

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

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

**SEGO JACKSON'S PRESENTATION**

Good morning everybody and thanks for joining us after a long weekend. I am going to move fairly quickly through this presentation because I want to get into to a fair bit of detail later on. I am going to pick up pretty much where we left off on the last Webinar, assuming many of you were able to join us for that. We talked about how when you are dealing with product stewardship programs and legislation on a product-by-product basis, it can get very frustrating that there are a lot of products out there that are often the responsibility of local governments to deal with and for taxpayers and ratepayers to pay for, for a variety of reasons. They're wasteful, They're toxic, They're dangerous, a whole variety of reasons that we work on products. Many of us who work in this area find it very frustrating when we have to address these products on a product-by-product basis. What we have begun thinking about and working on is, rather than get frustrated by this, get a framework approach as is used in British Columbia, Canada, and some other places. What this presentation is about is helping you start thinking within the concept of a framework.

As you look around at various electronic and other product stewardship legislation that has been introduced in the different states and you look to other countries and think about the things that are discussed in both local and national dialogues, a pattern emerges fairly quickly. Producers should have primary responsibility for collection programs and they do this through independent or collective programs. Often they will use stewardship organizations and they are responsible for the financing and organizing of collections through processing and removing those costs from governments. And a part of the process involves submitting plans and annual reports. Now it is a shared responsibility approach. They have the primary responsibility for the things I have talked about but others have roles as well and there are no legislated fees. The costs of the programs are to be internalized in their business operations.

Well, I said that other entities have roles. Government certainly has roles in terms of setting a level playing field, establishing performance standards and prioritizing products. It is essential that the government ensure that there is transparency in the process, and accountability. For those of us who have been working this area and have discussed all these things together, we really thought that it was time to start thinking about how to make this approach standardized for multiple products. As I said, this has already happened in some other places, but what would that look like in the US?

A number of us started raising the issue of what would actual framework legislation look like if you were to actually draft it out, such as what British Columbia has in place. What would that look like for an individual state? As you go through the process of actually drafting

model legislation, all sorts of issues emerge and things that you are not particularly aware of until you get into really trying to work through the detailed language. All of us who have worked on the electronics legislation for instance, have found that. So in talking about the need to do this, Bill Sheehan with the Product Policy Institute and I were talking and I said that someone really needs to draft this up and try to come up with a model for the state to see what we can learn from it. And Bill said, "let's try it." So we worked with some different drafts using language out of Canada predominantly to develop the initial draft and to see what that legislative framework would look like and how it would compare to some of the things happening in the US or what would be different about it here in the US. The goal was to understand a framework approach and begin going down the path to see what it would look like to actually establish framework approaches on a state-by-state basis.

I am chair of the Northwest Product Stewardship Council's Policy Subcommittee. That initial work that Bill and I had done was taken to the policy committee and with the same task: let's try to understand what a framework approach would look like. And to be honest, the attempt wasn't to draft a framework language and run with it right now. It was more to understand that as we move through different product areas and legislative approaches, what would we need to be doing if we had the goals and overall framework in mind to begin with? We were working with detailed language but Scott Klag, who is also on the Policy Subcommittee raised the issue of shouldn't we think through a check list of what we are trying to accomplish and shouldn't policies that are EPR policies they be judged against the checklist? In other words, a set of principles. What are we trying to accomplish here? So that took us down the path of not only working on detailed legislation but developing a set of principles.

What ended up evolving next was the California Product Stewardship Council also decided to develop a set of principles. We did a lot of back and forth with these principles between the two councils though much of the work was done with the Northwest Product Stewardship Council. Bill Sheehan with the Product Policy Institute did some shuttle diplomacy back and forth. What we did was establish a set of framework principles for product stewardship policy that guide development of product stewardship policy and legislation for multiple products. It is primarily aimed at state legislation but could be a guide for local and federal policy as well.

Well, these principles are certainly not the first principles that have ever been developed. They have gone through a natural evolution of a lot of work that has come before, like Minnesota's principles and the Canadian British Columbia principles. Product Stewardship Institute for instance in this country developed a set of principles that are still in use and working diligently with their government members. A group of NGOs that formed the US-Canada EPR Working Group developed a set of principles. There were a lot of lessons learned from e-waste legislation. All these things fed into our understanding of this set of principles that we have now adopted with the Northwest Product Stewardship Council, the California Product Stewardship Council and the other councils that have formed. It is a pretty simple two-page document but there is a lot of information in it so I will just show you some of this detail without walking through all of it since you are going to be able to come back to that later and look at it in more detail yourself.

Pausing here a little bit on producer responsibility, the producer of covered products in a state is responsible for design and managing and financing of the stewardship programs. They've got flexibility for how they do that. They are to finance collections through processing, cover the costs of new, historic, and orphan products, provide convenient collection to consumers throughout the state, etc. Each of these sections of this document goes through things like this in fairly good detail for a two-page set of principles.

- So we've got shared responsibility and governance -- we've already talked about some of this in terms of government's role and making and sure there is a level playing field and making sure that everyone that is producing that covered product has to be treated equally and fairly.
- Financing and environmental protection. This all folds into and should be compatible with existing environmental protection goals and laws and expand those to do more things that some of our existing laws don't do. It should be consistent with climate policy and higher waste hierarchies and things like that and certainly need to be responsible for how the products are managed at end-of-life.

The principles have now been adopted by the Texas and Vermont Product Stewardship Councils and the New York State Association for Solid Waste Management which is the organization that is in the process of launching a New York Product Stewardship Council.

So I want to talk now about how you can use this framework thinking, or this framework approach, when you are developing model legislation or when you are imagining how to get work that we are doing on individual products to fold into something greater in the future. Here are some options that you can use as a template for model legislation on a product-by-product basis:

- You can work on individual products but make sure that the language is harmonized so that it is easier for it to be part of a framework sometime in the future.
- Another approach is to pass framework legislation that allows the legislature to more easily add additional products over time.
- Another option is to pass framework legislation that empowers an agency, of course with input from the public and an advisory committee, to designate additional products over time.

There are more options there. You can find more information in this starter kit developed by the Product Policy Institute. If you are interested in this, you can get in touch with Bill Sheehan. This is really meant for policy people, people that work on developing legislation in the government sector and it is available on a request basis.

We are going to go through and look at how this works. I am going to do this in quite a bit of detail. I wouldn't suggest trying to write this down. You can access this PowerPoint to it later but the text in **red** is going to be the new text pertaining to a particular product. As we go through a series of slides, you will see how this works.

So let's imagine that you are in a state that doesn't have electronics legislation or you've got legislation that covers computer equipment but not televisions and we are all concerned about

this switch to digital that is nearly upon us now. A lot of televisions are showing up that need to be recycled. I am going to read through this first section:

1. By January 1, 2010, all producers of televisions shall collect free of charge unwanted televisions for recycling.
2. Producers of televisions shall submit a plan individually or with other producers describing:
  - a. How they will finance and provide convenient and effective collection, transportation and responsible reuse, recycling, or disposition of televisions throughout the state to rural and urban areas.
  - b. How the collected products will be handled in an environmentally responsible way.
3. Producers who do not provide such service are prohibited from selling televisions within the state.

This is highly simplified but it shows you how the general characteristics or principles can be applied and let's now adapt it for a different product. And for many folks mercury lighting is a concern. So if there is a lot of state action around mercury lighting, if you are going to follow a framework template, it would look something like this:

1. On different date the producers of mercury lighting shall collect free of charge unwanted mercury lighting for recycling.
2. Producers of mercury lighting shall submit a plan individually or with other producers describing
  - a. How they will finance and provide convenient and effective collection, transportation, and responsible reuse, recycling, or disposition of mercury lighting throughout the state to rural and urban areas.
  - b. How the collected products will be handled in an environmentally responsible way.
3. Producers who do not provide such service are prohibited from selling lighting within the state.

In the last section I just used the word "lighting" because as we see some companies moving away from fluorescent lighting but has put a lot of fluorescent lighting out in the marketplace and they are moving into LED's [light emitting diodes] or perhaps they only sell incandescents now but I don't think there is really an example of that. This would broaden the responsibility to sellers of all that lighting.

Ok, so now you've seen how you can take a single construct and apply it to other product areas. Let's look at how you would do this so that you create a framework for the legislature so that legislators can more easily add products over time so that they don't have these long, complicated bills for each product that they address.

So in this case section 1 basically remains the same except you replace "televisions" or the specific product with "covered products". Same thing with section 2. It stays the same. Section 3 stays the same and then you add a new section.

- On different date the producers of covered products shall collect free of charge unwanted covered product for recycling.
- Producers of covered product shall submit a plan individually or with other producers describing
  - a. How they will finance and provide convenient and effective collection, transportation, and responsible reuse, recycling, or disposition of covered product throughout the state to rural and urban areas.
  - b. How the collected products will be handled in an environmentally responsible way.
- Producers who do not provide such service are prohibited from selling covered product within the state.
- Names what the covered products that are included in the legislation and your legislature might be interested in naming several initial products or just one.

Maybe in 2010 for instance, there is some toxic product that is of particular concern in your state and they pass legislation that only pertains to that toxic product but in 2011 they can come back and through a very simple amendment to the legislation, add a wasteful product. Then perhaps the next year they have a greenhouse gas problematic product that is of concern and this allows them to not have to recreate long bills that say similar things but to stay within the same construction.

What I think many folks are very interested in is a construction that actually delegates to the agency a process for adding new products under the legislation over time through a rule making process. If we look at this, section 1 remains the same as what we just looked at, section 2 is identical, section 3 is the same, but then section 4 (and again, I have oversimplified this for the purposes of this presentation) is the new section:

- The State Environmental Agency shall designate products and product categories to be covered under this act in consultation with an advisory group.

So that's the gist of it. There are more options and more ways of doing this but really part of the story is how do you harmonize definitions and how do you harmonize much of the language so that it is more predictable to producers, less work for everyone and you don't go through these tremendous processes trying to figure out nuances for each and every product.

Let me tell you what happened in Washington State this year. Framework legislation language ended up in the Governor's Climate Advisory Team's recommendations. The advisory team came up with a wide range of recommendations but in this category which was addressing waste and agricultural issues one of the recommended actions was the development of an EPR product stewardship framework policy. There were a number of work groups working on specific areas working on behalf of the Climate Action Team. One was called the Beyond Waste Work Group. I worked on that and a number of other folks on the phone probably did too, including Jay Shepherd with Washington Department of Ecology. We were told to come back with legislative text that was detailed. So starting with the NWPSC draft that had already been worked on pretty extensively, that was reworked and taken forward as one of the recommendations coming from the action team. That draft that was developed was also used

as a template for lighting somewhat like I just described and also it applied initially to five different product groups, including carpet, mercury lighting, ... my memory is failing me. The intent was those working on the subject of EPR legislation in the state was not to run framework legislation yet. It was to understand framework legislation and look for compatibility with product specific legislation. But what ended up happening, much to our surprise, there was a decision to introduce an Omnibus Climate Change bill that included all of the legislative text that was developed through the Climate Action Team process. So this was an omnibus giant thing of 150 some pages that was introduced not as a serious attempt to run framework legislation or even to pass that specific climate legislation. It was really put out there as a discussion draft and to let people see all the language and start getting comments and begin that discussion. And, as well, in Washington, there was product specific legislation introduced that was compatible and that was lighting legislation. We also had pharmaceutical legislation running that was compatible.

Oregon passed its EPR electronics legislation in 2007. There is a lot of work there happening on many other product areas. Jan Wentworth, Scott Klag, and Abby Boudaris are folks working on all that. That developed a lot of interest along with the work in the NWPSA with moving forward with a framework approach in Oregon. The Department of Environmental Quality led a stakeholder process that was exceptional. A lot of good information developed through that process informed them and their framework legislation and then in 2009 they did introduce framework legislation. It was [HB-3060] and that has not gone forward at this point but has been really useful in generating a lot of discussion and will help all of us refine the framework approaches in the future. They also had numerous product specific bills introduced.

There are benefits to producers, but right now I think there is a lot of resistance to this approach from producers because they have not really acknowledged that EPR is definitely coming to the US. It's inevitable and this is an approach that is highly beneficial to them and not prescriptive.

- So some of the benefits are the possibility of using an approach like this to harmonize legislation between the states and to streamline compliance so that legislation that puts a system in place in Minnesota also works in Washington, also works in Oregon, also works in California.
- It puts the industry in the driver's seat, giving them tremendous flexibility.
- It allows industry to have some predictability on what's expected. What they are required to develop in the form of a plan and how they are supposed to perform
- It provides the level playing field that we discussed earlier.
- It also establishes real market and economic design drivers as opposed to government dictating design and, again, this can be done with minimum government involvement, having the majority of the activity happening out in the private sector by the producers themselves.

A lot of this information is being tracked by the Product Policy Institute and they have a specific web section on EPR Framework and are tracking framework legislation that's being

introduced in the country as it is introduced (<http://www.productpolicy.org/content/epr-framework>). .

I also want to draw attention to the Product Stewardship Institute, in fact, I am going to go on to the next slide. Here is a whole set of additional resources that you can tap into. The Product Stewardship Institute, their website is down at the bottom of the page and they have put together two pages that are exceptional tracking state by state specific legislation that has already passed and also legislation that's in play (<http://www.productstewardship.us/displaycommon.cfm?an=1&subarticlenbr=280>). So I would direct you to them for that and other educational opportunities. Also ask Bill Sheehan with the Product Policy Institute for additional resources that I have already named in this presentation.

### **Q & A for Sego Jackson's Presentation:**

**In Oregon, businesses raised multiple concerns like antitrust and collusion alleging that requiring EPR through legislation will discourage voluntary efforts, like battery collection. I am also concerned about disparities between producers in the state and importers of products into the state requiring increased cost to businesses. Things like that. Has Product Policy Institute or maybe your work group or anyone done an assessment of pro and con arguments raised by various stakeholders?**

Yes, I'll answer and then maybe as we go through the presentations we can get responses from Garth and Heidi too. So absolutely, the whole point of the stakeholder processes that California, Oregon, and Minnesota have done is to bring out those issues so that they can be addressed. And there is some analysis around some of the things that were questioned and some of it is really simply a matter of common sense in addressing those concerns. As this is new to the US, even though some of these companies have been actively engaged in these programs in Canada or Europe, it doesn't mean that their US counterparts are very versed in it. So there is often a certain bit of fear and misinformation that happens. So each of those points could be discussed more thoroughly on this call but I think the questions are: is anyone paying attention and can those issues be addressed and the answer on both occasions is, yes. That doesn't mean that there are not new things that need to be discovered as you get this input though.

**Does this type of legislation limit retailers on products they can sell? If so, how do you respond to the concerns that retailers might have about that.**

Well, that's a really interesting one. One of the problems of doing these Webinars is that you move through so much information quickly that I didn't emphasize that one of the cornerstone principles is that you can't sell in the state if you don't participate in a program. What we found in Washington is the retailers support this approach and they certainly have supported it on a number of product areas, especially with e-waste where part of their shared responsibility that they saw was that they would agree not to sell products through their various venues if the manufacturers were not fulfilling their legal obligations, that was part of the deal. They also have been pretty aware that there are other alternatives. One of the alternatives could be that there is a state tax put on those products. That is something that many of us really do not

want to see and retailers in particular don't like to see advance recovery fees and things like that. I hope that answers the question, but we found retailers really supportive of EPR approaches.

**So about the legislation itself. Do you recommend putting in sunset clauses just in case maybe there is broader federal legislation that is passed or something like that?**

I don't have a real conclusion on that at this point. I think that sunset clauses -- I've seen them result in really good programs disappearing after they were put in place believing that something would happen. I think that it's probably better to understand that this is going to be happening on a state by state basis, to not limit the ability of a state to do what they need to do. We often have very insightful people in place in our legislatures that if there is a law that isn't compatible with something that is happening nationally, they can adjust it. Garth might have other opinions on this, I'm not sure but we have put in some sunset e-waste legislation in Washington -- I'm not sure if that will turn out to be very useful.

**Do you think it is important to put minimum recovery requirements into the framework legislation?**

This is why it is so important to draft this stuff and try to figure out how it works and see what the problems are that emerge. Because I think it is more difficult in a framework approach where you are putting recovery goals into the statute itself to come up with something that actually works with a really broad range of products. That doesn't mean that it can't happen but it means that it's tricky. So what you would do for medications, for instance, would be quite different than what you might do for carpet. I think the trick as we work on these constructs is to really understand what is necessary to have in a statute and what can better be handled through a rule making process or through a delegation process or when you add a specific section so that one model where the legislature can add different products over time, or expand those sections so that when you are dealing with, let's say it's carpet, then the carpet section that you put more of the details including the recovery rates. So I do think recovery rates are important. I think it is very hard to come up with a recovery rate that's going to apply to all things. In fact, I think it is impossible to do that. The other thing I think that's really important is level of convenience and there is probably going to be some variability on that needed for different types of products as well. I believe that not only recovery rate but accessibility and as you look at the principles again, it requires that the programs be available throughout a state in both urban and rural areas. So I think working in language about that is critical.

**Who are the key players within government that are necessary to get a framework together?**

I think the key players are certainly your state agency, your legislature, and your local governments and because EPR addresses a whole variety of issues, everything from public health and solid waste and air quality and water quality having a real diversity of folks understand EPR, understand EPR policy, and a frame work approach is really important. Then I would say that one should not overlook the tremendous importance of the NGO community.

The non-profit advocacy groups are critical at the state level to get things done. Then you will always have some progressive businesses that will help -- folks like the charities, the retailers again have been really important players here in the Northwest. So it is more stake holders than just the government players. Now you will notice I didn't call out major producers in the list because right now you have a few producers of certain product areas are good supporters and we have certainly seen that in electronics but still by and large, it's new stuff here and there is still a lot of resistance and some of those more progressive business voices play an important role of mellowing things out some with some of the business associations. But I don't see corporate America stepping forward strongly in this right now. I think it's a shame because this is a great chance to have some really harmonized text and fairly simple approaches that would be beneficial to all ultimately.

**Wouldn't the framework be different between commodity categories? For example, batteries versus packaging versus chemicals?**

I think I already addressed that some. There are certain things that you can have consistent amongst all those different product areas and somethings that are going to perhaps be unique and to address the uniqueness through rule making or through separate sections on those product categories is the route to do that but you can still keep the primary construction consistent. When you are talking about chemical policy, there are other approaches that are needed and compatible with the EPR framework. So the EPR framework is not going to fix everything for everybody from every angle. It's just one component. But for the most part, between different product areas, you are still going to require the plans, you are still going to know what reporting, you are still going to have levels of responsibility. So if you work from that EPR framework principles paper, you can go through and check off -- have you accomplished that in your legislation or what's weird about what you are working on, where it actually is different and just be very conscious of that. That's the use of the principles is to double check your work and guide it.

**Vicci Salazar**

For the sake of time, we need to move on to our second presenter, **Heidi**, so if you have more questions go ahead and keep sending those in. Heidi, I am going to hand control over to you.