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June 16, 2008

Docket Operations Facility (M-30)
U.S. Department of Transportation
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

Docket No. PHMSA-2007-28444 - Main Department of Environmental Protection Requirements on Transportation of Cathode Ray Tubes

To Whom It May Concern:

The state of Washington respectfully submits the following comments on the Electronic Industries Alliance (EIA) petition seeking a determination of preemption of certain Maine cathode ray tube (CRT) environmental regulations. We are concerned that a determination in favor of EIA's petition would prevent states from fully regulating state-only hazardous and state-only universal waste. We support the Maine Department of Environmental Protection submittal opposing the petition for the following reasons.

This petition could cause problems in Washington since we have state-only hazardous waste, referred to as dangerous waste in Washington. If the EIA petition is granted, important dangerous waste requirements such as using a federal uniform manifest for the shipment of state-only dangerous wastes would be preempted. Such preemption is directly contrary to the Federal Uniform Manifest Rule adopted jointly by U.S. Environmental Protection Agency (EPA) and U.S. DOT, which clearly provides for states to include state-only wastes and additional state waste codes. Not being able to use the Federal Uniform Manifest would seriously affect the cradle-to-grave system in place in the nation for over twenty-five years. This, in turn, could result in serious environmental problems such as unreported spills, chemical reactions from incompatible wastes being stored improperly, and contamination of groundwater from mismanaged dangerous wastes.

If a finding of preemption is issued, we are concerned that states could not manage state-only universal waste in accordance with the universal waste requirements. The Federal Universal Waste Rule clearly intended that states could include universal wastes other than those in the federal rule. Washington was authorized by EPA to include additional categories of universal waste. If this authority were preempted, we would be

forced to require full regulation of waste streams instead of using the streamlined universal waste approach, or not regulating state-only universal waste in transportation at all. This was clearly not the intent of the Federal Universal Waste Rulemaking which authorized this streamlined approach.

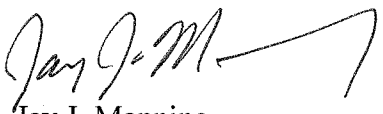
The existence of state-only dangerous waste has not caused problems or confusion. Transporters and regulated entities understand state-only dangerous waste and state-only universal waste. As long as states do not attempt to designate these wastes as hazardous materials under the DOT regulations, there is no confusion or obstacle to implementation of the Hazardous Materials Transportation Act (HMTA). Confusion is avoided by following the Uniform Manifest Rule for fully regulated state-only dangerous wastes, and the Universal Waste Rule for state-only universal wastes.

U.S. DOT has already determined that transported wastes that are not hazardous materials are not subject to preemption by the HMTA. EIA's petition specifically requests a determination of preemption for requirements on the transportation of cathode ray tubes and glass removed from CRTs that do not qualify as hazardous wastes or hazardous materials, and, therefore, are not subject to federal hazardous material transportation requirements. The Maine CRT requirements are not preempted by HMTA since they are non-hazardous materials within the meaning of the DOT regulations, and Maine is not attempting to classify them as DOT hazardous materials.

Washington is also implementing a manufacturer take-back program for electronic wastes. It is important that innovative manufacturer responsibility programs not be thwarted by a DOT preemption determination.

I am sending copies of these comments to Mr. Goldberg and Ms. Ladner at the addresses specified in the Federal Register. Thank you for considering our concerns.

Sincerely,



Jay J. Manning
Director

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