

# ENVIRONMENTAL LAW & LITIGATION

## NEW JERSEY CHANGES ELECTRONIC WASTE RECYCLING SYSTEM

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On January 9, Governor Chris Christie signed into law amendments to the state's Electronic Waste Management Act ("EWMA"). The governor had pocket-vetoed identical legislation in early 2016 without comment, but the efforts of the New Jersey Department of Environmental Protection ("NJDEP") to identify alternatives were unsuccessful. The amended EWMA continues to require that producers of the electronic devices that it covers – called "covered electronic devices," or CEDs – provide for the collection, transportation, and recycling of CEDs, at no cost to the consumer. But the amendments change the scope of CEDs, increase the number of manufacturers subject to the recycling obligation, and change the way in which covered manufacturers can comply.

### Covered Devices, Covered Manufacturers, and Covered Consumers

The EWMA requires manufacturers of CEDs purchased by consumers to fund their collection, transportation, and recycling when the consumer disposes of them. Before this amendment, the EWMA applied only to items with screens, such as televisions and computers. While consumers frequently discarded other items, the EWMA did not require manufacturers of those items to fund their recycling. The amended EWMA adds printers and fax machines to the list of CEDs. This change will greatly increase the total weight of the state's CEDs and add new manufacturers

to those required to recycle under the EWMA. The amendments also delete the former distinction between TVs and non-TV CEDs. This will simplify the program, but will also change the weight distribution of collection obligations, especially for companies that produce both. Further, the amendments redefine consumers to include not just the consuming public, but also state entities, school districts, and local government units. Manufacturers will now be required to fund the collection of e-waste from these newly added organizations.

### Compliance

The program also alters the way that each manufacturer's collection obligation is calculated. Under the former system, NJDEP sampled the e-waste stream and recorded the names of manufacturers appearing on labels to determine the portion of total generated waste that each manufacturer would be responsible to collect and recycle. The amendments require NJDEP to determine each manufacturer's market share based on sales in the nationwide market for all CEDs using "the best available public data." NJDEP will then determine an estimated market share by weight for each manufacturer, calculated by multiplying the weight of the prior year's collected CEDs by the manufacturer's market share. Additionally, a new penalty of 50 cents per pound will be assessed to each manufacturer failing to meet its collection obligations.

The amendments also introduce

a major change to the program's implementation by authorizing NJDEP to create a "statewide standard program" for collection and recycling. This appears tailored to address a particular problem that arose under the EWMA. The EWMA had required NJDEP to ensure that every county had at least one collection site. But in recent years, collection site operators in more sparsely populated areas have claimed that economies of scale encourage manufacturers to collect more from cities and other densely populated locations, leaving them underserved.

To solve this problem, the amended EWMA introduces two requirements with potentially major consequences for manufacturers. First, any statewide standard program must ensure that 90 percent of consumers be located within 15 miles of a collection location. Second, if NJDEP adopts a statewide standard program, most manufacturers may be required to participate. Whereas the pre-amendment EWMA permitted each manufacturer or group of manufacturers to submit its own collection plan, under the amendments only manufacturers whose market share, either individually or collectively as part of a manufacturer group, is greater than 10 percent of the total market may submit their own plans. All others may meet their obligations *only* by participating in the statewide program, paying a per-pound rate established by NJDEP rather than by the market. Using data provided by NJDEP for 2015, and combining the categories of TV and non-TV CEDs as

the amendments require, we calculate that only two or three manufacturers will meet this 10-percent-or-greater market share threshold (though the addition of printers and fax machines will affect this analysis).

The amendments also affect other stakeholders. One key category is recyclers, who must pay an annual \$15,000 fee and submit detailed records of their collections, including weight and type of collected CEDs. As municipalities and other collection sites now must also submit similar records, NJDEP is poised to become a repository of data on the state's e-waste, potentially allowing it to better regulate the market for the protection of all residents.

While the amended EWMA will change e-waste recycling in New Jersey, how NJDEP chooses to implement the changes will be important. NJDEP will propose regulations on a statewide standard program, will determine each manufacturer's market share, and will set the per-pound rate for manufacturers participating in any statewide standard program. Accordingly, while consequences for all affected persons are sure to be significant, their precise nature remains to be seen.

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