

Update on California's Covered Electronic Waste Recycling Program Implementation of the Electronic Waste Recycling Act of 2003 (SB 20, Sher)

February 2010

All program responsibilities of the former California Integrated Waste Management Board (CIWMB) have been transitioned to the Department of Resources Recycling and Recovery (CalRecycle)

Overview

The Electronic Waste Recycling Act of 2003 (Act), as amended and as codified in the Public Resources Code (PRC) 42460, et seq, established a funding mechanism to improve and provide for the proper end-of-life management of certain hazardous electronic products. The program is funded through a fee paid by consumers of covered electronic devices (CED) at the time of retail purchase. Collected fees are remitted by retailers to the State and deposited in an account. Subsequently, payments are made to approved collectors and recyclers of covered electronic waste (CEW) to offset the net cost of appropriate waste recovery, processing, and recycling activities.

Intent of the Act:

- Provide financial relief to responsible parties for managing covered electronic waste
- Foster cost-free recycling opportunities for consumers throughout the state
- Reduce illegal dumping
- Eliminate the stockpile of waste computer monitors/TVs
- Decrease amount of hazardous materials in covered products

Major Components of the Act:

- Assesses an electronic waste recycling fee on retail sales of covered electronic devices (CED)
- Tasks the Department of Resources Recycling and Recovery (CalRecycle) with operating a payment system for approved collectors/recyclers to cover the costs of recovering/recycling CEW
- Establishes certain manufacturer responsibilities: consumer information, brand labeling, annual reporting, product design for recycling, and reduction of hazardous materials
- Authorizes the Department of Toxic Substances Control (DTSC) to develop regulations for the proper management (storage, collection and recycling) of discarded electronic devices
- Requires DTSC to adopt regulations, consistent with the European Unions Restriction of Hazardous Substances (RoHS) directive, limiting the concentration of hazardous metals in covered electronic devices offered for sale in California.

Covered Electronic Devices (CED)

CEDs are video display devices that have been determined by the Department of Toxic Substances Control (DTSC) to be hazardous when disposed. Covered devices must have screens greater than four inches on the diagonal. Unless excluded by PRC 42463(f)(2), current covered devices include:

- Cathode Ray Tube devices
- Televisions and computer monitors containing cathode ray tubes (CRTs)
- Televisions and computer monitors containing liquid crystal displays (LCDs)
- Laptop computers w/ LCD screens
- Plasma televisions
- Personal portable DVD players w/ LCD screens

Revenue and Payment Status

The Act anticipated the growth in CEW recovery, as fostered by the payment system, to eventually outpace the revenue derived from the original fee levels that fund the system. CalRecycle is charged with statutory obligations to adjust the fee in order to maintain fund solvency. In June 2008, the then California Integrated Waste Management Board (CIWMB) projected that, at existing payment rates and projected recycling volumes, the fund (combined reserves and ongoing revenue) would be depleted by the end of 2008. CIWMB then acted to adjust the fee to new levels, which took effect January 1, 2009.

Annual Gross Revenue:

FY 07/08 approx \$77M; FY 08/09 approx \$100M; FY 09/10 projected > \$130M

- Consumers pay fee to retailers at time of new device purchase (currently \$8, \$16, or \$25, based on the screen size of device).
- Retailers remit collected fees to the Board of Equalization (BOE) at least quarterly.
- Retailers are allowed to keep 3% of fee for administration.
- ***Softening economy and changes in consumer spending may impact revenue.***
- Manufacturers are required to notify retailers regarding which products are subject to the fee.

Collection and Recycling Infrastructure (as of January 2009):

Approved Collectors: ~660

Approved Recyclers: ~60

- Growth in California's electronic waste collection and recycling infrastructure has been fostered by the Act and the payment system.
- Voluntary participants represent a diverse group: non-profits organizations, landfills, local governments and traditional e-waste collection and recycling businesses.
- DTSC inspections of recycling facilities and facility compliance with environmental standards are required for participant approval and eligibility to receive payments.
- The infrastructure to recover CEW also recovers substantial quantities of miscellaneous electronic waste, of which a large and unknown volume likely leaves the state without further processing.

Covered Electronic Waste (CEW) Payment System:

CalRecycle pays approved recyclers; approved recyclers are required to pay collectors.

Payment statistics to date:

- Over 1586 total claims submitted to CalRecycle by recyclers for payment
- Over \$ 344 million (representing over **760 million pounds** of covered electronic waste) have been claimed through the payment system since January 2005

Year to Year Comparison:

- 2005 total 225 claims submitted: \$31 M (64.8 M pounds)
- 2006 total 298 claims submitted: \$61 M (~128 M pounds)
- 2007 total 351 claims submitted: \$89 M (~185 M pounds)
- 2008 total 411 claims submitted: \$96 M (~218 M pounds)
- 2009 thus far ~ 300 claims: ~\$67 M (~171 M pounds) – *Not a complete year.*

CalRecycle has adjusted / denied between 2% and 5% of moneys claimed in the CEW system annually due to non-compliant or significantly inconsistent (and possibly fraudulent) documentation.

Recent Program Adjustments

The program has grown significantly since inception and fund solvency became an issue in 2008. The then CIWMB exercised its statutory authority in June 2008 to adjust the consumer fee to maintain solvency; these changes took effect January 1, 2009. CIWMB also adjusted the Recovery and Recycling Payment Rates in May to better reflect costs of operating in this industry; those changes took effect beginning July 1, 2008. (See Annual Net Cost Reporting below.)

Current System Challenges

- CalRecycle must ensure that payment is made in a timely manner only for eligible and properly documented CEW; specifically through complete and verifiable payment claims, including appropriate collection, transfer, and processing documentation.
- The program must accommodate continued use as a possible destination for recovered CEW, but only pay for recycled CEW.
- The program must allow for certain instances of otherwise eligible (California-sourced) covered electronic wastes resulting from illegal abandonment and load check activities to enter the payment system while simultaneously not creating a portal for fraudulent activities.
- The use of “handlers” not directly approved in the CEW system by approved recyclers and collectors has exposed system participants to increased risk of falsified collection documentation.

Future System Challenges

Future CRT Glass Markets Uncertain:

- Glass-to-glass recycling has limitations since CRT technology is being replaced
- Smelter flux continues to be more expensive option; few domestic operations

Non-CEWs: How to Manage and Who Pays?

- Mixed e-waste volumes increasing; CEW collectors and recyclers expected by customer base to handle mixed e-waste at no cost
- No effective restrictions on wholesale export of miscellaneous e-waste; domestic “de-manufacturing” is relatively expensive
- California looks to the Federal government to limit/control flow of miscellaneous electronic waste

Other Program Implementation Activities

Regulations:

- Any CalRecycle adjustment to payment rates or fee structures is considered a regulation and requires adherence to the provisions of the Administrative Procedures Act.
- The Office of Administrative Law (OAL) approved CalRecycle “print only” filing on regulations to govern the payment rates in June 2008. CalRecycle submitted emergency regulations affecting fee level changes in October 2008, with new fees effective January 1, 2009.
- DTSC has finalized the formal rulemaking process for permanent regulations for universal waste management standards, including electronic waste and the scope of covered electronic devices.
- RoHS equivalent regulations were adopted by DTSC for implementation December 2006.

Legislation:

- AB 147 would have allowed DTSC to request documentation from electronic product manufacturers about toxic materials in the products. This bill passed the Legislature but was vetoed.
- AB 1535 would have expanded universe of covered electronic devices (CEDs) to include CPUs stalled in committee in 2007; it was reintroduced in 2008 to adjust how fees are collected, but again stalled in committee.

Annual Net Cost Reporting

- Program participants must report annually on costs to handle and process CEWs if so directed by CalRecycle. This information is used to inform CalRecycle in fulfilling its obligation to adjust payment rates. These rates were originally set at \$.28 per pound to recyclers and \$.20 per pound to collectors, but are now set at \$.23 per pound to recyclers and \$.16 per pound to collectors
- The then CIWMB acted in November 2009 to require that reports be submitted to cover 2009 operations, which will be due to CalRecycle on or before March 1, 2010. Data from these reports will be used to evaluate existing payments rates.

Compliance Assistance and Fraud Prevention:

- CalRecycle has worked with DTSC to enhance the material handling compliance and enforcement portion of the program.
- CIWMB has worked with the Department of Finance to develop an external audit function in the program. DOF auditors reviewed documentation protocols, provided suggestions and assistance to staff, and have participated in auditing cost reports submitted by the participants in the system.

Public Education/Outreach

- CalRecycle maintains a public oriented website (www.eRecycle.org) to inform the public on environmental matters associated with the management of electronic waste, including a directory of reuse and recycling opportunities throughout California.

Other States and Federal Government:

California is closely monitoring activity on the national level. Approximately 18 other states have passed legislation, all taking more of a producer responsibility approach. As mentioned above, the largest program challenge -- ensuring payment only for California material -- would be minimized or eliminated by a national solution. However, any national system would have to provide cost relief to local governments and not contradict the stringent hazardous waste/universal waste management standards adopted by DTSC. The Act specifically describes conditions under which federal law would preempt the implementation of the Act (Public Resources Code 42485 (a)).

Outreach and Other Resources:

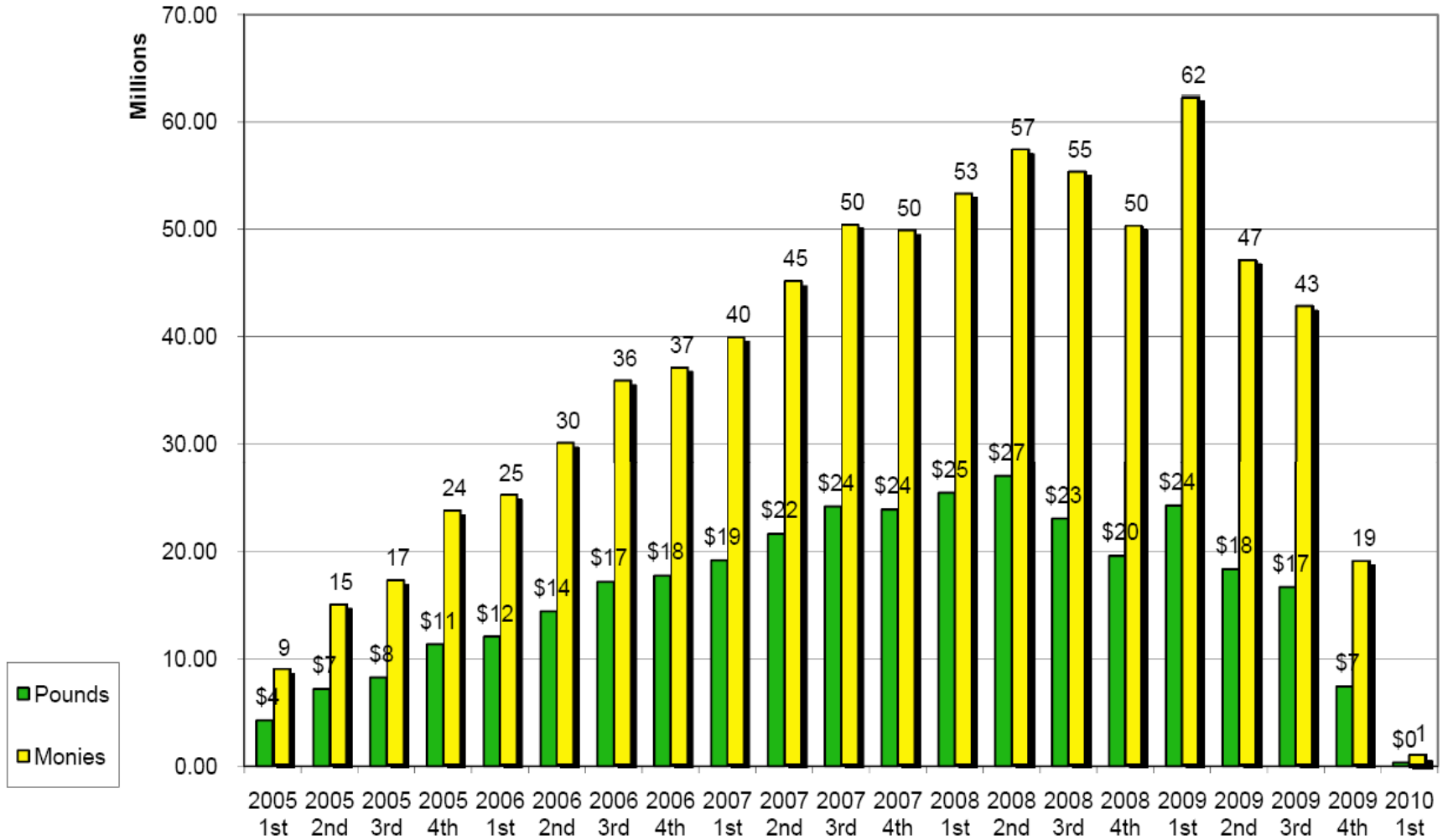
- www.eRecycle.org is the central website for all information relating to the Electronic Waste Recycling Act. The site includes links to PSAs and public education materials including downloadable point of purchase ads and banners.
- A list of approved covered electronic waste collectors and recyclers is available at: www.calrecycle.ca.gov/Electronics/Act2003/Recovery/Approved/
- The Electronic Products Management Directory lists nearly 600 locations that accept a variety of electronic wastes for reuse and recycling. (www.calrecycle.ca.gov/Electronics/Collection/)
- The Board of Equalization website contains Frequently Asked Questions, registration information and registration forms. (www.boe.ca.gov/sptaxprog/ewaste.htm)
- The Department of Toxic Substances Control website contains information on covered devices, hazardous waste management standards, and regulatory requirements. (<http://www.dtsc.ca.gov/HazardousWaste/EWaste/>)

***Comments on Quarterly Claim Chart (Next Page)**

The depiction of claim volumes in the chart reflects the general growth of the program since its inception in January 2005. Factors affecting the fluctuating volumes in recent quarters include a lowered payment rate (effective July 2008), economic uncertainty, the digital television transition in first half of 2009, and the widespread availability of recycling opportunities over the past five years that may have cleaned out much of the available stockpile.

Recyclers are supposed to submit claims within 45 days of the end of a claim reporting month, which leads to a delay in the tracking of program volumes. For instance, December 2009 claims aren't due until February 15, 2010. Recyclers also often encounter market conditions that may further delay a claim submittal.

Covered Electronic Waste Recycling Payment System Quarterly Monies and Pounds Claimed (as of February 4, 2010)



Covered Electronic Waste (CEW) Recovery & Recycling Payment System

