

Department of Ecology
Guidance Regarding Implementation of
Chapter 70.76 RCW

Chapter 70.76 RCW was passed by the Washington State legislature in the 2007 session. This law provides a blanket prohibition on the manufacture, sale and distribution of products containing PBDEs after January 1, 2008. The law also provides 12 specific exemptions from this prohibition, including one for new products made from recycled or used components that contain Deca-BDE. The Deca-BDE restriction for electronic enclosures becomes effective January 1, 2011 [assuming a safer and technically feasible alternative that meets applicable fire safety standards is available]. There is no exemption for the sale of new products [except for recycled carpet pad] that may contain very small amounts of other PBDE mixtures. The purpose of this guidance is to provide the public and the regulated community with information regarding Ecology's implementation of RCW 70.76.

Ecology understands that it may be very difficult for computer and electronic manufacturers to guarantee that they meet a standard of "zero" – as the PBDE Law requires. Ecology understands this is the case because the manufacturers have developed their environmental specifications so they align with the existing RoHS¹ 1000 ppm PBDE limit and because these manufacturers sometimes use recycled plastics. At this time, recycled plastic may contain residual amounts of PBDEs due to the fact the PBDEs are still used in the industrial market.

The PBDE statute states that enforcement of the chapter “must rely on notification and information exchange between the department and manufacturers”. Thus, the statute does not contemplate a completely traditional enforcement strategy. Ecology also has a responsibility to use its limited resources to best achieve compliance with RCW 70.76 and further the legislature's policy by focusing resources on the most significant violations.

Therefore, Ecology intends to use its enforcement discretion and not to take enforcement actions against a manufacturer if the following conditions are met.

- PBDE concentrations do not exceed 1000 parts per million (0.1 percent) of total PBDEs by weight in any homogenous material in electronic enclosures (television and computers), residential upholstered furniture products, or any other products that might contain residual PBDEs;
- If requested by Ecology, the manufacturer is willing to certify that this standard has been met; and
- The PBDEs are residual or pre-existing in the product materials and components and not intentionally added to the product materials and components as part of the manufacture or assembly process.

¹ European Union's Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment ("RoHS" Directive).

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In using its enforcement discretion in this manner, Ecology intends to continue to encourage recycling and reuse of products by not penalizing manufacturers who use recycled materials that may contain the above described levels of residual PBDEs. Ecology's use of its discretion in this manner is also consistent with the current RoHS requirements for electronic products.

This guidance is provided to the regulated community and the public to inform affected and interested parties regarding Ecology's implementation of RCW 70.76. This guidance may be amended or rescinded at any time by Ecology.