



California Product Stewardship Council

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January 15, 2008

Chair Margo Reid-Brown and Board Members
California Integrated Waste Management Board
1001 I Street
P.O. Box 4025
Sacramento, CA 95812

Sent via e-mail

SUBJECT: Comments on Proposed Framework Changes in Agenda Item #12

Dear Madam Chair and Board Members:

On behalf of the California Product Stewardship Council (CPSC), we would like to thank the Board again for taking a leadership role in adopting the Overall Framework for an Extended Producer Responsibility (EPR) System in California on September 19, 2007. The California Product Stewardship Council (CPSC) strongly supports the clear and decisive action that the California Integrated Waste Management Board (CIWMB) is taking to bring a sensible EPR approach to product waste management in California. As part of that process, we attended the Board Stakeholder Consultation Workshop on EPR November 14th. We appreciate the Board's ongoing effort to include all stakeholders in the EPR development process which led to the recommended framework changes in the January Agenda Item #12. This letter represents CPSC's official comments on the Agenda Item #12.

We are satisfied that the CPSC Framework Principles for Product Stewardship (attached) are generally incorporated in the existing CIWMB EPR Framework; several of the proposed changes are a direct result of our prior comments and we greatly appreciate those amendments. However, we found that some changes lack clarity or are problematic. We offer the following changes to the proposed framework:

1. Page 1 – line 21 – Change the word “may” to “will.” The CIWMB must seek statutory changes that include all four of the features: 1) product selection criteria, 2) requiring producers to work with other stakeholders as appropriate, 3) specifying what provisions must be in a stewardship plan, 4) specifying the enforcement mechanisms.
2. Page 3 – Policy Goals - line 83 – Currently reads, “Achieve a more equitable distribution of costs that substantially reduces the burden on taxpayers.” We suggest that language be deleted and making other modifications so the bullet reads, “Reduce the burden on taxpayers and ratepayers by transferring waste-related costs to producers and consumers of products.”

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Mission To shift California's product waste management system from one focused on government funded and ratepayer financed waste diversion to one that relies on producer responsibility in order to reduce public costs and drive improvements in product design that promote environmental sustainability.

3. Page 3 – Producer Responsibility – lines 100-101 – Change to read “Responsibility is not shifted to other levels of government without written consent or negotiated agreement with the affected government entity.”
4. Page 4 – Definition of EPR – lines 147-151 – The definition of EPR should be clarified to read as follows: Extended Producer Responsibility (EPR) is the extension of the responsibility of producers working with all entities involved in the supply chain, to reduce the cradle-to-cradle impacts of a product and its packaging. The responsibility lies with the producer, or brand owner, who makes design and marketing decisions.

Rationale: “working with” – this phrasing captures the relationship between the producers (who make decisions) and the actors in the supply chain through whom these decisions are implemented.

“supply chain” – this term is more commonly accepted than “product chain.” Recyclers and local governments are not part of a “product chain”, though such entities may be part of a cradle-to-cradle chain. Local governments have no role at this time in influencing the decisions of those who are in the supply chain.

5. Page 4 – lines 153-159 – Proposed changes are: The reference to the supply chain includes producers and other economic actors in the product marketing process including, but not limited to raw material suppliers, manufacturers, packagers, distributors, retailers, and ultimately, consumers. EPR focuses on enhancing environmental benefits through improved product design for reduction and reuse by extending the supply chain to include collection and recycling services that are provided to consumers by producers without transferring end-of-life management problems to the public.

Rationale: Local government is currently, for historical reasons, the default handler of product waste. But local government is unique in that it is the only entity that does not financially benefit from participation. The businesses in the supply chain all financially benefit from being parties to a voluntary business transaction, and consumers benefit voluntarily from use of the product. Local government, on the other hand, bears costs that can be considered “externalities” because they are passed onto the community. Local government should not be listed in the supply chain and we do not want to continue to absorb the end-of-life management costs of products. Rather, shifting those costs to the supply chain will create an incentive to reduce waste.

6. Page 5 – Roles and Responsibilities – lines 205-206 – We suggest that the new text be deleted as it does not add clarity. For example, how do you define “benefit”, “stakeholder” or “shares?” Does local government “benefit?” If so, how? Does that outweigh any costs?
7. Page 6 – System Effectiveness – lines 241-243 – We find the last part of the added sentence unnecessary and unclear and suggest deleting “but there would be flexibility in how provisions are implemented.” The following language already exists on page 11 line 413 that addresses flexibility, “There would be considerable flexibility allowing plans to be customized for individual producers and product categories.”

8. Page 6 – Informational – lines 252 - 254 – It appears that the producers are only responsible to develop and distribute educational materials to retailers but have no responsibility to directly market the program to the consumers. We would like to change the language to “Develop and distribute educational material to consumers, retailers, local government, haulers and recyclers on the safe use and storage of products, safe storage and handling of the residuals and containers, and the location of collection facilities. As a general standard, it should be as easy for a customer to become informed about proper end-of-life management as it is to determine the product price or warranty information.”
9. Page 8 – System Effectiveness- lines 304-310 – We understand and support the desire to encourage better product design through use of incentives. However, the way this paragraph is written could present a significant loop-hole. For example, we would not consider simply reducing toxics in a product to be Producer Responsibility if it no longer is banned from disposal but was still **designed for disposal** and not reuse or recycling. A good example of this is alkaline batteries. We applaud the battery producers for removing the mercury from their product, but alkaline batteries are still **designed for disposal** and that is not producer responsibility. Also, line 304-305 states “individual manufacturers to be exempt from the EPR requirements for certain (or select) products that conform to special environmental criteria” which we believe is too vague and broad. What “special environmental criteria?” Any producer that designs a product that requires local government management at end-of-life, outside of simple composting that could be done by a consumer, should be responsible to manage that product.
10. Page 8 – lines 322-326 – While we applaud having a policy that requires state procurement officials to purchase only products that are covered (e.g. registered), the state procurement officials seem to be disconnected from policy recommendations from CIWMB and often do not meet existing requirements to buy recycled content products, report their purchases, etc. As was discussed in AB 939, driving markets is a prime directive of CIWMB to create a market “pull” for materials. We would like to see the following sentence added to the end of line 326, “The CIWMB will develop a legislative proposal incorporating EPR in state agency purchasing which would create measures for reporting and accountability.”
11. Page 9 – Local Government Responsibility – System Effectiveness - lines 343-345. Instead of stating that local governments are responsible to “participate in workgroups,” we recommend that it be stated that: “Local governments will make a good faith effort to explore system effectiveness with producers and other stakeholders. Resulting collection systems may include use of curbside or other services as negotiated between the local governments and producers.” Also, we recommend adding a subcategory under local government responsibility titled “Financial: Receive compensation for services.” Any product that which cannot be easily recycled or composted or requires special handling by the collectors create a significant cost to the taxpayers and ratepayers and should be compensated for in a cradle-to-cradle management system.
12. Page 9 – Haulers and Recyclers Responsibility – lines 352-353 and 359-360 – We believe that the same language that applies to local governments on information dissemination in

number 11 above should also be applied to and added to language for haulers, collectors, and recyclers.

13. Page 10 – Governance – line 382 – the word “should” should be replaced with “shall.” The CIWMB should request authority for all those items to ensure the success of a product stewardship program.
14. Page 10 – Governance - lines 385-386 – delete “and/or for product exemptions”. Let the sentence read “Allow for the addition of new product categories in the future.” The products are either determined by the CIWMB to be covered by the Product Stewardship program or not. There is no need for “exemption,” only the criteria for inclusion.
15. Page 10 – Governance – line 410 – Again, change the word “may” to “shall.” It should not be optional as to whether a product stewardship plan contains items in 4-16 which includes concepts like requiring coverage throughout the state or establish transparency and accountability mechanisms. Those items are fundamental to a program; not requiring them would be a fatal flaw.
16. Page 11 – Product Categories Covered – line 421 – To provide greater clarify, add to the sentence “although it is not meant to be exhaustive, prescriptive or weighted in order of priority.”
17. Page 11 – Product Categories Covered – line 423 – Add language to the bullet so it reads “Degree of toxicity or hazard to human health or environmental health, considering the potential for toxic or hazardous materials to bioaccumulate, be persistent in the environment, or be mutagenic or teratogenic.” The purpose of adding this language is that the global environment is especially degraded for all species by dissemination of materials which are persistent and bioaccumulate with mutagenic or developmental impacts.
18. Page 11 – New line 432 – Green House Gas emission impacts. We believe with the State’s current emphasis on reducing green house gas emissions, the impact of a product on those emissions should be a factor for consideration in product selection.

Thank you for the opportunity to comment.

Sincerely,



Heidi Sanborn, Executive Director

cc: Mark Leary, Executive Director of CIWMB
Howard Levenson, Director of Sustainability, CIWMB

Attachment: CPSC Framework Principles for Product Stewardship Policy version 5.0