

**US EPA Region 10 & Product Policy Institute**  
Product Stewardship Webinar 2

**Framework EPR Legislation: Government's Role**  
**May 26, 2009**

**GARTH HICKLE'S PRESENTATION**

Well thanks everyone. I appreciate the opportunity to be here and thank EPA for hosting the event today as well as Product Policy Institute with the invitation to participate. I think both Seigo and Heidi did quite a good job in terms of establishing the basic context and argument for a product stewardship framework so I am hoping I am not going to be too repetitive following their remarks but I am going to try to put this in the context of one state, Minnesota, to illustrate some of the evolution and thinking that we've gone through on the product stewardship journey.

I am first going to provide the definition that my agency has adopted for product stewardship as well as a few of the underlying principles.

- Product stewardship means that all parties involved in designing, manufacturing, selling, and using a product take responsibility for the environmental impact at every stage of that product's life. So essentially it is engaging manufacturers, retailers, recyclers, consumers, and others along the product chain to reduce the environmental footprint of those products.

However, it is important to know that while everyone has a role, that doesn't necessarily mean that the role is the same. Manufacturers, collectors, recyclers, consumers all have different roles apportioned along the chain with different levels of responsibility. We really do look at it as an overall policy principle that does extend up and down the product chain and while there has been a significant emphasis on product stewardship and producer responsibility at the end-of-life portion of the product life cycle, we really do look at it as a tool to address many of the upstream impacts to get at some of the design considerations focussing on materials, energy usage, water, and so forth.

I did include two other operative definitions for producer responsibility. We really look at product stewardship and producer responsibility frankly, in this context, as fairly interchangeable. That both definitions connote a degree of shared responsibility amongst all the players along the chain so we do see in the schemes that are deemed as producer responsibility a fairly significant role for retailers, recyclers, and consumers. So that's really been our thought process over the last 10 years.

Clearly it is a global approach as both Heidi and Seigo touched on, with an emphasis on packaging and electronics specifically. The European Union has been a leader on advancing the concept by identifying the polluter pays principle that has been incorporated into many of their environmental statutes and directives. The practice really came into being with the

German packaging ordinance bill in 1990. The concept of producer responsibility has been included in the European Community Waste Strategy since 1997 so it has been a kind of a guiding principle for their waste management efforts. There have been specific directives issued on waste electronics, end-of-life vehicles, packaging, and batteries. As Heidi referenced, Japan, Taiwan, Korea, and several of the other Asian nations also demonstrated leadership on the concept. Also China has moved forward and adopted waste electronics and restrictions on hazardous substances-type legislation.

We are also starting to see an emergence of the issue in Latin America, particularly with the focus on electronics and packaging. Australia has created an interesting approach with the sometimes-deemed voluntary national packaging covenant, which I think is worthy of looking at in terms of helping to support some of the voluntary activities in that state.

In Minnesota, we adopted a product stewardship policy in 1999 that articulates expectations and roles for responsibilities for all the players along the product chain. It established some criteria and a process for selecting products for attention by the PCA as well as the state. That has helped guide our efforts over the last several years and has really been focussed on CRT [cathode ray tube]-containing products, paint, and discarded carpet.

First I am just going to briefly talk about the *Minnesota Electronics Recycling Act* since I think it has garnered the most of our attention over the last six years or so, and we really have been devoting a significant amount of resources to implementing this act. It followed five years of fairly difficult legislative debate at the state legislature. It was signed by Governor Pawlenty on May 8, 2007. It was based on a conceptual regional model. The intent was to try to get the states in the upper midwest that were looking at e-waste legislation to at least begin a discussion about how we could do this in a coordinated harmonized fashion to reduce the level of compliance and resources necessary to implement individual state laws. E-waste is a poster child nationally for the approach that we don't want to follow. Upwards of 20 states have implemented laws and all of them are different and some of them are significantly different than others.

The Minnesota law is based on an obligation which is determined by the previous year's sales of video display devices which are defined as laptops, monitors, and televisions. It requires an annual registration fee by the manufacturers. Originally, retailers were to report sales back to the manufacturer. That provision was just eliminated during the legislative session this past year so that provision no longer applies. The manufacturers will be using prorated national sales data.

There is an additional credit for collection in rural areas, to provide an incentive for manufacturers, recyclers, collectors to provide collection adequately state wide and not to just focus on the Twin Cities metropolitan area. If manufacturers, for whatever reason, don't want to operate their own collection program or if they fail to meet their obligation, there is a 30, 40, or 50 cent per pound fee that they have to remit to the Minnesota Department of Revenue based on their short fall of their obligation. There is a trading mechanism built in, so if they collect more than their obligation, they have credits that they can apply to the future year's obligation or sell to other manufacturers. It does require a statement of compliance with the

restriction on hazardous substances directive. In the European Union, retailers are required to provide information at point of sale about opportunities for collection in the state for their customers. This approach is under consideration in the Wisconsin legislature at the moment, and similar provisions were incorporated into the producer responsibility law which was recently signed by Governor Daniels in Indiana.

We do have only one program year data up to this point. The second program year concludes on June 30, 2009.

- We had 71 manufacturers registered with recyclers reporting about 33.6 million pounds of material collected statewide. We did see a significant expansion of collection options throughout the state.
- We are up to about 212 locations statewide with 68 of the 87 counties with permanent locations. That's a pretty significant build-out of the infrastructure to what we previously had.
- The per capita recycling rate for the first program year was about 6.5 pounds per capita. We met our goal of having statewide collection with about 34% of covered electronic devices collected outside the metropolitan area. That generally tracks the metropolitan area and non-metropolitan area population split so we were quite happy with that.
- The manufacturers really deserve some serious recognition for their efforts in terms of collecting a significant volume which was about 2 pounds per capita higher than we had projected would be achieved during the first year. Those pounds can be carried over up to subsequent years which is about 19 million pounds of recycling credits were generated the first year of activity.

The impact on local government. Obviously as Seago and Heidi both referenced, the rising volumes and subsequent costs for local governments are a significant driver for moving forward with an eye towards product stewardship policies and regulations. We did have, as I mentioned, a significant expansion of collection options including non-local government provided collection options. Best Buy, which was referenced, is doing collection. About 35 stores statewide. We've seen a whole host of other entities get into the business so that collection infrastructure has been built out compared to what it was the first year. As a result of that the producer responsibility portion of the law with cities and counties are starting to realize some significant cost savings. The city of Minneapolis, which provides curbside collection for the residents of a whole range of electronic products, realized cost savings of nearly \$700,000 during program year one. St. Louis county, which is located in northeastern Minnesota realized a savings of about \$90,000 during program year one as well. Several other counties are able to illustrate similar cost savings.

Now having said that, some of the cost savings for program year two will not be as significant because of that number of recycling credits generated during the first year as well as just some of the rougher times that e-waste recyclers are having due to the global commodity markets. But I think that just from these two quick case studies, there is a compelling rationale for local governments to look at producer responsibility or product stewardship mechanisms to help address some of the growing costs without having to rely on local government tax dollars.

So having had the experience with the e-waste law and the legislative dialogue and support for the concept over the past half dozen years, there was some interest with moving forward with a product stewardship framework. Rep. Paul Gardner moved forward study language during the 2008 legislative session in an omnibus state government financing bill directing the Minnesota Pollution Control Agency to conduct a study of what a product stewardship framework would look like for Minnesota. As we sat down to think about how a product stewardship framework could unfold, we looked at several things -- and Seago certainly touched on some of these.

- Developing a successful and sustainable approach to product stewardship in the state.
- Promoting consistency between the various product stewardship programs in Minnesota while obviously acknowledging that there are differences between various products, there are also some significant commonalities in terms of how those products are collected and managed at end-of-life -- particularly for those products that are addressed through household hazardous waste programs. So we saw this as an opportunity to help promote that consistency.
- Also promoting harmonization between the various state programs. We look at the framework as an opportunity for an industry-driven system that can be adopted by multiple states. By not addressing products on an individual state basis and product basis, the framework creates a platform for industry-driven programs to roll out in multiple states. We view that as a benefit of considering this approach. We are articulating principles and expectations for product stewardship but we also see it as providing cues in terms of what some significantly robust voluntary programs could look like -- acknowledging that there is a place for strong voluntary action.
- And then, importantly, reducing the staff and resources necessary to implement individual product programs.

We were directed to ensure that the recommendations would be consistent with product stewardship programs in North America so we did take a look at what was happening in the Canadian provinces, most prominently in British Columbia and Ontario as well as developments in California, Oregon, and Washington. All three of those legislative and policy efforts were helpful in terms of informing what Minnesota could do, particularly looking at opportunities for consistency and harmonization. Then the report was developed in consultation with stake holders. We held several public meetings to receive input from local government, environmental advocacy organizations, manufacturers, retailers, and other interested parties.

The recommendations focused on a couple broad areas.

*Criteria for evaluating products.* Essentially we broke the recommended criteria out into three main topic areas:

- First, does the product present adverse environmental and/or public health impacts including impacts on health or environmental health, presence of toxic and hazardous constituents, opportunities for reducing waste and toxicity. This was very much at the

top of what we heard from the stakeholders who participated in the development of these recommendations.

- Secondly, does the product have a potential for enhanced resource conservation? So including looking at climate change, resource recovery, material conservation, opportunities for increasing reuse, recycling content, etc.
- Lastly, does the product significantly burden solid waste programs or offer business opportunities. We tried to get at what is the economic context for managing these products? Is there an opportunity to move forward in a more economically efficient approach?

*Process for designating products.* The topic area that consumed most of the attention was the process for designating products. Once we've selected a handful of products, how is that actually designated for a product stewardship approach? We identified that the products would be submitted to the citizens board which provides oversight and guidance to the Minnesota Pollution Control Agency for consideration. They've got an opportunity to then take public testimony and so forth and it also provides a forum for an environmental advocacy group, a county or business to be able to submit a petition for a product, lets say. The citizen's board would then approve or reject the recommendation, however, the legislature would have the ultimate say on whether that product would be considered, recommended for action under the product stewardship framework.

*Components of Stewardship plans.* Again, we are specifically asked to identify what would be some of the key components of stewardship plans and some of this has already been touched on with the discussion today, but the definition, scope of products, laying out the roles and responsibilities for those along the product chain, but most importantly for our purposes, is proposing specific performance goals. We felt that performance goals are key and becoming more so for all of our work and so we really felt that including the performance goals in the context of the stewardship plan was critical but providing that flexibility in terms of what those specific performance goals would be knowing that those goals would certainly vary depending upon whether the product was a consumable product, lets just say like paint, or a durable product like electronics. So we needed to be able to provide that flexibility in the context of stewardship plan.

*Facilitating creation of industry managed organizations.* Obviously a key component of a product stewardship system having the manufacturers assume responsibility and being able to implement those programs like we have seen with the e-waste effort and part of that is making sure that they are providing ample antitrust exemptions. We do have existing examples right now in statute for e-waste as well as rechargeable batteries and then had language in the paint stewardship bill that was considered adopted by the legislature but vetoed by the governor just last week. We really look at facilitating and helping support those industry managed organizations as key pieces.

While the performance goals are to be identified in the context of the stewardship plan, our recommendations did include some specific guidance in terms of how those goals could be developed. Obviously recognizing that they will be different depending upon what that particular product is.

- Essentially developing an annual recovery rate for escalating collection of a specific amount or percentage of the product during the first four years of the program.
- Having the methodology spelled out in terms of how the performance goals and capture rates were determined.
- Indicating that there are some other product goals that could be considered including:
  - looking at what are the qualitative and quantitative goals to reduce the environmental health impacts of the product
  - assessment of the carbon foot print steps taken to reduce energy and water consumed during production, use, and disposal so really trying to look at that from the overall life cycle impact.

There has been a lot of activity legislatively around a whole host of different products and the list that was provided was the individual product bills that were moved forward this legislative session. Some of them received hearings and some did not. Essentially, it provides you with a sense that there is a tremendous amount of product related activity happening from a legislative or regulatory standpoint and we think that the product stewardship framework concept offers an opportunity to bring a little bit of sanity to that process and reduce some of the resources and staffing necessary to look at these programs individually in the legislative concept.

The framework report was translated into a bill. [HF-2407] was introduced on the final day of the legislative session by Rep. Gardner. It was not an administration bill but he may bring that up for consideration during the 2010 session. It largely follows the MPCA's report recommendations but given that it is a legislative draft, that it does provide significantly more detail on a couple points including prohibition on point of sale and end-of-life fees, placing more direct responsibility on the manufacturers for some of the education and outreach objectives, some of the enforcement provisions as well as providing opportunity for the public and others to provide comments on the functioning of the program on an ongoing basis.

One of the other issues that Bill Sheehan asked me to comment on was the role of local government in the context of Minnesota's product stewardship efforts. I've just got a couple quick statements that I want to leave you with. On one hand we have had local government, particularly the counties who are responsible for solid waste management in Minnesota, who have been the most prominent advocates for product stewardship in the state and at the legislature. However, recently we are starting to see some questions raised from all quarters, from local government as well as manufacturers about what is the pathway and method for how to integrate some of the existing programs into some of the manufacturer driven efforts? Some of the manufacturers have expressed concern about the local governments expanding presence and collection of e-waste for instance. Offering an ongoing significant service has been a hallmark of some local government programs in Minnesota. The drivers for manufacturers may be around compliance and brand management and so forth. So really trying to reconcile some of those different drivers and build bridges between those longstanding local government efforts versus the manufacturer-driven programs has been a challenge. But we are committed to keep fostering that discussion because it is something that is not going to diminish any time soon, particularly as retailers and others start offering a much wider array of collection services, whether for paint, thermostats, compact fluorescents

and so forth. We certainly want to recognize that long-standing government role of providing service to citizens particularly in greater Minnesota where there may not be opportunities for others to step in and provide service, but also we also want to support manufacturers and retailers as they start expanding their footprint in the product stewardship efforts.

Lastly, I just wanted to leave you with two slides about what is happening in the Canadian Stewardship Program because I think they have really started to confront the issue around consistency and harmonization between the various provincial programs head on. I have provided a chart of the whole array of varying products and activity in the various provincial programs. The Canadian provinces have been quite aggressive about moving forward stewardship programs over the last several years and will certainly continue to do so.

But, by the same token they have also recognized that they need to place much more of an emphasis on consistency and harmonization between those provincial programs, in part to help support the efficiency of the producer responsibility organizations whether they be for e-waste, lighting, packaging, what have you. And so to that end, the Canadian Councils of Ministers of the Environment has issued a Canada-wide Action Plan for extended producer responsibility. They issued a consultation document this past February and comments are actually due at the end of this week. I encourage you all to take a look at that document because it lays out a plan, to the extent possible given the political and constitutional context in the Canadian provinces, a road map for them try to harmonize their programs.

The objectives of the plan essentially are

- To promote extended producer responsibility as the policy principle for waste management.
- Provide guidance to the provinces on how to help promote consistency.
- Look at packaging as the first priority product material for this Canada wide approach -- given the work that has been undertaken so far on packaging particularly in the context of the Ontario and Quebec Blue Box programs.

I will leave you with those thoughts today and I would be happy to take any questions you may have. Thank you.

### **Vicci Salazar**

Ok great. Thank you. We did have a few come in. I just want to remind people that if you are logging off because we are going long, you will get an e-mail asking you for some feedback about this session so we would really appreciate it if when you get that e-mail you go ahead and respond to those quick 5 or 6 survey questions. It will really help us with these presentations and so we have a few questions here. I think some are for, maybe all of our speakers.

**One is about enforcement. Can you talk about enforcement in general? At what level are these things being enforced and how is that being paid for?**

**Garth:** In the context of the e-waste law in particular the need for enforcement has actually been quite minimal. We were able to get in contact with the vast majority of manufacturers

who were selling video display device products into Minnesota so we feel that we've actually had excellent compliance from the manufacturers. The issue that we did have some concerns with and had to devote some resources to was the provision that had subsequently been repealed regarding the retail reporting requirement and, as I think people can probably understand given the significant number of retailers both bricks mortars as well as online, that did take some significant action from the state in terms of outreach and education to ensure that the retailers were fulfilling that requirement.

But we feel that compliance has actually gone much better than we had expected from all parties across the spectrum frankly.

**Sego or Heidi, do you have anything to add to that?**

**Heidi:** I was just in Brussels for a packaging conference on EPR. This was their 17<sup>th</sup> annual... they've been doing it for almost 20 years. They said that they implement it a little bit differently in every country and it's good because it tells us a story of what works and what doesn't work. In Germany they have a non-compliance rate where companies are selling into the system that are not paying into a stewardship program that is as high as maybe 24-25% because the government has not done enforcement. So you have to be extremely careful that you design a system to have enforcement. In countries like France, where they have enforcement, the non-compliance is extremely low. Now in British Columbia, it's quite brilliant and elegant how they set it up because the manufacturers are very aware of who is selling against them in the marketplace. It's their job to tell those companies that they are selling into the province without participating, for example, in the paint product care program, that they will then tell those companies that they are not allowed to sell into this market unless you participate in the paint program and you can either work with us in product care or you have to develop your own system. If they then fail to do that, the paint product care will turn the names of those companies in to the provincial government who has a full time staff that that's all they do, is enforce the law for companies that are selling in the province but not participating in a stewardship program. You have to have enforcement and it is not local government enforcement, it's state enforcement but it is done in partnership with the industry groups because they are very aware of who is selling and who their competitors are.

**What incentives in existing legislation have worked the best to achieve high levels of participation?**

**Heidi:** I can tell you that we don't have... our bills haven't really been implemented yet here in California and as far as what I have seen in Europe and British Columbia the systems... the reason they are working is not because there is huge incentives. The market incentivizes them being efficient and this is where we have the best blend in these systems the way we have developed these frameworks has really utilized the best of the free market system. Because when you have true competition and the companies truly internalize the price of recycling of their products, their #1 incentive is to make money and you can't make money if you have a poorly designed product that comes back at you every two years and has no value. You have to design it so that it comes back to you in a way that has value. It is not coming back to you as frequently if you have longer and more durable products that can be picked apart and be recycled easily, has a higher use at end-of-life so it really incentivizes that holistic design at

the front end but you are letting the market be the driver. Your product will be more expensive on the shelf against your competitor if your recycling program is not more efficient.

**Sego:** For the questioner who was asking about participation of users of the program, certainly the convenience requirements in the Washington state e-waste legislation has been a big deal. Having easy to use, convenient locations that are well publicized ... I think that's a driver for the users to use them.

**Garth:** I think one of the key issues also is making sure that the program is set up so that there is significant flexibility so that manufacturers are able to collaborate with one another and actually, hopefully, the program is set up so that there are incentives for multiple compliance options. So that really has been helpful in terms of actually providing multiple access points for an individual manufacturer to be able to fulfill their obligation and also having some competition between those various compliance organizations, I think, has improved the overall functioning of the program.

**Heidi:** I can also say that when I was in Brussels recently at a packaging conference, manufacturers were presenting for two days about how they were outdoing their competitors. So for example, the glass folks were promoting why glass was better than a different type of packaging and so forth by reducing greenhouse gas footprint, volume not being properly recycled at end-of-life, and cost to manage. They actually got into a mode where they were competing for the best environmental results. I was impressed. I felt like I was in a conference of environmentalists. Some of the presenters were manufacturers. There were petroleum companies making plastic packaging. So they've evolved over 15-20 years that their goal is environmental improvement and telling the consumer how grand they are because in Europe, that really sells. It's starting to sell here too. So I hope our companies hear that and really jump on the bandwagon because I think this can really be a business friendly thing to do.

**Tommie Jean:** A couple people had asked Heidi for links to some of the statistics and the different studies that you were talking about and so I have those links. I can send those out. They are not hyperlinked on here and they are really long so, Vicci maybe we can try to post those on the EPA website too. So I'll send those along with the link of where you can download to these slides and presentations. A couple more questions here:

**Are there efforts underway to develop global EPR systems through a transparent and open process for any particular product or industry sector?**

**Heidi:** I haven't seen one. I do know that Wal-Mart has come out with the packaging score cards which is kind of a default regulation world wide because Wal-Mart is now world wide and if can't sell to Wal-Mart, you've got a problem. How far the package was made from where it was actually put on the product, the environmental impact of the package itself, is it recyclable, how much shelf space it takes up, and so forth. That by default is driving industry packaging world wide. So I think what's interesting is that the first real world wide rule is coming from the private sector. We are going to start to see harmonizing. Nobody wants to make it harder for businesses to operate and right now they are having to operate with

different rules in different countries and they have to hire private consultants just to figure out how they can sell into South Korea, how they can sell into Japan and Europe. It would be much nicer if we could harmonize things world wide but that's a big job and that would take many, many, many years I think.

**Have there been any EPR systems designed that help foster reuse of products rather than recycling of products?**

**Heidi:** That's an excellent question. Sego you can answer that for the computers and what's happened in Washington but I know in California we're very concerned about that. In fact, our existing e-waste law that's an advance disposal fee really put a higher value on the recycling instead of reuse and it has created a lot of problems. The Product Policy Institute has monthly calls amongst the stewardship councils and our next call is going to be focusing on reuse and how to make sure it is protected and is highest in the hierarchy when it comes to products end-of-life.

**Sego:** I think actually there is a lot of things that can be put in place that help favor reuse and have been done but I don't think that they have been particularly effective yet. There is a new law passed in Washington state that tries to allow more reuse in the Washington legislated e-waste system by those collectors who are collecting the materials to begin with. But that's really a patch and I don't think that's a comprehensive solution yet. So I think this is a really important question. I think that we are seeing drivers for the corporations to be doing more reuse perhaps and folding it more in their business models but I have a feeling that whoever asked that question is probably talking about more reuse at the local level and all this is really interesting and tricky, I think, when we have stuff that is being made globally overseas, big corporations and then is being brought in to local communities and some of that stuff may have a reuse value but also has toxicity and other problems associated with it. I think this is really the next big question for us to all tackle. I think that's where I would leave it. I don't think that one is solved yet. One thing that Bill Sheehan and I have talked about and some others, is you could potentially build into -- and this would probably have to be product specific -- a reuse percent requirement. If you are going to have a recovery rate requirement, you could have a reuse rate requirement as well.

**Vicci:** I think this is a great place to end this. I would like to say thank you very much to our three speakers and to Product Policy Institute for putting this together and for organizing this. I think the fact that everyone stayed on for an extra half an hour really indicates the importance of this topic and how relevant it is to all the decisions and considerations we are having to take right now as governments, as we are looking to manage our budgets. So thank you very much Heidi, Sego, and Garth and to Bill Sheehan and the Product Policy Institute and to all of you who have attended. I know there are some questions that weren't answered and so we will be passing those questions on to the Product Policy Institute and hopefully they can be getting back to you and please give us feedback on this session. It really helps us to provide better information to you and will allow us to follow up with you in terms of what information would be helpful to you in the future.