

NOTICE OF EXEMPTION

To: Office of Planning and Research
State Clearinghouse
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Sacramento, CA 95812-3044

From: Department of Toxic Substances Control
Hazardous Waste Management Program
1001 "I" Street
Sacramento, CA 95814

Project Title: Electronic Waste Recycling Act - Final Regulations

Project Location: Statewide.

County: This rulemaking affects all counties in California.

Project Description: This rulemaking addresses four regulatory aspects of universal wastes. First, it finalizes the emergency regulations, "Authorized Treatment of Universal Waste Electronic Devices", adopted by the Department of Toxic Substances Control (DTSC) in 2004 to implement the Electronic Waste Recycling Act of 2003. Second, the regulations modify California Code of Regulations, title 22, (Cal. Code Regs., title 22) chapter 11, appendix X, by adding a list of electronic devices that are Covered Electronic Devices for purposes of the Act, and adding notification requirements for manufacturers of Covered Electronic Devices. Third, the regulations reformat and consolidate California Code of Regulations, title 22, division 4.5, chapter 23, "Standards for Universal Waste Management". Lastly, the regulations promulgate new requirements implementing the restrictions on the use of hazardous substances (RoHS) provisions of the Electronic Waste Recycling Act of 2003 pursuant to Health and Safety Code section 25214.10.

DTSC is finalizing the emergency regulations that were adopted to implement the Electronic Waste Recycling Act of 2003. One of the major objectives of the Electronic Waste Recycling Act, as amended, is to establish a statewide program for consumers to recycle (and ensure the safe and environmentally-sound recycling of) waste video display devices, such as televisions and computer monitors that are hazardous wastes when discarded. The regulations establish, as did the emergency regulations, authorized treatment standards for electronic devices that are hazardous waste when discarded. The emergency regulations will expire May 11, 2010. Without the regulations, specifically the authorized treatment practices in place, covered electronic waste recyclers (universal waste recyclers) will be required by Health and Safety Code section 25201 to obtain hazardous waste facility permits from DTSC in order to recycle the universal waste electronic devices. The implementation of the Electronic Waste Recycling Act via these regulations will create additional opportunities for consumers (including businesses) to recycle their electronic devices. The recovered materials can be used reducing the need for additional natural resources.

The regulations divide the hazardous waste treatment of universal waste electronic devices into three categories and establish new forms of authorization for these categories. The regulations apply an incremental set of standards to recyclers whose recycling activities fit two of the categories. The first category of electronic waste treatment requires no formal authorization from DTSC and is not subject to these standards as long as the handler complies with specific regulatory standards. This category covers activities that typically occur during normal use of the electronic devices such as removing batteries from a waste device or an ink cartridge from a waste printer. Persons (recyclers) who conduct the second category of treatment will be subject to a self-implementing grant of authorization for low-hazard electronic waste recycling activities (e.g., dismantling electronic devices without use of heat or chemicals). The third treatment category allows physical separation based on differences in physical properties such as size, color, density, and ferromagnetism. This is authorized treatment under the universal waste rule. Recyclers, who conduct treatment activities that utilize chemicals or certain applications of heat, will remain subject to requirements in Health and Safety Code section 25201 and must obtain a hazardous waste facility permit. These recyclers are not subject to the regulations in this rulemaking. The regulations provide management standards for recycling universal waste electronic devices commensurate with the hazard these wastes pose. This eliminates the need for handlers and recyclers of universal waste electronic devices to be fully permitted for hazardous waste management

thereby facilitating compliance with the regulations and eliminating universal waste electronic device disposal to landfills.

DTSC is required by the Electronic Waste Recycling Act of 2003 to adopt regulations that identify electronic devices that DTSC determines are presumed to be a hazardous waste when discarded. The regulations implement this requirement by finalizing the emergency regulations of appendix X list [Cal. Code Regs., tit. 22, ch. 11, app. X, subsec. (c)], and add liquid crystal display (LCD), plasma televisions, and DVD players to that list as covered electronic devices. Health and Safety Code section 25214.10.1, subdivision (c), requires a manufacturer to provide an annual notification to retailers by April 1 of each year. The notification must identify any electronic device manufactured by that manufacturer that is included in appendix X on or before December 31 of the prior year to inform retailers that the device is a covered electronic device and is subject to Electronic Waste Recycling Act of 2003.

The regulations in California Code of Regulations, title 22, division 4.5, chapter 23, article 2 (Standards for Small Quantity Handlers of Universal Waste), article 3 (Standards for Large Quantity Handlers of Universal Wastes) and article 7 (Standards for CRT¹ Material Handlers) are reformatted into a single article to eliminate duplicative standards. The reorganization of chapter 23 eliminates confusion for handlers by establishing one set of regulations that apply to all universal waste handlers in California (as opposed to the current regulations which contain separate sets of standards for large and small quantity handlers of universal waste and CRT material handlers). Also, the revisions align the state regulations with the recent federal mercury containing equipment (MCE) rule.

Health and Safety Code section 25214.10.1, subdivision (b) requires that DTSC adopt regulations that prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, to the extent that Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003, and as amended thereafter by the Commission of European Communities, prohibits that sale due to the presence of certain heavy metals. The regulations took effect January 1, 2007 [Health & Saf. Code §25214.10(c)].

Name of Public Agency Approving Project: Department of Toxic Substances Control, Regulatory and Program Development Branch, 1001 I Street, Sacramento, CA 95812

Name of Person or Agency Carrying-Out Project: Department of Toxic Substances Control, Regulatory and Program Development Branch, 1001 I Street, Sacramento, CA 95812

Exemption Status:

- Ministerial [PRC, Sec. 21080(b)(1); CCR, Sec. 15268]
- Declared Emergency [PRC, Sec. 21080(b)(3); CCR, Sec.15269(a)]
- Emergency Project [PRC, Sec. 21080(b)(4); CCR, Sec.15269(b)(c)]
- Categorical Exemption: [State type and section number]
- Statutory Exemptions: [State code section number]
- General Rule [CCR, Sec. 15061(b)(3)]

Exemption Title: With Certainty, No Possibility of a Significant Effect to the Environment.

Reasons Why Project is Exempt: DTSC has determined that:

- The authorized treatment of universal waste electronic devices is a low-hazard activity.
- The authorized treatment of universal waste electronic devices addressed by these regulations does not pose a significant threat to human health and safety.
- The authorized treatment of universal waste electronic devices does not warrant the same level of regulatory standards as other “traditional hazardous wastes.”
- Universal waste electronic devices are largely solid materials that typically do not contain liquids.

¹ Cathode Ray Tube

- The authorized treatment activities allowed by these regulations (dismantling, size reduction, and materials segregation) generally don't pose significant environmental concerns.
- The regulatory standards imposed by this project eliminate possible environmental impacts.

Given the controls established in the regulations, DTSC has determined that implementation of the regulations will have no possibility of creating a significant effect on the environment.

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FILE DOCUMENTATION

AIR QUALITY

The universal waste electronic devices that may be treated are largely solid materials that typically do not contain liquids. Therefore, simple disassembly of these devices, e.g., removing a hard-disk drive from a computer, will not release liquid or gaseous chemicals into the air. In addition, the processing beyond simple disassembly that is authorized by the regulations is limited by California Code of Regulations, title 22², section 66273.75(a)(2) such that all mercury-containing lamps and other components containing fluids (i.e., liquids or gases) that would be identified as hazardous wastes are removed prior to processing. With respect to the solid materials, DTSC has determined that the primary hazard to the environment would be in the form of the release of metals. However, several factors eliminate any possibility of this environmental concern. First, the recovery of metals contained in the universal waste electronic devices is the ultimate objective of the recyclers authorized by the regulations [processing solely for the purpose of hazardous waste treatment is prohibited by §66273.75, subsec. (a)(7) and (a)(9)]. Thus, the recyclers must capture the metals or they will not receive the benefit of their efforts. Therefore, the recyclers will, of course, have systems in place to capture these materials. Secondly, the regulations require the recyclers to comply with all local air pollution control requirements including those for particulates and toxic air contaminants [§66273.75 (a)(6)]. Thirdly, the regulations require the treatment to be performed over or in a containment device [§66273.75(a)(3)], and the containment of any treatment residuals produced [§66273.75(b)]. Lastly, by excluding processes that use external heat (except for certain applications) and chemicals, including water, [§66273.73(c)(2)(A)], the regulations eliminate any treatment involving chemically energetic processes that might result in a release to the air.

WATER QUALITY AND SOILS (LAND)

Although universal waste electronic devices do pose a threat to groundwater when improperly disposed in a municipal solid waste landfill, there is no potential of such an impact when the recyclers conduct the authorized treatment activities allowed by these regulations (dismantling, size reduction, and materials segregation). The regulations contain multiple provisions that safeguard against improper disposal of the devices and/or treatment residuals thereof, and any subsequent impacts upon water quality. The regulations require the treatment to be performed over or in a containment device [§66273.75(a)(3)]. This prevents any material from being released to the land and eventually leaching contaminant into the groundwater. The regulations also require the containment of any treatment residuals produced [§66273.75(b)]. This also prevents any material from being released to the land and the eventual leaching of contaminants into the groundwater. Furthermore, all treatment residuals must be properly classified and managed in accordance with applicable hazardous waste requirements [§66273.75(a)(4)]. The regulations also exclude processes that use chemicals, including water, [§66273.73(c)(2)(A)]. This eliminates the possibility of hazardous, highly-mobile liquids (and gases) from being produced by recyclers operating under these the regulations. Thus, it eliminates any possibility of these materials leaking into the ground at these recyclers' facilities. Therefore, any possibility of such leaked hazardous materials eventually impacting the groundwater is nonexistent.

HAZARDOUS WASTES/HAZARDOUS MATERIALS

Worker Safety

The regulations address worker exposure (to hazardous materials and hazardous wastes) in section 66273.75, subsection (d). The regulations require recyclers who perform authorized treatment to ensure that workers (handlers) who process the electronic devices are thoroughly familiar with the hazards associated with such processing, and that they have access to the proper procedures and protective equipment necessary to conduct the processing safely. In addition, the regulations require handlers who process electronic devices to comply with all applicable worker health and safety laws and regulations, including: California Code of Regulations, title 8, subchapter 7 (General Industry Safety Orders), group 16 (Control of Hazardous Substances), article 107 (Dusts, Fumes Vapors and Mists) and article 109 (Hazardous Substances and Processes), and section 5198 (Lead). Additionally, all workers are subject to compliance with the general Cal-

² All regulatory references pertain to Cal. Code Regs., tit. 22 unless otherwise specified.
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OSHA worker safety requirements. The regulations also require that workers are trained [§66273.36], and that universal wastes are clearly labeled as such, so workers are aware of the hazards they face [§66273.34].

General Environment

The regulations contain standards that eliminate any impact to the general environment. These standards include: limiting the treatment activities that may be performed by the recyclers [§66273.73(c)(2)(A)]; requiring authorized treatment to be conducted over or in a containment device (e.g., a tray, box, workbench, etc.) [§66273.75(a)(3)]; and requiring all treatment residuals to be properly contained, classified, and managed [§66273.75(a)(4) and §66273.75, subsecs. (b) and (c)]. The regulations also contain standards that ensure that the recyclers' facilities are properly closed [§66273.77].

LAND USE AND PLANNING, NOISE, TRANSPORTATION AND TRAFFIC

The regulations ensure that the recyclers follow all applicable zoning and land use requirements [§66273.75(e)]. This will ensure that the universal waste electronic device recycling facilities will be located consistent with local zoning requirements. Hence, these facilities will be located only in areas that already are industrial-type areas, and will not be located near residences or sensitive habitat areas. Because these facilities will not be located near residential areas, residents will not experience noise or traffic impacts. Construction of new facilities is not required by these regulations. Any new recycling facilities that are established and plan to treat universal waste electronic devices would also be subject to local zoning, land use, and planning requirements described above.

CUMULATIVE IMPACTS

DTSC has completed only one similar project. That project was the regulations establishing the authorized treatment standards for cathode ray tube (CRT) materials. In almost every instance the handlers that recycle the CRT materials also recycle universal waste electronic devices. Because DTSC has determined there is no possibility of an impact from either set of regulations individually, there can be no cumulative impact. DTSC has observed that the universal waste regulations for these materials have collectively resulted in an increased awareness that these devices are hazardous wastes. This has led to a general, statewide trend towards increased compliance with the universal waste regulations. In part, as a result of regulations adopted in 2003 by DTSC (CRT materials), over 55,087,284 pounds of universal waste electronic devices were recycled under the Electronic Waste Recycling Act of 2003 program in 2005. As a result of these regulations, more universal waste electronic devices will be recycled. DTSC has approved approximately 50+ recyclers under emergency regulations that are similar to the project. As the trend under the emergency regulations has been towards increased overall compliance without any significant adverse impact on the environment, DTSC is certain that the combined effects of this project and the CRT materials regulations will not cumulatively result in a significant impact on the environment.

CONCLUSION

Given the controls established in the regulations, DTSC has determined that implementation of the regulations have no possibility of creating a significant effect on the environment.