

Covered Electronic Waste Recycling Program Background and Summary of Program Costs and Revenue Need Considerations

The Electronic Waste Recycling Act of 2003 (Act), as amended, established a comprehensive program to finance the end-of-life management of certain (covered) electronic devices. The program is financed through an Electronic Waste Recycling Fee (fee) paid by consumers at the point of retail sale of new covered electronic devices. Accumulated funds are used to administer the programs established by the Act, including the disbursement of recovery and recycling payments to approved collectors and recyclers of covered electronic waste (CEW).

CalRecycle has the responsibility to evaluate the program's revenue needs annually and to adjust the fee levels as warranted to maintain fund solvency and ensure continued operation of the program. CalRecycle must make necessary determinations regarding the fee by the statutory date of August 1, 2010. Any changes would become effective on January 1, 2011.

The current fee assignments are as follows:

- **Eight dollars (\$8)** for each covered electronic device with a screen size greater than 4 inches but less than 15 inches measured diagonally.
- **Sixteen dollars (\$16)** for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.
- **Twenty five dollars (\$25)** for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

Covered electronic devices are defined by statute as video display devices with a screen size greater than four inches that are identified by the Department of Toxic Substances Control (DTSC) after testing determines that they are hazardous when disposed. Currently, covered electronic devices include:

- Cathode ray tubes (CRT) and CRT-containing devices (including CRT televisions and computer monitors);
- Liquid Crystal Display (LCD) containing televisions and monitors;
- Laptop computers containing LCD screens;
- Gas plasma display televisions; and
- Personal DVD players.

Monies paid by consumers are remitted by retailers to the Board of Equalization (BOE) and deposited in the Electronic Waste and Recovery and Recycling Account (EWRRA). The EWRRA was established by the Act within the Integrated Waste Management Fund. While the EWRRA is used to pay for the specific program operations of CalRecycle, DTSC, BOE, and some State Controller's Office (SCO) payment services, the vast majority of expenditure demand comes from electronic waste recycling payment claims submitted by recyclers.

The CEW recovery and recycling system has fostered a robust collection and processing infrastructure for a problematic waste stream. However the growth of the fund reserve within the program, due to revenues outpacing the volume of recycling payment claims, is at a level where CalRecycle must exercise its statutory authority to adjust fee levels to better balance revenue and expenditures, while still maintaining fiscal integrity within the program and remaining prepared for challenges ahead.

Specifically, CalRecycle must consider:

- How much expenditure demand can be expected in the near-future?
- How much revenue is necessary to ensure continued program solvency?
- What are covered electronic device sales projections?
- How should any changes in the fee be structured to best achieve adequate and stable revenue levels?

Revenue and Expenditures

California's covered electronic waste recovery and recycling payment system is financed through a fee that is assessed on the retail sale of covered electronic devices. The fee level was initially set via the Act at \$6, \$8, and \$10, depending on the screen size of the device. In early 2008 it was projected that payment claim demands would exceed revenue and exhaust the existing fund balance at some point in FY 2008/09. These projections were based on the historical pace of program growth, the original recovery and recycling payment rates, and the level of revenue anticipated from new device sales trends.

The California Integrated Waste Management Board (CIWMB) acted in June 2008 to adjust upward the consumer fee levels, pursuant to statutory provisions, to a new range of \$8, \$16, and \$25, aligned with the existing three-tiered screen size structure. This adjustment was determined to be appropriate at the time based on historical growth in claim volumes submitted by recyclers.

Until mid-2008, the program had been growing at the average rate of an additional four million pounds of CEW claimed each quarter. However, contrary to the continued growth that was factored into predicting revenue need for the 2008 fee adjustments, CEW claim volumes unexpectedly fell in the latter part of 2008, peaked again in first quarter 2009, and then declined somewhat afterward. Please refer to Attachment 2 for a graphic depiction of historical quarter-to-quarter program volumes and a brief discussion of factors affecting CEW recycling rates.

Since program inception, CalRecycle has received more than 1660 claims totaling in excess of \$360 million. This represents the recovery and recycling of ~808 million pounds of CEW. However, even with the substantial volumes of CEW recovered and recycled, the excess revenue

derived from the current consumer fee is accumulating in a reserve that now needs to be stabilized and reduced through an adjustment to the fee levels.

Historical and projected program revenues are as follows:

- FY 2004/05: ~\$ 31,000,000
- FY 2005/06: ~\$ 78,000,000
- FY 2006/07: ~\$ 80,000,000
- FY 2007/08: ~\$ 77,000,000
- FY 2008/09: ~\$108,000,000
- FY 2009/10: ~\$140,000,000 (projected)
- FY 2010/11: ~\$143,000,000 (projected if no adjustments are made)

Fee Levels: Maintaining Solvency

As CalRecycle administers the financial aspects of the CEW payment system, it is obligated to maintain a fund balance that allows it to make recovery and recycling payments, as well as to provide funding for its own program specific operations and certain operations of both DTSC and BOE. CalRecycle has the authority and responsibility to revisit and revise fee levels annually, as warranted, to maintain adequate funds in the EWRRA. The next opportunity to do so is on or before August 1, 2010.

CalRecycle's specific authority is contained in Public Resources Code section 42464(f):

“On or before August 1, 2005, and, thereafter, no more frequently than annually, and no less frequently than biennially, the board (CalRecycle), in collaboration with the department (DTSC), shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. Adjustments to the fee that are made on or before August 1, shall apply to the calendar year beginning the following January 1. The board shall base an adjustment of the covered electronic waste recycling fee on both of the following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.”

As noted earlier in this document, the current level of CEW recycling payment claim demands compared to annual revenue has resulted in the accumulation of a significant fund reserve. This reserve will continue to accumulate within the EWRRA unless action is taken to adjust the fee. Informing the consideration of fee adjustment will be an estimation of expenditure demands balanced with the potential for revenue generation. Expenditure estimates can be based on projected claim volume and payment rates, as well as State agency operational requirements. Revenue potential can be calculated based on the projected sales of covered devices, both in overall number and in the distribution between screen size categories.

Additional Factors in Reserve and Fee Considerations

The Governor's Proposed Budget for FY 2010/11 indicates a starting reserve balance in the EWRRA of approximately \$87 million and an ending reserve balance of approximately \$138 million, assuming current revenue and expenditure rates. However, as part of the recent Governor's Revised Budget for FY 2010/11, a two-year loan of \$75 million has been proposed from the EWRRA reserve to the General Fund.

As of the drafting of this background and summary attachment, it is most prudent to assume that the \$75 million loan will be made. It is also prudent to plan for the contingency that the loan may not be repaid in the timeframe originally anticipated. Therefore any fee adjustment considerations should not rely upon the necessity of loan repayment to maintain program solvency and instead treat future loan repayment as an additional opportunity to further adjust fee levels. In the meantime, fee levels should be calculated based on available reserves and what revenue is necessary to keep the program solvent until such time as loaned funds can be repaid.

The Mechanics of Adjusting Fee Levels

CalRecycle has the authority to adjust, pursuant to timeframes and considerations contained in statute, the fee assessed on consumers. Adjustments to the fee would be considered regulations under the Administrative Procedures Act (APA). CalRecycle has authority to make such adjustments pursuant to an emergency rulemaking. Public Resources Code Section 42475.2 grants CalRecycle the authority to promulgate all regulations under the Act as emergency regulations that remain in effect for two years. This timeframe will allow any fee changes to remain in effect until the next time CalRecycle is authorized to revisit and revise them.

Upon CalRecycle's approval of any adjusted fee levels, program staff would work with the Legal Office to prepare emergency regulations and submit the package to the Office of Administrative Law (OAL).