

Technology Law Analysis

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WASTE NOT, WANT NOT: NEW RULES TO REGULATE E-WASTE

The Ministry of Environment and Forests ("MoEF") has taken the first step towards reducing the alarmingly growing menace of pollutants from the information age. The E - Waste (Management and Handling) Rules, 2011 ("Rules")¹ framed under the Environment Protection, Act 1986 ("EPA") were published on May 30, 2011 and have come into effect on 1st May 2012. This step is significant in the light of the fact that India generates about 400,000 tonnes of e waste annually of which 19,000 tonnes are getting recycled.² The Rules puts the onus on the producers and the consumers for reducing e-waste.

WHAT IS E WASTE?

E Waste has been defined³ in the Rules as electrical and electronic equipment in whole or in parts or rejects from the manufacturing and repair process, which are intended to be discarded. The electrical / electronic goods to which these Rules are applicable are the following:

Centralized data processing, mainframes, mini computers, personal computing, personal computers (central processing unit with input and output devices), laptop computer (central processing unit with input and output devices), notebook computers, notepad computers, printers including cartridges, copying equipment, electrical and electronic typewriters, user terminals and systems, facsimile, telex, telephones, pay telephones, cordless telephones, cellular telephones, answering systems

WHO NEEDS TO COMPLY WITH THE RULES?

The Rules apply to all producers, consumers, bulk consumers, collection centres, dismantlers, recyclers of e-waste. These terms have been defined in the Rules. "Producer" has been defined⁴ to mean any person who manufactures and sells electrical and electronic equipment under his own brand name or any person who sells assembled electrical and electronic goods under his own brand name or any person who offers to sell imported electronic and electrical equipment. The phrase "offers to sell imported" seems to be quite broad and it seems to bring within its ambit all importers as well as entities engaged in the retail and wholesale of imported electrical and electronic goods. "Consumer" has been defined⁵ as any user of the equipment. "Bulk Consumer" has been defined to mean bulk users of electrical/electronic equipment and to include entities such as Central Government, State Government, public sector undertakings, educational institutes, multinational organisations, international agencies and private companies registered under Factories Act, 1948 and Companies Act, 1956. While this definition does not specifically mention other entities such as partnerships, limited liability partnerships or sole proprietorships, it seems that all entities that are bulk users of the equipment will come within the ambit of the definition, since it is an inclusive definition. The Rules do not apply to batteries, to micro and small enterprises and to radio-active wastes, which are covered by other regulations.⁶

WHAT ARE THE OBLIGATIONS OF PRODUCERS?

- **E Waste generated during the manufacturing process** : The producers are responsible for the collection of e waste generated during the manufacture of the equipment and to channelize it for recycling or disposal. Disposal excludes any operation of recycling, recovery or reuse and includes physico-chemical or biological treatment, incineration and deposition in secured landfill.⁷
- **Extended Producer Responsibility** : the producers have an "extended producer responsibility" which has been defined to mean responsibility of a producer for their products beyond manufacturing till the environmentally sound management of the end-of-life products. Environmentally sound management of e-waste means taking all steps required to ensure that e waste is managed in a manner to protect health and environment against the adverse effects of hazardous substances contained in the waste. In furtherance of "extended producer responsibility" producers are responsible to ensure that e waste of their **end-of-life** products are channelized to registered "dismantlers" or "recyclers" through collection agencies. Producers are required to set up collection centres or take back systems either individually or collectively. "Hazardous substance" has not been defined in the Rules. The EPA defines "hazardous substance" as any substance which by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human - beings, other living creatures, plant, micro-organism, property or the environment.
- **Historical Waste** : producers have an obligation to deal with "historical waste" which is e-waste generated already available as on 1st May 2012. Producers are responsible for organizing and financing system to meet costs involved in environmentally sound management of e waste generated from the end of life of their own products as

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well as the historical e waste. The Rules permit producers to establish these systems either individually or by joining a collective scheme.

- **Reduction in the use of hazardous materials in manufacture** : producers have to ensure that new electrical/ electronic equipment does not contain lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls or polybrominated diphenyl ethers.⁸ This reduction has to be achieved within a period of two years. Thirty nine items have been exempted from this requirement. The list is provided in Schedule II to the Rules.
- **Labeling/Declaration Requirements** : producers need to provide contact details of authorized collection centres to consumers or bulk consumers to facilitate return of used electrical/electronic equipment. In addition producers need to affix a visible, legible and indelible symbol on their products and information booklets to prevent e waste from being dropped in garbage bins. The symbol has been given in Annexure A to this article.
- **Creating awareness** : producers are responsible for creating awareness through publications, advertisements, posters or any other means of communication. In addition producers are required to provide information booklets along with their equipment which inter alia provides information on the hazardous constituents of the product, instructions for handling the equipment after its use.

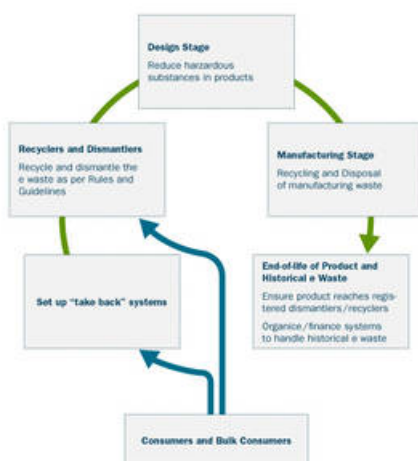
The collection, storage, transportation, disposal etc of e waste is to be carried out in accordance with procedures laid down by the Central Pollution Control Board ("CPCB") from time to time. The current CPCB guidelines dates back to 2008. It is imperative for the industry to keep track of latest guidelines being issued by the CPCB.

WHAT ARE THE OBLIGATIONS OF CONSUMERS?

Consumers are required to ensure that e-waste generated by them is channelized to authorized collection centers or registered dismantlers / recyclers or returned to the producers' take-back systems. Bulk consumers have an obligation to maintain records of e-waste generated by them and make such records available for scrutiny by the State Pollution Control Board. They are not required to file any period statements with any authorities.

REGISTRATIONS AND RETURNS TO BE MAINTAINED /FILED

It is mandatory under the Rules for every Producer to obtain an authorization from the State Pollution Control Board within 3 months of coming into force of the E-waste Rules (i.e. before 1st August 2012). The Producer is required to maintain records of the e-waste handled and to file annual returns with the State Pollution Control Board. In case there is an accident at the facility processing e waste or during transportation, the producer, transporter, dismantler or recycler as the case may be, needs to immediately report the accident to the State Pollution Control Board.



PENALTY FOR CONTRAVENTION

Under the Environment Protection Act, 1986 whoever fails to comply with or contravenes any of the provisions of the Environment (Protection) Act, or the Rules framed thereunder including the E Waste Rules or orders or directions issued thereunder, is punishable with imprisonment for a term which may extend to five years or with fine which may extend to INR 100,000 (approximately USD 2000), or with both, for each such failure or contravention. If the failure or contravention continues, then such person shall be liable with additional fine which may extend to INR 5000 (approximately USD 100) for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. If the failure or contravention continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years. Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence. There are two exceptions that have been carved out. The first is that if a person can prove that the offence was committed without his knowledge or that he exercised all due diligence to prevent the offence, then he will not be liable. The second is that if it is proved that the offence was committed with the consent or connivance of or is attributable to the neglect on part of any director, manager, secretary or any officer, then such persons shall also be liable.

CONCLUSION

These Rules are a welcome first step in reducing e waste. India has been a destination for dumping of e waste from developed countries. Besides, the domestic electronics / electrical consumption has also grown massively in the last few years making the Rules an imminent and urgent necessity. The onus of handling e waste has been placed on the producers right from the design stage till long after the products have been sold to the end consumer. By requiring producers to reduce the use of hazardous substances in their products, the Rules impose restrictions on

the producers right at the design stage. On the other end, by introducing the concept of "extended producer responsibility", it ensures that once the product has reached the end of its life, the producer needs to step in and be responsible for its recycling or disposal. Making consumers also responsible for environmentally sound disposal of electrical / electronic equipment is a laudable step. However, how this provision is going to be implemented needs to be seen. The State and Central Pollution Control Boards will have to play a proactive and dynamic role for an effective implementation of the Rules.

- **Aditi Jha & Gowree Gokhale**

You can direct your queries or comments to the authors

¹ The Rules can be found at http://moef.nic.in/downloads/rules-and-regulations/1035e_eng.pdf

² Business Standard, June 09 2011

³ Rule (3) (1) (k)

⁴ Rule (3) (1) (q)

⁵ Rule (3) (1) (f)

⁶ Batteries are covered by the Batteries (Management and Handling) Rules, 2001, Micro and Small enterprises are defined in the Micro, Small and Medium Enterprises Development Act, 2006 and radio-active wastes are covered by the Atomic Energy Act, 1962.

⁷ Rule 3 (1) (h)

⁸ A maximum concentration of 0.1% by weight in homogenous materials for lead, mercury, hexavalent chromium, polybrominated biphenyls and polybrominated diphenyl ethers and of 0.01% by weight in homogenous materials for cadmium shall be permitted.

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