

Legal Lookout: RoHS, WEEE and Related EU Directives

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Product stewardship is becoming increasingly important as international regulatory requirements involving product lifecycles become more prevalent. In Europe, several directives are likely to influence global product stewardship.

Background

Environmental regulation traditionally has focused on regulating manufacturing facilities by limiting or preventing environmental releases and related manufacturing activities believed capable of posing harm to human health and the environment. Other statutes and regulatory programs focus on compelling the cleanup of historic contamination resulting from industrial activities.

Environmental protection today is expressed differently, with a focus on product regulation. This is particularly true for consumer products believed capable of posing environmental degradation upon disposal at the end of their useful lives. Such directives were designed to minimize waste by forcing product design changes, and requiring the reuse and recycle of products.

In 2000, the EU adopted the precedent-setting End-of-Life Vehicle (ELV) Directive, or Directive 2000/53/EC. Under this directive, EU member states were required to develop and implement collection and recycling systems of all ELVs, and establish reuse and recycle goals. Product design standards required under the directive mandated that vehicles marketed after July 1, 2003, not contain lead, mercury, cadmium or hexavalent chromium, except as specifically authorized under the directive.

More recent similar directives include other consumer commodities. Under Directive 2002/95/EC, Restrictions of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment – commonly referred to as the RoHS Directive – manufacturers and importers were barred after June 30, 2006, from marketing electrical and electronic equipment containing lead, mercury, cadmium, hexavalent chromium and polybrominated biphenyls ethers or PBDEs in the EU. Directive 2002/96/EC on Waste Electrical and Electronic Equipment (WEEE) requires EU member states to establish systems for managing the burgeoning amounts of electronic waste.

Other directives have been enacted, and more are expected to follow in the future. Initiatives at the federal, state and local level are expected to follow EU's example.

Increasingly, the focus is turning upstream in the product development and production line. The directives assume the responsibility of sustainability is a shared one, providing a role for all major players involved, including government and private industry.

Standard operational practices will likely be required, as RoHS restricts the use of certain listed hazardous substances. Companies also can expect to be challenged by various uncertainties associated with the directive, including its scope, the scope of exemptions, testing protocols available to determine if a product is RoHS-compliant, and related legal and financial uncertainties. Further, as consumer products are based on the integration of materials and goods from other manufacturers, supply-chain manufacturers will need to

know RoHS requirements. It was noted that some products, such as those containing lead and flame retardants, the directive recognizes that substitutes are not available in all cases, and exemptions may apply.

Product regulation is already influencing domestic product take-back and/or related initiatives. For example, in the United States a thermostat consortium was formed in 1998 by Honeywell, General Electric Corp. and White-Rodgers. The Thermostat Recycling Corp. was formed to facilitate the collection and recycling of thermostats.

Similar initiatives are emerging in other countries. A China RoHS regulation was promulgated in March 2006. Other countries implementing RoHS- and WEEE-like initiatives are Japan, South Korea, Australia, New Zealand and Latin America.

Implications

State and local government agencies may impose similar end-of-life requirements. Similarly, voluntary initiatives will continue to populate the consumer product waste disposal scene.

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