

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

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

HEIDI SANBORN'S PRESENTATION

Thank you again for having me. I think Sego did a great rundown leading into what's happening in California. So my job today is to talk about the evolution and status of framework legislation in California and the role that local governments have played. I am representing Product Policy Institute today but I am also representing the California Product Stewardship Council (CPSC) and I am their Executive Director. I am going to cover the history of solid waste in California and the legislation briefly to have the background -- the Waste Board Strategic Directive #5, the Contractors Report that I worked on, and evaluating end-of-life systems and the resulting recommendations that the state implements framework legislation, and the formation of the CPSC, the Waste Board's EPR workshops and the adoption of the policy framework, EPR legislation which passed in 2008 which I will talk about briefly and then what we currently have which is the California Product Stewardship Act of 2009 and then what's going to happen next.

A brief history of legislation in California is that we had a big Waste Management Act, AB-939, in 1989. It put full responsibility for waste management on local governments. For the first time local governments were responsible for tracking their waste, achieving a diversion rate of 50% by the year 2000. If they didn't achieve that, they would have fines up to \$10,000.00 a day for failure to comply and it provided a waste hierarchy where we had source reduction first, then recycling and composting, and then environmentally safe land filling or transformation. It also required that local governments produce five planning documents in each county:

1. Source reduction recycling elements
2. Hazardous waste elements
3. Non-disposal facility elements
4. Siting elements
5. A county wide plan to pull it all together.

That created work for a whole lot of consultants. I was one of them and it became very clear to me in short order that a lot of money and energy was being spent on planning, not enough on doing, and the waste hierarchy was not being followed. And that local government really could not do much about source reduction because they were not the source for 70% of the problem and that is product waste. The source was the consumer that was buying it and the producers.

So from there what happened is that our Waste Management Board here in California provided some strong leadership in the area of product stewardship. They first actually adopted, when I was working in the chair's office back in the early part of 2002, a strategic plan that said our goal would be to get to zero waste and we wanted to do that partly through product stewardship. Then in 2007 a new board adopted Strategic Directive # 5 that said that the board will seek statutory authority to foster cradle-to-cradle producer responsibility and will develop relationships with stake holders that will result in producer financed and managed systems. That was amazing leadership on behalf of our Board in California. When they came out with that, I was just finishing up a contractor's report to the Waste Board. I was working at R3 Consulting Group at the time. The report looked at eight case studies with different end-of-life management systems from across the country and in Canada and it evaluated those systems and how we might proceed in California.

One of the first recommendations was to draft framework legislation which allows products to be added by regulation because in California we are seeing an awful lot of bills every year about products. And our state is going completely bankrupt. We are \$20+ billion in the hole. We are going to be cutting every program we have and we don't have the money to be doing this and our legislators at the same time are busy discussing every battery chemistry, every fluorescent lamp type. They simply don't have the time nor do they need to be discussing these kinds of scientific details. That's what the agencies are for. So we recommended that they delegate that authority to the agencies but provide the policy framework so that the agencies have guidance but that they can do the good science, the analysis, and recommend which products should be selected for stewardship programs. We also suggested that the waste board adopt policies on the preferred roles of government because really it was up to them to decide what role government wanted to play. Traditionally we played a rather dictatorial role and our recommendation in the report is that we get out of that; we ensure a fair market place, we set performance standards, we require transparency and accountability but we let the private sector do what they do best, which is design the systems, manage the systems, and manage the money that funds them. So it's a business friendly model. As business friendly as we can make it and still have it be effective and transparent. So that is what the recommendations were of the report and the Board actually followed a few of them.

I left the consulting firm in August 2007 and went to go work for the California Product Stewardship Council as co-director. They had formed in 2006 after the universal waste disposal ban went into effect in California. That was where state agencies said residents can no longer dispose of batteries, fluorescent lamps, and other universal waste products in the trash. The problem with that was no solution was provided. Again it was an unfunded requirement on local governments because local governments manage waste. To say it can't be disposed of without any funding or any statewide plan was simply cost prohibitive. Local governments can't do it. That was the fire that drove local governments to organize in California.

We filed incorporation papers in the summer of 2007 and received our non-profit status in March, 2008. So you know, that does limit our lobbying ability so primarily what we do is education and outreach and research and putting together case studies and so forth. We've got currently a 9 member board. We intend to get up to 11. They are all local government

representatives and we are local government driven but we have very strong partnerships with waste haulers, business community, packaging manufacturers, NGOs, ocean litter groups... I could go on and on. Our list serves now have over 900 people on them. If you would like to be on our list serve, you can actually go to our website and sign yourself up under the Stakeholders Listserv. We also only have contract staff at this point. We have over... we say 80 participating jurisdictions and other jurisdictions that fund us or actively are on our calls but we have well over 120 that are actually working with us at some level so that is about one-fifth of our state's 530 jurisdictions. Our funding right now is coming from grants, foundations, Local government "associates" fees, partnership donations from our business partners, and some general donations from the public.

Our mission is pretty clear. We are shifting our waste management system from one that's government and ratepayer funded to one that relies on producer responsibility. Of course, the huge goal in California right now is to reduce public costs and then also we are always trying to strive for environmental improvements to drive green design. So that's our mission. Just to give you a sense of who we are, these communities that are highlighted which are in stripes are members of the regional council of rural counties and as a group they voted to support extended producer responsibility policy. Counties that have individually passed EPR resolutions include all those that are in the dark green and then additional cities that have passed EPR resolutions are in the orange diamonds. So it is quite a few and we've only been around for three years so this is quite impressive, I think.

Now the resolutions and policies... we've gone around the state. We spoke to over 2,200 people last year and did over 70 presentations. It includes a wide variety of groups and associations including our Association of Counties, our League of California Cities, Regional Council of Rural Counties, environmental health directors, health officers, community service districts. We even have municipal utility districts and large association of governments like the Southern California Association of Governments which represents the bulk of the state's population. And here are some more so that you can get a sense of who we represent. It is quite broad statewide and I would say we are a purple organization. We have very conservative members and we have traditionally liberal members and I call this a purple issue because no matter whether you support primarily polluter pays and environmental protection or primarily fiscal responsibility and getting costs off of the taxpayers' backs, you can support and understand the need for product stewardship.

So then CPSC started holding workshops on EPR trying to bring the discussion to public forums. This is a picture of a workshop that we held in January, 2008, where we had local governments and state representatives talking about their experience with trying to comply with these universal waste rules and how they really couldn't. They couldn't afford to succeed, they would go bankrupt if they did. In fact, most jurisdictions are collecting about 5-10% of household hazardous waste products, the best we can estimate, so 90% of them, we are estimating, are still ending up in landfills. So that is clearly not a solution. We can't afford to afford to increase collection.

There has been a lot of public discussion. It was not just the workshops that we had through CPSC but also the Waste Board held some workshops in June, 2007. In September of 2007

the board adopted an EPR framework policy and had more workshops and then revised it and came out with the final version we have now in January, 2008. The website's [there](#). They've got lots of information there. They have a list serve so that you can get on and learn the latest of what's happening. It's a very public process. It has been all the way through. We have heard criticism from the industry that it hasn't been but I assure you...I've been working in this industry for 20 years and this was very public. It has taken several years and even state staff had called individual manufacturers and invited them to the workshops.

The EPR battery and lamp workshop is something that the California Product Stewardship Council organized in April 2008. We held two large workshops. This is our lamp workshop and you can see the TV cameras in the back. We actually had a San Francisco TV station there. This is very interesting to a lot of people. We have had people at this workshop testify from Europe from Osram Sylvania and other companies. We invite all to participate and share in the discussion so that we can develop the very best system possible here in California because often we are mimicked. Whatever we do may drive what happens in other states because we are so big and have 10% of the market share. So we want to be careful and thoughtful about how we proceed with these policies. But we were disappointed that at the end of these workshops we did not hear from the battery and lamp manufacturers that they were interested in taking their products back, particularly in the battery industry. The lamp industry has since then participated in some stakeholder meetings established by our legislature and come up with a report where they were willing to establish a producer responsibility organization to manage lamps but now we are waiting to see if the legislation actually follows the recommendations of the report.

Our retailers have been very supportive of EPR and the California Retailers Association says that they support allowing the manufacturers to incorporate the cost of recycling into the product price. They have been very helpful, even helping us get passed a thermostat EPR bill last year -- and some retailers like Sears are producers under the definitions in our bill. The reason is that they will put, for example, the Kenmore name on a mercury thermostat which makes them the brand owner so they will have to design the producer responsibility collection system for that product. They will even support that. They are not trying to shirk responsibility. I've heard this criticism from some of the manufacturers but I do understand the retailers position in that as a Home Depot selling 40,000 products, they can't take everything back or they would be nothing but a giant transfer station. They have to be careful for their business model, their type of business, their employee safety and so forth, which ones they take back. You've seen recently a lot of Home Depots and others are starting to take products back, Best Buy, and doing a really great job of it. Ultimately we need the producers to engage as well.

Now the trends:

- We had our waste board adopt their EPR Framework policy in January, 2008.
- The National Association of Counties adopted resolution supporting EPR framework in July, 2008. That was a big deal. For those of your out there, your National Association of Counties has this resolution and it's on the Product Policy Institute website and also on the CPSC website.

- Then we've seen 5 states introduce framework bills, whether it be study bills or full framework bills this year. So there is huge momentum. And, again we are building off of everything that has happened in other parts of the world including Japan and Korea, Canada, and Europe.

In California in 2008 we saw our Governor sign four bills with elements of producer responsibility.

- The first bill [AB-1860] makes the manufacturers of recalled products take them back and recycle them. You probably heard a lot about the lead in lunch boxes and jewelry. Our hazardous waste facilities that are funded by taxpayer money were actually being flooded with them. We said that's not right. It wasn't even legal for you to sell them, take them back. So we passed that bill. A great bill if you want to do a starter EPR bill.
- Then we had the pesticide container bill which leveled the playing field. We have an agricultural pesticide container voluntary program in the United States, which is wonderful but they were falling apart basically because of the "free riders." They had too many pesticide companies that were not paying into the system because it was voluntary. And the few who were, were having to pay the burden for all. It wasn't fair and it was about to collapse. So being a big Ag state, we made it a mandatory system so that they all participate in paying for the system.
- Then we passed the mercury thermostat EPR bill that CPSC co-sponsored with the Sierra Club. They had worked on it the year before and weren't successful. We got it through with the help of Honeywell thermostat recycling corporation and the Retailers Association all working together. I was very proud of the collaboration that we had on that bill and it actually goes into full effect on July 1, 2009. So we are rolling that out in California to get the mercury out of old thermostats and get those back.
- We also had our governor sign a landmark Green Chemistry bill that includes EPR. The governor said he doesn't want a chemical-by-chemical ban situation because what happens is the chemists can keep up with that and change a molecule and then you have the same type of toxicity and no law to deal with it. So we've got this comprehensive Green Chemistry bill and now we are looking to take the same comprehensive approach to products. So we see our EPR framework bill as building off of the Green Chemistry initiative.

CPSC's goal is to get to EPR framework legislation. "Don't get frustrated, get framework." What it would do is to give authority to the Waste Management Board to determine the products that would require stewardship programs and they would be determined by an evaluation by the waste board staff of toxicity, volume in the waste stream, impacts on the environment, costs to manage, etc.

- Only the products that float to the top would be selected.
- It would probably not be a flood of products. Probably two or three the first year.
- It would take awhile to implement.
- The responsibility would be on the producers to develop the funding and implement the collection system, which means that they would have to develop the stewardship

plan. It doesn't have to be long; it doesn't have to be a book, just tell us how you are going to do it.

- The producers would not be able to sell in California if they didn't participate in a stewardship program for the products selected.
- The Waste Board would adopt rules to add products so we would go through the full regulatory public process. Nothing behind the scenes. Everybody could get their bite of the apple.
- Then the Waste Board would establish performance goals, like collection goals, and evaluate the programs.

It's a shared responsibility system. You can't have a collection system if the consumers will not participate and you need others to help although producers have the primary responsibility.

- Producers would have to develop and fund the collection system.
- Retailers would also have to provide information to the consumers and only sell products in the stewardship program and they would be voluntarily participating in take back if that was the appropriate role for them with that product. Some of them may come back through other means, mail back and so forth.
- Consumers would have to follow the directions and they would have to use the collection systems. Ultimately they will pay the cost for proper end-of-life management in the purchase price of the product.
- The California state government would provide the requirements and regulatory authority to mandate all this and set the recycling rate.
- Local governments will buy the products in the stewardship plans, help with public education, and help with collection if they are reimbursed by the producers. That's what they do in British Columbia where the local governments that have hazardous waste facilities get paid \$0.40 for each gallon of paint that they collect on their behalf.
- Haulers participate by meeting the standards for collection so that there are best management practices for products. They would have to meet them if they collect covered products and they would receive compensation for services.
- Recyclers would meet the best management practices for handling and receive compensation for their services.

The way we've proposed it, we have an advisory committee where stakeholders participate in the development of regulations and design of measurement metrics. Each product will be totally different, have different metrics, and have different schedules for achievement of goals.

In California, one of our Waste Board members left to go back to the legislature. Assemblymember Chesbro authored the California Product Stewardship Act which was introduced in February of this year. The bill has currently passed out of its first policy committee and is going to be heard this Thursday in Appropriations. It is "on suspense" going into the Appropriations committee. We are not sure if it will get off or not but that is the

status of where that bill is. It does implement the EPR policy framework outlined and adopted by the Waste Board.

We did a presentation to the Ocean Protection Council in April. In California, as you know, we are right off the coast of the Pacific Gyre, that floating plastic out there and our Governor is very concerned about it. He put together the Ocean Protection Council to identify ways we can reduce that plastic getting out to the ocean. The Council adopted a report last November that said their # 1 recommendation to reduce plastics in the ocean is EPR for packaging. So they asked for a presentation on EPR. We had people from Europe and Canada representing industry as well as myself and some others. The result was that they adopted a resolution that supports the concept of EPR as adopted in the Waste Board's framework policy, to target the reduction of packaging. Local governments are being completely overwhelmed between the reduction in tax base and the imposition of more and more mandates for them to solve all these end-of-life problems including litter in creeks. The Water Board is cracking down on them for creek litter, ocean litter, copper in water... they just can't keep up. There is just not enough money for them to solve these problems. We have to get to the front end.

The next steps are that, especially with the framework bill, we have to address the concerns we are hearing. The Chamber of Commerce, and the Manufacturer's Association have come out in strong opposition. The arguments we are hearing are not new; they are exactly what we suspected. They are calling it a job killer bill because typically that enables them to get to the governor and kill bills. But we have multiple letters and reports from Europe and Canada that shows quite the opposite. So now our job is to educate more people. For example, the European Commission stated in its last implementation report of the European packaging and packaging waste directive that the separate collection and recycling of packaging led to 42,000 full time jobs created through just the packaging EPR initiative, not for any other products, just packaging. It also led to greenhouse gas savings of around 25 million tons of CO2 equivalent and a resource savings of around 10 million tons of oil equivalent.

In British Columbia, Canada, for eight stewardship programs they just came out with an independent study in January that says they have created 2,100 jobs and reduced 267,000 metric tons of CO2 equivalent. So we have the data to prove the concern wrong and we know that the companies that are concerned here are actually already doing this in Canada and Europe. Proctor and Gamble, Merck. These kinds of companies are saying we can't do it here. We're saying you already do.

For organizing local governments, I am available to help anyone through the Product Policy Institute. We have a framework EPR policy kit, we have PPI services that help you start councils, that's on the Product Policy Institute website. Just go to productpolicy.org and we're available to help and I hope this was helpful.

Q & A after Heidi's presentation

Is there a standardized definition of producers versus consumers or retailers? One person mentioned that when they talk about EPR, people get kind of confused. Is it the person who makes the item that is packaged or the person who actually makes the packaging that goes around the item? How do you define all these things?

Well, I would encourage you to look at the EPR policy framework done by the Waste Board because they very carefully looked at all the definitions that they could find in existing systems and came up with one that is most harmonized and clear for California which we would like to see harmonized across the country. The definition of a producer is fairly long but it also includes the brand owner or the first importer because most often, because many of our jobs have been exported out of the country, we are not the manufacturer anymore. The companies here are either the brand owners or the first importers. So that is very important to understand. That's a very, very good question and when you are talking about product types, if the board for example decides to select the entire category of packaging ... the producer, brand owner, or first importer... it would depend on how that is supplied. It would depend on where the company is and who is importing it and who has asked for it to be made and put their brand name on it. This is some already used in British Columbia. It is already working. It's not something we've created. And Europe uses the same. We could have a whole call on the details of these systems, I'm sure but that's the short answer.

Vicci Salazar

Ok great, so if we have more time, if you'll stick around if we can ask more questions at the end, we'll do that with both Heidi and Segó. But now I want to move on to **Garth Hickle**.