

# EPR as Explicit Property Rights

From Usman Valiante's [blog](#) at Solid Waste & Recycling Magazine, March 2006 under the title, *Wither EPR?*

Last week I attended the 4th Annual Extended Producer Responsibility Conference held in Calgary, Alberta, Canada and co-sponsored by Alberta Environment and Environment Canada. It seems to me that the overriding messages from the conference could be paraphrased as, "...Extended Producer Responsibility is a good theory but impractical...", moreover, "...if one of the goals of EPR is to promote design for the environment it isn't working...", and "...there are no true EPR programs in Canada because in practice the requirements are too complicated and onerous...". To hear it, EPR is not an acronym for Extended Producer Responsibility but for Extremely Pedantic Rhetoric.

Extended Producer Responsibility isn't well understood (and I say this notwithstanding those waving accreditations from institutions of received wisdom and shrilly protesting otherwise). As commonly discussed the concept of EPR is unclear (and its obscure and inaccurate naming doesn't help either). Take this classic OECD definition of EPR. "EPR extends the traditional environmental responsibilities that producers and distributors have previously been assigned (i.e. worker safety, prevention and treatment of environmental releases from production, financial and legal responsibility for the sound management of production wastes) to include management at the post-consumer stage. "Widely cited (I am as guilty as anyone) and oft repeated, this definition offers little about what EPR really is and nothing about how it should work in practice. In my mind this definition causes more confusion than it alleviates. So I'm

going to abandon the unfortunate EPR moniker and turn to alternative language to describe a way of regulating the environmental burdens associated with products and services. That is, language that describes the rights to possess and transfer property - **the language of property rights**.

Let's skip as much of the legal and economic jargon as we can and go right to a practical environmental example. A manufacturer produces cathode ray tube (CRT) TVs which are distributed and eventually retailed to consumers. The government determines that the TVs generate environmental burdens at the end of their useful life (i.e. lead contamination) and that those burdens warrant some form of intervention (i.e. regulation) to reduce them to some acceptable level (the "environmental standard"). In a property rights based regulatory approach the government states through regulation that while the title to a TV transfers from producer, to distributor/retailer to consumer as it passes down through the supply chain, the title to the TV immediately reverts back to the producer (or first importer) at the end of the TV's useful life. The producer may then transfer title to the "waste" TV to a third party (i.e. a waste collector) and the third party to a recycler but only if the transfers can be tracked from beginning to end and can be shown to result in the TV being finally managed to the "environmental standard" (i.e. the transactions are environmentally accountable and transparent). Any producer (or first importer) that fails to take title of its TVs at their end-of-life and meet the environmental standard in managing

them loses its right to transfer (i.e. sell) new TV's to consumers. That is it. Finis.

But wait! What about the formation and operation of a Producer Responsibility Organization (PRO) for waste TVs? What about the "funding mechanism" (i.e. fee scheme) for collecting and processing TVs to the "environmental standard"? What about all the regulatory and bureaucratic clap-trap that normally accompanies "stewardship" programs? In a property rights based regulatory approach all of these things are immaterial to the regulator. The producers - the waste TV title holders - sort themselves out to meet the environmental standard in managing their wastes. Producers could band together in a collective (i.e. Electronic Product Stewardship Canada - EPSC comes to mind) to manage their wastes (much as electronic producers do to create technical standards for CDs, DVDs etc.). Like any other aspect of business, contractual obligations and charges for covering the costs of administration, collection and recycling services are the subject of commercial negotiations between producers (or the producer collective) and service providers - what prices are actually established are also irrelevant to the regulator.

But what about the often asked question of program "funding" - i.e. fees and "who pays"? In such a system a collective established by producers will have to assign the costs of administering and paying for collection and processing of producer wastes back to the members of the collective. The cost allocation formula will have to be negotiated amongst the members of the collective. Since the collective is a

combine of producers, established by producers for producers, it will not have any government assigned power to levy fees from retailers or consumers. That said, the collective could pass on program costs by entering into an arrangement with retailers / first importers to accept program costs that have been converted to a system of fixed product levies or fees (obviously, with the understanding that the fees will be passed down to the consumer). Of course, such an arrangement of "fixing" recycling prices amongst producers and having retailers agree to pass them on to consumers would be subject to scrutiny by the Competition Bureau.

What have I described above? Well, in a nutshell something that looks very much like the requirements of British Columbia's Recycling Regulation. Not surprisingly, I've heard some describe BC's requirements as "too open" and not providing necessary specifics regarding governance and financing structures necessary to create - and consider the use of the term here in the context of the preceding paragraph - a "level playing field". So while EPR as "Extended Producer Responsibility" might be better described as "**Explicit Property Rights**" I suspect some would be much happier with EPR were it to mean "Extremely Prescriptive Regulation". Over the next couple of weeks I'm going to discuss the Explicit Property Rights model in the context of the sexiest "stewardship" issue going - waste electronics. Specifically, I'm going to talk about the treatment of "historic" and "orphan" waste and design for the environment (DFE) outcomes. Stay tuned.

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[http://blogsw2.solidwastemag.com/2006/03/wither\\_epr\\_1.htm](http://blogsw2.solidwastemag.com/2006/03/wither_epr_1.htm)