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A L E R T

ELECTRONICS RECYCLERS WILL HAVE TO DO MORE AND NO DOUBT SPEND MORE TO OBTAIN CERTIFICATION UNDER R2 SOLUTIONS' R2:2013 STANDARD

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On October 10, 2012, R2 Solutions¹ made available for comment its Draft 2013 R2 Standard ("R2:2013").² If adopted, R2:2013 would specify the requirements with which an electronics recycler would have to comply in order to receive certification from R2 Solutions after the effective date of that standard.

While the adoption of R2:2013 might appear to advance the overarching goals of reuse and re-

cycling of used and end-of-life electronic equipment, upon closer examination the opposite may be true. As will be discussed, electronics recyclers will have to do more and most certainly spend more to obtain certification from R2 Solutions under R2:2013. If the costs are too great, the result may be fewer, rather than more electronics recyclers seeking certification from R2 Solutions. The further result, unfortunately and ironically, may be abandonment, illegal disposal or illegal export of used or end-of-life equipment rather than reuse and recycling.³

Under R2:2013, an electronics recycler would no longer be permitted to, "develop" its own Environmental Health and Safety Management System ("EHSMS"), but would be required to use an EHSMS, "certified to an accredited management

1. R2 Solutions is a nonprofit organization formed for the purpose of housing the R2 Technical Advisory Committee ("TAC"). TAC is a multi-stakeholder technical advisory committee formed for the purpose of developing the R2 Standard. The Board of Directors of R2 Solutions appoints the members of TAC. In 2005, the United States Environmental Protection Agency ("EPA") convened a multi-stakeholder process for the purposes of developing Responsible Recycling Practices for use in accredited certification programs. In 2008, the ANSI-ASQ National Accreditation Board ("ANAB") approved the current R2 Standard ("Current R2 Standard"). ANAB is the organization that provides accreditation to the certification bodies that conduct third party audits of electronics recycling facilities. The above referenced R2:2013 Standard is the next generation of the 2008 R2 Standard. The R2 Standard is a voluntary consensus-based standard developed for the purpose of creating a voluntary market based mechanism for ensuring sustainable recycling practices.

2. The R2:2013 is available online for review at <http://www.r2solutions.org/clientuploads/Draft%20R2%20Standard%20Revision%20for%20Public%20Comment.pdf>.

3. An increasing number of states are banning the disposal of used and end-of-life electronic equipment in municipal waste (nonhazardous waste) landfills. See <http://electronicrecyclers.com/us-landfill-ban.aspx>. Assuming this trend continues, it will leave hazardous waste disposal and reuse and recycling as the only legally available means of managing such equipment. The costs of hazardous waste disposal are generally prohibitive. Thus, if the costs of responsible reuse and recycling are made prohibitive by the adoption of our R2:2013 in its current form, such adoption could lead, as indicated, to increased abandonment, illegal disposal or illegal export of such equipment.

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system standard,” likely increasing its compliance costs.⁴

Also, the Legal Compliance Plan called for by R2:2013 would require that the plan demonstrate compliance with applicable, “data security legal requirements of the operation.”⁵ Compliance with applicable “data security legal requirements” is not a requirement of the legal compliance plan now called for by the Current R2 Standard, further likely increasing compliance costs.

Additionally, while both the current R2 Standard and the R2:2013 Standard would require electronics recyclers to demonstrate compliance with applicable import and export laws in the shipment of Focus Materials (“FMs”)⁶ and untested or nonfunctioning equipment or components containing such materials, R2:2013 would specify what must be shown to demonstrate such compliance, which would impose a much heavier, and likely more expensive, burden than the existing standard.

R2:2013 would also raise the standard of care that an electronics recycler would owe with respect to the protection of worker health and safety and the environment, likely increasing the recycler’s compliance costs and possibly its legal liability. Under R2:2013, an electronics recycler would be

4. R2:2013 Section 1.

5. R2:2013 Section 3(a).

6. The Definitions Section of R2:2013 contains a detailed definition of “Focus Materials,” which makes clear that Focus Materials are those materials that, due to their toxicity or potential for adverse effects, warrant greater care during processing.

7. R2:2013 Section 4 (emphasis added).

8. R2:2013 Section 5(d).

9. R2:2008 Section 5(d).

10. R2:2013 Section 6(c).

required to, “use practices and controls at its facilities that protect worker *and public health and safety* and the environment *under both normal and (reasonably foreseeable) exceptional circumstances.*”⁷ The current R2 Standard does not mention a duty to protect public health. Nor does the current R2 Standard expressly subject electronic recyclers to a duty to protect worker health and safety and the environment in “(reasonably foreseeable) exceptional circumstances.”

As is the case with used equipment or components and end-of-life equipment generally, R2:2013 would further restrict the circumstances under which energy recovery, incineration and land disposal could be used to manage FMs, effectively prohibiting these activities as management options for such materials. Under R2:2013 an electronics recycler would be permitted to use energy recovery incineration or land disposal only “if documented *extreme and rare* circumstances beyond the control of the R2:2013 recycler disrupts its normal management of an FM.”⁸ Under the current R2 Standard, an electronics recycler is able to utilize energy recovery, incineration or land disposal, “if circumstances beyond the control of the R2 recycler disrupt its normal management of an FM.”⁹

Lastly, R2:2013 would create a more complex and likely more expensive scheme for the handling of reusable equipment and components. R2:2013 would require an electronics recycler prior to shipping used electronics equipment and equipment containing FMs, to assure and identify each shipment as either “(1) Tested for Full Functions, R2/Ready for Reuse; (2) Tested for Key Functions, R2/Ready for Resale; and/or (3) Evaluated and Non-Function, R2/Ready for Repair.”¹⁰ With respect to each such category, R2:2013 would require electronics recyclers to use, “effective testing methods” to confirm ap-

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propriate functions, to implement a written Quality Assurance Plan and Policy, to implement a written Product Return Plan and Policy and to ensure that the equipment or components meet the requirements of the recipient.”¹¹

R2 Solutions is making R2:2013 available for comment through December 16, 2012. Interested persons, including end-of-life users and others responsible for the management of used and end-of-life electronics equipment, should comment concerning these expected consequences including the potential for increased abandonment, illegal disposal and illegal export of used or end-of-

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11. R2:2013 Section 6(c). Obviously, the electronics recycler is not required to use effective testing methods to confirm functions for equipment that is evaluated as nonfunctioning.
 12. Should R2:2013 be adopted in its current form, it would come at a particularly bad time for the electronics recycling industry as well. See article entitled “Facilities Overwhelmed by Piles of CRT Glass” first published in *Waste & Recycling News*, October 29, 2012 which discusses the glut of CRT glass accumulating in recyclers’ facilities due to consumer changeover from cathode ray tube televisions to flat screens. In the article, Karl Palmer, Chief of Toxins for the California Department of Toxic Substances Control stated that “[t]he concern is, if you do the math, if the market dries up ... we’re going to have a continuing buildup of the glass. And we’ll have continuing buildups of these piles of waste and it becomes less and less viable economically for people to do the right thing, which leads to, potentially, abandonment of that waste or potential illegal disposal.”

life electronic equipment as a result of the adoption of R2:2013 in its current form.¹² ♦

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