Comments by the Basel Action Network (BAN) to the Environmental Protection Agency on the Proposed Rule on Cathode Ray Tubes and Mercury-Containing Equipment

(Docket: F-2002-CRTP-FFFFF)

August 12, 2002

I. Introduction

Despite claims by the US Environmental Protection Agency (EPA) that the Proposed rule on Cathode Ray Tubes and Mercury-containing equipment (“proposed rule”) will serve the greater cause of enhancing appropriate recycling, the Basel Action Network (BAN) finds that the rule works at cross-purposes to this goal. What the rule actually does is de-regulate and at times de-list certain internationally recognized hazardous wastes. While it is argued that this de-regulation will enhance recycling collection rates in the United States, the ruling does nothing to stipulate how and where such recycling should take place.
Apparently in disregard over recent evidence that the export of hazardous electronic waste from the United States constitutes severe environmental abuse to peoples and environments of Asia, principles of international law, and of environmental justice, the EPA has actually proposed rules that will likely exacerbate the immoral and irresponsible environmental dumping. Astoundingly, the EPA spokespersons continue to tell the media that the open-back-door policy for e-waste export is “part of the strategy” of the administration.

Of even greater concern than the sheer callousness of these policies however, is the fact that the United States is accomplishing this strategy in direct violation of their legal commitments under Organization of Economic Cooperation and Development (OECD) treaty law. That is, the “proposed rule” and current RCRA statutes are in fact illegal as the do not implement OECD treaty obligations. These illegalities must be corrected at once.

Further, the ruling fails to prohibit or even discourage the use of solid waste landfills and incinerators from being used to dispose of either or both CRTs and mercury-containing equipment, in what will surely be massive amounts of these toxic materials originating from individuals, households and so-called small quantity generators.

With respect to domestic recyclers, the “proposed rule” provides no performance standards or criteria for management of hazardous CRT wastes, nor obligations to provide communities with information regarding the hazardous materials being recycled.

Finally, by placing all emphasis on recycling hazardous waste rather than avoiding it, the rule postpones real solutions requiring upstream responsibility to prevent the introduction of hazardous materials into new products and to provide greater incentive for design-for-environment by manufacturers.

BAN believes that the “proposed ruling” is designed primarily to benefit the immediate financial interests of major manufacturers of electronic products – and not the interests of environmental protection and public health. It accomplishes this apparent goal by releasing manufacturers from upstream responsibility for design-for-environment. It does this directly by failing to promote cost-internalization mechanisms and does so indirectly by continuing to allow free and legal cost externalizations to communities downstream.

These outlets for environmental cost dumping include the continued allowance for consumers in their households to dump these toxic products on local communities without bearing a financial burden for doing so. Likewise, as previously noted, the “proposed ruling” allows an immoral escape valve for manufacturers by continuing to permit, without any controls whatsoever, real environmental costs from e-wastes to be externalized to poorer peoples in developing countries via the avenue of export. Indeed, if the proposed de-regulation has its intended effect of diverting more
material from landfill to recycling, it is expected that this ruling will have the effect of sending far greater quantities of hazardous CRT waste offshore. For all of the above reasons (elaborated below), we feel the “proposed ruling” will succeed in doing far more harm than good for the global environment and must be critically amended before being adopted.

In the sections below we focus on these concerns in greater detail and, finally, provide recommendations for remedy.

II. The EPA Ignoring Disastrous Hazardous Waste Export

With the “proposed rule” the EPA continues to ignore its obligations under international law as well as national laws and policies designed to provide protection against the egregious environmental injustice perpetuated by legal export of hazardous wastes to developing countries. Not only will the proposed rule continue to deny the basic human and environmental rights of populations in developing countries, the new rule seems intentionally designed to direct even more hazardous wastes toward these destinations.

The international commitment to provide controls and even prohibitions on hazardous waste exports is hardly a new one, having been discussed and agreed to, often with the full support of the US government, for the last 15 years. Indeed, with respect to the export of CRTs without controls, the US is currently, and will continue to be, in legal violation of OECD Decisions that were made as early as 1986 and which are still in legal force. Indeed, this “proposed rule” is not only an illegal attempt to turn back the clock 15 years -- it is also a U-turn away from existent U.S. policies on environmental justice.

The publishing of the “proposed rule” on June 12, 2002 is especially disturbing as the Basel Action Network, together with the Silicon Valley Toxics Coalition and other organizations had, four months earlier released the report “Exporting Harm: The High-Tech Trashing of Asia”, which fully exposed the grave danger imposed by US hazardous electronic waste exports to countries in Asia. This report’s findings were published in the New York Times and widely reported in all major global media outlets. Clearly the EPA had plenty of time to address the issues exposed by the report in the “proposed rule” but they intentionally chose to ignore these concerns – even in the face of violations of international law.

As an integral part of these comments we are attaching a copy of “Exporting Harm: The High-Tech Trashing of Asia” as well as a videotape by the same name documenting the fate of US CRTs in Asia.
Rather than seek to address and correct the detrimental flow of wastes from US shores, EPA spokesperson Bob Tonetti has actually stated to the press that exports are part of the US strategy for E-waste. And EPA CRT rule spokesperson Ms. Marilyn Goode has stated to the press, “We don’t have the authority to treat exports differently from things that are recycled domestically.” These statements are incorrect and very sad, particularly coming from the richest, most well resourced country in the world and in the latter case, the statement is simply incorrect. The Basel Convention goal, officially agreed to by the United States when they signed that Convention in 1989, calls for national self-sufficiency in waste management through waste minimization and reductions in transboundary movements of waste. Certainly, utilizing developing countries as a dumping ground for hazardous wastes resulting is precisely what the international community sought to prevent with the Basel Convention as this presents an obvious environmental and human rights injustice.

And as far as the lack of authority goes, on the contrary, the authority has been mandated since 1986 and until recent EPA exemptions from RCRA has been a part of USA law. Consequently, as explained in detail below, there is currently a legal contradiction in the US between our binding obligations under international OECD decisions (to which the US is a Party) and under RCRA. Granted, many of the problems with exemptions on controlling waste destined for export preceded the “proposed CRT rule”. However, rather than using the current opportunity to resolve those serious breaches and close the export loopholes, the EPA is, in the “proposed rule”, providing even more loopholes that will increase the likelihood that even more wastes will be able to be exported off-shore.

As pointed out in “Exporting Harm”, export of hazardous electronic waste not only harms the environment of the recipient country, it does a disservice as well to the exporting country by preventing the development of an infrastructure for domestic recycling and by avoiding more appropriate upstream waste prevention and design for environmental solutions. This latter concern is a serious one irrespective of the capacity of developing countries to manage imported hazardous wastes.

1. Derogation from Environmental Justice

It is extremely disturbing that a rule that allows the export of hazardous wastes to developing countries with no control, notification or prohibitions whatsoever actually includes text that asserts that environmental justice policies of the United States will not be denied by the “proposed rule”. As quoted in the “proposed rule”, “the Agency’s goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA’s policies, programs and activities.”
The catch here is that the USA currently does not respect environmental justice beyond its own national borders. Apparently, if you aren’t a US citizen, then principles of justice do not apply. By virtue of promoting free trade in hazardous waste, the US EPA can conveniently ignore the moral basis of environmental justice and simply find its populations for disproportionate environmental burdens across its North and South borders or on foreign shores. An environmental policy without similar regard to foreign populations is morally bankrupt and makes a laughing-stock of the government’s alleged commitment to environmental justice.

2. Derogation from OECD Treaty Obligations

In 1986, culminating in Council Decision-Recommendation C(86)64(final), a binding decision that is still in force, the OECD countries including the United States agreed to:

1. Provide for a regime of prior informed consent (PIC) so that all importing countries would have to consent to receiving hazardous wastes prior to export for disposal or recycling.

   Today’s reality: With respect to virtually all hazardous electronic waste the US EPA has created exemptions in violation of this requirement.

2. Provide that competent authorities have the authority to prohibit export in appropriate instances.

   Today’s reality: EPA claims they still lack such authority.

3. Establish the responsibility on the part of the exporting government to ensure environmentally adequate disposal/recycling facilities.

   Today’s reality: EPA has no mechanism for examining the short or long-term adequacy of environmentally sound facilities abroad.

This Decision-Recommendation is in fact much of the basis for RCRA Part 262, Sub-part E, (see below in II.5), which the EPA proposes to ignore in the “proposed rule”, contrary to the opinions of the Common Sense Initiative Council.

Yet CRTs clearly fall under the hazardous waste definitions of the OECD Decision-Recommendation. The definition of hazardous waste in this OECD decision include a Y list of hazardous constituents and waste streams to be controlled as long as they possess hazardous characteristics listed in Table 5. Table 5 includes substances considered “toxic” and “capable of creating toxic leachate”. Clearly, lead, listed as Y31 (“Wastes having as constituents lead or lead compounds”) from CRTs has been demonstrated to create toxic lead leachate by virtue of their failure to pass the Toxic
Characteristic Leaching Procedure (TCLP) test’s threshold of 5mg/l. So it is clear that CRTs fall under the OECD Council Decision-Recommendation C(86) 64 (final) having satisfied both lists.

It is likewise clear that the OECD Decision-Recommendation makes no exemptions for “small quantity generators” or individuals, no exemptions for “recycling destinations”, and no exemptions from the definitions of hazardous wastes or wastes to be controlled. According to the OECD Decision-Recommendation, CRTs are in fact hazardous waste, from any source, and bound for any recycling or disposal destination in any country in the world.

It is therefore certain that any exemption as proposed under the “proposed rule” and indeed the current rule, with respect to export controls on hazardous waste exports to any country, is in fact illegal based on US obligations under OECD treaty law. The OECD Decision-Recommendation would mandate that such material is defined in all cases as “waste” and “hazardous waste” and that Sub-Part E of RCRA or its equivalent apply.

Even under a very recent Decision of the OECD regarding trade in wastes for recycling among OECD member states (Decision C(92)39/FINAL), the “proposed rule” is found to be illegal as CRT waste must, in fact, under such rule, be defined as a waste and moreover, an “amber” listed waste subject to export controls that are not stipulated in the “proposed rule”. These export controls are found in RCRA 40 CFR Part 262 Sub-part H and apply to trade with OECD countries.

Thus even with respect to CRT exports to OECD member states for recycling, the “proposed rule” is in legal violation of US obligations under OECD treaty law.

3. Derogation from Basel Convention

While the United States is not a party to the Basel Convention and remains the only developed country that still has not ratified it, they have signed it, and it remains administration policy that they desire to become a Party to it.

Thus it would seem logical that the EPA would seek to align its definitions with those of the Basel Convention that in fact they have helped to negotiate (even as a non-Party). But unlike the EPA’s proposals of recent years, including the “proposed rule”, the Basel Convention does not make legal distinctions with respect to “waste” or “hazardous waste” based on whether or not its fate is for recycling or final disposal or whether it “resembles a commodity”. Nor do the regulations make exemptions in the definitions for small quantity generators. Further, they do not exempt from control “wastes collected from households”. These latter, post-consumer wastes, are controlled as “other wastes” (Annex II) under the Convention.
The Basel Convention defines waste as any material destined to recycling and disposal destinations (listed in its Annex IV). It defines hazardous waste by virtue of a series of lists. On the list of wastes presumed to be hazardous are the following:

**A1180** Waste electrical and electronic assemblies or scrap containing components such as accumulators and other batteries included on list A, mercury switches, glass from cathode-ray tubes and other activated glass and PCB-capacitors, or contaminated with Annex I constituents (e.g. cadmium, mercury, lead, polychlorinated biphenyl) to an extent that they possess any of the characteristics contained in Annex III.

**A2010** Glass waste from cathode-ray tubes and other activated glasses

Under the Basel Convention, regardless of whether or not the CRT, or CRT glass, is going for repair, recycling or reclamation, is processed or not, or is generated by a small quantity generator – it is all considered hazardous waste by virtue of its hazardous characteristics and its ultimate type of destination.

The justification by the EPA that some wastes more “resemble a commodity” than a waste, just because they are to be recycled is not at all consistent with the Basel Convention definitions of waste.

The glib, reckless, de-listings practiced by the United States, assumes that simply because something is going to be recycled that it somehow loses its hazardousness and inherent risk. It assumes that it will be recycled in an environmentally sound manner and that all collection and transport of same will likewise be done in an environmentally sound manner. However, history shows that this is rarely the case and in fact some horrific processes and methods can qualify as “recycling”. Hazardous waste recycling historically involves some of the more hazardous and polluting operations known, and always results in some toxic wastes that cannot be recycled that remain, often as serious pollutants.

**Hazardous wastes, whether going for disposal or recycling, are hazardous wastes according to OECD decisions, and the Basel Convention.** Rather than de-listing and de-regulating this material, the EPA should be promoting toxics use reductions, and waste avoidance. Recycling is not the ultimate goal for hazardous waste – elimination is.

*If* it is still deemed that rule changes are necessary to better streamline management of such wastes *domestically*, it should never be accomplished by *altering definitions* that will impact how the waste is handled for export as well, but rather by the creating domestic procedures applicable to existent definitions. By altering definitions and thus de-listing toxic materials from the scope of regulation, all control is lost when it might be sorely needed, such as in control over export.

This de-listing sends the signal that, contrary to norms established in the global community, the US does not care at all about what happens to their pollution outside of
their own boundaries. And, in the process, the United States places itself further and further out-of-step with the rest of the world in a time when increasing international harmonization of definitions and cooperation is needed.

Thus, the “proposed rule”, which continues to establish policy exemptions from the normal science-based definitions of waste and hazardous waste, will make it increasingly difficult for regulators and legislators to ever implement the Basel Convention, when the US does in fact ratify it. This is seen as especially absurd, while RCRA rule writers are accomplishing with their left-hand, rules that will have to be reversed when the right-hand finishes its Basel implementation legislation (now an ongoing process).

A similar mistake was made by the government of Australia several years ago and they were forced to undergo a serious reworking of all of their hazardous waste rules to accommodate the fact that under Basel Convention obligations, hazardous waste remains hazardous waste regardless of its eventual fate.

The United States, by virtue of this “proposed rule”, will in fact be the only country in the world that will not include CRTs and CRT glass as a hazardous waste. Clearly this position is based on economics, not on recognition of internationally recognized science and legal obligations.

4. Derogation from the Basel Ban Amendment

During the period of time that the United States remained a non-Party to the Basel Convention after signing it, the Parties to that Convention in 1994 and again in 1995 passed a consensus decisions to adopt a no-exceptions ban on all hazardous waste exports from countries that are a part of the OECD, the European Union and Liechtenstein to any other countries. This has been formally adopted as an amendment to the Convention that will enter into legal force after receiving the requisite number of 62 ratifications (currently it has 30). By current estimates, based on recent ratification rates, this amendment is expected to enter into legal force in about 5-6 years. In the meantime, however, most countries of the OECD/EU group, including all fifteen member states of the EU, have already implemented this agreement and are abiding by it. Under this agreement, OECD/EU/Liechtenstein countries are required to forbid all export of hazardous wastes defined under the Convention to countries such as China, Vietnam, Philippines, India, Pakistan, etc. that are currently on the receiving end of US waste collected for recycling.

It is unacceptable that the United States, a nation that purports to uphold principles of environmental justice, only applies such principles to human beings that reside within its own borders, while ignoring the human and environmental rights of foreigners, particularly in poor, developing countries. Clearly such principles have a moral imperative that applies to all peoples. This is the principle that the Basel Ban Amendment sought to address and is one that the United States should embrace in any rulemaking or legislation.
5. Derogation from RCRA Principles

In 1986, the government amended RCRA to include the basic principle of Prior-Informed-Consent (PIC) for hazardous waste in order to reflect the OECD law established that same year (see above). 40 CFR, part 262, Sub-Part E lays out the notification procedure applicable to hazardous waste destined for disposal or recycling. Sub-Part H in turn lays out the procedures that must apply for exports for recycling to OECD countries.

By de-listing materials from their “solid waste” or “hazardous waste” designation, as the EPA once again proposes to do, the EPA has removed these wastes from the possibility of applying to the text of Sup-Part E and H, and therefore from regulation.

Indeed the “proposed rule” even allows derogation from Sub-Part H with respect to exports of CRTs within the OECD area. Yet the OECD considers CRTs to be an “amber” controlled substance by virtue of it appearing on Annex VIII of the Basel Convention (OECD Decision C(92)39/FINAL, Appendix 4, Part I, (a)).

Not only are these definitional de-listings illegal according to the United States’ international legal obligations under OECD treaty law, but they are a far departure from the original intent and principle embodied in RCRA – which was to control all exports of materials containing hazardous constituents possessing hazardous characteristics and limit them to exports which have first received the consent of importing nations.

A statement occurs in the “proposed rule” as follows:

“Since these materials would no longer be considered solid or hazardous wastes, the Agency would not have the legal authority to require notification under 40 CFR, part 262, subparts E and H, or the authority to require additional notifications.”

This statement is in itself legal nonsense. The Agency does not in fact have the legal right under OECD treaty obligations to do what they have actually done – to redefine hazardous wastes, with respect to export, from what has already been agreed as definitions under those treaty obligations.

6. Derogation from Stockholm Declaration / Chinese National Law

Principle 21 of the Stockholm Declaration signed in 1972 reads as follows:
“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

Principle 24 reads as follows:

“If international matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing.”

The United States signed the Stockholm Declaration 30 years ago. However, the United States, with the assistance of the “proposed rule”, appears to be ignoring its key principles. Clearly, hazardous waste exports to countries like China, which has published a full ban on the import of CRT waste in January of 2000, cannot be considered consistent with the above principles. Indeed, China, has recently reiterated this ban in statements made to the mass media following the BAN/SVTC report “Exporting Harm” and have even called for exporting countries to take more responsibility in preventing exports.

The continued export by the United States to a country that has banned the import of this same waste, with the full knowledge of the US, flies in the face of the Stockholm Declaration’s “responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction, and the “cooperative spirit by all countries, big and small, on an equal footing.”

III. Exemptions for Small Quantity Generators and Households Unacceptable

It is far past time to revise RCRA to rid it of the dangerous exemptions for hazardous waste derived from households and small quantity generators.

We cannot support, nor comprehend any rule that on the one hand claims that its intent is to encourage recycling, and to protect the environment, yet at the same time allows small quantity generators, individuals and households to be exempt from all regulation.

As noted in the “proposed rule”, the average household has between 2-3 computer/CRT units in storage awaiting disposal. This is an astronomical amount of hazardous waste that could easily be destined for inappropriate landfill or incineration. The environmental impact from this free and legal pollution is simply unacceptable. In addition, electronics recyclers will be reliant only on the volunteerism of those individuals that are willing to pay out of their own pocket to do the “right thing”, rather than simply doing the “legal
thing”. Rather, with an issue this important and significant to the long-term health of our nation, the “right thing” should become the “legal thing”.

Further, if individuals are made the weak link in the chain of waste management regulation, then all CRTs and mercury-containing wastes can easily be shifted to the individual level to avoid regulation. Thus, as long as the “individual” is exempt at household level, the individual will be the path of least resistance for those wishing to avoid disposal costs. Loopholes allowed will be loopholes exploited – even by those for which they were not designed – large generators. For example by allowing “small generators” the stipulated approximately 7-8 CRTs per month to be disposed legally with no control whatsoever, it will mean that large scale users will simply rotate their monitors out of service rather than dumping them en masse. Even major users could remove almost 100 monitors each year in this manner. Given a life span of 4 years, this will mean that a company even with about 400 computers will be able to adjust quite easily to the loophole.

Then there is another very easy possibility of large generators giving their working monitors stocks away to their employees. Such gifts could even be written off in taxes and there would be no limit to the “disposal” a company could accomplish in this way. And there is no limit how many of these could be given away to each individual employee.

Finally, by exempting individuals and small businesses from facing up to the toxic materials in their consumer products, we circumvent the loop of responsibility that will impact green consumer choices. If responsibility is to be shared, as industry demands, then indeed consumers have to bear some responsibility and consequences and the subsequent awareness for their choices. If costs continue to be externalized via loopholes for small quantity generators which in effect subsidizes the pollution costs for manufacturers and consumers, there remains little incentive for consumers to become part of the solution by virtue of their consumer choices (e.g. by preference for toxic free computers or limiting unnecessary consumption), and even less incentive for manufacturers to press on for design-for-environment.

Of course, while a “stick” only approach to the end-of-life of a CRT is not the sole answer to the problem, and programs that place environmental costs at the front-end will provide the real way forward, such front-end solutions are unlikely to be put in place without applying real costs to end-of-life and forbidding free and legal pollution by anybody.

Already California and Massachusetts have forbidden the household deposit of monitors into solid waste management systems. The federal government should
do the same. It is essential that consumers and individuals not be left out of the loop of responsibility. If it is inappropriate for one user to dump 1,000 CRTs, then it is equally inappropriate for 1,000 users to dump 1 CRT each. Special rules for prohibiting households from discarding hazardous wastes into solid wastes systems are long overdue.

IV. Unacceptable that Circuit Boards and Equipment Containing Circuit Boards are not considered Hazardous Waste

In the “proposed rule” the EPA writes:

“The Agency is studying certain non-CRT electronic materials to determine whether they consistently exhibit a characteristic of hazardous waste. However we are not currently aware of any non-CRT computer components or electronic products that would generally be hazardous wastes.”

EPA further claims that they have already handled issues of circuit boards in previous rule making. However, those previous rules have similarly served to inappropriately exempt circuit boards from most hazardous waste controls and regulation, including ceding all control over export, as long as somebody claims the material will be recycled. And yet the EPA, with respect to the material that is exported, has no proof that the material will be recycled at all or that it will be done in an environmentally sound way.

The EPA is fully aware that circuit boards are far more hazardous than are CRTs. Australia has already shared the data they produced on circuit boards with other OECD members. Environment Australia, in their effort to comply with the Basel Convention, was forced to determine the hazardousness of various electronic waste components. They measured lead leachate via the Toxic Characteristic Leaching Procedure (TCLP) from circuit boards and found it to reach levels between 142 - 1,325 mg/L. In the table below, one can readily see the lack of sense in regulating CRTs while ignoring circuit boards.

| USA Lead Threshold for Hazardous Waste: | 5.0 mg/L of lead |
| Color CRTs Average: | 22.2 mg/L of lead |
| Circuit Boards: | 142.0 to 1,325.0 mg/L* of lead |

Based on the above levels, Australia concluded that due to the high failure rate of circuit boards, it could be concluded that all equipment containing circuit boards, unless these were removed from them, would also qualify as hazardous waste. Indeed, lead from circuit boards is far more bio-available than lead and barium bound in a glass matrix, as the lead solders are directly on the surface of the boards.
Just as CRTs are covered under the OECD and Basel Conventions, so too are circuit boards. Thus, at a minimum, all export of circuit boards and equipment containing circuit boards must be subject to export notification and consent, knowledge of adequate environmentally sound recipient destinations, etc. in compliance with OECD and Basel Convention norms regardless of whether they are destined for recycling or whether or not they derived from households.

Further, any small quantity generator or household exemption from such definitions is unacceptable for the reasons given above for CRTs.

V. Responsible Recycling and Community Right-To-Know

The EPA conveniently places blinders on its regulatory eyes, once the word “recycling” is muttered. This patently and blindly serves the interests of large manufacturers by ignoring real solutions of hazardous waste avoidance, while providing the placebo effect that the “green” word “recycling” implies. The fact remains that where hazardous waste is concerned, recycling is not at all the best solution. In fact export for recycling does a large disservice to the environment in Asia and to the exporting country by preventing waste avoidance measures and toxics use reductions. With respect to non-hazardous wastes such export for recycling also prevents the build-up of domestic recycling infrastructure.

It is also important that domestic recycling of CRTs be strictly regulated for all known occupational and environmental hazards, including implosion, silicosis, phosphor exposure, lead-barium releases, and exposure. The facilities we have observed in this country lack knowledge of the hazards inherent in CRT waste and in fact often break open CRTs with little protection for workers for example from toxic phosphor compounds.

It is not sufficient to simply encourage greater recycling. Recycling of hazardous waste poses serious threats to workers and communities unless stringent performance standards including environmental management systems to ensure best practices, and tracking of wastes downstream is mandatory. Likewise, there must be strong oversight of the recycling of circuit boards and designated universal waste recycling.

As part of strong RCRA oversight of recyclers, it is imperative that the “proposed rule” reinstate the Common Sense Initiative (CSI) Council’s recommendation that CRT recyclers and glass processors implement procedures for advising local communities of their activities and the potential for resident and worker exposure to lead, phosphor and other hazardous substances. The EPA’s “proposed rule” defers to an alleged history or preference for “local authority” to provide notice, despite ample evidence and precedent of federal regulations providing community and worker right-to-know. These provisions must be included in the “proposed rule”.
## VI. Proposed Rule Provisions

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<thead>
<tr>
<th>Provision Proposed</th>
<th>Acceptable?</th>
<th>Reason</th>
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<tbody>
<tr>
<td>Households not Regulated for CRTs and Mercury Containing Equipment</td>
<td>No</td>
<td>– Households are major source of hazardous CRT and mercury-containing waste&lt;br&gt;– Provides no consumer awareness or responsibility for their generation of waste&lt;br&gt;– Allows easy loophole for regulated users to pass wastes to individual level</td>
</tr>
<tr>
<td>Small-generators (CESQCs) not Regulated for CRTs and Mercury Containing Equipment</td>
<td>No</td>
<td>– CESQCs are major source of hazardous CRT and mercury-containing wastes&lt;br&gt;– Provides no consumer awareness or responsibility for generation of waste&lt;br&gt;– Allows easy loophole to simply dispose of electronics on a month-to-month rotation instead of in bulk</td>
</tr>
<tr>
<td>Not Regulating CRTs destined for re-use or repair</td>
<td>No (unless export option is forbidden for repair)</td>
<td>-- It is illegal under OECD treaty to export this material to any country without prior-informed-consent.&lt;br&gt;-- No guarantee that CRTs will really be repaired particularly when they are exported.&lt;br&gt;– These are still considered a waste under Basel and OECD regimes.&lt;br&gt;– When they are exported for repair, the broken or discarded parts deposited in the recipient country constitute the export of serious pollution</td>
</tr>
<tr>
<td>Off-spec CRTS are considered products and not wastes</td>
<td>No</td>
<td>– Export of this material without prior-informed consent is illegal under OECD treaty C(86)64/Final&lt;br&gt;– By considering such wastes “non-wastes” any form of control over export such as prior-informed-consent or how it is recycled, if it is recycled at all, is impossible&lt;br&gt;– This “streamlining” will only result in more off-shore dumping of US toxic consumer waste&lt;br&gt;– If this hazardous waste is exported there can be no control over&lt;br&gt;– Export of this material must be forbidden or at the very least controlled by Sub-Part E of Part 262&lt;br&gt;– Definitions of USA should be aligned with the OECD and Basel Convention to avoid serious problems when USA ratifies. The Basel Convention and the OECD consider this material as a hazardous waste.&lt;br&gt;– Export of hazardous waste to developing countries is a violation of principles of international law and environmental justice.&lt;br&gt;– There is real need for environmental training and performance standards for domestic recyclers.</td>
</tr>
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</table>
| Whole used circuit boards and shredded circuit boards are not regulated by RCRA if recycled | No | – Export of this material without prior-informed consent is illegal under OECD treaty C(86)64/Final  
– These materials are far more hazardous than CRTs and are indeed wastes  
– Recycling of these materials can be extremely hazardous  
– If this hazardous waste is exported there can be no control over how it is recycled, if it is recycled at all.  
– Export of this material must be forbidden or at the very least controlled by Sub-Part E of Part 262  
– These materials are covered by Basel Convention hazardous waste definitions that the USA should align with to avoid problems upon ratification.  
– Export of hazardous waste to developing countries is a violation of principles of international law and environmental justice.  
– There is real need for environmental training and performance standards for domestic recyclers. |
| Broken CRTs sent for recycling are conditionally excluded from RCRA. | No (unless the export is forbidden or at the very least subject to Sub-Part E and H of Part 262) | – Export of this material without prior-informed consent is illegal under OECD treaty C(86)64/Final  
– This “streamlining” will only result in more off-shore dumping of US toxic consumer waste  
– If this hazardous waste is exported there can be no control over how it is recycled if it is recycled at all.  
– These materials are covered by Basel Convention and OECD hazardous waste definitions that the USA should align with to avoid problems upon ratification.  
– Export of hazardous waste to developing countries is a violation of principles of international law and environmental justice.  
– There is real need for environmental training and performance standards for domestic recyclers. |
| Speculative Accumulation of CRTs is Forbidden | Yes | – such accumulation is dangerous as abandonment is likely |
| Glass Processors must store broken CRTs indoors and in accordance with packaging and labeling requirements, speculative accumulation, and must avoid temperatures high enough to volatilize lead | Yes | – all necessary precautions |
| Processed Glass if sent to a glass-to-glass manufacturer or lead smelter is not regulated under RCRA. Processed Glass if sent to other forms of recycling only has to comply with Universal waste-type packaging requirements. | No (unless the export is forbidden or at the very least subject to Sub-Part E and H of Part 262) | – Export of this material without prior-informed consent is illegal under OECD treaty C(86)64/Final
– If this hazardous waste is exported there can be no control over how it is recycled if it is recycled at all.
– These materials are covered by Basel Convention and OECD hazardous waste definitions which the USA should align with to avoid problems upon ratification.
– Export of hazardous waste to developing countries is a violation of principles of international law and environmental justice.
– There is real need for environmental training and performance standards for domestic recyclers. |
| Speculative Accumulation of processed glass forbidden | Yes | – necessary precaution |
| No plans to restrict any form of export of CRT or circuit board waste | No | -- Export of this material without prior-informed consent is illegal under OECD treaty C(86)64/Final
– The recycling of this material can be very polluting if not done correctly, and, if the material is exported, there is no control over this.
– Export of hazardous waste to developing countries is a violation of principles of international law and environmental justice.
-- These materials are covered by Basel Convention and OECD hazardous waste definitions which the USA should align with to avoid problems upon ratification |
| No Plans to Provide Right-to-know provisions or Performance Standards for Recyclers | No | – Recycling of hazardous wastes are some of the most polluting enterprises known. Regulation must be as strict as for users and disposers of hazardous wastes and materials. |
| Mercury Containing Equipment will be Regulated as a Universal Waste | Yes (but only if individual and small generator exemptions are closed; export to developing countries forbidden; and manifests for such waste required for tracking purposes) | – Mercury-containing equipment deserves regulation as a hazardous waste
– Mercury-containing equipment will be subject to RCRA prior informed consent provisions. |
VII. Recommendations for a Correct Ruling

1. That CRTs, CRT glass, circuit boards and equipment containing the same, as well as mercury-containing equipment all be regulated as hazardous wastes, and as such, are to at the very least, be subject to sub-parts E and H of Part 262 regarding export. Further, full manifests to track the chain of custody must be required.

2. That a complete review be made of RCRA with a view to correcting all illegal derogations from OECD treaty obligations, in particular with respect to inconsistencies found in RCRA relative to Council Decision-Recommendation C(86) 64 (final) and its amendments. Special attention must be paid to exemptions from hazardous waste and solid waste definitions made by the USA for materials that are, in fact, recycled and discarded and that possess hazardous characteristics and thus are considered hazardous waste under OECD and Basel Conventions.

3. That RCRA is amended to forbid all CRTs, CRT glass, circuit boards, and all equipment containing same, and all universal wastes, from being placed into solid waste landfills or incinerators for any reason, and instead must be taken to a licensed recycler, returned to the retailer from which they were purchased or to the manufacturer within the country of consumption.

4. That the United States ratify the Basel Convention together with the Basel Ban Amendment. That in the interim period prior to the ratification of the Basel Convention together with the Basel Ban Amendment, the United States implements, via rule-making procedures, provisions that reflect the Basel Convention and the Basel Ban Amendment as if they were full Parties to these agreements.

5. That EPA include rules that stipulate the strongest performance standards for environmentally sound hazardous waste recycling including full community and worker right-to-know provisions.

VIII. Attached Report and Video: Exporting Harm: The High-Tech Trashing of Asia.

END

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