

E-mailed from the

ASSEMBLY COMMITTEE ON
ENVIRONMENTAL SAFETY AND TOXIC MATERIALS

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March 7, 2011

To: Members, Committee on Environmental Safety & Toxic Materials
Members, Committee on Natural Resources

From: Assemblyman Bob Wieckowski
Chair, Assembly Committee on Environmental Safety & Toxic Materials

Assemblyman Wesley Chesbro
Chair, Assembly Committee on Natural Resources

Subject: Alternative Regulatory Systems: Extended Producer Responsibility and Product Stewardship

The Assembly Environmental Safety and Toxic Materials Committee and the Natural Resources Committee is scheduled to hold a joint oversight hearing on the use of Extended Producer Responsibility (EPR) and other product stewardship programs to reduce the adverse environmental and economic effects of materials in California a waste stream. The joint hearing will be held on Tuesday, March 8, 2011 in room 444 of the State Capital in Sacramento.

The committees will be conducting the oversight hearing to gather information on the ability of EPR programs as an alternative to prescriptive waste management and end-of-life product management regulations.

California has recently acted to create product stewardship requirements for the manufactures of carpet and paint products. The committees will be reviewing the progress toward implementation of these two product specific stewardship programs.

Some of the issues the committees will be considering include:

- ✓ Should California expand the use of EPR for those parts of the waste stream that pose environmental risk, public health concerns or high cost to local governments or consumers?
- ✓ What other states or countries implement EPR program and EPR framework programs can those serve as a model for California?

- ✓ Should California develop a broader EPR framework program to allow greater flexibility in regulating high risk and high cost products?
- ✓ Are the recently enacted legislation, AB 2398 (Perez) related to carpets and AB 1343 (Huffman) related to paint, being implemented in a timely fashion?
- ✓ Will the passage of Proposition 26 in the November 2010 election have an effect on existing and future product stewardship programs?

Extended Producer Responsibility (EPR)

Extended Producer Responsibility (EPR), also known as Product Stewardship, is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of the general public; while encouraging product design changes that minimize a negative impact on human health and the environment at every stage of the product's lifecycle. This allows the costs of treatment and disposal to be incorporated into the total cost of a product. It places primary responsibility on the producer, or brand owner, who makes design and marketing decisions. It also creates a setting for markets to emerge that truly reflect the environmental impacts of a product, and to which producers and consumers respond.

Product stewardship as an alternative to prescriptive regulations. In September 2007, the California Integrated Waste Management Board adopted an EPR framework as an overall policy priority and committed to seek statutory authority. Prior to adopting the EPR framework, CIWMB conducted a stakeholder workshop on EPR. The framework was adopted by CIWMB in a public board meeting, which included comments from stakeholders and the public.

ERP Framework Strategies

Since California enacted its groundbreaking recycling legislation (AB 939, 1989), we have created 22 new programs to regulate the end of life management of products. Rather than implementing separate laws to address environmental concerns for individual products, a comprehensive Extended Producer Responsibility (EPR) Framework would address a wide range of products that end up in California landfills and make a significant impact on our environment.

Selecting products subject to EPR under a framework strategy would be based on the relative risk or cost associated with these products in the waste stream. Determining what products would be subject to EPR would be determined within the regulatory process following enactment of statute. Some general concepts that should be addressed in that process include the following factors:

1. Total volume being disposed in landfills
2. Level of toxicity or hazard to human or environmental health
3. Total lifecycle net environmental impact

4. Potential for net lifecycle impact improvement
5. Level of market/infrastructure currently in place
6. Effectiveness of programs currently in place, if any
7. Current impacts to local governments/general ratepayers
8. Usage trends (increasing, decreasing, steady)
9. Difficulty to manage
10. Existing problem with illegal dumping

Legislation to create an EPR Framework system was introduced in 2009 and 2010. Those bills, AB 283 (Chesbro, 2009) and AB 2139 (Chesbro, 2010) proposed an EPR framework.

Carpet Stewardship Program – AB 2398 (Perez) - 2010

California is the first state to establish a private-sector designed and managed statewide carpet stewardship program. AB 2398 (Perez)¹ was approved by the legislature and signed into law in 2010. The act follows producer responsibility principles to ensure that discarded carpets become a resource for new products in a manner that is sustainably funded and provides jobs for Californians.

Discarded carpet is one of the 10 most prevalent waste materials in California landfills, equaling 3.2 percent of waste by volume disposed of in California in 2008. Most carpet is made from nylon and other polymers derived from virgin oil. Fortunately, numerous products can be manufactured from recycled carpets, including carpet backing and backing components, carpet fiber, carpet underlayment, plastics and engineered materials, and erosion control products. Several carpet recycling facilities currently operate in California, offering jobs, and producing products and feedstock for products

California law requires manufacturers (either individually or through their stewardship organization) design their own stewardship program: they prepare and implement a plan to reach certain goals, and report on their progress. CalRecycle approves plans, checks progress, and provides oversight and enforcement to ensure a level playing field among carpet manufacturers. Other service providers participate in the management system as negotiated.

The stewardship plan defines a program that is in compliance with the law and communicates a course of action to stakeholders and the public. Plans will be posted at this website, along with ensuing annual reports

Paint Stewardship Program – AB 1343 (Huffman) – 2010

California is the second state in the nation to enact an industry-led, statewide program to reduce the generation of leftover paint, promote its reuse, and properly manage unwanted leftover paint. The legislation approved in 2010 (AB 1343 (Huffman))² follows producer responsibility principles to ensure that leftover paint is properly managed in a manner that is sustainably funded and provides jobs to Californians.

¹ Chapter 681, Statutes of 2010 [Perez, AB 2398]

² Chapter 420, Statutes of 2010 [Huffman, AB 1343]

According to CalRecycle Californians generate millions of gallons of leftover paint each year. Prior to the passage of AB 1343, the only way for residents to properly manage their leftover paint was through local, taxpayer-funded household hazardous waste (HHW) programs. However, due to the immense cost to manage household hazardous waste, local programs typically can only afford to serve between 5-10 percent of the residents in their jurisdictions. Despite these low levels of participation, in 2009 paint represented almost one-third of the material collected through local HHW programs and cost local government millions of dollars to manage

AB 1343 sets forth the requirements of the statewide Paint Stewardship Program. The goal of the legislation is to reduce the generation of postconsumer architectural paint, promote the reuse of post-consumer architectural paint, and manage the end-of-life of post-consumer architectural paint, in an environmentally sound fashion, including collection, transportation, processing, and disposal.

California's paint stewardship law requires paint manufacturers (either individually or through a stewardship organization), design their own stewardship program. They prepare and implement a plan to reach certain goals and report to CalRecycle on their progress. The stewardship plan defines how a manufacturer or stewardship organization intends to fulfill its responsibilities under the law and communicates a course of action to stakeholders and the public. CalRecycle approves plans, checks progress, and provides oversight and enforcement to ensure a level playing field among paint manufacturers. Other service providers, such as HHW management contractors, local HHW programs, and/or retailers, participate in the program as negotiated through the manufacturer or stewardship organization.

Proposition 26 effects on statutory product stewardship programs.

On November 2, 2010, California voters approved Proposition 26, a State initiative constitutional amendment that affects the authority of both the State Legislature and local governments in the area of fees and taxes. The amendment creates a new definition of taxes encompassing various charges that the law previously treated as regulatory fees. Going forward, new or increased fees or charges that a local government seeks to impose, and that fall under Proposition 26's new definition of a tax, will be subject to voter approval. And in many instances voter approval will require a two-thirds supermajority because those fees or charges would be special taxes. Proposition 26 became effective on November 3, 2010.

The existing product stewardship laws as well as other programs for products including tire, motor oil, beverage containers, or electronic waste include fees on manufactures, retailers or consumers to cover program cost. The passage of Proposition 26 has the potential to limit the use of these product specific fees for stewardship programs without a 2/3 vote.

2011-2012 Legislative Session EPR Bills.

- AB 1189 (Mendoza) Batteries - This bill makes technical correction to the current rechargeable battery recycling program.

- SB 515 (Corbett) Batteries - This bill requires producers of household batteries to institute programs to manage used household batteries. This bill requires battery producers to set up and finance programs to take back used batteries and recycle or properly dispose of them.
- SB 932 (Leno) Florescent Lamps - States the Legislature's intent to enact legislation that would promote the recycling of residential fluorescent lighting.
- SB419 (Simitian) Home-generated Medical Sharps - Existing law requires a pharmaceutical manufacturer selling medication that is intended to be self-injected at home to submit to the Department of Resources Recycling and Recovery a plan supporting the safe collection and proper disposal of specified waste devices. This bill would require pharmaceutical manufacturer to submitted these plans in an electronic format