



Zero Waste Commission

CONSENT CALENDAR

June 11, 2013

To: Honorable Mayor and Members of the City Council  
From: Zero Waste Commission  
Submitted by: Doug Halperin, Chairperson, Zero Waste Commission  
Subject: Product Stewardship and Extended Producer Responsibility

RECOMMENDATION

Adopt a Resolution:

1. Approving an Extended Producer Responsibility Policy;
2. Directing staff to provide written notice of Berkeley's policy to various agencies to encourage state and county legislation requiring those who design, manufacture, and sell products to take responsibility for minimizing environmental impacts through all stages of the product's life cycle, including appropriate disposal using reuse; recycling; anaerobic or aerobic composting; or wasting for unrecyclable residuals; and
3. Authorizing a contribution of \$1,000 to the California Product Stewardship Council from the Import Mitigation Grant in the Alameda County Recycling Board Fund.

SUMMARY

Product Stewardship is a movement that has evolved from growing concern over who should bear the costs of managing the end-life of consumer products, including problems associated with packaging, pharmaceuticals, and fluorescent lamps; and other products with toxic elements or otherwise difficult to recycle or reuse. Product Stewardship includes familiar environmental strategies such as: Design for the Environment; greening the supply chain; pollution prevention; banning of certain materials or products; resource conservation; take-back; leasing; and reduction of landfill disposal.

The producer of the product is in the best position to anticipate and mitigate adverse impacts. In addition, other stakeholders, including product and packaging designers, suppliers, manufacturers, distributors, retailers, users/consumers, recyclers and waste managers, share responsibility for the environmental effects of products through reduction, reuse, recycling and other methods of disposal that are consistent with the Berkeley Municipal Code Section 3.40.020 definition of Highest and Best Use.

Extended Producer Responsibility (EPR) is a mandatory type of Product Stewardship that includes, at a minimum, the requirement that the producer's responsibility for their product, extends to post-consumer management of that product and its packaging.

### FISCAL IMPACTS OF RECOMMENDATION

The \$1,000 contribution to the California Product Stewardship Council (CPSC) is subject to appropriation in the FY 2014 budget from the Import Mitigation Grant in the Alameda County Recycling Board Fund (646-5613-432-3510). Staff time will also be allocated to prepare communications to state and county agencies.

### CURRENT SITUATION AND ITS EFFECTS

Berkeley ratepayers and taxpayers pay the cost of dealing with this discard stream, even though the City has no control over the volume of discards or the design and manufacture of the products and their packaging.

Extended Producer Responsibility (EPR) offers a solution by engaging producers in the lifecycle management of their products and having them take responsibility for the proper management of products. This reduces the burden on local governments to provide collection and recovery programs. EPR also establishes performance goals for stewardship programs that are designed and implemented by producers, and ensures the cost of recovery is reflected in the cost of the product; this creates a consumer-paid funding system rather than passing on the costs to ratepayers. EPR recognizes that all stakeholders share some responsibility, but the producer has the greatest responsibility because only they can change the way the product is designed. EPR does not stipulate *how* producers must take responsibility, but rather that they *must if they sell the product in California*.

EPR allows the free-market system to work *for* recycling, not against it. For example: paint, carpet, and thermostat manufacturers all supported and demanded recent legislation in California to “level the playing field.” This legislation requires that robust recycling programs be designed and operated by the manufacturers themselves. The 3 bills that were introduced had no opposition and passed with support from the manufacturers, retailers, haulers and local governments. Costs for disposal of many other products are not adequately accounted for and environmental impacts have not been sufficiently addressed. This is particularly true where impacts to water and air are concerned.

Over the long term, implementing Product Stewardship policies and programs helps to 1) reduce total volume of the discard stream; 2) ensure that products are designed to be recyclable and/or repairable; and 3) ensure that products are manufactured with little or no toxic content. In the short term, these policies and programs address the collection and processing of materials, provide direction on purchasing products with the least impact or greatest opportunity for reuse and recycling, and the prohibition of products with harmful effects such as single use plastic check-out bags.

With new policies in place, new regulations in effect, and new consumer education tools made available, the costs to ratepayers and taxpayers should be significantly reduced over time, in part because the volume of the discard stream will be smaller and the remaining costs will be shared more equitably by the private sector, including designers, manufacturers, distributors, and retailers.

## BACKGROUND

There is widespread support for EPR. CalRecycle adopted an EPR policy framework in January 2008 as the basis for future legislation. The framework concept allows multiple products to be regulated under one law, as opposed to the costly and time consuming product-by-product legislation of the past.

The California Product Stewardship Council (CPSC) is a coalition of California cities, counties, and regional agencies working to encourage State legislation for Product Stewardship that will ultimately reduce cities' cost of managing waste. Led by the CPSC, a large and growing number of California municipalities and counties are working together to promote State legislation that would guide stakeholders in implementation of Product Stewardship goals. CPSC supporters include 130 municipalities and 27 local government associations, including the Association of Bay Area Governments, East Bay Municipal Utility District, and StopWaste.Org. Organizations, including the League of California Cities, the California State Association of Counties, Regional Council of Rural Counties representing 22 counties in California, the National Association of Counties, the National League of Cities, and the California Council of Directors of Environmental Health have adopted resolutions and/or policies that support EPR/Product Stewardship.

City of Berkeley support of CPSC will help promote current and future efforts to create and implement State laws that guide the development of Product Stewardship principles for various classifications of products. Statewide and County legislation is advancing authority to develop rules, set goals and targets for new product classes such as pharmaceuticals, and establish oversight over their disposal. Recent Alameda County legislation governing pharmaceutical disposal is a notable step forward.

In November of 2008, the Zero Waste Commission (ZWC) adopted an EPR resolution and worked to integrate EPR principles in the City of Berkeley's Climate Action Plan. The Environmental Advisory Commission (CEAC) unanimously approved the same resolution. The ZWC and CEAC concluded that the City of Berkeley embraces the principles of Product Stewardship and should establish a formal Extended Producer Responsibility Policy as a necessary step to achieve the City's goal of zero waste, and to minimize toxics in the environment.

In the 5 years since this work, much progress has been made in policy, programs, and legislation. The ZWC finds it timely for the City of Berkeley to affirm its commitment to EPR by adopting this resolution, joining CPSC as a member in its efforts at the State level, and continuing to integrate its concerns into the completion of the City's Zero Waste Strategic Plan and update of the Climate Action Plan.

At their February 25, 2013 meeting the Zero Waste Commission approved action recommending that Council adopt a resolution for an Extended Producer Responsibility Policy, and direct staff to provide written notice of Berkeley's policy to various agencies to encourage appropriate state and county legislation. In addition, the ZWC recommends contributing \$1,000 to the California Product Stewardship Council (CPSC).

M/S/C: Davis/Twu; Ayes: Halperin, Schultze-Allen, Twu, Wenning, Davis; Noes: None; Abstain: None; Absent: Kalil

RATIONALE FOR RECOMMENDATION

Responsibly implemented, Extended Producer Responsibility policies and legislation will lead to the production of more durable and environmentally friendly products, the reduction of certain types of packaging and products that prove difficult or impossible to recycle or reuse, and the establishment of end-of-life product management such as take-back or recovery programs. This is consistent with City policies for greenhouse gas reduction, zero waste, environmental health, and green purchasing.

Supporting the State coalition in turn supports positive actions for zero waste and environmental health. Product Stewardship principles have become widespread and hold promise to provide an effective solution to product waste and environmental contamination from toxic substances.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the Commission's Report.

CONTACT PERSON

Nashua Kalil, Vice Chairperson, Zero Waste Commission, 527-7772  
Andy Schneider, Secretary, Zero Waste Commission, 981-6357

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

PRODUCT STEWARDSHIP AND EXTENDED PRODUCER RESPONSIBILITY

WHEREAS, the product stewardship movement in the United States seeks to ensure that those who design, manufacture, sell, and use consumer products take responsibility for reducing or eliminating negative impacts to the economy, environment, public health, and worker safety; and

WHEREAS, these impacts can occur throughout the lifecycle of a product and its packaging, and are associated with energy and materials consumption; waste generation; toxic substances; greenhouse gases; and other air and water emissions; and

WHEREAS, manufacturers who design products and specify packaging have the ability and responsibility to reduce these impacts by incorporating the full lifecycle costs into the cost of doing business; and

WHEREAS, the terms “product stewardship” and “Extended Producer Responsibility” (EPR) describe different approaches to a product’s lifecycle management: “product stewardship” refers to the large concept that everyone involved in a product’s lifecycle, including manufacturers, distributors, retailers, consumers, and recyclers have responsibilities for a product’s environmental impacts and end-of-life resource management; “Extended Producer Responsibility” is a legislative approach that places both financial and operational responsibility only on producers for the product’s end-of-life management; and both approaches ensure governmental oversight and enforcement of these responsibilities; and

WHEREAS, the Zero Waste Commission reviewed the April 11, 2012 document “Product Stewardship and Extended Producer Responsibility: Definitions and Principles” that seeks to harmonize terminology in the State of California and ultimately the U.S.A., and to help guide development of policies, legislation, and other initiatives by governments, companies, and organizations; and

WHEREAS, in “product stewardship” the City of Berkeley includes the acts of minimizing health, safety, environmental and social impacts, and maximizing economic benefits of a product and its packaging throughout all lifecycle stages; and

WHEREAS, while the producers of products have unique abilities to minimize adverse impacts, suppliers, retailers, consumers, materials recovery enterprises, resource recovery park operators, and recycling depots also can play vital roles by collecting and processing discards so that they become refined resources that can be sold into commerce for using as-is or for making new products, thereby reducing demand for destructive mining, timbering, and unsustainable agricultural practices; and

WHEREAS, by “Extended Producer Responsibility (EPR)” the City of Berkeley means that product stewardship includes, at a minimum, the requirement that the producer’s responsibility for their product extends to financing post-consumer management of that product and its packaging; and

WHEREAS, the City of Berkeley has since the birth of the modern recycling movement in 1970 incubated some of the most efficient and effective methods of diverting resources from wasting, using source separation and universally recognized collection methods like drop-off, curbside pickup, and buyback, and has developed a group of specialized materials recovery enterprises that have exceeded state and county goals of 75% diversion, and now seeks to add EPR as one more tool in an already successful Zero Waste toolbox; and

WHEREAS, under EPR, producers are required to design, manage, and finance programs for end-of-life management of their products as a condition of sale; and

WHEREAS, any new EPR programs should use existing collection and processing infrastructures whenever possible, but they may also create new materials handling systems when no practical alternative is available; and

WHEREAS, EPR programs for brand types should cover all currently manufactured products in a given category; and

WHEREAS, “orphan” products coming from companies no longer in business or from companies that cannot be identified and are not covered by a producer-run system may require fees or other forms of payment as required; and

WHEREAS, all producers within a particular product category have the same requirements; and

WHEREAS, whether they choose to meet these requirements individually or jointly with other producers, payments from producers that are derived from advanced disposal fees collected at point of sale from consumers should be passed on to collectors and processors of a given commodity type that meet highest and best management standards; and

WHEREAS, to ensure both transparency and accountability, the City of Berkeley believes it is the responsibility of governmental organizations rather than privately chartered corporations to have full authority for fund oversight and management and to ensure collectors and processors be paid for their work; and

WHEREAS, producers have flexibility to design the product management system both to meet the performance goals established by governments, and to ensure compliance with highest standards of the day; and

WHEREAS, new EPR systems must follow the same resource conservation hierarchy of reduce, reuse, recycle, and compost as existing and traditional reuse and recycling systems; and

WHEREAS, products must be managed in a manner that is protective of human health and the environment, and burning and burial of products are not sufficiently protective to be used as disposal options; and

WHEREAS, governments should work with producers and have oversight in the design, implementation, and funding of public education programs to ensure achievement of performance goals and standards; and

WHEREAS, consumers should continue to reduce waste, reuse products, use take-back and other collection programs, and make appropriate purchasing decisions based on available information about product impacts; and

WHEREAS, producers and governments should work together to provide all consumers with convenient access to collection services, such as but not limited to; conveniently located resource recovery parks, recycling centers, materials recovery enterprises, and take-back programs established by retailers; and

WHEREAS, governments are responsible for ensuring that EPR programs are fair, transparent, and accountable to the public; and

WHEREAS, EPR programs, including their development and the fate of products managed, should be designed and implemented with input by all stakeholders; and

WHEREAS, in January 2008 the California Department of Resources Recycling and Recovery (then called the Integrated Waste Management Board), endorsed an EPR System for the State of California; and

WHEREAS, in July 2008 the National Association of Counties adopted a resolution in support EPR, in November 2009 the National League of Cities adopted an EPR policy, and in June 2010 the U.S. Conference of Mayors adopted a resolution in support of EPR.

NOW THEREFORE, BE IT RESOLVED that the City of Berkeley supports State authority to oversee and manage EPR programs in a manner that is broadly representative of manufacturers, affected government, reuse and recycling industries, and EPR entities.

BE IT FURTHER RESOLVED that the City of Berkeley supports other governments to enforce a level playing field for all parties in the product value chain by maintaining a fair and competitive marketplace with open access to all, by ensuring that payments for disposal services are fairly distributed to all program operators, and by setting and enforcing performance goals and standards.

BE IT FURTHER RESOLVED that the City Manager is directed to write to the California Department of Resources Recycling and Recovery (CalRecycle) to urge timely actions to implement new product stewardship initiatives that follow the principles laid out in this resolution.

BE IT FURTHER RESOLVED that the City Manager is directed to write to the California legislative representatives for Berkeley urging them to support the concept of EPR and the continued evolution of EPR as defined herein.

BE IT FURTHER RESOLVED that the City of Berkeley will contribute to or show support for vetted organizations that advocate for new product stewardship initiatives and actions that are compatible with the principles laid out in this resolution.

BE IT FURTHER RESOLVED that the City of Berkeley will contribute \$1,000 from the Import Mitigation Grant in the Alameda County Recycling Board Fund to the California Product Stewardship Council, an organization of California local governments working to speak with one voice in promoting transparent and fair EPR systems in California.

BE IT FURTHER RESOLVED that the City of Berkeley encourages all manufacturers to minimize excess packaging, reduce or omit use of toxic materials in their products, design products for durability, reusability, and recyclability, use recycled materials in the manufacture of new products, and provide financial support for collection, processing, recycling, or landfilling of all discarded resources.