



WASTE NOT

BETTER STANDARDS ARE IN THE WORKS TO KEEP PRODUCTS AND PACKAGING OUT OF LANDFILLS— BUT THEY'RE IN DANGER OF BEING HIJACKED BY THE BEVERAGE INDUSTRY

By Jim Motavalli

Can something be moving forward and backwards at the same time? It's happening with extended producer responsibility (EPR), which is an evolution of recycling that places the burden of taking back waste on the companies that created the products, containers or packaging in the first place. EPR is gaining real traction in the U.S., but it's also in danger of being hijacked by corporate interests with hidden agendas.

Until very recently, EPR, also known as "the producer pays," had become the rule in Europe (see "In Europe, EPR Is the Law," page 27) and was establishing beachheads all over the world. But the U.S., where corporations have powerful lobbies and the ear of Congress, was stubbornly opting out. Meanwhile, the number of states that had enacted bottle bills (creating a deposit system for beverage containers and producer-maintained collection centers) remained small. To this day, just 10 states have bottle bills, the country's best example of producer-supported recycling efforts in action.

THE ELECTRONICS TAKE-BACK ALONE IN MAINE SAVES THE STATE'S CITIES AND TOWNS UP TO \$3 MILLION ANNUALLY.

But a noticeable shift happened in early 2010, when Maine became the first state in the U.S. to enact a product stewardship "framework" law that targets products well beyond just beverage containers—including the handling of electronics and batteries at the end of their useful lives. The electronics take-back alone in Maine saves the state's cities and towns up to \$3 million annually.

In related initiatives, municipalities (including Austin, Texas, and the state of Hawaii) started to get serious about "zero waste," or so-called "nil to landfill" programs, meaning that nothing going into the plant is wasted—it all has a second use. General Motors says it has met zero-waste goals for its U.S. plants, having located reuse options for everything it produces.

The Product Policy Institute (PPI), an EPR leader, is in talks with the carpet and packaging industries on mutually acceptable guidelines. Some 32 states have now established product-specific EPR laws (taking back, say, end-of-life TVs and other electronics and making their manufacturers liable for the cost of recycling them). In the U.S. today, 24 state laws address electronic take-back, 15 cover the safe disposal of mercury-containing automobile switches, nine cover the handling of lead-acid batteries, 10 address beverage container recycling and nine address mercury thermostats. Hazardous products are those most frequently cov-

ered, but the scope is expanding rapidly.

In the U.S., EPR is playing out at the state and local level, but is still very unlikely to become a federal mandate as it is in Europe and elsewhere (especially in the post-midterm election climate). As it gains strength locally, however, it will become a force to be reckoned with, enjoying the same kind of widespread public support that recycling has across the country.

EPR has also become well established in Canada, where British Columbia law has been phasing in for various products since 1994. The province's law has been closely studied, and less-successful versions have also been enacted in Ontario and Manitoba.

The United States Conference of Mayors voted to "encourage its members to develop producer responsibility policies" in 2009, and it has become the rage for city councils—including Woodland, California's just before Christmas—to enact EPR laws. As that city said in its report, "Solid waste ratepayers and taxpayers are financing costly collection infrastructure and programs that, in effect, amount to subsidies for product manufacturers who profit from the sale of products without having to take responsibility for their safe and efficient disposal, reuse or recycling."



Taking Responsibility: Who, Us?

Woodland got to the heart of the matter. Three quarters of what the U.S. throws into landfills today is products and packaging. A lot of it is designed for one-time use, and much of it is toxic. Taxpayers subsidize that waste disposal through their local governments, and if the waste is contaminated it's up to those same taxpayers to figure out and pay for proper disposal. The current system imposes few penalties on manufacturers that put their beverages in one-way, non-refillable containers or swath their goods in excess packaging. And the producers want to keep it that way. According to *The Economist*, the success of EPR "worryes businesses, few of which are eager to pick up the bill for waste disposal. Some business associations, such as the California Chamber of Commerce, have denounced EPR bills as 'job killers.'"

The problem is that businesses can't "just say no" when it comes to EPR—it makes them look greedy and insensitive. A much better approach for them—in fact, a textbook case—is unfolding today in Vermont. A really effective bottle bill (with some producer responsibility built in) is under attack from industry-sponsored legislation that describes itself as EPR, but in reality would weaken recycling in the state. Vermont's bottle bill goes back to 1972 and covers metal, plastic, glass and paper drink containers with a five-cent deposit (15 cents for liquor bottles). Vermont has an 85% recycling rate and, along with concurrent curbside programs, it collected 73 million containers for recycling in 2008. It's a law that clearly works. The proposed law that would undo it is the Vermont Extended Producer Responsibility Act of 2010, and—to the horror of the Container Recycling Institute and Vermont Public Interest Research Group (VPIRG), among many others—it would replace the bottle bill with a law that they say is EPR in name only.

Paul Burns, executive director of VPIRG, a leading opponent of the campaign to kill the bottle bill, says the bill is likely to be revised before being taken up by the state legislature in early 2011, but "I'm sure it will still contain the repeal of our most successful recycling campaign, which is the bottle bill. However else it might be changed, that is the bottom line for the beverage industry, and they're putting a lot of lipstick on this pig to get it through. The big corporate beverage giants think they can come in here and hoodwink the people into repealing the bottle bill, but along with [Vermont's ban on billboards] it's one of the most strongly supported environmental laws in the state."

Wolf in Sheep's Clothing

The same industries that disdained EPR are now embracing it as a work-around in the states (including huge population centers California and New York) that still have bottle bills. The beverage industry has long supported groups such as Keep America Beautiful (the group famously known for its

"crying Indian" ads) that emphasize individual responsibility for litter collection but which, unbeknownst to most consumers, work behind the scenes to oppose and defeat bottle recycling bills. But that approach is getting threadbare.

A new tactic is to publicly embrace recycling, mainly by distributing free bins. The industry likes such one-time payments, not the costly ongoing commitment represented by bottle bills. PepsiCo, for instance, is sponsoring the multi-year Dream Machine recycling initiative with big player Waste Management, Inc., Keep America Beautiful and Greenopolis that has so far put bins and interactive recycling kiosks in 14 states.

But the campaign against bottle bills is getting into high gear. "The beverage industry should be applauded for claiming responsibility for their packaging while other packaging brand owners are opposing EPR," says Bill Sheehan, PhD, executive director of PPI. "But bottle bills help keep curbside paper clean and should not be sacrificed in the name of EPR."

Further inflaming bottlers is the fact that New York recently declared that it would keep 80% of its unclaimed deposits from its state program. That's money that the bottlers pay up front to fund the deposit program, and it accumulates when cans or bottles are tossed away. It's a sum amounting to \$120 million a year.

The new tactic is to disparage recycling as ineffective, while claiming that industry proposals will painlessly achieve long-sought EPR goals. Kim Jeffery, CEO and president of Nestlé Waters North America (a leading bottled water manufacturer), is spearheading the fight. In a GreenBiz.com article entitled "Why It's Time to Rethink Recycling in the U.S.," Jeffery charges that "bottle bills...aren't the answer. The problem with bottle bills is they create an enormous government bureaucracy, do only a reasonable job of diverting a very small portion of the waste stream—beverage containers—from landfills, and do nothing to build curbside, public space and commercial recycling infrastructure."

Jeffery has shared a stage with veteran green architect Bill McDonough to present his vision at forums across the U.S. "I'm so pleased to be joining Bill to share our sustainability vision," he says. "For me, EPR means that all manufacturers must consider what happens to packaging materials at the end of a product's life, and we must figure out a way to get those materials back, and use them again." McDonough could not be reached for comment.

Coca-Cola took much the same approach in a 2010 white paper conducted by Natural Logic that it reportedly financed, "Product Stewardship & Extended Producer Responsibility: Toward a Comprehensive Packaging Recycling Strategy for the U.S." The proposal's foundation involves enacting product stewardship bills through state legislatures, just like the strategy now underway in Vermont. According to the report, "This will effectively shift the burden of cost for current recycling programs to producers and away from local governments."

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In the U.K., Kraft Foods sells Kenco coffee in refill bags that use 97% less packaging than a new jar.

One doesn't have to be a total cynic to ask why a major bottler would fund a study that advocates making itself responsible for financial burdens now shouldered by local governments. The short answer is, it didn't—because under the Vermont model beverage companies would save “millions” every year, according to Susan Collins, executive director of the Container Recycling Institute. Instead of paying deposit money up front on bottles and cans, she says, the industry proposals would have the beverage companies paying only for the products that make it into recycling bins.

Certain Canadian programs enacted with the same model as Vermont's proposed law—and in fact coauthored by the same company, StewardEdge, headed by Derek Stephenson—have been deeply troubled. Stephenson, who declined to comment for this article, is a major figure in EPR programs in Canada, and has recently branched out to Europe, Asia and Australia. Vermont would be a significant beachhead in the U.S., and bottlers like the version of EPR designed by Stephenson and others because it saves them a lot of money.

In the calamitous Ontario version of the legislation, recycling costs \$25.5 million (Canadian) annually, but bottlers pay only \$7 million of that, Collins says. Half of the cost is borne by municipalities. Discounts are built into the system. Because the producer pays out only on the bottles collected, rather than on each one sold with a deposit, as in bottle bills, huge

savings are realized.

One of the prime defenders of the proposed Vermont EPR law is Andrew MacLean, a lobbyist for the beverage industry in northern New England. “This bill greatly expands recycling beyond the bottles and cans that are 2% of the waste stream, and I'm surprised that some environmentalists don't like it,” he says. “I think they're upset because they didn't think of our approach themselves. Vermont's bottle bill is the most expensive in the country, and our program makes sense for a much greater percentage of the waste.”

MacLean, who acknowledged that his bottler clients hate bottle bills, says he would have wanted to sit down with VPIRG to iron out a workable program, but “they refused to work with us.” Meanwhile, he says, the national beverage industry is looking at Vermont as a model for the rest of the country. And, indeed, it is.

Why Single-Stream Recycling Doesn't Work

A major problem for the industry's approach to EPR is that it would dump all the bottles and cans that now go to redemption centers into household blue bins. That gets you part of the way toward a goal, articulated by Jeffery of Nestlé in his article for GreenBiz.com, of a 60% recycling rate for all PET plastic beverage containers in the U.S. by 2018—at least on paper. But sim-

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ply because bottles and cans go into bins doesn't mean they will actually be recycled into something new.

The major issue, recycling advocates say, is that American recycling programs are increasingly "single stream," which means that instead of presorting paper, plastic and other recyclables, everything is collected together. And that leads to a much higher percentage of spoilage.

According to Collins, "Recovery rates don't report what is contaminated—just what is delivered to the recycler. If Vermont abandoned its bottle bill, it would end up with twice the amount of contaminated product. A lot of paper mills, for instance, won't buy from single-stream systems. From collection centers there is a contamination rate of maybe 2%, but it's 25% from single stream."

Buddy Boyd of Gibson's Recycling Depot, which works with the pioneering EPR system in British Columbia on e-waste, says convenience is no panacea. "Single-stream collection of materials increases contamination rates by commingling everything together rather than trying to separate them and make everything whole and clean again," he says. "It's like trying to unscramble an egg." Electronics collected via the single-stream approach end up being crushed together with other recyclables, which defeats any reuse or resource recovery

efforts (while also failing to remove any hazardous materials, such as mercury switches).

Sheehan says that, over the last decade, 60% to 70% of American recycling programs have gone single stream. "And the stuff given to the recycling facilities is significantly contaminated unless a lot of money goes into sorting it. The paper people don't like it, because the glass and plastic gums up their recycling machines. And the glass people aren't getting enough clean glass."

A Critical Year

All of this suggests that 2011 will be a critical year for EPR in the U.S. It could end up co-opted and neutered by industry, or it could find itself in its strongest position ever—with local and state governments dictating terms to bottlers and other packagers. "I take this personally," says Sheehan. "What could be lost is the whole reason behind recycling, which is to close the loop and make new products [out of old ones]."

Ontario's experience offers a case history of how not to do EPR. Its Blue Box program, launched in 2004, is not true EPR. Unlike corporate-funded programs in Europe, the costs in Canada are shared by the government and producers. And it has led to



BILL SHEEHAN

Spotlight on EPR

spread adoption of EPR in the U.S.

E Magazine: Is EPR reaching a tipping point in the U.S.?

Bill Sheehan: Yes. EPR is in a high legislative phase. The question now is what kind of EPR recycling we will have. The danger is that powerful corporations—in concert with the garbage industry and public sector waste departments—will water down EPR so that it does little to move the needle towards sustainability. If all EPR does is throw industry funding at programs that collect masses of mixed material that are sold on low-grade global commodities markets, we won't get meaningful change.

E: What kinds of EPR schemes are being advocated for packaging?

B.S.: Two camps are squaring off. One approach is the mixed-basket-of-goods approach proposed by the beverage industry in Vermont as an alternative to beverage container deposits. This employs industry financing for a "comprehensive" material-based program for

all packaging and printed paper. In practice, it relies on industry financing of government-delivered curbside programs. In Canada, this approach has been implemented in Ontario and Manitoba and has delivered poor results.

The second approach, pioneered in western Canada, is phased and targeted EPR. Government targets specific product categories—such as soft drinks, fast food, detergents and cleaners, and lets producers engage with consumers to innovate new programs. That's how it has worked with the successful EPR programs for household hazardous products that are underway.

E: Should local and state governments pay part of the cost of EPR programs, or should corporations bear the burden alone?

B.S.: The central principle of EPR is that those who design, market and use products and packaging—producers and consumers—should pay for all of the environmental management costs. Experience shows that good EPR programs do not require any further subsidies from state or

Bill Sheehan cofounded the Product Policy Institute (PPI) with Helen Spiegelman in 2003, and serves as its executive director. In his work at PPI, he tackles waste from every angle—from championing waste-reduction methods to promoting cleaner manufacturing processes and the use of less-toxic materials. Sheehan has been a major supporter of bringing extended producer responsibility (EPR) to the U.S., and his work has led to the formation of Product Stewardship Councils in California, New York, Texas, Vermont and other states. Here, he talks to *E* about the promise for wide-

LANDFILLS TODAY IS PRODUCTS AND PACKAGING. TIME USE, AND A LOT OF IT IS TOXIC.

a backlash, with some retailers imposing "eco fees" on consumers.

According to "The Eco-Fee Imbroglio," a report from the C.D. Howe Institute, a Canadian research institution, "Public outcry over the imposition of fees relating to this plan by some retailers led the government to suspend and eventually scrap the program." Ontario's environment ministry is now in the process of reviewing a proposal to move to a full EPR system—making producers pay 100% of the cost.

Well-designed EPR—such as the programs in British Columbia and Maine—is phased in slowly and carefully, with plenty of competition and full stakeholder participation. It doesn't have to be run by or even have the participation of local governments—if the producer pays, the producer can also design the most cost-effective solution. In fact, it forces them to do so, which is the point.

That said, Neil Seldman, director of the Institute for Local Self Reliance, points out that government-run programs are much more likely to be unionized and pay a decent living wage than programs subcontracted by corporations with an eye only for the bottom line. "EPR has to be green and pro-labor, too," he says, pointing to the disparity of programs that pay \$7 an hour with few benefits, as in Atlanta, and those that are unionized and pay \$20 an hour, with benefits, as in San Francisco.

Sheehan's response is that labor rights have to be built into the design of EPR programs by local governments. "It needs to be articulated as part of performance standards," he says. "Let industry figure out how to achieve those outcomes."

The moral seems to be that corporations should be empowered to create and pay for their own EPR programs—under strict guidelines and with regular monitoring. EPR is on the move, finally, and vigilance is needed to keep it moving in the right direction.

There are ominous signs of a national counter-attack against EPR, however. In Maine, incoming governor Paul LePage, a conservative Republican, says that he believes in "strong environmental laws," but one of his first acts was to order a review of the state's EPR law to "ensure that manufacturers do not have to pay to recycle their consumer products..." But making manufacturers pay is the essence of EPR, and removing that provision would gut the whole meaning of EPR.

CONTACTS: Container Recycling Institute, www.container-recycling.org; Institute for Local Self-Reliance, www.ilsr.org; Product Policy Institute, www.productpolicy.org; Steward-Edge, www.stewardedge.ca; Vermont PIRG, www.vpirg.org. **E**

JIM MOTAVALLI is a senior writer at E.

local governments. In fact, they work better when government sets the bar and then lets industry design and operate the most effective programs. One of the opportunities in EPR is that it offers brand owners an opportunity to build a relationship of trust with the consumer.

E: How do you view the beverage industry's proposal for EPR for packaging in the Vermont legislation?

B.S.: Coca-Cola and Nestlé have made a fundamental concession: They admit that they have a moral responsibility to provide stewardship of their empty containers. But repealing effective, industry-managed container deposit programs makes no sense from a sustainability perspective.

Deposits get more than double the recovery rates of mixed curbside collection, they yield clean material that is used to make new products, they work for beverages consumed away from home and they engage consumers rather than taxpayers or garbage ratepayers. Industry-managed bottle deposits are the grandmother of North American EPR programs—they should be improved and expanded, not abandoned.

E: Is the Maine law a model for the rest of the U.S.?

B.S.: Maine's first-in-the-nation framework law establishes the principles of EPR in policy, and also a process for identifying priority products in the waste stream for new product stewardship programs. Maine has more EPR laws than any other state, a strong state environmental agency and, not insignificantly, a campaign finance reform law.

Maine also has a collegial culture that allowed the bill's author to get support from the business community through the Maine State Chamber of Commerce. States with less experience and capacity than Maine may need to first pass several product-specific EPR bills. Those can ultimately be rolled into a framework regulation as British Columbia did in 2004.

E: Why is Congress so unfriendly toward EPR?

B.S.: I think it's more a matter of neglect. Recycling has never been a major focus of our federal government. In Europe and Canada, they've moved beyond debating whether EPR is the right policy and are asking how to make it work. Ultimately, harmonized federal or national EPR policies make sense. But brand owners are

more powerful in Congress than in the state legislatures.

E: How does the Product Policy Institute see its role?

B.S.: PPI was the first environmental organization in the U.S. to raise the fundamental question of whether local communities should be bearing the burden of cleaning up after the throwaway economy. We told the story of the history of waste: how the provision of convenient municipal garbage collection, at no cost to those who design and market consumer goods, encouraged the proliferation of toxic and throw-away products and packaging.

We challenge—and still challenge—end-of-pipe services by local governments and waste haulers that don't solve the waste problem, but perpetuate it. We think it's time for the public to demand "cradle-to-cradle" product stewardship from the companies they do business with, so that consumers can return products and packaging rather than resorting to garbage trucks, landfills and incinerators.

CONTACT: Product Policy Institute, www.productpolicy.org. **E** —J.M.

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