

**RESPONSE TO HARMONIZING THE IMPLEMENTATION OF  
PACKAGING STEWARDSHIP**

Canadian Environmental Law Association  
Ramani Nadarajah  
June, 1995

**Publication #264**  
**ISBN# 978-1-77189-465-4**

VF:  
CANADIAN ENVIRONMENTAL LAW  
ASSOCIATION.  
CELA BRIEF NO. 264; Response to  
harmonizing the impleme...RN16977

April 6, 1995

## RESPONSE TO HARMONIZING THE IMPLEMENTATION OF PACKAGING STEWARDSHIP

### 1. Introduction

On March 7, 1995 representatives from environmental groups and municipalities met to review and provide comments on the document entitled Harmonizing the Implementation of Packaging Stewardship ("the Document") which was prepared by Industry representatives of the Policy and Law Subcommittee. The members were represented by Ben Bennet (Association of Municipal Recycling Coordinators), Gerard Coffey (Toronto Environmental Alliance), John Hanson (Recycling Council of Ontario), Kathy Thompson (Canadian Federation of Municipalities), Kevin Mercer (It's Not Garbage Coalition), Ramani Nadarajah (Canadian Environmental Law Association), Don Wedge (STOP), Ruth Lotzkar (Consumers' Association of Canada) and John Jackson (Citizens' Clearing House on Waste Management). The following is a compilation of the comments that were received from the participants.

#### 1) Labelling Requirements

The members approved a national uniform labelling requirement. Labelling should identify whether the product is returnable, reusable or disposable. Products which do not have a recyclable component or do not have the means of being recycled within the region should not be permitted to use the label.

Everything is recyclable to one extent or another. However, consumers are confused about the extent to which they can recycle or re-use product waste. There is a need of a clearer identifier for products that conform to the national minimum standards for recycling and re-use.

The standard recycling symbol arrows do not help consumers understand the direct recyclability of a product. Often, as with plastics, the number identifier of polymer type in a recycling symbol, leads consumers to believe the product is recyclable even if it is not since the symbol is all they have to go by.

There is a need to identify if the product conforms to standards and, like the green dot, it should be a simple symbol.

## 2) Designation of Primary Steward

The use of a primary steward at the same point in the distribution system in all comparable stewardship programs across the country is acceptable. It should be noted, however, that there may be difficulty identifying a primary steward for products imported into Canada; in this instance, primary steward is the company responsible for the importation of the product.

With respect to paragraph three, we question the impartiality of industry acting as its own watchdog to ensure all primary steward participation. We would propose instead that a government appointed multi-stakeholder organization be established to oversee primary steward participation.

## 3) Criteria for Levy

It is our position that the levy should primarily encourage the reduction and elimination of undesirable packaging. We can not, therefore, support the inclusion of the second paragraph which states that:

- . any criteria selected as a basis for a stewardship levy will have to be **material neutral** in order to be equitable to all brand owners, packaging manufacturers, material suppliers and consumers.

There are some products, for example plastics, which are hazardous in the production stage. A material neutral levy will not provide industry with incentive to investigate alternative materials which can result in minimum amount of packaging or less harmful materials. The approach proposed in the document fails to take into account the market value of the product since some products will be more expensive to handle, transport and recycle.

We recommend that the levy should take these direct costs into account. The direct costs of the levy will have to be factored into the purchase price of the product, thereby resulting in a direct cost to the consumer. The stewardship cost of the product should also be displayed at the point of purchase.

The fourth, fifth, sixth and seventh paragraph under the heading Consequences should be deleted entirely.

Paragraph six fails to take into account market fluctuations for a post-consumer commodity. It provides an arbitrary basis for determining at a certain point in time as to what constitutes an efficient low cost collection/recycling system.

With respect to paragraph seven, a floor levy should be established for all products to address the concerns raised in paragraph six.

#### 4) Penalties for Enforcement

Enforcement by means of fines and penalties would be the most effective way to ensure that the diversion rates are met. However, a discussion on enforcement is moot given that the CCME has not established regulatory standards to ensure that the diversion rates are met.

As long as the CCME fails to impose regulatory standards and opts for voluntary participation instead, discussion about enforcement and penalties remains futile.

With respect to paragraph four, the criteria for determining success or lack of success are vague because of the reliance on consumer participation as the criterion for assessing programme success. This leaves stewards capable of neglecting a program and then claiming its inefficiency is the result of consumers. If consumers are to be the standard for efficiency, then it should be linked to an extensive product 3Rs education strategy directly related to the product marketed by the steward.

We urge regulations be established and enforced to ensure that there is a mechanism in place to ensure industries meet the targeted diversion rates.

#### 5) Financing

With respect to the first paragraph, we consider the maintenance of source separation as a necessary priority to meet market specifications. Such an approach is consistent with the Canadian Code of Preferred Packaging Practices which recognizes a hierarchy within the 3Rs. Source reduction must be considered first, with elimination of waste through re-use and recycling next.

The third paragraph should be amended to state:

Harmonization could take place with information being shared across provincial lines through a government/industry/municipal and NGO committees.

Failure to include the NGO's would lead to a lack of public access to the process.

The discussion on financing focuses on the least cost systems. This is reflected in the comments in the document that:

The operation of viable stewardship programs across the country would be enhanced if the means of sharing the costs of managing packaging wastes are not substantially different from one programme to another.

The problem with this approach is it fails to recognize the connection between financing and market factors, such as the mode of collecting, volume of material collected, the consistency and quality of materials, distance to recycling facilities and seasonal variations which impact on the operation of a stewardship programme.

Paragraphs four and five should be deleted entirely. The notion of shared responsibility is unknown beyond the Province of Ontario and is irrelevant to the discussion of national standards.

#### 6) National Specifications

There are national and international standards for recyclable products. We recommend that specifications meet the international and national standards as opposed to the regional standard. Permitting end-market specifications to meet specifications other than the national standard has the potential to lower market specifications.

With respect to standards we recommend that there be a hierarchy of standards that industry should be required to meet, commencing with the highest standards. Industry will therefore, be required to comply with international standards, followed by national standards and regional standards, respectively. The specifications should not be politically driven as stated in the document, but should rather be based on an upper tiered system as the one described above.

#### 7) Market & Infrastructure Development

The statement in the first paragraph that the "coordinated national and regional approach to end-market development is logically tied to the efficient and economic use of recovery facilities " is troubling. The use of the term efficient is open to a varied interpretation, e.g efficient may connote cost efficiency as opposed to efficiency in reducing packaging. The term should be clarified.

The marketability of a post-consumer product should conform as closely as possible to the standards set by the market mechanisms for that product. National markets for post-consumer commodities are essential to providing the volumes necessary for successful recycling initiatives at the local level.

#### 8) Trade

We recommend that the provisions be examined to ensure consistency with the Basel Convention.

With respect to the comments in the document about " consistency with GATT and NAFTA" it should be noted that neither GATT nor NAFTA address packaging. If industry has concerns whether particular provisions are consistent with GATT or NAFTA, we suggest that industry point out the specific provisions in those two treaties which are of concern.

There is always the potential for parties to allege that any environmental initiative constitutes a trade barrier under existing treaties. If particular provisions are challenged on this basis, the matter should be addressed at the appropriate time through the appropriate venues provided for within GATT and NAFTA. Concerns about consistency with GATT and NAFTA, whether perceived or real, should not be used to hinder initiatives aimed at minimizing the environmental impacts on packaging and at achieving reduction in the amount of packaging sent for disposal.

#### 9) National Minimum Objectives

Environmentalists believe that effective, equitable packaging stewardship should begin with the concept of a national minimum standard for each of the following factors:

- 1) Labelling;
- 2) Designation of Primary Steward;
- 3) Criteria for Levy;
- 4) Penalties and Enforcement;
- 5) Financing;
- 6) National Specifications;
- 7) Market & Infrastructure Development; and
- 8) Trade.

However, national minimum objectives can only be effective if they are enforceable, equitable and obvious. The CCME endorsement of the "spirit of voluntary co-operation" does not obviate the need for commitment to progress along with the supporting mechanisms necessary to ensure that packaging stewards understand, implement and fulfil targets set forth in proposed National Minimum Objectives.

Minimum objectives are not an imposition; they reflect a baseline commitment to the resolution of a solvable concern. The alternative to minimum standards is greater difficulty for business, government and consumers. Minimum standards give clear, equitable direction, and above all demonstrate commitment to the absolute reduction, re-use and recycling of packaging wastes across Canada. NAPP gives all levels of government, packaging producers, users and end-consumers a stake in ensuring that packaging waste is virtually eliminated. Without a

commitment to minimum standards there is no sense of purpose to NAPP.