

**SB 222 EPR Advisory Council Meeting**  
 Thursday, September 26, 2024, 9:00am-11:00am E.T.  
 Meeting Location: Online via Google Video

**Introduction**

Bradley Baker: [Introduction to the agenda]

- Roll Call
- Vote on meeting frequency for Council Members
- Mary Cummins (Canada - Ontario) - they have had an EPR packaging law in the works for many years
- Reid Lifset (Yale) - Research on the impacts of eco-modulation
- Bradley - Update on Needs Assessment
- Bradley - Legislation discussion
- Open to public comment

**Roll Call**

**Attendees**

| <b>Member Names</b> | <b>Affiliation</b>                 | <i>Present</i> |
|---------------------|------------------------------------|----------------|
| Lee Zimmerman       | Frederick County on behalf of MACo | X              |
| John Neyman         | Republic Services                  | X              |
| Frankie Sherman     | Charles County                     |                |
| Chris Pilzer        | WM                                 | X              |
| Eileen Kao          | Montgomery County                  | X              |
| Angie Webb          | Maryland Environmental Service     | X              |
| Vinnie Bevivino     | Bioenergy Devco                    | No             |
| Michael Okoroafor   | McCormick                          | No             |
| Ellen Valentino     | MD-DE-DC Beverage Association      | X              |
| Mario Minor         | Market Fresh Gourmet               | X              |
| Scott DeFife        | Glass Packaging Institute          | X              |

|                       |                                      |   |
|-----------------------|--------------------------------------|---|
| Dan Felton            | Ameripen                             | X |
| Abigail Szein         | America Forest and Paper Association | X |
| Delphine Dahan Kocher | Constellium                          |   |
| Peter Hargreave       | Circular Action Alliance             | X |
| Chaz Miller           | Maryland Recycling Network           | X |
| Kelly Doordan         | Trash Free Maryland                  | X |
| Martha Ainsworth      | Sierra Club                          | X |
| Crystal Faison        | Shepherd Design and Construction     |   |
| Miguel Lambert        | Repurpose Aggregates                 |   |
| Gurcharan Singh       | WAH Global                           |   |
| Bradley Baker         | MDE                                  | X |
| Dave Mrgich           | MDE                                  | X |
| Sara Weitzel          | MDE                                  | X |
| Shannon McDonald      | MDE                                  | X |
| Tim Kerr              | MDE                                  | X |
| Tyler Abbot           | MDE                                  | X |

### **Vote on Increasing Frequency of Meetings**

Bradley Baker: We're at monthly meetings now, but we're thinking about increasing the frequency of meetings. We want to open a vote up to the council to schedule more frequent meetings. We're also planning a presentation from Jeff \_\_\_\_\_. But most will be talking about future legislation. We'll open it up to a vote. Ellen did you have a question?

Ellen Valentino: I just want to open up discussion on the frequency of the meetings. I don't disagree at all, but the content for the formulation of the recommendations sort of runs parallel right (the needs assessment information and the frequency of the meetings)? We can meet, and I think that's important. I recommend that we have a speaker from MN who recently just passed EPR too. I just want to flag that. Everyone can make the determination, but the content of the needs assessment makes sense and I know we're getting ready to go over legislation. [In support of meeting more frequently] It's important that moving forward we are able to discuss recommendations with substantive data.

Bradley Baker: For one of our meetings we are already planning a panel meeting with states that are implementing. [We will check with MN and add them if they weren't included. Just to get the different flavors of EPR. Is anyone opposed to meeting every other week?

Abigail Sztein: Would that mean a shorter amount of time?

Angie: [Suggests shorter meeting - an hour or less if we're meeting more frequently. Suggests focusing on a specific each time, and acknowledges that everyone has limited time.]

Scott DeFife: [Suggests twice per month (close to every other week, but not quite and excluding holidays) and a poll in advance because October is already full.]

Daniel Felton: [Supports twice monthly.] Would it make sense for one of those monthly meetings to be focused on legislation and how the proposal might advance over time. Maybe that is a shorter call, and then a longer call for everything else that is substantive.

Mario Minor: [Checking in for roll call]

Chaz Miller: Every other week is unavoidable. An hour only meeting might be a little unrealistic with a group of more than 20 people. The most important thing is how much data we're getting from needs assessment so that we can actually make intelligent decisions.

Unknown caller (John Neyman?): Adding onto Chaz - it would be nice to know the status of the needs assessment, and get an update prior to scheduling the meetings.

Bradley Baker: [States that the needs assessment update is a standing agenda item.]

Martha Ainsworth: I think twice per month is much more realistic. We're not just waiting on the needs assessment, we're also discussing what the objectives of this legislation and program should be. So there's also other information we might want to know. Of course, having read through draft 3 of SB 222, there's a lot to understand about the changes made in the past [which might require longer than a 1 hour meeting]. We may want to dedicate one session to understanding what's currently there and the meaning of it all.

Angie: Everyone has some really good points. I agree. The needs assessment update will give us a better understanding and everyone will have a better idea and feel better about meeting twice per month, and hopefully we'll have the data to make good recommendations (and give everyone more comfort with meeting twice per week).

### **Resource Productivity & Recovery Authority - Mary Cummins: Ontario IPR with an Empowered Regulator**

Bradley Baker: [Introduces Mary] They have been implementing EPR and have scar tissue from that. MDE will be the regulatory agency implementing EPR in MD, so we just want to have that perspective. We'll hear from the other states, but they haven't implemented yet. We want to hear from someone who has actually implemented one of these programs.

Mary Cummins:

*Introduction*

- RPRA = Resource Productivity & Recovery Authority
- Focus: Why did the Ontario gov. move from an EPR framework to an individual producer responsibility framework
  - We had a blue box program with 50% funding with an oversight body - why create a RPRA

Cameron Parrack: We refer to our PPP packaging EPR program as the “blue box” for our American Colleagues.

Mary Cummins:

*Background*

2016: Ontario gov. introduced bill 151 to replace previous waste diversion act

Waste Diversion Act:

- Programs approved by gov., written and submitted by industry (one program operator)
- Approved by gov.
- Waste Diversion Ontario (oversight body) - charged to oversee program operators (PRO's) and approved operator plans. The goal was a funding model.
- There were environmental outcomes in program plans, but no enforcement. Industry would report, but there was no need to hit requirements outlined in program plans.
- The government saw that as a problem
  - Producers wanted choice - they wanted more than one PRO to choose from (especially local companies)
  - Service providers (haulers and processors) did not appreciate having only one customer
    - the customer would say this is how much we'll pay and if you don't like that we'll go to one of your competitors
    - some would say that created lower costs
    - Others would say inefficiencies and a lack of innovation
  - Lack of enforcement (biggest problem) - there was no-one who was enforcing the outcomes/commitments of the (often very detailed) program plans. While there was some enforcement power in government, government is busy.

SUMMARY: Wanted:

1. Producer choice
2. Non-detailed program plans
3. Service provider competition
4. Actual enforcement

*EPR to IPR*

- Transitions occurred with: tires, batteries, electronics, HSP, lighting
- Shift from Extended Producer Responsibility to Individual Producer Responsibility (this means that if I'm a producer, I'm not forced to join one PRO)
- Now I have to:
  - Report and register with the regulator (RPRA)

- Get obligation and requirements from regular
- Go out and find someone to provide me services
- It's like other business procurement procedures, but for those familiar with EPR history, it can be uncomfortable/difficult to understand that that's the transition we've gone through. You now have an individual role in determining how you achieve compliance. These regulations are outcome-based (not program plans), and you have ultimate flexibility in how you get there.
- The biggest program that is still in transition (10 year transition to a competitive system) is the Blue Box transition.

#### *Key players in Ontario's Framework*

- Government developed outcome-based regulation
- RPRA - Implements and enforces regulations. Independent statutory decision maker.
- Ultimate flexibility for producers
  - Producers can also say they don't want the flexibility, there's an easy path to join a PRO
  - For producers who say they don't want multiple PRO's, why then does Ontario have multiple PROs for every program? Clearly producers are joining multiple PROs.
  - Ultimately, it is the responsibility of the producer to make sure the PRO is performing.
- PROs and Service Providers - provide collection and management services for producers

#### [QUESTIONS]

Scott DeFife: Did you provide a role to certify PROs before they start to get members? Is there a guide to the PRO or can anyone make their own PRO and then you come together and then get certified? Are producers picking amongst an array of qualified PROs or are people just freewheeling - make up my own PRO?

Mary Cummins: A lot of producers assumed RPRA pre-certifies PROs. No-one pre-certifies. This is set up as being marketplace/market forces. The idea is if I'm a person who says "I see a business idea here. I have a really good idea for a way to collect and process material and I want to get in the game", you just register with RPRA as a PRO. That's it. There's no pre-qualifications. There's nothing. It is the role of the producer to make sure who they're contracting with can actually perform what they say they'll perform. Make EPR like the other lines of business you have. If you don't think a company has a viable business model, you should not be picking them as your PRO.

Scott: There's a deadline? Everyone needs to be in a PRO?

Mary: There is no deadline. There was some concern at the beginning in 2017 about what happens if no-one makes a PRO. But that didn't happen in any material. Whether it be some business opportunity - I think what we saw was the market responding and creating these companies. So, there was business to happen here, and I think that's why that concern never came to fruition. There are multiple PROs - I have over 30 that came into this marketplace and said I see an opportunity here. There's no deadline because producers can do it all because of

that flexibility. They don't need a PRO. They can do this on their own (which happens in every program except for Blue Box)...They report everything into RPRA. That's why there's no deadline. The deadline is when a producer needs to come in and report to RPRA that they have met their requirements. If they haven't selected a PRO and they haven't done anything at all, that's when they're going to get in trouble. So, it's that you'd better have something figured out by the time you have to tell RPRA how you're meeting your requirements.

Bradley: We have a question in the chat - does the framework preclude eco-modulation.

Mary: It did not. The framework doesn't speak about money. There are PROs who include eco-modulation in how they charge their fees, and there are PROs who don't. A producer gets to choose what they want to have. It's up to the producer and the business model of the PROs. And they all do it in vastly different ways. There are PROs out there who don't even choose a per-unit or per-kg fee, they just charge based on the size of your company and your obligation and that's it. You don't even report supply data to them. And they perform all of the services you need in order to comply.

[BACK TO PRESENTATION]

Mary:

*Key players in Ontario's Framework Cont.*

- RPRA
- Created by government, identified in statute as the outside government organization that will enforce these regulations and the entire framework to achieve the provincial outcomes of the government.
- RPRA is an independent statutory decision maker. The government can't tell the registrar or compliance team how to enforce these regulations. It's a division of that power. The government isn't involved in telling them *how* to enforce the law.
- It gave RPRA a lot of powers
- Funding: There are 3 things that make RPRA unique
  1. Independent from government (but accountable). We're funded by the producers. Producers (who we regulate) come in to us. They have to register and report to us because we also enforce against free-riders. When they do that, they pay a fee. The fee is a cost recovery model for the pleasure of regulating all of them. So, that's how we're funded. We don't receive any tax base.
  2. Not a single producer/stakeholder sits on our board. Our board is made up of 5 government appointees who elect the other six. No municipalities or producers. We are not controlled by either government on our statutory decision making, nor are we controlled by the stakeholders.
  3. We are fully empowered. Our government has given us prosecutorial powers, administrative penalties, compliance orders to enforce against the entire framework to achieve the government's policy objectives.

These are the three things that make this RPRA on a global scale. There are a lot of different types of RPRAs all over the world, but we are the only one with those three.

[QUESTIONS]

Paul Nolan: Just a quick legal question. In the US we have different legal forms. This is clearly an organization that was formed under Canadian statute and then has its own existence. Could you explain that a little bit more, because in the US, many PROs are ending up 501c3's (charitable purpose organizations). They're formed, not necessarily controlled by government, and then subject to the stringent IRS rules, etc. A little bit more about that, just so that we can understand the Canadian environment vs US environment.

Mary: In Canada, we have the Delegated Administrative Authority (DAA) model. The government is able to delegate powers to an organization outside of government. Again, this was a big learning curve for producers. When we speak about RPRA and the powers we have to producers, they don't really fully understand it. But then when I say "but you're inspected by the ministry of labor" or you've got Canadian revenue agency. Car dealerships are heavily regulated by an organization which is also a DAA like RPRA. I think there are 27 DAA in Ontario where the government has given power outside of government to regulate a particular industry... The DAA allows us to exist outside. All of the immigration companies that exist around the world to make sure anyone who has hired \_\_\_ is \_\_\_. Ontario and BC are the ones who like it the most.

Paul: I take it then that there's a power to enforce? So the agency can legally go to court and institute a legal action.

Mary: Prosecutorial power, yes.

Paul: Ability to contract (as an entity, it's able to sign contracts whether leasing office space or whatever, you can act)?

Mary: Correct. We are incorporated by reference in the statute. Our corporate structure is identified in the statute as 5 appointed members, 6 after that, 1 ministerial observer. And then the minister goes: "and now you're on your own, RPRA". We exist as a legal entity and we have those powers granted to us through government. And then we have an operating agreement with them on how we operate. But, again, the really important thing is: not on how we enforce. That is the independent component.

Cameron Parrack: I just want to pull on a thread that Paul noted about PROS being registered as charitable organizations. Now, every province in Canada sets up their EPR network differently. But, in Ontario, it's silent on whether a PRO must be a not-for-profit. So, we have a mix of for-profit and PROs operating and not-for-profit PROs. In Alberta, they've clarified in their statute that a PRO must be not-for-profit. So, they've taken that hard line. Here in Ontario, we've got the flexibility and then that leaves the freedom of choice for a producer to choose whether to contract with a for-profit or not-for-profit entity.

Mary: That's why I think we saw that concern never came to fruition. Every program got multiple PROs because people saw a business opportunity because there's no restriction (you can make money as a PRO). Producers sign up with for-profit PROs who are very public about the fact that they're for-profit. Producers aren't just choosing not-for-profits. To give you a bit of the Canadian landscape, there is a RPRA-like in every single jurisdiction. In Alberta, in Nova Scotia, in Quebec. But, we're the only one with all three. There might be one that has two of our three things that make us a little bit more unique. I would say the biggest thing that makes us the most

unique is those powers. My colleagues in Alberta are a lot like me, *but they have no prosecutorial power.*

Bradley: If the government didn't feel like the goals were being met, would they have the option to pursue their own enforcement action?

Mary: No, RPRA is the only enforcement body. We decide how to enforce, what to enforce, and when to enforce. The government can't direct us on that. It gives them cover, and the DAA model is very popular in Ontario for that reason. (For 27 different DAA's, they are able to say this is down to our authority to figure out how it's going to work.) Now, what the government can do:

- The government can't tell me what to do. My board of governors can't tell me what to do (I'm an independent statutory decision maker). But, my board can fire me if they don't like what I'm doing.
- The government can change the law if they don't like how it's being interpreted.

[PRESENTATION CONTINUED]

*Why a RPRA*

- It's given the government the ability to say this is the authority, not the government when people attempt to come in and lobby them to say "we don't want this enforcement action taken against us". Result: Independence, and a level of fairness in term of a consistent approach for producers.
- They know there is an empowered body who can enforce on free-riders. We just came from our Canadian Stewardship Conference where many EU speakers were, and one of the biggest things they say is "we send things off for enforcement, but nothing happens". With RPRA, things happen. We've issued our first administrative penalty against a blue box free rider. We issue compliance orders. We're forcing the system to do what it needs to do, and that's probably the biggest value add for producers to see.

[QUESTIONS]

Question from chat: When you prosecute is it the PRO RPRA goes after

Mary: It depends. It's individual producer responsibility. So, the individual producer is accountable for everything regardless of having hired a PRO. But there are certain things a PRO is legally obligated to do as well.

- If the PRO fails to report to us, they can receive a contravention
- There is certain shared liability between the PRO and the producer. In those cases, I can choose who we're going after, and context matters a lot to me in making that decision.
  - Example involving tires: When the tire collection system wasn't working last year or two years ago, we issues compliance orders against the PROs, not the individual producers. Could have been the individual producers if we had chosen that, but it was a shared responsibility, and it was the PROs we issues against. So, it really depends on the contravention and the context behind the contravention that leads us to make a decision like that

*A progressive approach: Tools used to achieve compliance*



Mary: All of these powers (referred to as slides) are provided to RPRAs. But what's really important about Ontario and makes it fairly unique is a concept we have here called regulatory modernization.

- Regulatory Modernization: It's the idea that we always start with the idea that the vast majority of companies, once they understand how and why, will comply. This is a model that goes throughout all of those 27 DAAs. It's not unique to RPRAs per se, but it is kind of a unique-to-Ontario concept.
  - We call it "communicating for compliance" and lots of fun terms, but the idea is we spend the vast majority of our resources/budget on proactive education and awareness (#1 on slide). And we do see results with this. If they don't [comply], we have all of these other tools that we look at a progressive way of using. Moving from (#1 on slide) to prosecution (#6 on slide) is highly unlikely. Possible - nothing says I can't, but it is highly unlikely. We're going to go through a journey with these producers.
  - Compliance, as a result, does take time, but it is a more successful journey as opposed to making me a "meter maid" where every single time there's a contravention, all I'm doing is issuing a bunch of administrative penalties. That's not what RPRAs do. RPRAs understand the context and work with the industry, and our goal is the preventative objectives here, not to just issue a bunch of administrative penalties.
  - It's important to understand this construct, where the government's given us, and other DAA's like us, these powers, that this is the approach we take (we communicate, educate, bring awareness). When we've gone through these steps, then we have to say, we have evidence of non-compliance, and either here's your administrative penalty or here's your order on what we require you to specifically do, and that's it. On administrative penalties: very powerful tool.
  - Penalties: 2 components
    - Specific case presented: \$340,000 penalty for free-riding under blue box program
      - 60,000 is calculated based on what RPRAs believe the company avoided paying because they're not compliant
      - The producer gets something that tells them that it is cheaper to comply than pay the fine.

Chaz Miller: Two questions. For packaging, how many PROs are there? Are there any individual PROs for packaging?

Mary: We have 4 PROs for packaging and no individual producers. Blue box is our only program where no individual producers are doing it on their own. They could - there are mechanisms built in that could make it possible. But we have 4 PROs. They are all competing and active, they all have producers, and they all offer their services different ways (target different service segments).

Chaz: The second question has to do with free riders. In particular, with electronic commerce. There's an extraordinary problem in Europe, I know, with free riders. How are you dealing with that in Ontario.

Mary: In Ontario, a company who sells directly to consumers is obligated as a marketplace, if they have residency here or not. We have companies in some of our programs who have registered and are complying producers who have no residence in Canada. Regulation states, if you have no residency in Canada, but sell directly to consumers, you are obligated under these regulations. Now, what I will say is: we're still at the beginning of transition, so RPRA has not begun enforcement action against that bucket of producers. We've had a fairly high degree of voluntary compliance with that bucket (companies reading the reg and saying ok we'll report). When we hit a company who says no - whether or not a Canadian regulator can go after someone outside Canadian borders...we'll find out. It's the same challenge to be honest - I mentioned the regulator who regulates immigration consults in businesses across the world. They're also faced with that same question, but have yet to attempt to enforce. Their law says they can, but none of us have attempted to do that yet. But, these companies are registering with us as well.

Chaz: With a company like Amazon, for instance, which only directly ships a little bit less than half of what it sells, how do you enforce? I understand how you could enforce against Walmart. But how about somebody who just does it as a side-hustle?

Mary: Well if they're doing it as a side hustle, they're probably too small for us to go after. We have an exemption level. So, for efficiency, there's a cutoff. So, if it's just someone selling on ETSY, it's probably not worth that effort to go after a grandma who makes jewelry and sells it online. But ultimately someone like an Amazon (which Amazon does have residency - lots of residency in Canada) it's really then coming down to a reporting question. And that's the same with retailers, whether online or brick-and-mortar. Figuring out what is Amazon obligated for and needs to report, and what don't they, and when they don't, are they obligated. In Europe, they've made it a lot simpler and said Amazon you're obligated for it all, unless that company is registered and reporting. That's a really lovely regulatory approach for someone like me because it makes my job a lot easier. But we do have to figure out: Amazon's obligated only for what they're obligated for under the law, and then my team has to go out to go after everyone else. We work quite closely with brick-and-mortar and online retailers around that to say a lot of our brick-and-mortar retailers in particular started this new push where they actually require a RPRA registration # from all of their vendors to prove you're registered with RPRA. If you're not, show me the email that proves you're exempt. There's a lot of work that goes on to make sure that's correct. But, I'm not going to lie, the EU model of the online folks are obligated for everything unless the person reporting is particularly appealing.

*Is it working?*

It's too early to say.

Cameron Parrack: I just want to layer on one more point there that I think Mary was hammering out, which is: how the producer hierarchy is defined is really important - in the regulation or in the program plan or rules. Meaning that you're not always going to be able to have an obligated producer because they exist somewhere else in the world. But big e-tailers and retailers need to do a lot of work with their suppliers to collaboratively understand who is actually obligated for this product. It's not just on the regulator. There's a lot of behind the scenes work better

understanding your supply chain, and better understanding where those businesses are located to figure out who has to cover this cost - who's going to be paying the PRO.

Mary: I see a few more questions. Bradley, would you like me to take them or give my email? I'm happy to talk one-on-one with anyone as well.

Bradley: We can send questions from me to Mary, or you can reach out individually.

Mary: I'm happy either-or.

Ellen Valentino: I have one question I think is really germane since we have her here, or I can send it online. Bradley, I heard your directive on that. But, I think it's a really important one. It's up to you.

Bradley: Ok, you'll be the last one and then we'll move to Reid.

Ellen: EPR systems at least from our industry's perspective are meant to make change. What's your current recycling rate? Have you seen any kind of increase? Do you have any data around the betterment of recycling in Ontario since this change? If so, maybe you can share that and send that forward.

Mary: One of the issues is that this is our first year of receiving performance from the PROs. So we haven't actually been able to look at that across the board. We don't even have the data for Blue Box yet because it's only been six months since it transitioned in. So, first, it's too early for us to answer that question. But, second, even once we get the data, the government expanded the obligation/changed the landscape quite a bit. So, for instance in electronics, they expanded the definition - they removed some things, they added a lot of things. In Blue Box, they expanded the definitions. So, it's difficult for us to do an apples to apples comparison to say we're seeing increased resource recovery. But, what's important is that that's actually only one of the reasons we did this entire transition. EPR isn't just about resource recovery. It's about competitive markets, it's an economic model, it's about product design changes, eco-modularization. It isn't just about "are you increasing the amount you're recovering. So:

1. Too early
2. Might be a difficult exercise for RPRA to ever perform because it's not apples to apples, but we're certainly going to tree
3. Resource recovery is actually only one objective of an EPR framework. So, is it working? We're looking at all of those objectives to say:
  - Are we seeing increased competition? We have 30 PROs.
  - Are we seeing increased competition in the service provider market? We have new entrance coming into this province and making investments and building plants.
  - So, there are things we can point to around the objective of EPR that we can see. For that one, it's just a little too early just because this is our first year getting most of the data.

Bradley: Thank you so much, I appreciate it. I appreciate the experience that you have in this space as well. One of the goals of this advisory council was to look at different EPR models that are being done, which is why we're doing a panel with the states and why we have so many

speakers that are talking about the differences between the different states that are implementing as well. So, I just want to thank you for joining us.

Mary: Thank you so much for having us. Again, happy to have you reach out to Cameron. Bradley, if you want to share our information, please do. Anyone who wants to talk 1-on-1, happy to. If you want to filter it through Bradley, happy to. I know a few of you on the call, so happy to do it however you would like.

Cameron: And we're currently engaging with all of the states that are rolling out EPR programs for PPP to provide advice, learn about what's going on in their jurisdiction. We're all doing this together, so one of our big pushes is for harmonization - understanding definitions, how folks are defining recovery, obligated materials, and where possible harmonizing - all in an effort for reducing administrative burden for producers.

Bradley: Thanks so much

Mary: Thanks, take care.

### **Eco-modulation -Reid Lifset** **Restoring the incentives for eco-design in EPR: The challenges for eco-modulation**

Bradley Baker: [Introduction of Reid Lifset]

Reid Lifset:

I'll be talking about one component of EPR - Eco-modulation. I was going to ask you all to raise your hands if you knew about eco-modulation, but I don't think that's going to work on google meets.

[Technical setup]

Reid Lifset: I'm a long-time student of EPR. I've been studying EPR since the early 90s. I'm good friends with the guy who invented the notion. I'm apparently the person who invented the acronym (not the concept, but calling extended producer responsibility EPR). That is my claim to fame. I think that's what will go on my tombstone. I was working on this when my hair was darker and my waistline was thinner. I wrote the first academic article on this in 1992. I've been studying and publishing about EPR ever since. My latest endeavor is a very extensive bibliography of >1200 reports and studies issued over the years since EPR started. I'm hoping to make that online soon if I can raid a little more money and finish up some details.

*A long-time EPR researcher*

Most of my work is not focused specifically in the US, but global. I've looked at EPR beyond packaging. [Possibly the world's only EPR cartoon]

Outline:

1. Eco-modulation 101
2. The challenges of restoring eco-design incentives
3. Meeting the challenges
4. Conclusions

Before I outline the basics of eco-modulation, I want to remind you that EPR is meant not only to increase recycling rates and reduce the financial burden on local governments, it's also meant to incentivize eco-design: get producers to improve the environmental design of their products.

### *Eco-modulation 101*

This is a diagram of one of the typical ways EPR is organized [see diagram on slide "The Problem: Collective EPR"].

- The problem:
  - It has to do with how the costs are covered and allocated to producers. In most systems the costs of services provided by the PRO are allocated according to producers according to their market share and the weight of the relevant type of product or package. If a producer has 20% of the market for that category that includes packaging type or material, it pays 20% of the costs incurred by the PRO for managing that category. Unfortunately, that means if the package is redesigned to be more recyclable, and the market share doesn't change, then the fees don't change. So this reduces the financial incentive for companies to invest in eco-design - what is one of the central rationals for EPR.
  - It helps to think of eco-modulation as a way to restore those missing or muted eco-design incentives.

Eco-modulation can incentivize eco-design in 2 ways

#### 1) Increased granularity of modulation

- Definition of increased modulation: the fees producers pay typically depend on the material or format of what's ending up in waste. Increased granularity = increasing the number of categories (ex PET and Polypropylene #5 vs just "plastic").
- Plastic example: The type of package that isn't as recyclable will pay more, and the one that's doing well will pay less

#### 2) Bonuses and penalties

- Fees for packages that have some disruptive element like ceramics on bottles or certain types of labels on plastic bottles. (FEES = added on top of basic fee)
- Bonuses for desirable characteristic like recycled content (BONUSES = discounts on basic fee)
- Eco-modulation fees are on top of the regular fees the producer pays
- [Lists examples of characteristics and associated bonuses or fees]

[Describes chart of who is using different fee structures in EU countries - data from 2020. Slide titled "Modulation Already Exists"]

Eco-Modulation has 5 core elements

1. Product Scope: Which kinds of products or packages are subject to it. For example, if recycled content is part of the system, does it apply to all kinds of packages, or just plastic packaging? So, there's
2. Objectives: What is the focus of eco-modulation

- a. Recyclability
  - b. Recycling rate
  - c. Problematic substances
  - d. Recycled/sustainable content
  - e. Increased lifespan
3. Technical Criteria: How is recyclability defined in technical terms? Or recycled content?
  4. Fee Structure: How are the bonuses and penalties divided. What are the financial levels associated with each of those requirements? Ex: France and Italy - eco-modulation for packaging is pretty complicated because they're trying to achieve specific goals.
  5. Fee Magnitude: How big are the fees?

### *The Challenges to Eco-modulation*

This is what you might call a causal chain for EPR/eco-modulation. A scheme is put in place. Producers respond to rewards and penalties. Presumably, that changes what's put on the market and what's in the waste stream. End of life management is changed in some way. Obviously, recycling rates are supposed to go up. And then there's some environmental impact, typically measured in terms of recycling rates or landfill diversion.

It's important to remember that recycling is an intermediate objective. What we want actually is an improvement in the state of the environment (fewer carbon emissions, less air and water pollution and the like.) Recycling rates are not always aligned with that. They are an imperfect proxy for the things we actually want to achieve. Unfortunately, in most EPR systems, this issue is not accounted for. So, keeping in mind that recycling and circularity is an intermediate goal, we want to the best extent possible to make sure there are reductions in things like greenhouse gas emissions or threats to biodiversity, or whatever the environmental impact. This is the real environmental value of eco-modulation and EPR. I read through the 3rd draft of the MD bill, and noticed there was only one paragraph addressing this, and there was nothing built into the bill to try and assess whether these improvements are happening.

[Explains slide titled: "Product Attributes are an Unreliable Proxy"]

- The state of OR commissioned this study (71 LCAs)
- Environmental attributes (ex: recyclability, recycled content, or compostability) of packaging food serviceware
- Goal: to see if attributes actually correlate with net lower environmental impacts across the full life cycle of packaging
- Results: Relying on attributes - awarding or penalizing based on these attributes - is scientifically problematic in terms of whether it produces environmental benefits.

Eco-modulation relies on attributes.

Eco-modulation can lead to perverse outcomes: Ex: plastic bags

Practical Difficulties in Implementation.

1. Ineffective incentives from eco-modulation: Sometimes the incentives of eco-modulation may be ineffective because of the size of the penalties
2. Data Management, verifiability, and traceability
3. Insulation of producers from eco-modulation through online sales

4. Harmonization is limited and difficult
  - Impact for eco-modulation: If states don't harmonize around parts of the eco-modulation structure, then the market signal is really weak.
5. Evaluation is complicated (and requires sophisticated research)
  - It's hard to know whether the changes in products/packages that are put on the market actually arise from EPR/eco-modulation. Changes could be the result of changes in the cost of materials or changes in the market that the producer is competing in.
  - Similarly it's difficult to figure out whether environmental changes like greenhouse gas emissions have arisen because of eco-modulation. Carbon emissions can change because of changes in the overall economy or changes in the power grid and things like that.

Will we know if eco-modulation works?

- EPR has a poor track record for policy evaluation.
- Whether results we see can be attributed to the policy in question
- Very little tracking of policy effectiveness after (ex-post evaluation)
- There's a lack of technical and financial data and understanding of what's effective

### *Meeting (some of) the Challenges*

How do we do something about this? We need to see (or do our best to try to find out) if these policies that we're putting in place actually improve the environment

Increasing connection to environmental outcomes

- Use Life Cycle Assessments (LCA) to inform policy design
  - LCA is an imperfect methodology, and it's complicated. But it's not clear whether there are other, better ways of doing this
  - OR requires that the 25 largest producers conduct LCAs for 1% of the relevant packages, every 2 years. And they've also added a voluntary component that there bonuses that reward the conduct of life cycle assessments. They are not tying the actual fees and structure of their EPR to the LCAs quantitative elements. What they're doing is getting the community to pay attention to LCAs and where the environmental impacts are actually occurring.
- Better structure for data collection and data harmonization
  - Important that the PROs are required to report systematically. One thing I did not see in the MD draft legislation was any requirement for reporting on eco-modulation. There should be reporting on how many penalties were imposed, how many bonuses were requested. Without that baseline data, policymakers have no way of figuring out what's going on.
- Life cycle assessments
- Natural experiments
- Detailed case studies
- Occasional deep dives - not possible if data is not available

Let me wrap this up. I think restoring the eco-design incentives through eco-modulation will not be so simple as some people think. And I think it will be difficult to assess success in ways that tell us we really want to know. At the same time, I want to reflect on a conference I attended last week in CA on packaging recycling. I was really struck by the number of producers and entities in the packaging supply chain that were working really hard to adapt their packaging to the

upcoming requirements from the states that are instituting EPR. There is activity, from my 30 years in this field, that I really haven't seen before. There is something to this, but we need, once these things get put in place, to see how much they got where we want to go. More generally, I think it's very important to change the norms in how we debate this stuff and the analysis we conduct. I think it's very important that the data are available and transparent and verified. So, for example, if an industry group or NGO issues a study, and they publicize the results but don't publicize the data or document how they did it, I think we should be skeptical. In fact, I think our default should be "I'm not going to pay attention to this unless you tell me how you did this". Unfortunately that doesn't seem to happen right now. Finally, I think there needs to be much more frequent *ex post* policy evaluation. All right, thank you. If you have any interest in diving deeper, there's a paper that I published on this. If you want the short version, there's an interview in the industry magazine Resource Recycle, and I'd be glad to answer any questions.

Bradley: Reid, thank you very much. And just for context for yourself, the legislation that I distributed was the third reader of SB 222, and that was the version that was out there right before the bill got turned into a study bill and not an EPR bill. When we were distributing that, that was more for a foundation for where the negotiations left off. So, we're planning on using that as a foundation and maybe adding and taking away depending on the recommendations from the advisory council.

Reid: Brad, you asked me something in our email exchanges about consumer prices. And, if you want, I could make a comment or two on that.

Bradley: Yeah, because we hear that prices are just going to go up and inflation is a hot topic. I just wanted to get a better understanding of do we see that in real life?

Reid: The punch line here is: don't believe what you read from either side. Because it turns out that this is a really complicated thing to determine. Whether prices are passed on when producers experience higher costs depends on what's going on in the market they're selling into. Whether they have strong competition or they dominate the market whether their consumers are very price sensitive or relatively price insensitive (price elastic or inelastic). It's not automatic that the prices get passed on, but it's not automatic that the producers swallow it. It's that universal answer to all interesting questions: it depends. So, don't buy these generic universal statements. And, be very careful about what's being offered as evidence here. Isolating the effect of the prices so that you can be sure that they are attributable to this one factor is pretty complicated stuff. I've seen studies on both sides that I don't find unacceptable. So, don't buy that. So, that doesn't really help you, does it.

Bradley: But I think it can be an important lesson.

Christopher Pilzer: You mentioned the requirement reporting on eco-modulation was pretty important, which I took as a key point. Who in your estimation has done a good job of that?

Reid: Nobody I've found yet. So, France has been doing eco-modulation nominally since 2010 (but in a serious way maybe since '15). I've tried multiple times to find out how they're doing. And, every time I ask, they send me their fee schedule. But, I'm hoping that this gets better as more countries in Europe institute this. I actually talked to one of the main PROs in France, and



they said oh that's competitive/proprietary data. Well, I'm sorry, that's B.S. This is a public issue and the impacts on competition are much less important than figuring out whether the public policies work.

Martha Ainsworth: How would you evaluate - why use eco-modulated fees, why not just regulate PCR, or some other parameter and enforce that? What are the tradeoffs there?

Reid: That's a good question that people are debating. I think that in some cases it's better to do it separately - that we don't turn EPR policy into a christmas tree with way too many ornaments. At the same time I think that for example if we're talking about a tax vs eco-modulation fees, taxes are very politically unpopular. The political viability of providing financial incentives may be much greater if it's done through EPR. Another reason is that the burden of managing this is displaced from the government to the PRO. And then there's a political element that's not about the policy design which is: EPR has momentum now and proponents see a window that is open to go after certain goals and they worry that if they wait for a different policy instrument to be used, that window will close. I mean that's political life.

Martha: In terms of their impact on the environment, which is what you were talking about, and being able to distill what the impact would be - would you say that perhaps a straightforward regulation might be more easy...

Reid: It will resolve a portion of the challenge. If you have a requirement on environmental tax apart from EPR, then you don't have the complexity of the eco-modulation fee structure which will make any analysis more confusing and difficult. At the same time, the core problem - that of attributing a change in the market or a change in the environment to a policy - remains. Whether the incentive is provided through an eco-modulation fee or a tax, It's still vulnerable to the problem that maybe these changes occurred because of things unrelated to the policy.

Martha: Thank you.

Bradley: [Thanks Reid, and transitions to the next part of the agenda.]

### **Needs Assessment Update - Bradley Baker**

Bradley Baker:

#### *Waste characterization study*

- We have our 9 sites for the waste characterization study
- We are planning on going to a lower level of granularity to pull out some more impactful data specific to packaging. I received 10-12 waste characterization studies from individual counties (developed on their own) that will be incorporated into the needs assessment outside of the waste audit that the state is conducting. We will be a little bit more granular in our analysis.
- HDR's subcontractor is also including data from their own previous studies

#### *Addition of bottle return program n Needs Assessment*

- We are taking the impacts of a potential bottle bill out of the modeling effort (which determines the cost of an EPR program).
- We will be talking about the potential impacts of implementing a bottle bill in our report, and we have some interesting data from the Container Recycling Institute.
- The references in SB 222 to a bottle return program were actually taken out of the bill. If we want to appropriate money, it makes it easier to do that when we have specific language in the law.

Kelly Doordan: I've looked over the RFP for that Needs Assessment that was posted on the EPR advisory council website. Since the contractor has submitted a proposal and been selected, can you share the full proposal with us? You know, stripped out financial information but the technical portion?

Bradley Baker: We already had some stakeholders do that, and we can send out a redacted version.

Angie: Is there a way we can send out a timeline of expected data from HDR? [Discusses usefulness to directing meetings].

Bradley: HDR did talk about a timeline when data will be available. I think we are going to be having them give an update at our next meeting as well. We can certainly send out. It will be on our website as well.

Things we have finished:

- We have finalized our stakeholder list for the surveys. We've gone back and forth with our contractor on the survey questions. I think they'll probably go out within the next week or two. So, we should be getting some data from that.
- Waste Audit: Currently scheduled for the first few weeks of Nov. We had some landfills that wanted to negotiate the terms of the access agreement, which caused some delay. Even though these are the same landfills and we sent them the same terms as the 2016 audit. But, we did have some back and forth with their attorneys. Most of them signed without a hiccup, but we'll be working through that with our contractor also.

Peter Hargreave: Great news that you're adding more categories. Is there any ability to share those categories? Those categories could become quite important for the PRO for planning purposes just to make sure that we understand how the data is going to be broken out, so that we can figure out: does it meet with our categories? If there's any ability to share that, that would be appreciated.

Bradley: We can do that. I should note that the law required by county, by recyclable material. Which can be pretty high level. We are going to try to get a lower level of detail, and we can certainly send out that list. Since the needs assessment is taxpayer-funded (whereas in CO, it is the producers who are paying for that one), and if you've been reading the news about MD's budget, we took very seriously the cost of this needs assessment and tried to align to the specifics of the law - not adding extras to that. The original due date for the needs assessment was April 1 2025. So on some level, I like to feel like we're way ahead of schedule. That was before we lost our funding and the due date was brought in by a year. We're moving as quickly as we can. Our

contractor has many concurrent activities that are being worked on at the same time, which also adds some complexity to a project. It's not a linear scope.

Peter Hargreave: The third reader of the bill, I know, is just considered the base. But, I just noted that the third reader of the bill had the PRO paying for the needs assessment. I guess that won't have sailed, so the PRO wouldn't be paying for the Needs Assessment then?

Bradley: When it went to committee, that was taken out and then there was never an appropriation set up. For a year we actually did not have funding to even pursue the Needs Assessment. So, we had to wait a year to get that funding set up. We weren't sitting on our hands, we were still writing the RFP and we selected our PRO and convened the advisory council. But, not having money to implement made it difficult to work with the accelerated schedule.

Eric: I just wanted to add a little bit of detail on the schedule and timeline questions. We're at this point where we are beginning to engage stakeholders. That's going to be happening over the next two weeks. Like Brad said, the survey to counties and select municipalities will be going out in the next couple of days. The surveys are undergoing testing now to make sure we've worked out all of the bugs because it is a very detailed survey which should take 30-45 minutes to complete. The information from the solid waste plans available combined with the information that we're planning to receive from counties and municipalities combined with the interviews of select haulers in the state, and all of the MRFs and composting facilities. All of that activity is happening over the next four weeks. In terms of timeline - the ability for us to provide/report out data for you to discuss and help guide these meetings is going to become available based on that general timeline but also the responsiveness of all of the potential respondents to those concurrent surveying and interview processes.

Bradley: One of our cost-saving measures is that a lot of the information asked in the CO survey can either be found in our yearly report because we already collect that data or the County Solid Waste Plans. As a cost-saving measure, we work with HDR to take out those equivalent questions from the survey because they were already asked and provided in the report.

Eric: The surveys are meant to be complementary to the existing MRA reporting mechanisms. All of our surveying is intended to get to that next level of detail that isn't necessarily included in that reporting. For example, tonnages of curbside vs dropoff recycling.

Bradley: For those involved with/aware of the questions in the CO survey, if you don't see a question in there, it's probably because it's already in a report or already in the County's solid waste plans as well. All of that information is public on our website, and has been for years.

Eric: One last thing on timing: For the next monthly meeting, we are targeting to have that surveying effort complete and to be able to provide a preliminary reporting of the data analysis at that point. So, it's just a couple of weeks away and there will be a lot of activity between now and then. That's the timeline, just to add to what Brad was saying.

Christopher Pilzer: On that stakeholder list, does that include the 3rd party haulers you got from NWRA?

Bradley: It does, we're doing a similar process to Colorado. Especially with regards to the cost information, there's some sensitivity around that, so it's going to be a very similar process to the data collection in CO.

Martha: Can we get access to the list of questions and stakeholders?

Bradley: We're sending out the questions, and we have a list of the stakeholders as well and we can do that too.

Bradley: [Introduction of next topic]

### **SB 222 Discussion**

- Central question for additional meetings that we'll be scheduling: *What do we want to be in the bill?*
- [Agenda for SB 222 discussion presented. Outlined on the "What do we need to decide" slide.] Is there anything I'm missing from this that we need to decide for the legislation?

Martha Ainsworth: The legislative intent and objectives. What we're hoping to achieve. I don't think we agree completely. We'll discuss this when we get to setting performance goals, but in a previous discussion that you and I had, this issue was raised as to whether performance goals expressed in a plan are aspirational or actually enforceable by the State. And, whether we don't need some in statute. So, I wouldn't necessarily dismiss that topic. I would advocate discussing the tradeoffs there.

Bradley: I have that as a note. Anything else we need to decide for legislation? This is really going to be the agenda for our next meeting.

Scott DeFife: One thing I've noticed in the other states is the timelines for implementation. I see the timeline for review and revise in our plan content, but not just those but also the fee-setting and registration and things like that. Some of the legislatures have given a very shortened time frame to implement and put everything together. I think what we're learning from the first few states is that a little bit more time is probably going to help. Peter may not be able to say it, I'll say it. He may not even agree with me, but I'll say it.

Bradley: That was an intent of that bullet also: the timeline. We can do a phased approach also.

Abigail Sztejn: Some of this information will be theoretically guided by the outcomes of the needs assessment. If we're structuring this with the idea that legislation would be introduced in January to make decisions tied to a Needs Assessment that wouldn't be that won't be finished until July or sometime next year, I would hope that we're relatively clear on what elements of it are going to be integrated and what would be getting updated as we have the results of the Needs Assessment.

Bradley: We're planning on delivering the Needs Assessment in December.

Abigail Sztejn: My apologies, but I still think that if we're drafting the language now...

Bradley: Sure.

Abigail Sztejn: Ok, thanks.

Ellen Valentino: Yeah, I agree with what you just laid out. I do think we can compartmentalize these in the meetings. Whether it's the governance, oversight responsibility of the PRO, then the program and the authority, the development, and then the execution, I just want to concur, again I'm going to point to MN: there may be disagreement among this group, but that doesn't mean there's a disagreement about moving forward with a single PRO. If we can phase this up, I think we can move this important policy forward. We can make recommendations, but there's a general assembly and governance over there that's ultimately going to want to have input as well. So, I just want us to keep in mind: I do think we can do a phase 1, phase II, phase III. If we can't agree on phase II and phase III, maybe moving forward with phase I. I'm just putting that out there. I think if we can compartmentalize governance and then move the other two topics from there, there will be some agreement to hold open policy discussions for another phase or so on.

Bradley: I've got that noted.

Peter Hargreave: [Discusses adding clarity around definitions]. Particularly, who is the producer? What is obligated vs. exempted? We may need to look at exemptions to provide additional clarity.

Bradley: I sit in on a meeting with the other states where we are trying to do some of that. It's difficult once EPR starts getting implemented more to have 50 different rulebooks. That increases the complexity of compliance as well.

Peter: Very much agree.

Chaz Miller: No states have actually implemented their EPR for packaging law. I think that's an argument for proceeding a little cautiously and learning from their mistakes. Secondly, when it comes to goal setting - we should keep in mind that with the history of recycling in this country, aspirational goals tend to fail. We need to focus on goals that can be achieved while improving the environment.

Bradley: I agree with learning from the other states. That's also why I wanted to bring in Mary. And, I checked with the other states and they aren't copyrighting their stuff, so we can rip off and deploy what works.

[Introduces upcoming MRF tour.]

## **Public Comments**

[None]

Bradley: Thank you all, we will be scheduling more meetings every other week. We still need to figure out the time frame on that. We look forward to presenting out on the needs assessment four months before the initial goal that was in the 3rd reader. We'll send out a doodle poll or something like that to try to figure out the best way for those, because I know calendars are starting to really get full.

Angie Webb: Thank you guys, we appreciate everything. Have a good one!