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## To Fee or Not to Fee – That is the Question...

And the answer is ... *Don't fee!*

### Extended Producer Responsibility (No Fees)

The short story regarding legislated financing systems is that there are only a few mechanisms that result in true extended producer responsibility (EPR), and “no fees” is the right approach. EPR requires that the producer cover the financial costs of end-of-life management of their products as a cost of doing business and in the price of their products. The rationale for placing responsibility on producers is that they make design and marketing decisions and therefore have the greatest ability to reduce the environmental impact of their products. If the producer is not covering these costs, it is *not* producer responsibility.

**Cost Internalization:** In true EPR, end of life management costs are reflected in product prices as a cost of doing business – along with the costs of materials, labor, worker safety requirements, etc.

- **Examples:** Legislated programs include the electronic laws in Washington, Oregon, Maine and Minnesota; mercury thermostat stewardship laws in California and Maine; and the Medications Return Program in British Columbia. Voluntary programs include the Thermostat Recycling Corporation for Mercury Thermostats, the Agricultural Pesticide Container Recycling program, and the Rechargeable Battery Recycling Corporation for rechargeable batteries.

Government can require that producers pay for the state’s costs related to the legislated program, including rule-making, reviewing producer plans and reports, ensuring transparency and enforcing if performance goals are not obtained by producer-designed programs. Use of these funds should be strictly limited to these purposes and the funds should be placed in a dedicated account.<sup>i</sup>

### Extended Retailer Responsibility Fees

In certain other financing systems producers may play a limited role, but financial responsibility is assigned to, or is passed on to, retailers and their customers. Required fees are passed from manufacturers to retailers as a set fee, but are not visibly passed on to consumers (they are internalized in the *retail* cost of the product). The retailer may include the full fee amount “invisibly” in the product cost, or choose reduce the amount that is passed on to the consumer. This is the second preferred approach, if a true EPR approach is not taken.

- **Example(s):** British Columbia stewardship programs under Product Care including paint and pesticides.<sup>ii</sup>

## Extended Consumer Responsibility Fees

Required fees are passed on from manufacturers through retailers to consumers as a set fee and the fee shows on the customer's receipt

- **Examples:** The British Columbia Paint system under Product Care requires that fees are paid by the retailers to Product Care but it is voluntary for the retailer to pass it on to the consumer. If the retailer chooses to pass the fee along visibly to the consumer, it would be considered a Consumer Responsibility Fee. <sup>iii</sup>

Fees under such systems may entail a limited amount of responsibility by producers, if for instance, they manage and use the collected funds to provide an end-of-life collection and recycling system. While true EPR is much better, these systems at least keep the costs related to a product within the product chain, and involve financial transactions by the producer.

## Extended Government Responsibility Using Consumer Fees

Government-managed consumer fees, including *Advance Recovery Fees* and *Advance Disposal Fees*, are fees that are required in law or rule to be collected by the retailer from the consumer and paid into a government-managed fund. Producers have no financial responsibility and receive no feedback that might lead to greener design. If a consumer fee is legislated, it is preferable that the collected fees go to a public/private third party organization for management to protect the funds from being "raided" by state government for unrelated purposes.

The worst case scenario in regards to potential for stimulating green design, is that a legislated fee is placed into a government fund and the program is entirely administered by the government. Government fund administration results in inflated costs, bureaucracy, potential raiding of funds, and the complete sidestepping of any responsibility or participation by producers, retailers or others in the chain of commerce – except the consumer.

- **Examples:**
  - **California's E-waste Recycling Fee.** An example of a government-managed consumer fee that does not involve producer responsibility and demonstrates inflated government bureaucracy and administrative costs is California's e-waste program. The program is managed and paid for by the State using fees collected by retailers at point of sale from consumers. The program requires 55 full-time Board of Equalization staff to collect fees from 28,500 retailers and manage the fund. In addition, approximately 40 more staff are employed at CalEPA between the California Integrated Waste Management Board and the Department of Toxic Substances Control to oversee and enforce the e-waste program. <sup>iv</sup>
  - **Tire Fees.** Twenty-five states have retailer collected fees <sup>v</sup> -- many of which have been ineffective in providing an adequate program and have been subject to raiding.

Just as opponents of true EPR have tried to characterize cost internalization as a fee based system, proponents of Government Consumer Fees have characterized Advance Recycling Fees as "true"

producer responsibility and as EPR. If the producer isn't paying, it isn't EPR. If the government is charging the fee, collecting the fee and running the program – there's nothing “producer” about it. It is Extended Government Responsibility.

## Producer-Paid Charges (Fees) For Service

*Producer-Paid Charges (Fees) for Service* are often confused with legislated fees but are completely different. Producers commonly join together to fulfill obligations through a stewardship organization (sometimes called a producer responsibility, third party or compliance organization). These may be for-profit, non-profit, or public/private entities. The organization acts on behalf of the producer to fulfill the producer's obligations or to implement the desired voluntary program, in the case of non-legislated systems - and charges for its services. There are many ways the costs might be charged to the producer (gross sales, per product sold, return share, etc.) and the method is determined by the stewardship organization's governing body. In each case, the charge is for service provided by the stewardship organization. Sometimes these charges are referred to as fees.

- **Examples:** All third-party stewardship or compliance organizations that are utilized by producers, or their trade organizations, charge for their services in some way. Two voluntary programs include the Thermostat Recycling Corporation for Mercury Thermostats and the Rechargeable Battery Recycling Corporation for rechargeable batteries.

## Differential Fees

Whether a charge for service or a legislated fee, *differential fees* help advance green design and should be considered. A system whereby producers of greener products (those having clear design features that make them easier to manage) pay a lower fee for those products will provide additional incentive for redesign.

## Eco-fees

*Eco-fee* is a term that has been applied at various times and by various interests to describe most of the fee-based systems described above and therefore the term is meaningless without specific explanation within a specific context.

## Endnotes

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<sup>i</sup> Oversight costs should have a cap if targets are met so that industry knows what to budget. The cap could be raised if producers fail to achieve reasonable program results, which causes the state to incur additional costs related to enforcement. This provides financial motivation for the regulated producers to keep oversight costs for the government low. An example is Washington's EPR e-waste law (E-Cycle Washington):

<http://www.ecy.wa.gov/programs/swfa/eproductrecycle/resource.html>) Often, however, the oversight costs are established by law or rule.

ii <http://www.productcare.org/>

iii [http://www.calpsc.org/assets/pdf/Framework\\_for\\_EOL\\_Products\\_CIWMB\\_June2007.pdf](http://www.calpsc.org/assets/pdf/Framework_for_EOL_Products_CIWMB_June2007.pdf) Contractors Report to California Integrated Waste Management Board page 65.

iv [http://www.calpsc.org/assets/pdf/Framework\\_for\\_EOL\\_Products\\_CIWMB\\_June2007.pdf](http://www.calpsc.org/assets/pdf/Framework_for_EOL_Products_CIWMB_June2007.pdf) Contractors Report to California Integrated Waste Management Board page 62.

v <http://www.ecy.wa.gov/pubs/0207029.pdf> WA ecology report page 65.