EPEAT Label Should Not Use Recycling Standards That Violate International Waste Trade Laws

January 19, 2010

The End Of Life (EOL) Subcommittee of the Electronic Products Environmental Assessment Tool (EPEAT) standards writing process is currently considering requirements for the recycling of EPEAT registered products in new EOL criteria for TVs and imaging devices. Stakeholders are drafting requirements for minimum electronics recycling standards that will be allowable for OEM recycling of registered products. Any standard that meets these minimum requirements would be added to the list of acceptable recycling standards for takeback programs for EPEAT products.

“R2” and “e-Stewards” have already been mentioned as standards that could be approved by the EPEAT program. The Basel Action Network (BAN) and the Electronics TakeBack Coalition (ETBC), however, have been warning the EPEAT Subcommittee that R2 and any other standards utilized by EPEAT must use definitions and requirements consistent with international laws (e.g. the Basel Convention) for the purposes of exporting electronic waste. This is especially true because EPEAT is now available for use in 40 countries and others will be added in the future. Below, we explain why we believe EPEAT must call for recycling standards that work, by and large, for any nation, and for trade between nations, in accordance with national and international rules. We use the R2 standard as an example of one standard that fails to do that, but these issues could apply to any standard that is not compatible with international law.

As an international program, we believe EPEAT has a responsibility to respect existing international and national definitions and laws in the EOL criteria, and specifically in the recycling standards that are approved for use in recycling EPEAT-registered products. To do less than this could result in the EPEAT program aiding and abetting the illegal activity already too common in the electronics recycling industry.

Unless Changed R2 will Create Conflicts and Illegality for EPEAT Users

R2 violates the trade laws of most of the world – including the new EPEAT countries

The R2 standard was not created for use in nations outside the U.S., yet some stakeholders are now advocating using R2 internationally within the EPEAT program. However, this would create significant problems for the implementation and credibility of EPEAT because many provisions of R2 will actually violate the laws of all 39 countries of EPEAT other than the United States.
Global label shouldn’t violate global treaties

EPEAT can’t, of course, be absolutely consistent with every single law of every country where it’s used. But we are talking about the violation of global treaties for trade in hazardous wastes that most of the world has ratified – the Basel Convention, the Basel Ban Amendment, and the OECD Decision (explained below). Of the 40 current EPEAT countries, all but Taiwan and the U.S. are Parties to the Basel Convention, and Taiwan adopted rules fully consistent with Basel.

Using voluntary standards lower than the law undermines EPEAT credibility

The risks to EPEAT of using an U.S. standard for the international registry is of great concern to those who want to see the EPEAT label succeed; it is very likely that the use of a standard that prescribes specific practices which will result in illegal activity in other countries will undermine the credibility of the EPEAT brand. Worse, it could result in real damages to users and possible litigation, as R2 certified companies in other countries are cited or shut down for violating laws as a result of following the EPEAT dictated “R2 Practices”. Voluntary standards are usually meant to go beyond the law – certainly not spell out multiple options that violate law.

Can’t expect that local laws will be followed - Audits don’t verify legal compliance

Some stakeholders argue that we can overcome the R2 conflicts with global treaties on waste trade by simply saying in the standard that local laws will trump whatever is in the standard. We can say that, and indeed the R2 standards attempt to do that, but that is not going to happen. Here’s why.

For the local laws to effectively supersede the R2 standard, two things would have to happen:

a) The R2 auditors and recyclers would have to be made aware of the parts of the standard which are in conflict with laws and regulations (there is no plan to do this); and

b) R2 auditors would have to perform legal compliance audits, showing that R2 recyclers comply with the laws.

But with respect to (b) above, that is not what auditors will actually be doing. R2 is a voluntary standard not linked to any specific laws. Like most such certification programs, there is no expectation for R2 auditors to assure compliance with all applicable laws. It is the job of governments or government sanctioned programs do that. Rather, the R2 auditors will be doing environmental management audits, which verify that the recycler has “a plan for complying with the environmental, health, and safety legal requirements relating to its operations.” Thus it will be nobody’s responsibility to point out the contradictions between the R2 language and the law.

How R2 Provisions Violate International Law

Most countries of the world (172) are parties to the Basel Convention, a United Nations treaty governing hazardous waste trade. And 67 countries have ratified an agreement known as the Basel Ban Amendment, prohibiting the export of hazardous waste from developed to
developing countries. Many of these countries (including 32 of the 40 EPEAT countries) have already put this Amendment into legal force (e.g. in all EU).

Unfortunately, R2 ignores the Basel Convention, the Basel Ban Amendment, and the definitions of hazardous waste used in both. And instead of referencing these existing international trade laws, it defines multiple “R2 Practices” which, if followed in the 39 non-U.S. EPEAT countries, will result in violations of the law.

Finally, R2 is even at odds with U.S. law due to the fact that it does not stipulate that exports to other OECD countries must be in accordance with established OECD rules. The chart below explains how R2 violates these global agreements.

<table>
<thead>
<tr>
<th>How R2 Violates International Laws</th>
<th>What R2 Says</th>
<th>What International Law Says</th>
</tr>
</thead>
</table>
| **R2 uses a narrower list of hazardous chemicals (called Focus Materials in R2) than do the Basel Convention countries** | R2’s definition of the toxic materials: “The following are R2 Focus Materials:
(1) Items containing polychlorinated biphenyls (PCBs),
(2) Items containing mercury,
(3) CRTs and CRT glass,
(4) Batteries (5) Whole and shredded circuit boards, except for whole and shredded circuit boards that do not contain lead solder, and have undergone safe and effective mechanical processing, or manual dismantling, to remove mercury and batteries.”
This list is applied to what is subject to export controls. | The Basel Convention’s list of hazardous waste which it controls by trade restrictions includes the following constituents, which are not in R2:
- Cadmium
- Beryllium
- Chromium
- Arsenic
- Selenium
- Hazardous toners
- Flammable materials
Note: circuit boards and other parts often contain beryllium, cadmium, selenium, etc. |
| **R2’s exemption for exporting “de minimus” amounts of toxics conflicts with international law** | R2’s list of focus materials exempts, “Equipment, components, or materials (whole or shredded) that have undergone safe and effective mechanical processing or manual dismantling to remove FMs, yet still retain de minimus amounts of FMs, are not subject to the R2 requirements that are triggered by the presence of FMs.”
In addition, R2 does not define the term or levels of “de minimus,” leaving this open to wide interpretation. | The Basel Convention does not normally apply a “de minimus” quantity. The only exception for this is PCBs (50ppm limit). Thus exports of these in accordance with R2 requirements would very likely violate Basel. |
<p>| <strong>R2 uses methods for determining legality of</strong> | R2 provides 3 options for R2 recyclers/brokers to “identify and...” | If used in any of the 172 Basel countries, the three R2 methods of... |</p>
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| imports in other countries that violate international law | document the legality — under the laws of the importing countries – of all international shipments by obtaining documentation. The documentation shall consist of one of the following:  
“(A) A copy of the relevant information from the United States Environmental Protection Agency,” or  
“(B) Documentation from the country’s Competent Authority stating that the country legally accepts such imports,” or  
“(C) A copy of a law or court ruling from the importing country that demonstrates the legality of the import.” | determining legality of imports would all be illegal. This is because in all cases the government must, through communication with other governments, determine the legality of all shipments of potential Basel wastes – this duty cannot be transferred to recyclers or brokers. Problems with the specific options are as follows:  
(A) Documentation from the U.S. EPA would be meaningless in any other country (besides the U.S.)  
(B) Documentation from any one country alone is not enough, as trade must be approved by all countries concerned, including importing, exporting, and transit countries. Furthermore, the importing Basel Parties are legally bound to consider each shipment on a case by case basis, based on what it contains, whether there is current capacity, whether the destination facility is environmentally sound, properly permitted, and whether or not it is even legal to trade with the exporting country, etc. Or they may also provide “general consent” under specific conditions but again only to specific facilities, for specific wastes – not a blanket approval.  
(C) This method of determining legality is likewise illegal for Basel countries. Recyclers in one country are not allowed to interpret the requirements of other countries by purporting to possess the right documents. All must be done through governments as described above. |
<p>| R2 has no rules for exports through transit countries | R2 is also completely silent about ensuring legality in transit countries (where ships stop on their way to final destination countries). | All Basel Parties are legally bound to disallow shipments through their ports that are not approved by the transit country authorities, just the same as for importing countries. |
| R2 incorrectly ignores | R2 contains language for exports to | The OECD Decisions (treaties) are |</p>
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<td>non-OECD countries, but it lists no requirements for how recyclers/brokers must manage trade going to OECD countries.</td>
<td>legally binding on 37 out of the 40 EPEAT countries. Contrary to the statement in R2’s Footnote 4, there are specific controls for hazardous waste exports to OECD countries and many forms of trade in wastes between OECD countries are illegal. If countries are exporting listed wastes from OECD to other OECD countries, a modified form of government-to-government prior notification and consent is required. But the R2 standard is silent on this matter, leading exporters to believe they need not notify receiving OECD countries. (The standard is in this aspect illegal even for use in the United States.)</td>
<td>In fact, it contains the following (erroneous) footnote: Footnote 4 reads: “The R2 Document makes the assumption that these shipments are legal to import into OECD countries”. Furthermore, like Basel, the OECD has different definitions of hazardous waste than the R2 Focus Materials.</td>
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<td>Worker health and safety language calls for adherence to U.S. OSHA standards and PELs for sampling and/or monitoring. Footnote 5 requires that: “Recyclers that export used CRTs for reuse and CRT or mixed CRT glass for recycling also have export obligations under USEPA’s CRT rule (FR: July 28, 2006 Volume 71, Number 145).”</td>
<td>OSHA and PELs are U.S. specific regulations, and are not required, used, or enforceable in other countries. The U.S. federal CRT Rule is not enforceable in other countries.</td>
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<td>In Provision 6 (f), R2 says that the R2 broker or recycler “need not conform to the exporting requirements” if they are shipping less than 15 units under certain circumstances.</td>
<td>Most Basel Parties consider non-working equipment with toxins to be hazardous waste, subject to the export controls (and Basel Ban Amendment). Such a ‘small quantity’ exemption would be illegal under the Basel Convention, where there are no ‘small quantity exemptions’ for trade in hazardous waste.</td>
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