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Testimony of Mark Murray, Executive Director

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U.S. House Subcommittee on Environment and Hazardous Materials

Thursday September 8, 2005

"Electronic Waste: Does the Federal Government Need to Play a Role"

Introduction:

Good morning, Mr. Chairman and members, my name is Mark Murray, and I am the Executive Director of the non-profit environmental organization, Californians Against Waste. Californians Against Waste is a 28 year old grass roots advocacy organization that has been instrumental in the development and implementation of virtually every solid waste and recycling policy enacted in California for the last two decades.

I have been with the organization for 18 years, the last 10 as the executive director and senior legislative representative.

Californians Against Waste was the legislative sponsor of State Senator Byron Sher's Senate Bill 20, the 2003 legislation which enacted California's first in the nation e-waste recycling law. Along with State Senator Sher, we developed the initial proposal for legislative introduction,

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organized support, and negotiated the final language with a wide range of stakeholders and policy makers.

This morning, I would like to provide the members of the committee with a brief update on the status of the California program.

Additionally I've been asked to talk a little about how the SB 20 compromise came to be.

Finally, I would like to provide our perspective on what additional role the Federal government might play in addressing the e-waste problem.

California's E-waste Recovery & Recycling Act: A Mid-year Update

Program Overview:

On January 1, 2005, California began full implementation of the state's pioneering Electronic Waste Recovery and Recycling Act. The intent of this program is to provide cost-free recycling opportunities for consumers, to reduce and prevent illegal dumping of electronic waste (and reduction in e-waste "stockpiling"), and to decrease the use of hazardous materials used in electronic devices and ultimately entering the environment.

The most prominent and visible feature of this act is the direct funding of public, private and non-profit e-waste collectors and recyclers in order to provide California business, institutional and residential consumers with a 'free and convenient' network of e-waste recycling opportunities. The entire system is 100% self financed through a front-end 'advance recycling fee' collected from all retailers of 'covered electronic devices (CED's)'. The initial fee, set at \$6, \$8, or \$10 per device depending on size, is generally passed on to consumers of CED's at the time of purchase.

Recovery payments are made by the state to authorized recyclers of covered electronic waste (CEW) and set at a level to reimburse recyclers and collectors for the net cost of proper material management. Combined, the collected revenue and the payment system are intended to:

- Provide cost-free recycling opportunities for consumers throughout the state
- Provide financial relief to local jurisdictions
- Reduce / prevent illegal dumping
- Reduce / eliminate the stockpile of waste monitors/TVs

Electronic devices (CED's) covered under the act include: cathode ray tubes (CRT), CRT containing devices, computer monitors w/ CRT, laptops with liquid crystal display (LCD), desktop computers containing LCD, TVs w/ LCD, TVs w/ CRT, and plasma TVs.

Provisions for Adding Devices

The DTSC has statutory authority to adopt regulations that identify electronic devices that are presumed to be, when discarded, a hazardous waste pursuant to this chapter. For example, as of July 2005, plasma and LCD screen TVs were added to the program through this avenue.

Fee Amount

The IWMB may annually review and adjust (increase or decrease) the covered electronic waste recycling fee to assure that there are sufficient revenues to fund the program. This process will use data provided by participants in the Act and the IWMB will use this information to calculate a fee amounts that will be adequate to fund the program but not build large reserves in the program.

Payment Amount

The CIWMB, may adjust the payment schedule every two years to cover the net costs of recycling (for an authorized collector to operate a free and convenient system for collecting, consolidating and transporting covered electronic wastes generated in this state and for an electronic waste recycler to receive, process, and recycle each major category, as determined by the board, of covered electronic waste received from an authorized collector).

Manufacturer Responsibility Under California's E-waste Law

While the Act places the financial responsibility on retailers through payment of the fee, manufacturers still play a role in implementation of the program. They must submit to the board a report that includes all of the following:

1) An estimate of the number of covered electronic devices sold by the manufacturer in the state during the previous year.

2) A baseline or set of baselines that show the total estimated amounts of mercury, cadmium, lead, hexavalent chromium, and PBB's used in covered electronic devices manufactured by the manufacturer in that year and the reduction in the use of those hazardous materials from the previous year.

3) A baseline or set of baselines that show the total estimated amount of recyclable materials contained in covered electronic devices sold by the manufacturer in that year and the increase in the use of those recyclable materials from the previous year.

4) A baseline or a set of baselines that describe any efforts to design covered electronic devices for recycling and goals and plans for further increasing design for recycling.

5) Finally, manufacturers must make information available to consumers, that describes where and how to return, recycle, and dispose of the covered electronic device and

opportunities and locations for the collection or return of the device, through the use of a toll-free telephone number, Internet Web site, information labeled on the device, information included in the packaging, or information accompanying the sale of covered electronic device.

Restricting the Use of Hazardous Materials: California Law and EU RoHs Directive

A key provision of California's act was to reduce the use and generation of hazardous materials in the environment. However, rather than adopting a California specific ban on certain materials, California policy makers chose to piggy back on similar policies already evolving in Europe.

The EU Directive on the Restriction of use of certain Hazardous Substances restricts the use of six substances (lead, cadmium, mercury, hexavalent chromium, polybrominated biphenyls, and polybrominated diphenyl ethers) in electrical and electronic equipment placed on the market after July 1, 2006.

The provisions of the Act require DTSC to adopt regulations that prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union (as a result of Directive 2002/95/EC). The deadline for this manufacturer compliance component in California is January 1, 2007.

Current Progress: A mid year assessment

In the 10 months since implementation, 286 e-waste collectors and 39 e-waste recyclers have stepped forward and are providing consumer and business recycling opportunities at more than 311 locations in the State of California. These locations include everything from non-profit thrifts such as the Goodwill and Salvation Army, to local government operated Household Hazardous Waste collection depots. Several local governments and private sector recyclers have partnered

with electronics retailers to provide point of purchase recycling opportunities. Additionally, many e-waste collectors and most recyclers are providing direct pick-up and recovery services for business and institutional generators. While in some locations, the cost of this added convenience is paid by the generator, in most urban areas of the state, the market-place is so competitive that this service is provided at no additional charge. In most areas of the state, consumers and businesses have multiple, convenient opportunities for recycling e-waste.

California Recycling Opportunities and Volumes:

With just 6 months of program data, it would be premature to speculate on the success of the California program. Still, the exponential growth to date in both opportunities for recycling and volumes collected for recycling are worth noting:

- More than 311 'certified' physical locations in the state for e-waste drop-off and recovery.
- Additionally, more than 250 additional locations where electronics retailers, local governments, non-profits or other handlers accept e-waste for drop-off and pick-up by certified collectors or recyclers.
- Free and convenient recycling opportunities for e-waste are now available for most Californians.
- With the exception of some rural areas in Northern and South Eastern California, every county and medium to large city has at least one location for the 'no cost' drop-off of used CEDs.
- To date, e-waste recyclers have submitted recovery payment claims for more than 20 million pounds of covered electronic waste collected during the first 6 months of 2005. A recent survey of the state's certified recyclers revealed that at least 1 million additional pounds were collected, but claims have yet to be submitted.

- Based on our ongoing survey of e-waste recyclers, we are projecting that California will collect in excess of 50 million pounds of CEDs in 2005.
- Recovery payments are set by the California Integrated Waste Management Board and total 48 cents per pound, of which 28 cents is retained by recyclers and 20 cents is passed on to collectors.
- The State Board of Equalization (BOE) has reported collecting approximately \$30.8 million in e-waste fees during the first 6 months of 2005.
- Sales of CEDs for which the BOE has collected fees for the first 6 months of 2005 equal 80% to 85% of California's share of national sales for the same period, suggesting that the vast majority of 'internet', 'reseller', as well as 'brick and mortar' retailer sales are being captured.
- First year program revenue is projected to be \$60 to \$70 million, which is projected to be more than sufficient to cover first year recovery payments and administrative costs.
- Start up administrative costs are budgeted at approximately \$8 million for the first year, and then expected to stabilize at \$5-6 million annually.

Getting to Yes: A Brief History of how the SB 20 Compromise Came to Be

The adoption of California's first in the nation E-waste recycling law in September 2003, was explicitly the product of a nearly three year public policy making process which culminated in adoption of Senate Bill 20.

E-waste Policy Issues Demanding a Federal Role:

Restricting E-Waste Exports to developing World

A key policy objective of the California program is to ensure that hazardous e-waste generated in California is not exported to the developing world for management, dismantling or improper disposal. At the same time, the act recognizes that many of the legitimate end-use markets for e-scrap materials properly processed for recycling and ready for remanufacture exist in the same developing countries (i.e. China, India, Southeast Asia) where improper management has previously occurred. California's program attempts to address this dilemma with the following provisions:

In order for an entity to export electronic waste to a foreign destination it must do the following at least 60 days prior to export:

(a) Notify the California Department of Toxic Substances Control (DTSC) of the destination, contents, and volume of covered electronic waste to be exported.

(b) Demonstrate that the importation of covered electronic waste is not prohibited by any applicable law or regulation of the country of destination and that any import is conducted in accordance with all applicable laws. As part of this demonstration, required import and operating licenses shall be forwarded to the department.

(c) Demonstrate that the exportation of covered electronic waste is conducted only in accordance with applicable international law.

(d) Demonstrate that the management of the exported covered electronic waste will be handled within the country of destination in accordance with applicable rules, standards, and requirements adopted by the Organization for Economic Co-operation and Development for the environmentally sound management of electronic waste.

(e) Demonstrate that the covered electronic waste is being exported for the purpose of reuse or recycling.

In order to protect legitimate recycling enduses markets, these requirements do not apply to a component part of a covered electronic device that is exported to an authorized recycler or manufacturer and that is reused or recycled into a new electronic component.

Despite the detail and thoughtfulness of these provisions, it is unlikely that the provisions of state law—any state law, can be wholly successful in monitoring, regulating and appropriately restricting international trade.

Addressing the continuing problem of the export of hazardous electronic waste from the United States to the developing world for improper management and disposal, is an issue that remains best addressed by the federal government.

Internet and Catalog Sales Concern

There is little question that California and other state's have the legal authority to assess environmental mitigation fees—such as the SB 20 e-waste recycling fee—on out of state entities for products sold in California. The question is not a legal one, but one of logistics. The State may simply not be able to readily track and collect the fees from individual consumers who purchase covered devices from some out-of-state internet retailers

However, despite the doom and gloom predictions, the California experience has demonstrated that the vast majority of internet and catalogue retailers are participating in the CA Electronic Waste Recycling Program. And while the State may not be able to readily track and collect the fees from individual internet consumers, the consumer is still responsible for paying the fee as mandated by the law. The California BOE can and will be able to enforce fee payment on large consumers such as businesses if they purchase covered electronic devices from out of state

retailers for use in California, but it is inevitable that some small percentage of individual consumer transactions will slip through the cracks.

And while the impact of the 'internet sales issue' as it relates to 'advance recycling fees' has been blown out of proportion, state government's will continue to lose sales tax as well as environmental and other legitimate fee revenue from internet sales.

Addressing the 'out-of-state/internet sales' issue, limiting loopholes, increasing state authority, is another issue that may be best addressed by the federal government.