half of the states have enacted electronic waste management laws. These laws vary widely from state to state. Some states require manufacturers to collect and recycle their used electronic

devices. Other states prohibit the disposal of certain types of electronic waste, while yet others have adopted a combination of these approaches. Pennsylvania's General Assembly took a combination approach when it passed the CDRA in November 2010. (We note that the inconsistency in state laws is particularly confusing for businesses with operations in multiple states. The EPA is considering a uniform national policy or regulation to address these inconsistencies in e-waste management. However, aside from promulgating specific rules for cathode ray tubes and printed circuit boards, the EPA's current role in e-waste management is generally limited to public education and encouraging the recycling or reuse of used electronic devices.)

COVERED DEVICE RECYCLING ACT

The CDRA applies exclusively to a subset of e-waste referred to as "covered devices." Covered devices under the CDRA include desktop computers, laptop computers, computer monitors, computer peripherals like keyboards and printers, and televisions that are intended for use by a "consumer." The term "consumer" is defined in turn as an occupant of a dwelling unit that uses a covered device primarily for personal or home business use. In other words, the term "covered devices" does not include those devices that are intended for use by nonresidential users such as businesses, institutions and government because those entities are not consumers under the CDRA. However, as discussed in the section below, the significance of this exclusion may be limited, as it is often difficult to determine whether a covered device is intended for

use by a business (i.e., a nonconsumer) or for personal/home use (i.e., a consumer).

Other electronic devices, such as mobile phones, appliances, motor vehicle components and GPS units, are specifically excluded from the definition of “covered device” and are not subject to the requirements of the CDRA. In addition, covered devices do not include devices that are: (1) functionally or physically part of or connected to equipment or a system designed and intended for use in an industrial, governmental, commercial, research and development or medical setting; (2) part of equipment used for security, anti-terrorism or emergency services purposes; or (3) intended primarily for use by “professional users” (the term “professional users” is not defined).

Most of the CDRA’s requirements went into effect on Jan. 1. These requirements are far-ranging and apply to manufacturers, retailers, electronics recycling facilities and the Pennsylvania Department of Environmental Protection:

- **Manufacturers:** Manufacturers of covered devices are required to register annually with the DEP, establish programs that operate at no cost to consumers for the collection, transportation and recycling of covered devices in numbers equal to their market share, and submit an annual report to the DEP verifying that the covered devices it collected were indeed recycled.

- **Retailers:** Retailers may only sell brands of covered devices that are registered with the DEP and must notify customers about how and where to recycle covered devices.

- **Recycling facilities:** Any covered devices collected in Pennsylvania for recycling, even if they are recycled elsewhere, must be recycled in compliance with all applicable federal, state and local laws. Under Pennsylvania residual waste regulations, electronics recycling facilities located in Pennsylvania are already required to obtain a DEP general permit No. WMGR081 prior to processing electronic waste. That requirement was not changed by the CDRA.

- **DEP:** The DEP is required to review plans for manufacturers’ recycling programs, take actions necessary to ensure compliance with them, maintain lists of registered covered devices, coordinate public outreach, encourage recycling and submit annual reports to the General Assembly evaluating the effectiveness of all these measures.

The CDRA provides for enforcement by judicial action, injunctive relief and

penalty assessments on any person who violates the CDRA’s provisions. Manufacturers will be subject to penalties of up to \$10,000 for the first violation and up to \$25,000 for the second and each subsequent violation of the CDRA. Other people who violate the CDRA will be subject to penalties of up to \$1,000 for the first violation and up to \$2,000 for the second and each subsequent violation. All penalties collected will be deposited in the newly established Electronic Materials Recycling Account, a restricted fund that the DEP may use only to carry out its duties under the CDRA.

It is critical that manufacturers, retailers, consumers and businesses be advised of the CDRA’s requirements and their potential applicability.

IMPENDING DISPOSAL BAN

On Jan. 24, 2013, the scope of the CDRA will expand beyond manufacturers, retailers, recyclers and the DEP. On that date, no person may place a covered device or any of its components in the municipal solid waste stream (nonhazardous residuals produced during recycling in any solid waste disposal facility are explicitly excluded from the disposal ban). In addition, landfills and solid waste disposal facilities may not accept covered devices for disposal. In the event that covered devices do find their way into a solid waste disposal facility, the CDRA provides a hold-harmless provision pursuant to which the owner/operator of that facility will not be found in violation if the owner/operator: (1) makes a good-faith effort to comply with the disposal

ban; (2) posts a sign in a conspicuous location at the facility stating that covered devices and their components will not be accepted; and (3) provides written notice to all collectors registered to bring solid waste to the facility that covered devices and their components will not be accepted at the facility.

Although the disposal ban will primarily impact the residential collection of covered devices, the impact may also be felt by businesses. As mentioned above, the term “covered devices” applies to certain devices that are intended for use by consumers, which are in turn defined as residential or home-based users. Therefore, computers and televisions that are intended for use by businesses or government entities would not be considered covered devices, because these entities are not consumers. Businesses, however, may not be able to benefit from this exclusion, because many landfill operators, waste haulers or other entities subject to the landfill disposal ban may simply prohibit the acceptance of any covered device rather than determine whether the computer or television was intended for use by a residence or business. Consequently, businesses may ultimately find that disposal options for their used electronic devices are limited, whether or not they are covered devices under the CDRA.

With the recent statutory changes regarding the disposal and recycling of certain electronic devices, it is critical that manufacturers, retailers, consumers and businesses be advised of the CDRA’s requirements and their potential applicability. Before electronic devices reach the end of their useful life, you should review the CDRA (and other applicable waste disposal requirements) to determine whether that device is a covered device, and, if so, evaluate available recycling options. •

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