



ADVANCING LOCAL GOVERNMENT'S INTERESTS THROUGH EPR FOR PACKAGING

A discussion paper from a six-month dialogue among
local government officials, convened by UPSTREAM

November 2014

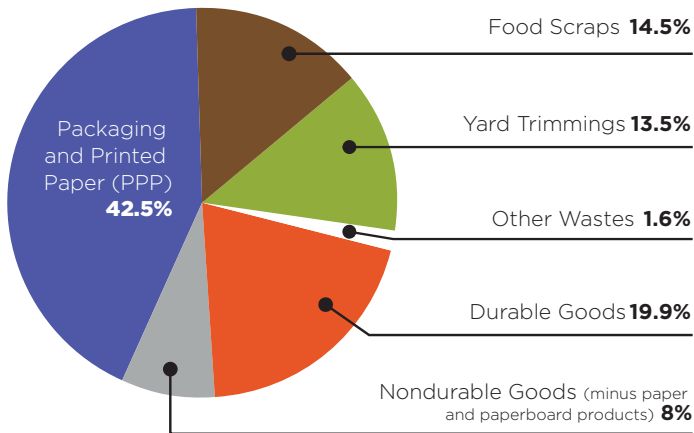




SUMMARY

Extended Producer Responsibility (EPR) is a policy framework designed to increase the recycling of products and packaging by shifting funding and sometimes program management from local governments, taxpayers and ratepayers to the producers of products and packaging and their consumers. The cost of recycling, composting and even some disposal options is included in the retail price. This approach ensures that the costs of end-of-use management are born by producers and consumers, rather than externalized onto society as a whole. The environmental management of the product and its package become part of the costs of doing business, like R&D, marketing, and logistics.

Total U.S. Municipal Solid Waste Generation by Category



SOURCE: Municipal Solid Waste Generation, Recycling, and Disposal in the United States. Tables and Figures for 2012

However, the recycling of traditional materials in the United States has largely been built around local government-financed and operated programs. In many instances, communities have made significant investments in equipment, personnel, and facilities - all of which would need to be reconciled to an alternative system funded and managed - partially, or in full - by producers. In order to apply EPR policies effectively to meet the challenges of improving packaging design and increasing recycling in the United States, it is necessary to identify and resolve the issues in the interface between producers and local governments.

Critical to this goal is the recognition that local governments have direct or delegated responsibility for solid waste, recycling and composting management in their communities. They are the existing service providers – directly or through contracts, franchise agreements, service level ordinances or other means. Although the majority of local programs have been operating for two decades or more, program efficiency and efficacy varies widely from one community to another. Nevertheless, expansion and improvement of recycling is often constrained by political forces and conflicting budget priorities. In virtually all communities, additional investment is needed to increase recycling – expenditures that will range from public education to capital improvements in materials recovery facilities (MRFs, the factories where recyclable materials are first sorted into saleable commodities).

The transition to EPR for packaging requires that local governments play integral roles in developing and implementing policies to ensure net benefits to the communities they serve.

Although recycling in the United States and in individual states should ideally be approached from a *system perspective* to achieve optimization of material recovery, the disaggregated and constrained nature of local decision-making presents considerable obstacles. Still, as current stewards of our nation’s recycling programs, the transition to EPR for packaging requires that local governments play integral roles in developing and implementing policies to ensure net benefits to the communities they serve.

The purpose of this paper is to:

- Identify key local government issues and concerns regarding extended producer responsibility (EPR) for packaging.
- Recommend processes for addressing potential local government issues with the establishment and implementation of EPR programs.
- Build a common understanding of the issues involved with a transition to producer-funded programs.
- Provide a platform for local governments to support and advocate for EPR for packaging programs that successfully advance their goals and interests.

The paper pulls together insights and recommendations from a policy dialogue among local government officials, which UPSTREAM convened and facilitated from May through October 2014. Potential reasons why local governments will be interested in this approach include the opportunities for higher performance, higher service-orientation, decreased government administration and costs, potentially lower and more equitable tax burdens on their citizens, and significant environmental benefits through increased recycling and better packaging design.



WHAT LOCAL GOVERNMENTS WANT FROM EPR FOR PACKAGING

EPR is often described as a policy mechanism to help develop more sustainable packaging systems where packaging materials are designed and stewarded for continuous reuse, and where producers share in the costs and responsibilities of managing packaging materials. Where it has been implemented, EPR has also resulted in the development of broader recycling infrastructure and increased recovery of targeted materials. It is typically applied at the state level and can harmonize and optimize recycling efforts across a state or province. There are opportunities for improved program performance and better system design that are challenging to achieve through existing traditional recycling infrastructure and policies. Through the dialogue, participants identified key objectives that underlie what local governments want to achieve through EPR packaging systems:

1. **Shift system financing and - depending on local circumstances - management responsibilities upstream from a government-taxpayer basis to a producer-consumer basis:** Costs for the collection and recycling of packaging are shifted away from government, taxpayers and/or garbage/recycling ratepayers to the companies that produce the packaging.
2. **Significantly increase recycling:** EPR should provide the financing and drivers to achieve an 80-90% recycling rate for most materials. Local and state governments provide oversight to ensure environmentally-responsible recycling and results.

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3. **Move packaging design toward reusable, recyclable or compostable options made with safe, sustainable materials:** EPR should help provide the necessary feedback to producers and packaging designers to ensure nearly all packaging is designed to be reusable, recyclable or compostable.
4. **Develop robust markets and processing infrastructure:** EPR should provide for market development and increase the marketability of recycled materials. Policies should provide funding to improve materials recovery facilities (MRFs), and ensure that producers recover and utilize packaging materials, including those that are difficult to sort and market. Producers are well situated to help localities collect and market materials in an increasingly global commodities market.
5. **Set standards that create a clear, fair system that yields results:** EPR should include clear definitions of roles and responsibilities among producers, and local and state governments. EPR should deliver increased material recovery through better services, greater access, better outreach materials and messaging, and transparency.
6. **Provide for robust education and outreach and harmonize collection efforts across jurisdictions:** EPR policies should include adequate producer funding for education and outreach, and harmonize recycling efforts throughout states where it is applied. To achieve consistent, robust recycling across a jurisdiction, recycling media (carts, bins, colors for different containers, away-from-home bins, etc.) should be standardized. In addition, EPR should lead to consistency in collection wherever packaging is consumed, including residential, multi-family and institutional/commercial/ industrial (ICI), in rural as well as urban jurisdictions.



CONCERNS FROM LOCAL GOVERNMENTS REGARDING EPR FOR PACKAGING IMPLEMENTATION

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The transition to EPR for packaging from our current systems is a complicated endeavor due to competing interests and the complexity of changing existing roles and business relationships. In some places where EPR for packaging has been implemented, the rollout of programs has created “winners and losers” as producers enter into financial and contractual management relationships, which were previously the sole purview of local governments and waste/recycling businesses. In addition, because EPR policy moves recycling from a local government and taxpayer/ratepayer-funded service to a private-sector funded service with government oversight, the system operates more like a regulated utility. Getting the program design elements right is critical to the short-term and long-term success of any new initiative. To that end, the participants in the dialogue identified a number of concerns that should be addressed in EPR policy to win local government support, including:

ously the sole purview of local governments and waste/recycling businesses. In addition, because EPR policy moves recycling from a local government and taxpayer/ratepayer-funded service to a private-sector funded service with government oversight, the system operates more like a regulated utility. Getting the program design elements right is critical to the short-term and long-term success of any new initiative. To that end, the participants in the dialogue identified a number of concerns that should be addressed in EPR policy to win local government support, including:

1. **Producer control should have defined limits:** EPR should not lead to monopsony control, in which producer organizations have unchecked power to determine payments to service providers. This could potentially lead to a “race to the bottom” that is destructive to existing recycling programs.

2. **Local governments and the waste/recycling industry must be involved in planning, management and crafting legislation:** Program planning and management should involve both local governments and the waste and recycling industry. Their bargaining power in program development should not be less than the producers. The true legitimate costs of providing collection and processing services should be covered and service providers fairly compensated.
3. **Producers and consumers should bear the true environmental and end-of-use costs for the products they produce and consume:** A primary purpose of EPR is to stop the shifting of environmental costs and liabilities from producers onto government and society.
4. **EPR must do better than the status quo:** It is critical that EPR delivers a high-performing system that achieves results and delivers on the issues that are important to local governments, including increased recycling.
5. **Packaging vs. printed paper.** Packaging is sometimes lumped with printed paper. Packaging and printed paper should not subsidize each other in an EPR system. Printed paper should be subject to its own requirements.
6. **Prevent the incineration of packaging materials:** The primary public-interest goal of producer responsibility is to encourage better packaging design, and the reuse and recycling of packaging materials. Waste incineration is not reduction, reuse or recycling. It does not yield materials that will go into manufacturing processes to reduce dependence on virgin materials and the higher greenhouse gas impact of these upstream activities. We recognize that local governments have invested in incineration technology as a waste management strategy. However, we believe a primary purpose of EPR is to develop processes that allow materials collected to be reused/recycled in manufacturing operations.
7. **Difficulty and cost of transitioning to EPR:** Many governments have service level ordinances that require certain types and timing of services. These may have to be adjusted under an EPR system. There are also local solid waste plans that will need to be updated. The loss of income due to the loss of garbage revenue (tip fees or rates paid by ratepayers to the jurisdiction), and the loss of income due to loss of recycling revenue (tip fees, rates paid to jurisdiction by ratepayers, sale of recyclables), as well as loss of income from utility taxes must be weighed against the prospective cost savings from transitioning to an EPR system. Any transition should be carefully approached on a *full cost accounting* basis that

comprehensively captures the full financial costs of the system. Finally, communities or their contractors may have invested significantly in MRFs or other processing capacity and want to ensure that EPR does not lead to stranded assets. EPR systems must yield net cost savings for communities.

8. **EPR laws should not pre-empt local government action:** Some communities may want to pursue local policies that offer greater levels of service or require additional restrictions on packaging. EPR policy should not prevent communities from pursuing local policies and standards related to packaging.

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In short, to successfully transition from a traditional government-based system to an EPR system, there will need to be a dynamic set of checks-and-balances in the design and operation of the EPR system that recognizes the continued stakeholder role of communities. No public investment should be stranded. High-functioning aspects of the current system should be enhanced and not abandoned, and adequate time should be allowed for the transition to be effectively planned and implemented with the least amount of disruption of traditional services.



CHANGE AHEAD

POLICY RECOMMENDATIONS

In order to maximize the opportunities provided by the transition to EPR for packaging, while addressing the concerns of local governments, participants have developed a set of policy recommendations to be included in EPR policy discussions and subsequent legislation.

A. PROGRAM SCOPE

1. **Cover industrial, commercial and institutional sectors:** The EPR program covers the industrial, commercial and institutional (ICI) sectors following the implementation of the program within the residential sector.
2. **Require an 85% recycling rate:** The EPR program seeks an overall recycling rate of eighty-five (85%) or higher, and provides economic drivers in order to achieve that goal. To determine accurate rates of how much material is actually being recycled, recycling should be measured as materials leaving material recovery facilities (MRFs) as new manufacturing inputs, not how much material is collected at curbside or otherwise.
3. **Set target recycling rates by material type not in aggregate:** The target recycling rate should apply to specific material categories as opposed to overall packaging recycling.

4. **Apply programs across all jurisdictions to ensure equivalent levels of service for all rural and urban neighborhoods, regardless of community wealth.** The EPR program applies to all areas that local governments are currently servicing, either directly, through service providers, including waste-service franchises regulated only by states, or by service level requirements.
5. **Address the development of “away-from-home” recycling infrastructure.** The EPR program assumes responsibility for creating and operating a system that provides recycling access on par with garbage access at parks, sports and entertainment venues, pedestrian areas, transportation venues, and other away-from-home locations where recyclables are generated.

B. PROGRAM DESIGN

1. **Develop product redesign incentives/requirements to diminish potential for materials to be incinerated/landfilled:** Producers develop market based incentives and/or design requirements to stimulate product redesign and re-use to diminish the potential for materials to be incinerated or landfilled. EPR programs provide for necessary investments in materials recovery facilities (MRFs), and ensure that producers develop and implement plans to recover and utilize packaging materials that are difficult to sort and market. EPR addresses new or potential packaging materials that have no markets or are incompatible with current recycling systems. Programs lead to reduction in materials that cannot be recovered or processed.
2. **Material specific targets and performance measures are developed by producers and state and local governments, and enforced by the State:** Targets would be set in consultation with local governments and service providers.
3. **Local governments are given meaningful consultation opportunities and ongoing consultative mechanisms, including in some cases participation in program management:** Local governments are given meaningful consultation opportunities in the design of the program as well as ongoing consultative mechanisms during the implementation of the program. Producers utilize stakeholder engagement processes and advisory council formats to gain input from local programs, governments and service providers, and may involve local governments in program management.

4. **Include enhanced dispute resolution and enforcement penalties for underperforming or non-compliant programs.** An enhanced dispute resolution process is incorporated into the program, whereby local governments have the right to receive compensation for impacted costs if producers are not providing adequate service levels that result in materials being sent to local landfills and/or incinerators. Enforcement options could include producer responsibility for packaging that winds up as garbage. Producer payments would be required for the amount of packaging still in the garbage, with a system of incentives for reducing this waste and lowering the cost to producers. Payments would go to improve MRFs, not to waste disposal costs.
5. **Incorporate flexible and scalable options for local government participation:** The EPR program incorporates flexible and scalable options for local government participation in the management of packaging materials. Additionally, the program incorporates existing programs, services, and service providers into the stewardship program, and provides a transitional period during which existing programs, services, and service providers are automatically incorporated into the stewardship program, if they choose to be included.
6. **That local governments be given the right of first refusal** for providing packaging product stewardship services under new EPR programs. Local governments have the option to continue managing and providing collection and processing services (for those that already provide that service) at wage levels that provide a middle class lifestyle.
7. **Include standards, definitions and roles that create a clear, fair system that yields results:** EPR systems are developed with clear definitions of roles and responsibilities, and goals that are reasonable but robust. The programs create a balance of oversight from the state but also freedom to act by the producers. The program design includes provisions that assure improved material recovery, improved system decision-making, and improved efficiency. EPR leads to system-wide improvements, including: better services, standardized lists of materials collected and recycled, higher quality material recovery, greater access, better outreach materials and messaging and transparency.
8. **Provide for checks and balances to prevent monopsony and too much producer control:** Policy provisions and rules are developed to prevent the concentration of power and control over collection and processing systems by the producers.

C. ENVIRONMENTAL IMPACT

1. **Seek efficiencies in collection, transport, processing to reduce carbon footprint:** The design and implementation of the EPR program should focus on seeking efficiencies within the collection, transportation and processing of materials to optimize cost performance and to minimize the carbon footprint of the program.
2. **Include measures and incentives for redesigning packaging,** which ensures that the program moves up the pollution prevention hierarchy by minimizing the landfilling and/or incineration of collected program materials. EPR helps provide the necessary feedback to producers and packaging designers to ensure packaging is designed to be reusable, recyclable or compostable. And also, that it is compatible with existing or new collection and processing systems.

D. FUNDING

1. **Payment for services to local government should be based on full cost accounting:** Local government compensation for their assistance in, or management of, the product stewardship program should be based on a local government's true operating costs.
2. **Local governments should be compensated for EPR management and standardized/industry-funded, 3rd party audits should be conducted to determine appropriate levels of compensation:** Local governments should be compensated for the management of packaging materials that end up in local government waste streams, and that standardized and industry funded waste audits be conducted to help determine appropriate levels of compensation for such management.
3. **EPR programs should transition to be fully funded by industry, in which producers are responsible for all costs associated with the management of packaging materials** including, but not limited to collection, transportation, processing, public outreach and education.
4. **Producers are obliged to fund promotion and public education annually** on a per capita basis. **Local governments should receive compensation for their role in continued education and outreach activities** following the implementation of the EPR program.

E. SERVICE PROVISION

1. **Rural and remote areas should receive an equitable level of service as their urban counterparts** under the EPR program.
2. **Existing service levels and quality of service should be maintained or exceeded** for those local governments that have established recycling programs in place.
3. The implementation of the program seeks to provide a **seamless transition** for those local governments with established recycling programs, **in order to minimize and/or prevent any disruptions to existing services, employment and service contracts, and community expectations.**

F. ROLE OF LOCAL GOVERNMENT

1. **Local governments are provided the option and opportunity to play an active role in the management of packaging and printed paper** under the product stewardship program.
2. **The EPR program incorporates meaningful consultation opportunities in the design of the program as well as ongoing consultative mechanisms** during the implementation of the program.
3. **Local governments explore the creation of a representative local government product stewardship agency that would facilitate active engagement, and negotiation with, all product stewards** on existing and new product stewardship programs.
4. **Local governments are given the right of first refusal** for providing packaging product stewardship services under new EPR programs. Local governments have the option to continue managing and providing collection and processing services (for those that already provide that service) at wage levels that provide a middle class lifestyle.



CONCLUSION

When it comes to packaging recycling, most local government officials can agree on a number of core principles:

1. Packaging should be designed to be reusable, recyclable or compostable, so it can be utilized as a resource and not a public liability when consumers are finished with it.
2. Packaging should be reduced as much as possible to avoid the unnecessary management of excess materials.
3. Standardized collection media and infrastructure for residential, multi-family, ICI and away-from-home should be applied across jurisdictions within a state.
4. Robust outreach and education efforts should be employed on a larger statewide scale to encourage citizens to participate in recycling.
5. Policies and best practices should be employed to encourage recycling and reduce waste.
6. Companies that produce packaging should share in the costs of managing packaging waste.

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There are a number of ways to implement the financial and management responsibilities for producers, and determine the roles of local governments, waste/recycling businesses and other stakeholders in an EPR system. These models range from product stewardship initiatives where producers pay into a fund, which is administered by a third-party organization

with a multi-stakeholder board to distribute resources to boost recycling across the state; to 100% producer-financed and managed EPR systems where producers assume all the costs, liabilities and potential benefits from that level of control.

The participants in the dialogue are not jointly espousing one model or another. We offer the substance of our dialogue and our recommendations to serve local governments as they weigh the potential benefits and challenges of developing and implementing EPR for packaging policy.

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UPSTREAM is a national environmental organization dedicated to creating a healthy, sustainable, and equitable society by addressing the root causes of environmental harm. Our mission is to advance sustainability and reduce climate disruption through product-focused environmental policies. We work to ensure that products are designed with safe, sustainable materials and continuously reused or recycled into the products of tomorrow, creating jobs, business opportunities, and a healthy environment. Our dedicated staff work with public interest groups, government officials, leading companies and everyday people to advocate for product stewardship initiatives, where consumer goods companies are responsible for reducing or eliminating the environmental impacts of their products.



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