

February 8, 2006

Via E-Mail

Ms. Cynthia Moore
Wisconsin Department of Natural Resources
Cynthia Moore <Cynthia.Moore@dnr.state.wi.us >

Re: Comments on Model Electronic Waste Recycling Legislation

Dear Ms. Moore:

Thank you for the opportunity to comment on the proposed "Model Electronic Waste Recycling Legislation for the Great Lakes States: An Act Providing for the Recovery and Recycling of Used Electronic Devices" (the "Model Legislation").

3M Company manufactures various types of specialized electronic equipment that could be affected by certain provisions of the proposed Model Legislation. 3M respectfully submits the following comments, which address this specialized equipment.

1. Definition of "Covered Electronic Device"

3M understands that the intent of the Model Legislation is to focus on general household/consumer/business computers, computer monitors, televisions, etc. There are exclusions for "covered electronic devices" that are "functionally or physically a part of a larger piece of equipment designed and intended for use in an industrial, commercial or medical setting, including diagnostic, monitoring or control equipment." Section 1(g).

3M manufactures equipment that appears to fall within the intent of this exclusion, but the language above does not specifically address it. For example, 3M's Security Systems Division and Traffic Safety Systems Division manufacture equipment used in governmental or quasi-governmental settings, such as specialized library systems, security systems and traffic control systems. One example is the 3M™ Self-Check™ Systems used by public and academic libraries. These systems include a touch-enabled monitor along with readers for bar codes on the books, which allow library patrons to check out books themselves from a library. The system is connected to detector gates as part of a comprehensive system to prevent removal of books unless they are checked out.

Additionally, as part of a larger system, the monitor of the 3M™ SelfCheck™ system is not intended to be easily removed without technical service disassembly or cutting off the monitor cables. Another example is the 3M™ SmartCheck™ system monitor and computer are contained behind plexiglass in a cabinet, and the entire system has to be disassembled in order to remove the monitor.

This type of equipment is part of systems that are used in governmental or quasi-governmental settings. Because the current language does not specifically mention “governmental” or “quasi-governmental,” and because the systems are not specifically used in “industrial commercial or medical” settings, the equipment is not clearly excluded, even though the intent would appear to apply to this type of equipment.

In addition, 3M’s subsidiary, 3M Touch Systems, Inc. manufactures Micro-Touch™ Touch Screen Monitors. These monitors differ from standard computer monitors in several important respects. First, they are touch-enabled and do not use a keyboard. Accordingly, they are not practical for general consumer or household use. Second, as a stand-alone product, they do not have the capacity to show an image, without the subsequent addition of other components (hardware, etc.). 3M Touch Systems sells these monitors to distributors and/or value-added-resellers, who in turn sell them to systems integrators/system manufacturers that combine them with other equipment and use them in retail, commercial and industrial applications. A very common application is in the retail setting, where store clerks touch the screen and use attached bar code readers to scan products for checkout.

Although the 3M Touch Systems monitors are not practical for household or general consumer use, 3M cannot guarantee that these monitors would never be used by a household. It is possible that a monitor might be purchased for use by someone with a disability who could not use a keyboard, for example, or by someone who is experimenting with their use for purposes of developing a new product. Such use would not be in greater than a de minimis amount, however, in comparison to the overwhelming use of these products for commercial and industrial applications.

In order to address the Touch Screen monitors as well as the library systems, police and border control, and traffic control systems, 3M proposes the following changes to the definition of "Covered Electronic Device" under Section 1(g)(ii):

Covered Electronic Device does not include any of the following:

- ii. A covered electronic device that is designed and marketed by the manufacturer for use in an industrial, commercial, governmental, library, traffic control, security, border control or medical setting, including diagnostic, monitoring or control equipment, and the equipment is not used by households in other than a de minimis amount.

2. Definition of “Video Display Device”

Section 1(v) of the draft Model Legislation includes a definition of "Video Display Device" that says “an output surface having a viewable area greater than four inches when measured diagonally that displays moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion . . .” “Output surface” is not defined in the rule. 3M’s understanding is that this definition of “Video Display Device” is intended to describe computer monitors or televisions. However, unlike the definition of “Covered Electronic Device,” the definition of “Video Display Device” does not state this clearly. The term “Video Display Device” is significant under the Model Legislation because it is referenced in the Section 2 “Scope” section.

3M is concerned that this definition of “Video Display Device” could be interpreted to mean a flat panel on which pictures are displayed, such as a simple screen or a whiteboard. 3M Visual Systems Division sells a 3M™ Digital WallDisplay Plus, which is a flat, hang-on-the-wall display system that incorporates an XGA digital projector, a dry erase board and a stereo sound system.

3M suggests that this definition of “Video Display Device” be revised to exclude a dry erase board or white board type product, as follows:

"Video Display Device" means an output surface having a viewable area greater than four inches when measured diagonally that **contains electronic components for purposes of displaying** moving graphical images or a visual representation of image sequences or pictures, showing a number of quickly changing images on a screen in fast succession to create the illusion of motion . . ."

Alternatively, 3M suggests that language be added to the end of the “Video Display Device” definition to make clear that it is intended to cover “Covered Electronic Devices” that are computer monitors or televisions, or that it is not intended to cover screens, whiteboards or dry erase boards that do not contain electronic components.

3. Section 2 “Scope of Products”

Section 2(1) says that it covers “video display devices.” However, this description of scope creates potential conflicts with the definition of “covered electronic devices” in Section 1(g), and may cause confusion because “video display device” does not clearly say computer monitors or televisions. We think it would be simpler to list the types of equipment covered, as was done in the definition of “Covered Electronic Device.”

In Section 2(2), it refers to “printers”—we suggest that this be revised to read “desktop printers” to avoid confusion and be consistent with Section 1(g).

4. Section 3 “Sales Prohibition”

Section 3(2) says that the corporation implementing the Model Legislation will “maintain a list of all manufacturers in compliance with the requirements of this Act.” This does not address the possibility that some manufacturers might be in compliance because they are not covered by the law. 3M anticipates that sellers might check the website and not finding a company listed, will assume that they are not in compliance, when in fact they may not be subject to the law.

One option for the Corporation might be to determine “compliance” through exemption determinations and then list those manufacturers or equipment. However, this would be very burdensome, for both manufacturers and the Corporation. Perhaps this could be revised to read that manufacturers of equipment that is not subject to the Model Legislation would not be included on the list. If this language were written into the law, this would clarify the status of exempt equipment and help to avoid a lot of questions on this point. We recommend that if there is such a list, the list itself include this language also. In addition, manufacturers could point to this language in the Model Legislation in responding to compliance-related requests from customers.

This determination of “compliance” by the Corporation, when combined with the RoHS-related provision in Section 12, raises many questions as to how the Corporation would determine that manufacturers are in compliance with RoHS, as discussed in more detail below.

5. Section 5

Section 5(1) refers to paying a fee for “video display devices” but this term is defined to only apply to a subset of “covered electronic devices.” This may be the intent, but the definitions should be checked.

6. Section 12 - Restriction of Hazardous Substances

Section 12 states that on the effective date of the law, “manufacturers of CEDs must be in Compliance with the European Union’s (EU) Restrictions on Hazardous Substances (RoHS) Directive for mercury, cadmium, lead, hexavalent chromium, PBBs and other materials identified by the EU.”

3M Company is committed to compliance with the EU RoHS Directive. Nevertheless, this provision raises several concerns. It is a very broad statement, and suggests that a manufacturer of a Covered Electronic Device would need to be in compliance with the EU’s RoHS Directive for all products that are subject to that Directive, not just the “Covered Electronic Devices” that are otherwise subject to the Model Legislation.

The statement “other materials identified by the EU” is vague. It suggests that it would need to be a material identified under the RoHS Directive, but this is not clear. It would also simply defer to the European Union decisions on whatever future materials might be added, without prior review by the State legislature or an opportunity for affected parties to comment.

How would the Corporation or the State adopting the Act determine whether a manufacturer is in compliance with the EU’s RoHS Directive? Would it rely on an enforcement action by the EU to determine this? Would a manufacturer then effectively lose its right to defend itself here in the United States? These and other related questions should be addressed before including Section 12 in the model legislation to ensure that all legal and/or constitutional issues have been fully considered.

Also, the EU’s RoHS Directive is still being interpreted by the EU and is not yet effective. There are no specific testing standards. Despite the fact that it has an effective date of July 1 of this year, several major exemption requests are still being considered by the European Union, due to the lack of feasible alternatives in certain applications as well as considerations of overall lifetime of equipment; for example, an interest in avoiding having to scrap parts that have been part of lifetime buy contracts. The Section 12 RoHS language, however, would apply as law here in the United States when some of these major issues are not yet worked out. In addition, there are concepts in the EU relating to compliance, such as “place on the market,” for which there may be no equivalent here in the United States. Member States within the

EU are currently using different interpretations that appear to create inconsistency in this area, although there are moves within the EU for more consistency. It is unclear how a United States agency or court would apply this type of European Union concept for purposes of determining compliance.

As noted in a recent article in Chemical & Engineering News, major electronics manufacturers plan to comply with the RoHS Directive “for all their new electronic devices, even those sold in the U.S., because their markets are global.” Hileman, “Electronic Waste,” Chemical & Engineering News, p. 19 (Jan. 2, 2006). Accordingly, because states would benefit from the EU's implementation of RoHS in this manner without the formal adoption of related legislation, Section 12 on RoHS compliance should be

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removed from the model legislation, or at a minimum, the section could be removed and reconsidered a few years from now after more time has passed and more of the specifics of RoHS are clear.

Thank you again for the opportunity to comment.

Sincerely,

Steven J. Smits
Manufacturing Operations
Director

cc: Mr. Garth Hickle, Minnesota Office of Environmental Assistance