

EPR'S NEXT STEP

An expert on extended producer responsibility offers a recap of the evolution of U.S. product stewardship – and then takes a look at which materials could soon be covered by the concept. **BY SCOTT CASSEL**

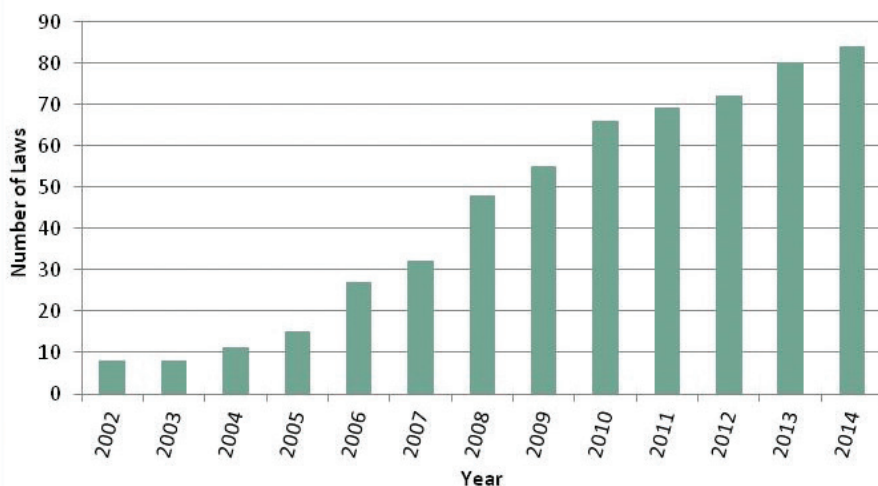
Back in 2000 the terms “product stewardship” and “extended producer responsibility” were rarely uttered in the U.S. Today there are 84 EPR laws in 33 states across 12 product categories.

These laws are spreading both in the U.S. and around the world, and for three basic reasons: They have saved millions of dollars for government agencies, they have created jobs and they have reduced waste by using materials more sustainably. EPR laws also have the potential to influence the environmental design of products, rendering them more sustainable across their life cycles.

For those less familiar with the term, EPR is a type of legislation that requires manufacturers to take financial and managerial responsibility for the end-of-life management of their products and packaging.

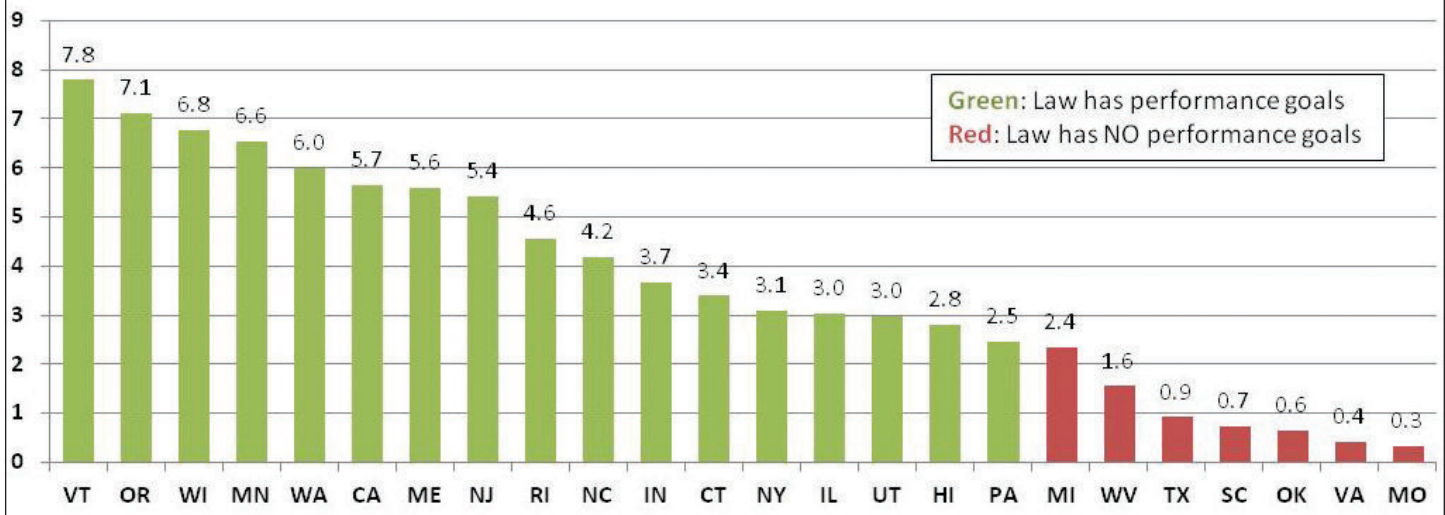
Like other environmental programs, EPR initiatives need to be nurtured and maintained to ensure that they stay relevant and effective in a dynamic marketplace. This has not always happened. Or, if it has, it's been well after problems have manifested. In addition, not all EPR laws are good laws. This is due largely to a lack of collective U.S. experience in planning for and implementing these new systems, and/or weak laws resulting from the political process.

EPR laws in the U.S. since 2000



We are clearly not yet at the EPR tipping point in the U.S. But what is evident is the growing interest in EPR – among states and local governments that consider this policy central to achieving their waste management goals, among environmental groups and other organizations, and among waste management and recycling companies that count on EPR policies to provide funding so that their firms can be hired to manage the additional

E-scrap pounds per capita (collected in 2012 or 2013)



Source: Electronics Recycling Coordination Clearinghouse online data tables

supply of collected materials.

This article will provide a status update on EPR systems in the U.S. It will identify which products provide the greatest lessons and which offer new or emerging opportunities. It will lay out the elements of a good EPR law. And it will discuss key issues being debated in the field.

Electronics

Across the U.S., 25 electronics product stewardship laws are in effect. What we have learned from these laws is that the best ones share a few things in common: They have performance goals and/or convenience standards; they accept a wide scope of products (e.g., a broad range of electronics and peripherals vs. only computers); they clearly assign program and financial responsibilities; and they include a disposal ban. The low performers often lack these traits.

We have also learned that a changing marketplace can cause quite a bit of growing pain in EPR programs. For example, recently the costs of managing cathode ray tubes (CRTs), coupled with some state programs having inadequate manufacturer performance goals, has led to municipalities unable to get consistent service, and sometimes they are unexpectedly confronted with CRT management costs. Given that each of the 25 state electronics product stewardship laws differs from the next, manufacturers that do business in multiple states face compliance challenges – what is required in one state may not be required in another.

The Product Stewardship Institute (PSI) is currently working with stakeholders

across the U.S. to address implementation problems and improve some of these laws.

Paint

Eight EPR paint laws are in effect across the U.S. – a trend started by Oregon, which adopted the nation’s first program in 2009. Portland’s Metro area alone, a multicounty jurisdiction made up of 1.5 million residents, reports a savings in paint management costs of over \$1 million per year. California quickly followed suit, adopting its own paint stewardship law in 2010, followed by Connecticut in 2011; Rhode Island in 2012; Minnesota, Vermont and Maine in 2013; and Colorado in 2014. Additional states are preparing to introduce legislation in 2015 based on the model legislation passed in these eight states.

What we have learned through the paint program is that a tightly facilitated stakeholder dialogue process, along with the full support of industry, resulted in a consensus-based state model that can be replicated nationwide with impressive results. At the center of this process is PaintCare, the manufacturer-backed organization that plans and operates the state programs.

At the same time, however, the paint program has demonstrated just how crucial it is to practice “preventative medicine” before problems arise. We now know, for example, that the process for establishing a contractual agreement between the stewardship organization and a municipal program to continue paint collection activities requires time, patience and active communication to preempt potential issues. We also know that estab-

lishing permanent paint collection sites (as opposed to one-day collection events) in rural areas can pose challenges for towns without a retail presence. Finally, we have learned that concerns over what is known as an “eco fee,” in which consumers pay extra at point-of-sale for the product’s eventual recycling, can impede program expansion if labeled as a tax, and that retail opposition can delay progress.

Today, stakeholders are actively working to remedy these issues. Nevertheless, most states are eager for their turn to introduce paint stewardship legislation, and many consider paint a gateway to other EPR programs.

Thermostats

Thirteen mercury thermostat laws are currently in place across the U.S. Program results clearly show that Vermont and Maine, the two states with a \$5-per-thermostat bounty paid to consumers or contractors, significantly outperform all other states, with collections topping 30 thermostats per 10,000 people in 2013. Another important element of higher-performing thermostat laws is the legal authority of the state regulatory agency to require additional collection sites, more education and outreach, or a financial incentive if the program is not collecting enough thermostats.

Wave of New Opportunities

People often ask me what the priority products are in the U.S. for EPR coverage. While PSI works with each state to iden-

tify its own priorities, generally speaking, electronics, paint and mercury products top the list across the board. And while PSI evaluates each product's "readiness" for EPR based on a matrix of environmental, economic and social criteria, we also put a heavy emphasis on marketplace opportunity. Indeed, three "opportunity" products have emerged over the past year: pharmaceuticals, batteries and carpet.

Pharmaceuticals

With the recent release of the federal Drug Enforcement Administration's (DEA) final rule on the disposal of controlled substances, which essentially opens up the opportunity for more drug take-back locations, all eyes are turned toward pharmacies and manufacturers for the next phase of pharmaceuticals stewardship. And in the wake of a federal appeals court ruling in favor of an Alameda County, California pharmaceuticals EPR ordinance (against which the industry filed suit in 2012), drug manufacturers are being forced to reconsider

their responsibility to protect against drug abuse, accidental poisonings and polluted waterways. Expect state and local EPR bills to pop up nationwide in the pharmaceutical sphere.

Batteries

After Vermont passed the first EPR law for primary batteries in the U.S. last May, there has been a growing nationwide interest in all-battery (single-use and rechargeable) legislation. This, along with a hodgepodge of bills in multiple states, has helped prod both battery manufacturing sectors to develop a first-time all-battery draft bill. Connecticut is leading the negotiations and PSI is assisting with bill language, which could serve as a model for multiple states.

Carpet

A recent PSI dialogue meeting in Connecticut focused on exploring solutions for increasing carpet recycling through EPR legislation and other strategies. Despite the noticeable absence of manufacturers at the

meeting, more than 100 participants attended, with government officials representing 15 states. The meeting ultimately prompted carpet manufacturers for the first time to offer to pay carpet recycling firms to help offset their recycling costs. However, the details have been kept confidential. Regardless of manufacturer opposition to a regulated program, multiple states are expected to introduce EPR legislation for carpets in 2015.

Tires

In a recent informal PSI survey of our state and local government members, along with river cleanup groups (which often pluck tires from waterways at significant expense), 90 percent of respondents identified scrap tires as a problem due to illegal dumping, government cleanup costs, and lack of scrap tire markets. Several states are likely to introduce EPR legislation in 2015, but tire manufacturers have not embraced EPR as the answer. There is clearly a need for dialogue.

PSI will hold a national dialogue in

Numbers of note

Electronics

MONEY SAVED: Based on data from counties across **New York state**, cost savings for municipalities as a result of the NYS Electronic Equipment Recycling and Reuse Act are likely in the millions, if not tens of millions, of dollars. In **Washington state**, local governments and their taxpayers have saved more than \$61 million in e-scrap

recycling services since the state's 2009 e-scrap EPR law went into effect.

JOBS CREATED: **Washington state** estimates that, since 2009, its electronics EPR program has created 125 jobs for businesses providing collection, transportation and processing services. Within nine months after **Oregon's** program was implemented, 61 new

jobs had been created. And research for the Illinois Recycling Association shows that an estimated 8,000 jobs were created in Illinois in the wake of its state electronics EPR law.

AMOUNT RECYCLED: More than 215 million pounds of e-scrap have been recycled since the state of **Washington** enacted its 2009 EPR law.

Paint

MONEY SAVED: In the first two years of **Oregon's** paint stewardship program, the cost of managing each gallon of paint decreased by almost 11 percent. In **California**, at least three counties' household hazardous waste programs report annual paint management savings of between \$70,000 and \$350,000.

JOBS CREATED: In **California**, the paint program created 23 new jobs

within at least one Southern California paint recycling company, according to data presented in the July 2014 magazine of the League of California Cities.

AMOUNT RECYCLED: Overall, **Oregon** has achieved a 34 percent increase in the quantity of paint collected and processed through the PaintCare program. By 2012, 72 percent of all latex paint collected by PaintCare was used to make

recycled-content paint, a notable increase from 57 percent in 2011.

CONVENIENCE: Before the PaintCare program launched in **Oregon** in June 2010, approximately 65 percent of state residents lived within 15 miles of a paint collection location. By the end of year two, that figure grew to just over 94 percent.

Thermostats

TOTAL COLLECTED: Between 2007 and 2013, Maine collected 44,663

thermostats through its EPR program, representing 394 pounds of mercury.

January, sponsored by the state of Connecticut, to explore solutions for scrap tires, including EPR, market development and other options.

Household Hazardous Waste

A growing number of state and local agencies are thinking ahead to figure out how pesticides, solvents and other HHW materials could be managed through EPR. Household hazardous waste managers are interested in any system that can provide funding to increase the volume of the products they collect and safely manage. Canadian provincial EPR systems for HHW in British Columbia, Manitoba and Ontario have proven instructive in those deliberations.

Questions loom in packaging sector

In the U.S., most brand owners are convinced that EPR systems for packaging will not work in the U.S., and their perspective is often shared by waste management companies that fear losing control of the recycled materials they collect and now market (those firms also dread having to negotiate contracts with big brands instead of small municipalities). In addition, many in the zero waste environmental community, and even some local government officials, are concerned about losing control to corporations that might force changes in the recycling systems they manage. Finally, glass, steel, aluminum, plastic and paper commodity recycling players are split on what they support.

U.S. resistance to EPR for packaging has remained steadfast despite data showing much higher recycling rates in European countries that have had packaging EPR in place for over 20 years. Meanwhile, five Canadian provincial EPR packaging programs are in place, more are on the way and countries around the world are adopting EPR packaging programs each year.

The U.S. corporate culture is a powerful political force. Here, businesses wield tremendous influence over policy. Elsewhere, corporate culture is different.

In fact, I recently discussed with an Australian industry colleague the corporate attitude toward producer responsibility in the U.S. She commented: "I met the U.S. representative from [a major company], which is also one of our corporate members, and he said he was going to fight EPR full force. They want to do as little as possible.

16 basic elements of an EPR bill

- Product scope
- Disposal bans
- Funding mechanism
- Incentive payments
- Performance standards
- Convenience standards
- Stewardship organization
- Outreach and education requirements
- Plan contents
- Audit requirements
- Anti-trust
- Reporting requirements
- Penalties for violation
- Administrative fees
- Implementation schedule
- State procurement

That was a shocker coming from Australia where the environmental attitude of the Australian representative from the exact same company is completely different."

The good news is that the needle has moved a bit with the introduction of the Recycling Partnership and the Closed Loop Fund, which may be signs that brand owners are willing to take some financial responsibility for increasing the stagnant recycling rates of the past 15 years. But how long will progress take, who will be involved and what real goals will emerge?

There have been an exhaustive number of discussions on packaging in the U.S. for the past eight years, but no meeting to date has been designed to include all relevant stakeholders, discuss all relevant issues (including EPR) or be convened by state and local government agencies, which support a range of strategies, including EPR. While some discussions have helped raise awareness of the options to increase recycling, they have failed to generate a common vision for the future. Our Canadian, European and other international corporate colleagues whose companies operate in the U.S. have expressed bewilderment and even a bit of embarrassment at the packaging EPR outlook in the U.S. We expect this will change over time – hopefully sometime soon.

More laws, better laws

Since PSI has developed EPR models on many products, I am often asked for the

recipe for a good EPR bill.

The short answer is that a good law is one that is results-oriented and that spawns a program containing the following three ingredients: convenient infrastructure, awareness and – whenever possible – incentives.

First, for residents and businesses to be responsible stewards, they need a convenient and easy way to recycle or manage their used products. Manufacturers must set up enough collection points so that take-back is convenient for both rural and urban residents. Second, people need to be educated about why they should take this action and know where to bring their scrap products. And third, many consumers need incentives. Give them a store coupon, 5 cents for a beverage container or \$5 for a mercury thermostat and watch as they respond.

Good bills also need clear definitions of roles, responsibilities and outcomes. If bills are too complex to administer and/or implement, they won't be embraced.

The longer answer is that every good EPR bill addresses 16 basic elements (see list on next page). However, the nature of each bill will be slightly different in each state, and not every state will want to include all 16, or in the same way. That said, the manner in which these elements are handled determines whether a law will be strong or weak. For example, if an e-scrap bill limits the product to computers, rather than including TVs, peripherals and other equipment, the amount of e-scrap collected will be lower. If a program has no performance goals or convenience standards, consumers may not have access to collection sites and manufacturers will be less likely to pursue higher recycling rates. Finally, if a state does not have legal authority to require manufacturers to educate the public about a program, awareness – and thus participation – will likely be low.

EPR advocates want strong programs that are effective and efficient. If EPR laws produce poor results, it is often because the political process played out in favor of program opponents.

The road ahead

To fuel EPR momentum in the U.S., we need to know the effectiveness of the laws in place. It is easy for naysayers to avoid any discussion of EPR by selectively choosing to limit program data. It is much harder to refute well-documented experiences in the U.S. and worldwide. Governments and

certain industries have started to compile EPR program statistics, which will help us fine-tune our systems, develop the best models and seek the highest environmental, economic and social benefits at a reasonable cost.

But we also need stronger coalitions among those knowledgeable about EPR programs in the U.S. and around the world. We need business leaders to step forward and participate in the EPR dialogue that will happen with or without them. We also need to be clear on the goals of EPR, and to recognize that it will not solve all waste management problems. But at the same time we need to recognize that there is much that EPR *can* do.

When walking the EPR road, we must expect bumps. But any well-traveled road once considered rocky will eventually

be smoothed out. Even now, as we look back 15 years to the beginning of the EPR movement in the U.S., we can see just how far we have come. The spread of EPR is inevitable. It's happening at all levels of government, inside corporations and environmental groups, and even in academia. The strength of the movement is growing broader and more solid. **RR**

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