



## CALIFORNIA'S RECYCLING CHALLENGE

*The California Foundation on the Environment and the Economy (CFEE)  
Co-Hosted by The California Product Stewardship Council (CPSC)*

# Lessons Learned from CFEE/CPSC Delegation to British Columbia and Washington State to Examine Materials Management and Recycling

August 2019

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From July 28 to August 1, 2019, the California Foundation on the Environment and the Economy (CFEE) and the California Product Stewardship Council (CPSC) led a research mission – “California’s Recycling Challenge” – to British Columbia and Washington State to examine best practices in materials (aka “waste”) management and recycling. The delegation consisted of a select group of California state policymakers and key stakeholders who met with government, industry, and NGO leaders and visited state-of-the-art collection and processing facilities in Vancouver and Seattle.

The CFEE/CPSC tour was prompted by the growing challenges in California's recyclables markets. China, India, and other countries, which are traditional markets for California recyclables, have imposed strict contamination and/or outright import bans on recyclables that have forced our state to confront the challenge of managing more of our own waste streams internally.

In recognition that California can no longer rely on disposing of its recyclables out-of-state and out-of-country, the visit to British Columbia and Washington State sought to identify model practices to reduce waste at the source and recycle it in-state by establishing policies to support new infrastructure and a statewide system to cleanly and efficiently process a multitude of products.

In doing so, California stands to gain new job opportunities in-state, source reduce materials so there is less to manage, and increase reuse to divert products away from landfills and incinerators that can serve a better, more useful purpose while fulfilling the public’s support of recycling. This briefing document outlines key insights learned from seeing how our Pacific Coast neighbors are grappling with and solving their “Recycling Challenge.”

## Key Lessons Learned

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1. BC has Shifted Responsibility from Local Governments to Product Producers to Fund, Design and Operate Closed Loop Recycling and Reuse Systems for 22 Products
2. WA State has passed Four Extended Producer Responsibility (EPR) bills - E-Waste, Pharmaceuticals, Solar Panels and Paint
3. BC & WA Both Advised that Rules Be Clear and Empower Producers to Flexibly Meet Performance Goals Set by Government
4. Defining "Covered Products" is Extremely Important
5. In BC, Regulators Are Empowered to Add New Regulated Product Categories Without Additional Legislation
6. Inter-Industry and Industry/Regulator Collaboration Is Key
7. Trust But Verify: Third Party Audits of Stewardship Programs
8. BC and Washington State Jurisdictions Have Limited Impact on Global Materials Markets
9. Local Government Has Options When EPR Comes to Town
10. The Importance of Standardization
11. One-Off Bans Have Limited Impact

## 1. BC has Shifted Responsibility From Local Governments to Product Producers to Fund, Design and Operate Closed Loop Recycling and Reuse Systems for 22 Products

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In California, cities and counties generally have the responsibility for collecting business and residential waste for recycling and landfill disposal. This entails handling certain aspects of materials management, including potentially absorbing operational costs and contracting with private sector vendors who may do collecting, hauling, sorting, and end-of-life (EOL) management of materials.

British Columbia's (BC) **Extended Producer Responsibility (EPR)** model, conversely, represents a shift in which entities should be responsible for managing products at EOL. It is the product producers who must manage the EOL — not the municipalities and their taxpayers or garbage ratepayers, which socializes costs (see Appendix A for CalRecycle's Checklist of Essential Features of EPR regimes).

Once the regulator has decided that a product category will be regulated, it is incumbent on the producers of the material to develop a program to reduce waste at the source via green design, collect product waste, increase diversion away from landfills, and recycle remaining materials. The producer is also responsible for funding the program, increasing public awareness, improving public accessibility to collection opportunities (curbside, depots, return-to-seller), contracting with firms to carry out their program, and making an annual report to the BC government outlining programmatic results.

Advocates for EPR see it as the smartest, lowest cost way to incent producers of materials to improve product design to make their products easier to recycle. As one BC plastics recycling representative noted, his firm can only recycle products that can be recycled. Without incentives for manufacturers to make materials that have recycling markets, it's unreasonable to expect significant improvements in recycling rates.

Another noted benefit of EPR is the shift of costs from the local government and taxpayers to producers who must devise the funding mechanism to operate their program. The most common strategy is to simply internalize as a cost of doing businesses, but another option is to assess an additional "eco-fee" onto the cost of the product that consumers pay. However, this can be unpopular with retailers who must track eco-fees.

BC has 22 EPR product categories, including paper and packaging products, beverage containers, electronics, small appliances, paint, household hazardous waste, and others.

## 2. WA State Has Passed Four Extended Producer Responsibility (EPR) Bills - E-Waste, Pharmaceuticals, Solar Panels and Paint

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Like BC, Washington State is embracing EPR to shift materials management from local governments to producers. Their program covers considerably fewer products.

To date Washington has passed four EPR bills, including e-waste, pharmaceuticals, solar panels, and in 2019, a paint EPR was signed into law but has not yet been implemented. The state is currently studying the feasibility of an EPR program for packaging.

### **3. BC & WA Both Advised That Rules Be Clear and Empower Producers to Flexibly Meet Performance Goals Set By Government**

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The BC EPR model empowers producers to meet government regulations in a flexible manner. In this performance-based system, the regulator sets specific goals and broad objectives that producers are mandated to meet. Every five years, regulated producers must develop a 'Stewardship Plan' that details how they will fulfill the government's mandates over the course of the next five years.

The means and methods of complying with the regulations are decided by the producers alone, with the regulator providing only four key roles: 1) setting performance goals, 2) ensuring transparency, 3) enforcement and 4) level the playing field.

During the CFEE/CPSC visit to Vancouver, the regulator stressed their desire to only play the most limited role as plan certifiers, rather than as authors or overbearing editors. If the regulator exerts excessive control over the plans, the opportunity for producers to devise innovative, lowest cost programs is diminished.

One key feature of EPR flexibility is that regulated companies whose products are in the same category can scale their resources by establishing a "**Stewardship Agency**" (or Stewardship Organization) that manages the products on their behalf. Producers must pay into the agency based on how much of their product is sold into the province. They also sit on the Board of Directors of the stewardship agency.

Regulated companies may also opt to manage their own materials without coordinating with similar companies. Firms that act to comply individually must still submit their stewardship plan to the regulator.

A noted benefit of allowing producers to run the program is the reduction of waste management expenses. For instance, the additional cost per refrigerator sold in BC is \$11.50 CAD, and this covers operating costs of the stewardship program to collect and recycle fridges. BC's regulator estimates the cost would be upwards of \$150 CAD per fridge with more prescriptive regulations seen in other jurisdictions.

Another example of demonstrated innovations is the beverage container stewardship agency, Return-It, which has been empowered to prioritize the revamping of collection depots to be more consumer-oriented. Their depots centers are not only very clean, but they've adapted collection practices to younger generations for whom convenience is key. Return-It offers online accounts in which members of the public can sign up, drop off their used beverage containers without sorting, and later be credited for their deposit once a worker has scanned the cans and bottles on their behalf.

#### **4. Defining "Covered Products" is Extremely Important**

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How products are defined by regulators/legislators is critically important. The universe of consumer materials is vast and complicated by subtle distinctions and overlaps. Without careful classification of materials, whole categories of products can either be omitted from recycling rules or erroneously included.

Not only does this mean that some materials will end up in landfills that otherwise may not, but it can also inadvertently disrupt market competition by advantaging some firms over others by excusing key products from regulation.

One example is Washington State's EPR program for solar panels, which mistakenly exempts utility-scale solar photovoltaics (PV). This arose due to a simple oversight in bill language that only mandated recycling of solar PV that were attached to buildings. It's a lapse that has yet to be remedied.

#### **5. In BC, Regulators Are Empowered to Add New Regulated Product Categories Without Additional Legislation**

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By fast-tracking EPR laws in 2004, the British Columbia parliament delegated its authority to add new regulated products to the provincial regulator. Accordingly, there is no need to return to parliament to secure additional authority for each new specific product only the affirmation of the provincial regulator.

This enables the regulator to move unilaterally, if not methodically, when it determines a class of materials should be included in the EPR code. Using only the rulemaking process presents its own benefits and drawbacks, but it's a model favored by the stewardship agencies who met with the CFEE/CPSC delegation.

This could be attributed to the political culture in BC that emerges from a parliamentary system in which elected legislative representatives also hold key ministerial positions in the executive branch. It may also be due to the comfort level that industry has with regulators who possess greater expertise in materials management than parliamentarians.

#### **6. Inter-Industry and Industry/Regulator Collaboration is Key**

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A recurring theme in meeting with stakeholders in BC is the degree to which stewardship agencies work with each other and with the regulator to fulfill their obligations. The inter-industry collaboration arises from the acknowledgment that different stewardship agencies have varying administrative and infrastructural assets that can be leveraged.

For instance, at the bottle collection depots, Return-It is contracted by other stewardship agencies to collect non-beverage container materials. At numerous Return-It Centers, the public can drop off their containers as well as electronics, small appliances, textiles, and other products which are then collected and shipped to their respective recycling programs. This is a smart use of program funds for other stewardship agencies because the Return-It brand enjoys 98 percent public awareness in the province.

During meetings with the CFEE/CPSC delegation, BC regulators and industry both agreed there was a unique level of trust between each other that enabled a comfortable collaboration. This may result from the fact the regulators view their role as a facilitator to achieve recycling rules and not a strict manager.

## **7. Trust But Verify: Third Party Audits of Stewardship Programs**

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One of the core tenets of successful EPR regimes is transparency. BC and Washington both rely on third party auditors (paid for by the stewardship agencies) to assure to industry, regulators, and the public alike that regulations are met. In doing so, it removes a possible point of mistrust by allowing a credible neutral firm to conduct a thorough assessment of recycling programs.

## **8. BC and WA State Jurisdictions Have Limited Impact on Global Materials Markets**

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While British Columbia and Washington State have moved boldly to introduce ambitious recycling programs, their combined population of 13.5 million people has limited capacity to affect global materials markets.<sup>1</sup> Representatives in both BC and Washington noted that producers may be insufficiently compelled to alter product design if it's only their jurisdictions establishing EPR.

Should California consider establishing EPR for producers who have footprints in both BC and Washington, it would likely yield greater pressure on producers to reconsider product design more earnestly. It may also elicit greater push back from industry who fear the regulatory uncertainty that could come from California's adoption of EPR.

One forum for coordinating action between jurisdictions is the **Pacific Coast Collaborative** (PCC). This is an ongoing initiative between BC, Washington, Oregon, and California. Signed into action by Governor Schwarzenegger and his Pacific Coast counterparts, it's been an active working group with the goal of aligning policies between like-minded jurisdictions whose combined influence is greater than the sum of the parts.

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<sup>1</sup> Enforcement is key to non-compliance, should a manufacturer not redesign their products to comply with new regulations. If a jurisdiction is relatively small, they can still leverage outsized fines to push action, to a certain extent.

## 9. Local Government Has Options when EPR Comes to Town

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Prior to province-wide EPR, BC municipalities were tasked with waste management and recycling.<sup>2</sup> When EPR emerged as an alternative model, there was concern from cities and counties about relinquishing control to the industry to “regulate itself.”

In BC, there were three options presented to municipalities:

1. Do nothing
2. Let EPR stewards provide all services
3. Cities could enter into contracts to provide services on behalf of stewardship agencies

Importantly, in other countries where EPR has been adopted, there have been other arrangements offered to municipalities to ensure a level of comfort while also ensuring that the EPR scheme still enables the producers to manage the program themselves. Some jurisdictions offer hybrids of BC's EPR system and a system partially managed by the jurisdiction. Most cities have opted for the EPR stewards to handle recycling due to their relatively low cost of management and high level of efficacy.

## 10. The Importance of Standardization

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In BC and Washington, industry and government stakeholders underscored the importance of standardizing the collection bins for the public. The idea being, whether you were in Vancouver or Victoria, the recycling bins should look the same, thus reducing confusion about what is and what is not recyclable.

One of the challenges in California is that there are hundreds of municipalities running recycling programs, each with different approaches to pre-sorting waste for landfills and waste. This can result in “wish-recycling” in which the public aspires to be more environmentally-conscious and will attempt to recycle materials that are not actually capable of being recycled and instead must be resorted out of the recycling stream and sent to a landfill.

One of the stated benefits of EPR is that producers have the incentive to standardize to more efficiently manage their program. They also have a statewide presence to create a consistent disposal experience for all residents.

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<sup>2</sup> BC municipalities still operate the landfills.

## 11. One-off Bans Have Limited Impact

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While several representatives in BC and Washington stated that bans of single products can have an important effect on reducing the creation of certain problematic materials, they conceded that one-off bans have only a limited impact on the trillions of tons of solid waste worldwide.

Some BC and Washington stakeholders recommended that California consider establishing a comprehensive recycling framework, one that holds greater promise for smart material management if done correctly.



### ***About the California Foundation on the Environment and the Economy (CFEE)***

The California Foundation on the Environment and the Economy (CFEE) is a 501(c)(3) nonprofit organization that conducts intensive public policy conferences, legislative briefings, multiparty workshops, and international study travel projects for California State legislators, regulatory commissioners, members of the Governor’s Cabinet, business, labor, environmental and local government leaders. The subject areas covered by CFEE are energy, water, telecommunications & technology, housing and transportation, another infrastructure and climate issues.



### ***About the California Product Stewardship Council (CPSC)***

The California Product Stewardship Council (CPSC) is a powerful network of local governments, non-government organizations, businesses, and individuals supporting policies and projects where producers share in the responsibility for managing problem products at their end of life. CPSC is California’s thought leader and expert on Product Stewardship and the Extended Producer Responsibility (EPR) movement.

## Appendix A.

# CalRecycle Checklist of Essential Features of Extended Producer Responsibility (EPR)

### Extended Producer Responsibility (EPR) Basics for Proposed Legislation (June 2019)

Legislation that incorporates an EPR approach must include the following elements that CalRecycle considers critical to best achieve successful program implementation in a comprehensive, fair, and transparent manner. CalRecycle is available to provide assistance.

**State Oversight Agency.** A lead State oversight agency is clearly identified.

**Definitions.** Key terms are clearly defined, including, but not limited to, definition of Producer, covered product(s), and responsible entities.

- **Must Include Tiered Definition of Producer.** Important for streamlined enforcement at first point of entry into California, lower fiscal impacts to the State oversight agency, and for providing a level playing field to all Producers:
  - (1) The person who manufactures the covered product and who sells, offers for sale, or distributes the product in the state.
  - (2) If there is no person who is the manufacturer of the product for the purpose of paragraph (1), the manufacturer of the covered product is the person who imports the product into the state for sale or distribution.
  - (3) If there is no person who is the manufacturer for the purpose of paragraphs (1) and (2), the manufacturer is the person who sells the product in the state.

**Funding.**

- Program funds are managed by the Producer or Stewardship Organization to implement the Stewardship Plan and reimburse the State oversight agency for oversight/enforcement expenses.
- Cost internalization (i.e., assessment is not visible on receipt, similar to other costs of doing business) or a visible assessment should be determined on a case-by-case basis.
- The Producer or Stewardship Organization must demonstrate to the State oversight agency that its Annual Budget, whether funded via a visible assessment or cost internalization, is sufficient to achieve the program goals.

**Program Goals.**

- Program goals and the frequency by which they are reviewed and revised by the State oversight agency are set in statute.
- Must be meaningful, clear, enforceable, and quantitative in order to enable enforcement action against the Producer or Stewardship Organization if its program fails to achieve the statutory goals.

**Stewardship Organization.**

- Producers must operate under an approved Stewardship Plan individually or as members of a Stewardship Organization.
- The Stewardship Organization must be organized as a non-profit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986.
- The Producer or Stewardship Organization cannot use Program funds to pay penalties or costs for litigation against the State.

**Stewardship Plan, Annual Reports, Budgets.**

- Producer or Stewardship Organization must submit and implement a Stewardship Plan that will result in achievement of the program goal(s) required by statute and/or set by the State oversight agency.
- Stewardship Plan must include a mechanism to transfer program funds to another entity if deemed necessary.

- Producer or Stewardship Organization must submit an Annual Report, including independently-audited financial statements, that contains the data needed for the State oversight agency to determine if goals are being achieved.
- Producer or Stewardship Organization must submit an Annual Budget to the State oversight agency that demonstrates the program allocations and expenditures are appropriate and sufficient to achieve the program goals.
- Producer or Stewardship Organization must coordinate with and address concerns of stakeholders, at a minimum, during development of the Stewardship Plan, Annual Report, and Annual Budget.

**Oversight & Enforcement.** State oversight agency:

- Conducts compliance determinations of Stewardship Plans, Annual Reports, and Annual Budgets for approval, conditional approval, or disapproval.
- Conducts inspections and takes enforcement actions to ensure a level playing field among Producers.
- Receives reimbursement by a Producer or Stewardship Organization for its full costs of oversight and enforcement.
- Audits the Producer or Stewardship Organization for compliance with statute and regulations.

## Appendix B. Additional Resources

“California’s Recycling Challenge” Materials:

<http://www.cfee.net/conferences/californias-recycling-challenge.html>

Video on the evolution of the British Columbia Extended Producer Responsibility Model:

[https://www.youtube.com/watch?v=RGWNfMfoSjU&feature=player\\_embedded#!](https://www.youtube.com/watch?v=RGWNfMfoSjU&feature=player_embedded#!)

CalRecycle Overview of Extended Producer Responsibility: <https://www.calrecycle.ca.gov/epr>