Hewlett Packard and e-Waste Regulation (B)

HP decided to support SB 20 in the California legislature starting in December 2002 despite no other electronics firm choosing to do so (at the time or through the final vote in which it passed the Senate on Sept 12, 2003). Governor Davis signed the bill into law on September 24, 2003.

The rationale for HP’s support for SB 20 was summed up by Renee St. Denis, director of the American Product Take-Back program at HP: "California is going to be the state that’s going to set the agenda for the country on this issue." She continued, “We thought it was important for us to put our cards on the table, to say what kind of role we would play in the solution.”

While there was initially some aggressive language included in the bill on producer responsibility that favored HP over Dell and others with no e-waste efforts in place, that language as well as the language on corporate targets was removed from the bill by legislators steering its progress between June 2, 2003, and July 29, 2003. What remained on the producer responsibility front required manufacturers to provide recycling information to each consumer and annual reports to the state with estimates of how many products they sold, what toxics they included, and what initiatives they had in place vis-à-vis designs to reduce the toxic contents.

In the final bill, the point-of-sale fee or consumer “tax” that had appeared in the SB 1523 bill Davis vetoed remained, as did provisions to ensure it would apply to out-of-state sellers, e.g., Dell. These provisions were new, at least since the prior legislative session.

SVTC Targets Dell

On June 25, 2003, SVTC released a report entitled “A Tale of Two Systems” that lauded HP for its responsible handling of e-waste while targeting Dell.\(^2\)

HP’s Roseville facility was held up as “state of the art” for using mechanized processes to protect workers. The report claims workers were fairly compensated and safe from hazards involved in handling toxic materials. In particular, the “Two Systems” report noted how workers’ blood-lead levels are constantly monitored at the HP facility.

The report contrasted HP’s facility with the vendor Dell primarily used, UNICOR, based on a visit to the latter’s facility at the US penitentiary in Atwater, California, where the workers are inmates. The report questions whether the inmates are given proper access to tools and equipment to keep them safe when handling e-waste, quoting one worker as saying:

\begin{quote}
Even when I wear the paper mask, I blow out black mucus from my nose everyday. The black particles in my nose and throat look as if I am a heavy smoker. Cuts and abrasions happen all the time. Of these the open wounds are exposed to the dirt and dust and many do not heal as quickly as normal wounds.
\end{quote}

The SVTC report also noted that the inmates working at UNICOR’s prison recycling system were not protected by the Fair Labor Standards Act and only paid between $0.20 and $1.26 an hour. Shortly after the report came out, Dell announced plans to switch the third-party e-waste recycling partner away from UNICOR. Bryan Hilton, a spokesman for Dell, said the decision was based on new vendors being more competitively priced, further noting that his company “did not make any decision based on special interest groups.”\(^3\)

Nevertheless, the bad PR Dell received from SVTC hurt HP’s main competitor in the eyes of a number of consumers.


e-Waste Laws in Maryland and Maine

On April 20, 2004, Maine governor John Baldacci followed California’s lead by signing the state’s own e-waste law. The Maine law was dramatically different from the California law in how fees were assessed: there was no consumer “tax” provision; rather it focused on producer responsibility through a back-end fee assessment. Like in California, local governments and consolidators were responsible for collecting e-waste for recycling. The back-end fees on manufacturers to be assessed in Maine were to be based upon how many of a particular manufacturer’s products ended up in the recycling stream and what their share of the total cost of recycling was at local recycling facilities, who would bill the manufacturers. That is, fees in Maine were based on market share of collected products and how efficiently those products could be processed.

Maryland then followed with a slightly different law, but also one that focused on producer responsibility. Governor Bill Ehrlich signed HB 575 into law in May 2005. The law requires manufacturers that sell more than 1,000 computers in the state to pay the state a relatively low flat fee for e-waste recycling unless they demonstrate they have a program in place that allows consumers to recycle products free of charge.

With Maine and Maryland following California’s lead, e-waste was beginning to make it onto more and more legislators’ radars. How regulation would play out remained unknown.

HP Model Bill

HP’s political strategy evolved following passive, reactive lobbying around California’s e-waste law and those in Maine and Maryland. The company decided to be more proactive and to draft a model bill that could easily be passed on to legislators to consider at either the state or the federal level. The model bill was intended to give policymakers across jurisdictions a starting point for a discussion, thereby shortening the time until new polices came into effect—with the goal of ultimately reducing the regulatory uncertainty HP was facing. The results of any new regulations on e-waste would have a direct impact on the long-run profitability of the firm’s earlier investments, particularly in establishing its own e-waste recycling facilities.

The model bill, like the Maine and Maryland laws, placed the financial burden directly on manufacturers rather than on consumers as in California. In HP’s model bill, manufacturers

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4 The concept of particular jurisdictions leading in the adoption of an innovative environmental policy has been coined the “California Effect.” See David Vogel, Trading Up (Cambridge: Harvard University Press, 1995).
could recycle their own products or pay heavy fees to finance state or other recycling programs based upon market share. David Isaacs, director of Government and Public Policy at HP, commented that “in any system, where there’s a fee or not, there needs to be some sort of calculation as to how much funds you need to raise to cover the cost of recycling.”\(^5\) Isaacs further argued that giving companies the flexibility to pursue their own recycling programs would promote innovation.

Scott Cassel, executive director of the Product Stewardship Institute, commented that the HP model bill is a good “starting place” for state government and a “real attempt at providing a significant and prime role for manufacturers,” adding that it may not go far enough in some respects like the number and variety of product lines it covers.\(^6\)

### Decision Time Again

St. Denis and Isaacs were again at a point where they had to make decisions on how to move forward in navigating e-waste regulation given HP’s already sizeable investments and leadership position. The California law they initially supported was not helping them. The Maine and Maryland laws were more beneficial to them but not ultimately what they wanted. Could they get other locales to adopt regulation that would help the firm?

How would they convince legislators that the HP model bill was the way to go? Or at least a reasonable place to start thinking about e-waste?

Should they focus on state legislators or should they instead focus more of their limited lobbying resources at the federal level? Where should they start?

Should they be working with other firms now or should they continue to go it alone? If they were to work with other firms could they convince them to get on board with the HP model bill?

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\(^5\) Communications Daily.

\(^6\) Communications Daily.