

THE OEM COMPLIANCE NEWS

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Sims Participates in Basel Convention Meetings Impacting the Transboundary Movement of E-Waste

Patricia Whiting, senior international policy analyst with Sims Recycling Solutions (SRS) original equipment manufacturer (OEM) compliance team, attended a number of Basel Convention meetings this spring in Geneva, Switzerland. The first meeting of the Expert Working Group (EWG) on the review of Basel Annexes took place from March 20-23, 2018. The second meeting of the EWG on the technical guidelines on transboundary movements of electrical and electronic waste and used electrical and electronic equipment (e-waste) took place from April 17-19, 2018. These guidelines address whether these materials are waste or non-waste under the Convention. The outcome of both groups will alter, among other things, how the Convention applies to transboundary movement of e-waste.

Expert Working Group Meeting on the Review of Annexes

Ms. Jacinthe Sequin of Canada and Mr. Joost Meijer of Chile co-chaired the EWG. The government of Japan provided financial support for the meeting. The EWG meeting has initiated work on a review of the Basel waste annexes with a view to updating and streamlining them. These Annexes include,

- Annex 1 (categories of waste to be controlled as hazardous under the Convention, unless they do not possess any of the characteristics contained in Annex III);
- Annex III (list of hazardous waste characteristics);
- Annex IV (disposal and recycling operations);
- Annex VIII (hazardous waste), and
- Annex IX (non-hazardous waste).

The Parties have not updated these annexes since the Convention went into force in 1992. The EWG will present their recommendations to the Open-Ended Working Group (OEWG) of the Basel Convention in September.

The objective of this first meeting was to create a shared understanding of the wide range of issues experienced by countries related to Basel Annexes IV and IX, particularly regarding B1110. B1110 defines electrical and electronic assemblies (essentially e-waste) classified as non-hazardous under the Convention, unless it contains Annex I material to an extent causing it to exhibit an Annex III characteristics. (Annex VIII has a mirror hazardous waste listing for electronic assemblies). The EWG also worked on the development of a path forward to present information and resolve issues, and an outline for the report to the OEWG including the proposed path forward. This included a discussion of overarching and crosscutting issues as well as specific Annex issues.

The European Union (EU) circulated a number of proposals at the meeting that raised concerns to the recycling industry, as they have the potential to impact existing recycling operations and create trade barriers for non-hazardous waste shipments. With regards to recycling operations, new proposals would categorize recycling/reclamation operations (such as washing, sorting, shredding and bailing) as interim, preparatory or pretreatment operations and not recycling. Proponents of this concept also propose having "final" only applied to incineration.

Such proposals alter the traditional concept of what recycling is and seem to run counter to the goal of developing a circular economy where most recyclables may be recycled again. As an example traditional recyclers, such as SRS, would be labeled as pretreaters under the Convention. Whereas incinerators would be labeled as recyclers. However, waste that is finally disposed by incineration (destroyed or irreversibly transformed, such as persistent organic pollutants) can no longer be recovered as resources.

[See Basel Convention, page 2](#)

Basel Convention, continued from page 1

In addition to Whiting, Ross Bartley of the Bureau of International Recycling (BIR) and Adina Adler of the Institute of Scrap (ISRI) represented the recycling sector. Rick Goss of ITIC and Paul Hagen of Beveridge and Diamond represented the OEMs.

Second Expert Working Group Meeting on the Basel E-Waste Technical Guidelines

Patricia Whiting also participated in the April 2018 meeting of the EWG on the e-waste technical guidelines. The government of Switzerland funded the meeting. The e-Waste technical guidelines were adopted on an “interim-basis” during the twelfth meeting of the COP in May 2015, as the Parties could not agree on a number of issues. The government of China took the lead at the most recent COP in May 2017, to facilitate the complete adoption of the guidelines. China hosted the first EWG in Beijing in January 2018.

Mr. Yang Zheng of China and Ms. Magda Gosk of Poland co-chair the EWG. The co-chairs worked with the experts during the recent meeting, to discuss outstanding issues and alternative suggestions for text in response to comments provided by various stakeholders. Outstanding issues include,

- Residual lifetime of used equipment;
- Obsolete technologies including cathode ray tubes (CRTs);
- Presence of hazardous substances in used equipment;
- Waste resulting from failure analysis, repair and refurbishment activities; and a
- Specific exemption for medical devices.

Concerning residual life, the EWG agreed a new paragraph should be added to the guidelines indicating that any party may wish to apply other criteria in addition to those already mentioned in the guidelines. (For example, additional criteria regarding age or residual lifetime of equipment). The addition of this paragraph also covered the outstanding issue of obsolete technologies, as parties could add criteria covering equipment containing CRTs or the management of residual waste generated during failure analysis, repair or refurbishment.

In terms of the presence of hazardous substances in used equipment, the group revised the text in an existing paragraph to enhance coverage of the issue. Concerning waste resulting from failure analysis, repair and refurbishment, the EWG discussed revisions to emphasize the importance of environmentally sound management) in these operations. In this light, the group reviewed terms already used in the Convention (such as exporter, the person who arranges the transport of hazardous waste) and how they could be augmented with terminology more specific to the guidelines (such as the concept of a person who arranges non-waste transports).

Finally, in terms of a specific exemption for medical devices, the EWG agreed that such devices are covered in the new paragraph on obsolete technologies.

In terms of a way forward, it was agreed that the Secretariat will work with the lead country, China, on a new version of the technical guidelines with text agreed upon at the Geneva meeting, and some extra editorial changes that China will incorporate based upon comments from the group.

EPA Seeks Additional Participants for the SMM Electronics Challenge



Are you a manufacturer, retailer or brand owner with a used electronics collection program? Are you interested in receiving recognition for your achievements in addressing electronics sustainably? If so, consider joining the Environmental Protection

Agency's (EPA) Sustainable Materials Management (SMM) Electronics Challenge.

The U.S. EPA held a webinar on May 9, 2018 to recruit new participants for its SMM Electronics Challenge. The SMM Electronics Challenge is a voluntary program open to electronics manufacturers, retailers and brand owners that collect used electronics from U.S. consumers, businesses and within their organizations. EPA annually recognizes Challenge participants with Bronze, Silver, and Gold Tier awards for their contributions in diverting used electronics from landfills by sending them to third-party certified recyclers and refurbishers. Additional Challenge Champion awards address the entire life cycle of electronics products by recognizing contributions in designing products sustainably and implementing company programs that improve electronics sustainability.

Participants are recognized by the EPA with a Tier award at the annual Consumer Electronics Show in Las Vegas. Companies that meet these data requirements are also eligible to apply for the Champion awards. In 2017, the Agency recognized Dell Inc. (Gold Tier), Samsung Electronics (Gold Tier), Staples Inc. (Gold Tier), Xerox (Gold Tier), Best Buy Co. Inc. (Silver Tier), LG Electronics USA Inc. (Silver Tier), Vizio Inc. (Silver Tier) and Sony Electronics Inc. (Bronze Tier) for their environmental achievements. This included diverting more than 227,000 tons of used electronics from landfills to R2 and e-Stewards certified recyclers in 2016. LG, Staples and Samsung also were Challenge Champion Award winners for exemplifying leadership and developing innovative processes and products that focus on environmentally responsible ways to best use a product's materials throughout its entire life cycle. Xerox is the newest participant in the Challenge, with at least two more members slated to join in 2018.

Presenters on the webinar included:

- Janice Johnson, EPA's Challenge, lead
- Beth Johnson of Dell,
- and Tim Dunn of Best Buy.

Both company representatives stressed the value of their long-standing relationship with the EPA and the credibility the EPA offers participants. Best Buy also indicated that the program has allowed the company to be recognized as more than a retailer and the Champion Awards have offered inspiration for projects to get off the ground.

For more information on the EPA's SMM Electronics Challenge please contact Janice at 703-308-7280 or Johnson.janice@epa.gov. You can also visit EPA's Challenge website at: www.epa.gov/smm-electronics/sustainable-materials-management-smm-electronics-challenge.



Legislative Update: Wisconsin

Sims Recycling Solutions continues to regularly track legislative and regulatory activity pertaining to electronics take back laws around the world. The following outlines current activity across the United States. For information about legislative activity anywhere in the world, email us at srs.oem.compliance@simsmm.com.

WISCONSIN



Department of Natural Resources Holds E-Cycle Stakeholder Meeting

Larry King, director of OEM compliance and Patricia Whiting, senior international policy analyst represented Sims Recycling Solutions (SRS) at the e-cycle stakeholder meeting on the current state of electronics recycling in Wisconsin (WI). This event was sponsored by the Department of Natural Resources (DNR) on May 30, 2018 in Madison, WI. In addition to SRS, representatives of collectors, recyclers, manufacturers, (cities, counties and states) EPA Region 5, and non-profit organizations attended the meeting.

Sarah Murray of the DNR commenced the day by providing an overview of the program including a review of results from the Wisconsin 2017 report. In this context, Murray discussed key current program challenges including:

- Access for recycling consumer devices (especially in rural areas),
- Cost increases associated with the program (tax payer costs),
- Gaps between what is collected versus manufacturer targets,
- Scrapping or dumping of material leaving the program,
- Downstream markets and the changing nature of electronics, and
- Stored material (due to consumer data security concerns) and a lack of resident awareness.

Wisconsin State Senator Mark Miller then detailed the most recent legislative e-cycle proposal. This includes:

- Switching to a calendar year for the program year for manufacturer targets and recordkeeping,
- New rural incentives to increase collection;
- Reduction in registration fees for small manufacturers;
- Inclusion of all K-12 schools for collection points (not just public schools); and
- Updating device definitions.

In addition to outlining the State's outreach efforts, Murray discussed potential non-regulatory options the State is considering to promote e-cycling. These options include:

- Discerning ways to combine material from small sites into full loads,
- Increased access for residents at shared events across municipalities and counties,
- Addressing underserved areas proactively;
- Incorporating existing non-program sites, or starting new sites and events, and
- Developing creative options to add value to the consumer recycling experience in exchange for a fee (potentially focusing on data security).

The stakeholder meeting also included a panel representing collectors, recyclers and manufacturers. This panel allowed them to provide their perspectives of what has changed and what the future may hold in terms of e-cycling.

Finally, the afternoon consisted of small group discussions concerning the challenges and opportunities in electronics collection and recycling over the next five years. The group discussed what would be an effective and successful electronics and recycling system going forward, with a view towards potential future changes to enhance and sustain electronics collection and recycling in Wisconsin.

Community Spotlight



In each newsletter, Sims Recycling Solutions provides a featured interview of a customer, partner or colleague within the field of IT asset disposition or recycling. These interviews provide an opportunity to learn about the different aspects of electronic equipment disposal or recycling from an economic, environmental or social perspective. This issue profiles Paul Hagen, a principal attorney at Beveridge and Diamond in Washington where he practices in the areas of United States and international environmental law. Mr. Hagen, among other things, counsels clients including multinational corporations and trade associations, on the negotiation and implementation of regional and global environmental agreements impacting the chemicals and electronic sectors.

You have been covering the Basel Convention for years. What do you view as challenges and opportunities for electronics sectors, and others, in the context of recent implementation initiatives including proposed revisions to annexes governing waste definition and the interim e-waste technical guidelines?

We are entering an important phase in the evolution of the Basel Convention and its approach to managing used and end-of-life electrical and electronic equipment and other products. Much of the current discussion under the Convention is informed by the broader interest among governments and stakeholders in advancing the circular economy and sustainable materials management. The Technical Guidelines are the first globally recognized criteria for differentiating shipments of used equipment and parts destined for reuse, failure analysis or repair from wastes. These Guidelines are already influencing national approaches to these classification issues and over time should allow more equipment and parts to be repaired and refurbished for reuse. Work is just beginning on possible amendments to the Convention annexes. These discussions are likely to shape what qualifies as a waste under the Convention as well as the universe of wastes that will be classified as hazardous. The outcome of these negotiations will determine future trade flows in many types of recyclable materials for a very long time.

Your firm has been active on issues arising under global environmental treaties such as the Basel Convention and the Stockholm POPs Convention. What other issues do you and your team cover?

Our work on multilateral environmental agreements positions us well to advise companies across many sectors on emerging environmental requirements in key markets. Many international environmental agreements are evolving and often drive legal and policy developments at the national level. For example, we have a team of lawyers focused on compliance and product stewardship issues arising in Latin America. Much of this work involves helping companies anticipate and comply with national product take-back and recycling schemes for electronics and other products under evolving Extended Producer Responsibility (EPR) laws. Latin America has been particularly active in this space in recent years. We have a similar approach to advising on issues in other parts of the world, including greater China. Having attorneys who are able to work in Spanish, Portuguese and Chinese, and cultivating a deep network of local counsel in various countries allows us to leverage our global and U.S. experience to solve compliance and business challenges in other places.

We are also very focused on EU implementation of the circular economy package and how that will influence not only the Basel Convention but also national approaches to promoting reuse and recycling in other countries.

You seem to be an active conservationist and serve on the boards of several leading non-profit organizations, including the Conservation Fund. You also chaired the board of the Environmental Law Institute for a time. What prompted you to pursue a career in environmental law?

Our firm was founded by the first head of the U.S. EPA and the first head of New York State's Department of Environmental Conservation. At the start of my career, the international environmental field was just ramping up and I was fortunate that our clients looked to Beveridge & Diamond for support on those issues. Our firm is unique in that we are the only national boutique law firm focused on environmental law and litigation. I also believe the business community has an important role to play in advancing conservation and sustainable development. To that end, I actively support organizations like the Conservation Fund and the Environmental Law Institute that work collaboratively with governments, non-profit partners and companies to address complex environmental challenges.

What do you do in your spare time?

I have a long-standing interest in the outdoors and among my favorite hobbies are fly-fishing and birdwatching. Fishing often requires that you spend time in memorable places, from the Atlantic surf on East end of Long Island, to quiet trout streams in Montana, or the endless flats of the Bahamas. The birds are always good company wherever you go. I will pack a local bird book for Basel Convention meetings and do my best to get out and look around before heading home.

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