Attachment 1: Overall Framework for an Extended Producer Responsibility System in California

This document contains staff's recommendations for an Overall Framework for an Extended Producer Responsibility (EPR) System in California. If adopted by the California Integrated Waste Management Board (CIWMB or Board), staff envisions that this document, in addition to the Board's Strategic Directive 5: Producer Responsibility (http://www.ciwmb.ca.gov/agendas/mtgdocs/2007/02/00021620.doc) will guide further discussion and development of product stewardship programs in California.

To achieve Strategic Directive 5, Producer Responsibility, the CIWMB staff developed the proposed ~~will seek legislation for an~~ Extended Producer Responsibility (EPR) Framework Approach described in this document. This EPR Framework Approach would provide a comprehensive, yet flexible method for managing products that have significant impacts on the environment and serve as an alternative to the current piecemeal approach with many different laws and methods. The ~~CIWMB will seek an~~ EPR Framework Approach states ~~that achieves stated~~ policy goals and ~~that is based on specified~~ guiding principles, along with other key elements (described below).

The EPR Framework ~~legislation~~ is intended to guide proposals to seek statutory changes to provide the Board with the authority to develop and carry out state government roles and responsibilities.~~,~~ ~~which~~ This may include developing regulations using a public process, managing a process to select products and establish targets for product steward programs, and overseeing product stewardship programs with stakeholders that are customized for each product or product category. It would allow manufacturers flexibility in determining how to meet the established targets. However, it would not preclude the implementation or expansion of existing programs, nor would it preclude consideration of other approaches to end-of-life product management (such as for e-waste).

Key Elements of an EPR Framework Approach

Staff found that EPR Framework approaches have common key elements and, based on the analysis and stakeholder input, staff proposes these key elements:

1. Policy Goals
2. Guiding Principles
3. Definitions
4. Roles and Responsibilities
5. Governance
6. Products/Product Categories Covered
7. Program Effectiveness and Measurement

The sections that follow further describe staff recommendations for an EPR Framework Policy Goals, Guiding Principles, Definitions, Roles and Responsibilities, and

Governance (CIWMB Authority). The remaining elements would be further explored and addressed in legislation or in the development of regulations.

1. Policy Goals

Extended Producer Responsibility (EPR) is a policy approach that seeks to shift the primary responsibility for developing and/or participating in product stewardship programs that address the end-of-life (EOL) management of discarded products and materials from the general public and local government to producers. It would thereby incorporate the costs of product collection, recycling, and/or disposal into product price, and encourage product design, source reduction, and reuse so as to have a reduced impact on human health and the environment.

The goals of the EPR Framework, and any product stewardship programs that would be implemented under it, are to:

- Provide measurable net environmental benefits through product design innovation; improved environmental performance throughout a product's lifecycle, that includes reduced solid waste, toxic components, energy and water consumption, and reduced greenhouse gas and air emissions; ~~and~~ the highest and best use of products and materials in a cradle-to-cradle system; and avoidance of transferring EOL management problems to other states and countries.
- Advance green product design and the waste management hierarchy of source reduction and reuse, as well as proper collection and recycling where needed.
- Address all materials in the waste stream, both in terms of volumetric or toxic impacts in landfills, where practical, with consideration of life-cycle impacts.
- Design product stewardship programs to ~~that~~ maximize economic efficiency and market-based competition to stimulate innovation and reduce costs.
- Achieve a more equitable distribution of costs that reduces the burden on ratepayers and local jurisdictions and transfers waste-related costs to producers and consumers of products.

2. Product Stewardship Guiding Principles

Producer Responsibility

- All producers selling selected products into the state would be required to develop and/or participate in an approved stewardship plan that addresses source reduction, collection, transportation and environmentally sustainable reuse/recycling of covered products in the product design phase.
- Responsibility to physically and financially manage product end-of-life impacts shifts from general ratepayer and local government to producer and consumer.
- Responsibility is not shifted to other levels of government without consent.
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- All brand-owners for a particular product category are subject to the same stewardship responsibilities, which encourage environmental performance by individual producers.

Environmental Protection Strategies

- Environmental protection strategies and resource allocation shift to an emphasis on increased prevention, source reduction, green product design, and reuse; with increased collection and recycling where needed.
- Environmental protection strategies strive to harmonized policies and programs by various levels of government while acknowledging and preserving the unique authorities and responsibilities of each to address environmental concerns.
- Strategies are designed to give government the flexibility to implement program improvements through administrative and regulatory processes.

System Coverage

- All consumers have reasonable access to product collection locations.

Results-Based Programs

- Programs focus on results and provide brand-owners with flexibility to determine the most cost-effective means of achieving the desired outcomes with minimum government involvement.
- Product categories are clearly defined to simplify compliance and enforcement and ensure common understanding among program participants.
- Programs are tailored for individual products and encourage continued innovation by producers to minimize environmental impacts during all stages of the product lifecycle, from product design to end-of-life management.
- Industry is accountable to both government and consumers for environmental outcomes and allocation of revenue from fees/levies.
- Program development process is open and provides the opportunity for input to all stakeholders.

3. Definition of Key Terms

a) Extended Producer Responsibility In the Background Paper *Producer Responsibility: Overview of Policy Considerations* from the June 5, 2007 Strategic Policy Committee Meeting Workshop, staff presented various definitions of Extended Producer Responsibility, along with similar terms being used internationally.[1] Staff recommends the following definition:

[1] California Integrated Waste Management Board, *Producer Responsibility: Overview of Policy Considerations, Background Paper*, Prepared for the Strategic Policy Committee, June 5 2007, Pages 12-15. Available at: www.ciwmb.ca.gov/agendas/mtgdocs/2007/06/00022104.doc

Extended Producer Responsibility (EPR) is the extension of the responsibility of producers, and all entities involved in the product chain, to reduce the cradle-to-cradle impacts of a product and its packaging. The greatest responsibility lies with the producer, or brand owner, who makes design and marketing decisions.

This definition is similar to the definition used by the Product Stewardship Institute in recognizing a shared responsibility, but one that lies mostly with the producer. The reference to the product chain refers to suppliers, manufacturers, retailers, users and recyclers. EPR focuses on enhancing environmental benefits through improved product design for reduction and reuse, and increased collection and recycling where needed, without transferring end-of-life management problems elsewhere.

b) Producer This term is fundamental to any discussion on EPR, yet it is challenging to define for all products. In order to have a common understanding of the term, staff offers the working definition below with recognition that a more refined definition would be needed for a product stewardship program that is focused on a particular product or product category. Product-specific definitions of the term producer need to be legally binding if all producers are to be held to the same ground rules.

Producer means

i. a person who manufacturers a product and sells, offers for sale or distributes the product in California under the manufacture's own brand

ii. if subparagraph (i) does not apply, a person who is not the manufacturer of the product but is the owner or licensee of a trade mark under which a product is sold or distributed in California, whether or not the trademark is registered, or

iii. if subparagraphs (i) and (ii) do not apply, a person who imports the product into California for sale or distribution.

c) Cradle-to-Cradle Impacts The term "cradle-to-cradle impacts" is referred to in the definition of "Extended Producer Responsibility" and staff believes it is beneficial to make it clear that EPR goes beyond advancing recycled content, the Board's traditional focus, but one that can lead to non-optimal environmental decisions. EPR is a comprehensive, rather than single-attribute approach, and consequently is more likely to result in the best environmental solution.

Cradle-to-cradle impacts include energy, water, and materials use; greenhouse gas and other air emissions; toxic and hazardous substances; materials recovery and waste disposal; and worker safety.

d) Product Stewardship Program This is a term that is used by provinces in Canada and Board staff believes using the same term in California would be helpful to be consistent in our communications, particularly for those stakeholders operating throughout North America.

Product Stewardship Program is a program that encompasses product design for source reduction and reuse, as well as the collection, transportation, recycling, and disposal of unwanted products, including legacy products and the program's fair share of orphan products, which is financed as well as managed or provided by the producers of those products.

e) Stewardship Organization Several terms are used to describe an entity that works on behalf of the producer to implement its responsibilities such as Third Party Organization (TPO), Producer Responsibility Organization (PRO), and Stewardship Organization (SO). Staff recommends using the term and definition below, which is consistent with what is currently being proposed in the state of Washington.

Stewardship Organization is a corporation appointed by a producer to act as an agent on behalf of the producer to administer a product stewardship program.

4. Roles and Responsibilities

Staff recommends that the following general description of roles and responsibilities for producers, retailers, consumers, state government, local government, haulers, recyclers, and advisory workgroups be used to help lay a solid foundation for an effective product management and stewardship system. These would be modified, as appropriate, when developing any ensuing product stewardship program. While there is a description in this for general responsibilities for California State government, Section 5 below delineates specific governance authority that would be needed for the CIWMB to develop and implement an overall producer responsibility program.

For each stakeholder group, staff identifies these types of responsibilities, where applicable.

- Product stewardship system effectiveness (oversight and continual improvement)
- Information needs/requirements
- Physical management of products and component materials (cradle-to-cradle)
- Financial management of end-of-life responsibilities

A. Producers' Responsibility: System Effectiveness, Informational, Physical, Financial

Whether established legislatively or voluntarily, an EPR approach to a specific product or product category places primary responsibility on the producers of that product to design and implement a program to achieve specified goals. Producers may use stewardship organizations (see *Definitions of Key Terms above*) to ~~typically~~ administer recovery and recycling programs for specified materials. The membership of a stewardship organization can be entirely comprised of industry representatives, including manufacturers, distributors and retailers. Other stewardship organizations are multi-stakeholder organizations that include government representatives. Stewardship organization responsibilities usually include registering members, collecting fees from

members, managing a program fund, monitoring compliance and reporting on results. In cases where producers create and elect to participate in stewardship organizations, the ultimate responsibility is retained by the individual producers while the functions may be performed by stewardship organizations. Additional details about individual versus collective producer responsibility would need to be addressed in product-specific regulations, as needed, due to variations in product design, market structure, and potential public/environmental benefit.

System Effectiveness: Develop or use an approved stewardship plan for selected products. Plans would address product design, source reduction, collection, transportation and reuse/recycling of covered products considering lifecycle impacts and utilizing market incentives, as feasible.
Informational: Register covered products and provide effectiveness reports including performance and cost data to State government. Provide audited financial records for EOL management, when required, to justify cost recovery by stewardship organizations and maintain transparency and accountability to stakeholders.

Develop and distribute educational material to retailers for consumers on the safe use and storage of products, safe storage and handling of the residuals and containers, and the location of collection facilities.

Clearly communicate information about proper EOL management for haulers, collectors, recyclers, local government, etc. Typically this is accomplished through Material Safety Data Sheets (MSDSs), product labels, and websites that explain hazardous materials contained in the product and requirements for safe EOL management and recovery of the product.

Participate in good faith with governmental organizations and multi-stakeholder groups to continually improve product stewardship program.

Physical: Design products to reduce life cycle environmental impacts. Support environmentally preferable products and services through supply chain management decisions.

Ensure the collection and management of material from the consumer through a network of conveniently located collection sites. May choose to assign and oversee this responsibility through contracting directly with collectors, transporters, processors or through participation in a stewardship organization. All occupational health and safety and environmental standards must be met in either case.

Financial: Responsible for ensuring financial sustainability of end-of-life collection and management whether contracting directly or participating in a stewardship organization.

B. Retailers' Responsibility: Informational, Physical

Informational: Required to provide information from producers (or stewardship organizations on producers' behalf) to customers on how to access services.

Physical: Retailers only sell products that are covered (registered) in product stewardship programs where they exist.

Involvement in an EOL collection system is voluntary and may be compensated, as negotiated between producers and retailers.

C. Consumers' Responsibility: Physical, Financial

Physical: Responsible for following directions provided by producers including stewardship organizations, retailers, local government, and EOL service providers. Utilize provided collection services and do not dispose of products through illegal or non-preferred means.

Financial: Pay the costs of proper EOL management internalized in product pricing.

D. General California State government responsibility: System effectiveness, informational, financial

Several State government entities have responsibilities with respect to the state government role in developing a level playing field and providing oversight. These include the Legislature, Cal/EPA, CIWMB, and other relevant state level authorities.

System effectiveness: Establish statutory requirements ~~(Legislature~~) and regulations ~~(CIWMB)~~ that provide the authority to mandate individual financial and/or physical take back of designated products; ban designated hazardous materials from use in products and/or landfill disposal; set minimum reuse, recycling and recovery rates; establish minimum environmental standards ~~for EOL management alternatives~~ (e.g., source reduction, collection, processing, and recycling, reuse/export).

Review and approve stewardship plans submitted by producers or by stewardship organizations on behalf of producers.

Implement EPR using guiding principles set forth in the Framework, including procurement specifications that encourage green product design.

Participate in multi-stakeholder collaborative efforts to provide net environmental benefits, including efforts to establish product performance standards.

Create a level playing field by ensuring ~~Responsible for ensuring~~ that all producers comply with the established requirements and that targets are being met.

Consider the appropriateness for a neutral third-party organization to administer many of these responsibilities. Responsibility ultimately lies with government to assure environmental protection goals are being met.

State procurement officials must only purchase products that are covered (registered) in product stewardship programs, where they exist.

Informational: Ensure public access to performance information and evaluations.

Financial: Seek reimbursement for oversight and enforcement services, perhaps through product registration fees. Penalties should be considered, if producers fail to meet the established requirements, or conversely, financial incentives may be offered for meeting or exceeding program requirements.

E. Local government responsibility: System effectiveness

System effectiveness: Local government procurement officials must only purchase products that are covered (registered) in product stewardship programs, where they exist. Local governments may choose to participate in informational, physical, and financial roles at their discretion according to the needs of their community and may require/negotiate compensation by producers or stewardship organizations.

F. Haulers' and collectors' responsibility: Physical, Financial, Informational

Physical: Meet standards or use best management practices for handling products and materials.

Financial: Receive compensation for services.

Information: Provide information to producers that can be used to design or label products to enhance recovery.

G. Recyclers', dismantlers', processors' responsibility: Physical, Financial, Informational

Physical: Meet standards or use best management practices for handling products and materials.

Financial: Receive compensation for services.

Information: Provide information to producers that can be used to design or label products to enhance recovery.

H. Advisory Committees' and Working Groups' Responsibility: System effectiveness, Informational

This category applies to advisory committees, scientific peer review panels, technical coordination or problem-solving groups, inter-agency management coordination and working groups.

System Effectiveness: Participate in the developed of regulations and the design of measurement metrics to help ensure transparency and accountability.

Informational: Advise State government on product or process-specific issues related to producer responsibility. Areas for contributions by technical working groups may include development of product performance standards, facility operation standards, and options to finance EOL management of orphan and historic waste.

5. Governance

Staff recommends that the Board ~~seek legislation that would provide the CIWMB with the~~ pursue statutory authority to develop and implement an overall producer responsibility program through a public process. This authority should include, but is not necessarily limited to, the following:

- Establish overall Producer Responsibility regulations;
- Subsequently d~~D~~etermine products or product categories to be included;
- Establish targets, measurement, and reporting requirements;
- Allow for coverage of new, historic, and orphan products;
- Allow independent and collective manufacturer programs;
- Establish plan submission and reporting requirements;
- Establish and collect penalties for non-compliance;
- Establish transparency and accountability mechanisms;
- Require use where appropriate of front-end financing mechanisms (e.g., point-of-manufacture or point-of-sale) as opposed to end-of-life fees;
- Require coverage throughout the state, both urban and rural, at a level necessary to meet performance standards;
- Require use of performance standards (may cover product performance, EOL management systems, and recycling/recovery facilities);
- Require adherence to the State's solid waste hierarchy or other mechanism to ensure products are managed for highest use or proper disposal if hazardous and not recyclable;
- Require best management practices for handling;
- Allow for the addition of new product categories in the future; and
- Require mechanisms/incentives to drive product design for environmental improvement (e.g., toxics reduction, greenhouse gas reduction).