Attachment 1: Overall Framework for an Extended Producer Responsibility System in California

This document contains staff's recommendations for an Overall Framework for an Extended Producer Responsibility (EPR) System in California. If adopted by the California Integrated Waste Management Board (CIWMB or Board), staff envisions that this document, in addition to the Board's Strategic Directive 5: Producer Responsibility (http://www.ciwmb.ca.gov/agendas/mtgdocs/2007/02/00021620.doc) will guide further discussion and development of product stewardship programs in California.

To achieve Strategic Directive 5, Producer Responsibility, the CIWMB staff developed the proposed Extended Producer Responsibility (EPR) Framework Approach described in this document. This EPR Framework Approach would provide a comprehensive, yet flexible method for managing products that have significant impacts on the environment and serve as an alternative to the current piecemeal approach with many different laws and methods.

The EPR Framework is intended to guide proposals to seek statutory changes that would provide the Board with the authority to develop and carry out state government roles and responsibilities. This should include providing the Board with authority to establish overall program requirements and procedures, including but not limited to: 1) establishing agency-wide product selection procedures and selecting product categories; 2) requiring producers of selected categories to work with retailers, haulers, local jurisdictions, and other stakeholders, as appropriate, to develop and implement Board-approved plans to address the targeted products; 3) specifying what provisions must be addressed in each plan (e.g., goals, fee or cost structure options, administration, reporting, etc.), while allowing flexibility in how provisions are implemented; and 4) specifying enforcement mechanisms such as penalty procedures and provisions for non-compliance. The approval of a product stewardship plan would not preclude the implementation or expansion of existing programs, nor would it preclude consideration of other approaches to end-of-life product management (such as for e-waste).

The use of product-specific stewardship plans would be a key component to provide producers, retailers, haulers, recyclers, and other entities in the product chain with the flexibility to customize programs for specific products. While each plan would address certain topics, how each topic would be implemented would be unique and customized for the product. Producers would also have the option of creating individual plans or participating in group or other plans.

Key Elements of an EPR Framework Approach

Staff found that EPR Framework approaches have common key elements and, based on the analysis and stakeholder input, staff proposes these key elements:

The sections that follow further describe staff recommendations for an EPR Framework Policy Goals, Guiding Principles, Definitions, Roles and Responsibilities, and Governance (CIWMB Authority).   The remaining elements would be further explored and addressed in legislation or in the development of regulations.

1. Policy Goals

The goals of the EPR Framework, and any product stewardship programs that would be implemented under it, are to:

- Address all materials in the waste stream, either in terms of volumetric or toxic impacts in landfills, where practical, with consideration of life-cycle impacts.

- Provide measurable net environmental benefits through product design innovation; improved environmental performance throughout a product's lifecycle, that includes reduced solid waste, toxic components, energy and water consumption, and reduced greenhouse gas and air emissions; the highest and best use of products and materials in a cradle-to-cradle system; and avoidance of transferring EOL management problems to other states and countries.

- Advance green product design and the waste management hierarchy of source reduction and reuse, as well as proper collection and recycling where needed.

- Design product stewardship programs to maximize convenience to consumers and economic efficiency and market-based competition to stimulate innovation and reduce costs.

- Reduce the burden on taxpayers and ratepayers by transferring waste-related costs to producers and consumers of products.

2.   Product Stewardship Guiding Principles

Producer Responsibility
- All producers selling selected products into the state would be required to develop and/or participate in an approved product stewardship plan. Each plan would have certain provisions that must be addressed (e.g., goals, fee or cost structures, administration, and reporting, along with environmental provisions such as source reduction and product design, collection, transportation and environmentally

sustainable reuse/recycling, etc.), while allowing flexibility in how provisions are implemented.

- Responsibility to physically and financially manage product end-of-life impacts shifts from general ratepayer and local government to producer and consumer.
- Responsibility is not shifted to other levels of government without consent or negotiated agreement with the affected governmental entity.
- All producers for a particular product category are subject to the same stewardship responsibilities, which encourage environmental performance by individual producers.

Environmental Protection Strategies
- Environmental protection strategies and resource allocation shift to an emphasis on increased prevention, source reduction, green product design, and reuse; with increased collection and recycling, and purchase of environmentally preferable products, when feasible.
- Environmental protection strategies strive to harmonize policies and programs by various levels of government while acknowledging and preserving the unique authorities and responsibilities of each to address environmental concerns.
- New EPR programs should not dismantle existing programs that the Board determines effective.
- Strategies are designed to give government the flexibility to implement program improvements through administrative and regulatory processes.
- CIWMB will collaborate with agencies, internal and external, and other key stakeholders to effectively address cross-media and cross-organizational issues when considering the selection of product categories and when considering approval of product stewardship plans.

System Coverage
- All consumers have reasonable access to convenient product collection locations.

Results-Based Programs
- Programs focus on results and provide producers with flexibility to determine the most cost-effective means of achieving the desired outcomes with minimum government involvement. This includes allowing individual producer responsibility, along with other options.
- Product categories are clearly defined to simplify compliance and enforcement and ensure common understanding among program participants.
- Programs are tailored for individual products and encourage continued innovation by producers to minimize environmental impacts during all stages of the product lifecycle, from product design to end-of-life management.
- Producers are accountable to both government and consumers for environmental outcomes and allocation of revenue from fees/levies.
- Program development process is open and provides the opportunity for input from all stakeholders.

3. Definition of Key Terms

a) **Extended Producer Responsibility** In the Background Paper *Producer Responsibility: Overview of Policy Considerations* from the June 5, 2007 Strategic Policy Committee Meeting Workshop, staff presented various definitions of Extended Producer Responsibility, along with similar terms being used internationally.[1] Staff recommends the following definition:

> **Extended Producer Responsibility (EPR) is the extension of the responsibility of producers, and all entities involved in the product chain, to reduce the cradle-to-cradle impacts of a product and its packaging; the primary responsibility lies with the producer, or brand owner, who makes design and marketing decisions.**

This definition is similar to the definition used by the Product Stewardship Institute in recognizing a shared responsibility, but one that lies primarily with the producer. The reference to the product chain includes but is not limited to producers (see definition b) Producer), retailers, haulers, consumers, recyclers, and local governments. EPR focuses on enhancing environmental benefits through improved product design for reduction and reuse, and increased collection and recycling where needed, without transferring end-of-life management problems elsewhere.

b) **Producer** This term is fundamental to any discussion on EPR, yet it is challenging to define for all products. In order to have a common understanding of the term, staff offers the working definition below with recognition that a more refined definition would be needed for a product stewardship program that is focused on a particular product or product category. Product-specific definitions of the term producer need to be legally binding if all producers are to be held to the same ground rules.

> **Producer means**
> i. **a person who manufacturers a product and sells, offers for sale or distributes the product in California under the manufacture's own brand**
> ii. **if subparagraph (i) does not apply, a person who is not the manufacturer of the product but is the owner or licensee of a trade mark under which a product is sold or distributed in California, whether or not the trademark is registered, or**
> iii. **if subparagraphs (i) and (ii) do not apply, a person who imports the product into California for sale or distribution.**

c) **Cradle-to-Cradle Impacts** The term "cradle-to-cradle impacts" is referred to in the definition of "Extended Producer Responsibility" and staff believes it is beneficial to make it clear that EPR goes beyond advancing recycled content, the Board's traditional focus, but one that can lead to non-optimal environmental decisions. EPR

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[1] California Integrated Waste Management Board, *Producer Responsibility: Overview of Policy Considerations, Background Paper,* Prepared for the Strategic Policy Committee, June 5 2007, Pages 12-15. Available at: www.ciwmb.ca.gov/agendas/mtgdocs/2007/06/00022104.doc

is a comprehensive, rather than single-attribute approach, and consequently is more likely to result in the best environmental solution.

> **Cradle-to-cradle impacts include energy, water, and materials use; greenhouse gas and other air emissions; toxic and hazardous substances; materials recovery and waste disposal; and worker safety.**

d) **Product Stewardship Program** This is a term that is used by provinces in Canada and Board staff believes using the same term in California would be helpful to be consistent in our communications, particularly for those stakeholders operating throughout North America.

> **Product Stewardship Program is a program that encompasses product design for source reduction and reuse, as well as the collection, transportation, recycling, and disposal of unwanted products, including legacy products and the program's fair share of orphan products, which is financed as well as managed or provided by the producers of those products.**

e) **Stewardship Organization** Several terms are used to describe an entity that works on behalf of the producer to implement its responsibilities such as Third Party Organization (TPO), Producer Responsibility Organization (PRO), and Stewardship Organization (SO). Staff recommends using the term and definition below.

> **Stewardship Organization is an entity appointed by a producer to act as an agent on behalf of the producer to administer a product stewardship program.**

4. Roles and Responsibilities

Each stakeholder benefiting from a selected product shares in the responsibility of developing and implementing an effective product stewardship program. Staff recommends that the following general description of roles and responsibilities for producers, retailers, consumers, state government, local government, haulers, recyclers, and advisory workgroups be used to help lay a solid foundation for an effective product management and stewardship system. **The roles and responsibilities would be modified, as appropriate, when developing any ensuing product stewardship program.** While there is a description in this for general responsibilities for California State government, Section 5 below delineates specific governance authority that would be needed for CIWMB to develop and implement an overall product stewardship program.

For each stakeholder group, staff identifies these types of responsibilities, where applicable.

- · Product stewardship system effectiveness (oversight and continual improvement)
- · Information needs/requirements
- · Physical management of products and component materials (cradle-to-cradle)
- · Financial management of end-of-life responsibilities

A. Producers' Responsibility: System Effectiveness, Informational, Physical, Financial

Whether established legislatively or voluntarily, an EPR approach to a specific product or product category places primary responsibility on the producers of that product to design and implement a program to achieve specified goals. Producers may use stewardship organizations (see *Definitions of Key Terms* above) to administer recovery and recycling programs for specified materials. The membership of a stewardship organization can be entirely comprised of industry representatives, including manufacturers, distributors and retailers. Other stewardship organizations are multi-stakeholder organizations that include government representatives. Stewardship organization responsibilities usually include registering members, collecting fees from members, managing a program fund, monitoring compliance, and reporting on results. In cases where producers create and elect to participate in stewardship organizations, the ultimate responsibility is retained by the individual producers while the functions may be performed by stewardship organizations. Additional details about individual versus collective producer responsibility would need to be addressed in product-specific product stewardship plans, as needed, due to variations in product design, market structure, and potential public/environmental benefit.

System Effectiveness: Develop or use an approved stewardship plan for selected products. Each plan would have certain provisions that must be addressed including, but not limited to, goals, fee or cost structures, administration, and reporting, but there would be flexibility in how provisions are implemented Plans would also address product design, source reduction, collection, transportation, and reuse/recycling of covered products considering lifecycle impacts and utilizing market incentives, as feasible.

Informational: Provide effectiveness reports including performance and cost data to State government for covered products (e.g., those products which may require registration). Provide audited financial records for EOL management, when required, to justify cost recovery by stewardship organizations and maintain transparency and accountability to stakeholders.

Develop and distribute educational material to consumers, retailers, local government, haulers, and recyclers on the safe use and storage of products, safe storage and handling of the residuals and containers, and the location of collection facilities.

Clearly communicate information about proper EOL management for haulers, collectors, recyclers, local government, etc. Typically this is accomplished through Material Safety Data Sheets, product labels, and websites that explain hazardous materials contained in the product and requirements for safe EOL management and recovery of the product.

Participate in good faith with governmental organizations and multi-stakeholder groups to continually improve product stewardship program.

Physical: Design products to reduce lifecycle environmental impacts. Support environmentally preferable products and services through supply chain management decisions.

Ensure the collection and management of material from the consumer through a network of conveniently located collection sites. May choose to assign and oversee this responsibility through contracting directly with collectors, transporters, processors, or through participation in a stewardship organization. All occupational health and safety and environmental standards must be met in either case.

Financial: Responsible for ensuring financial viability of EOL collection and management whether contracting directly with a public or private entity, or through participation in a stewardship organization.

B. Retailers' Responsibility: Informational, Physical

Informational: Required to provide information from producers (or stewardship organizations on producers' behalf) to customers on how to access services.

Physical: Retailers only sell products that are covered (e.g., registered) in product stewardship programs where they exist.

Involvement in an EOL collection system is voluntary and may be compensated, as negotiated between producers and retailers.

Physical or System Effectiveness: Responsible for participating in workgroups to explore system effectiveness and negotiating in good faith with producers and other stakeholders to assume a share of responsibility.

C. Consumers' Responsibility: Physical, Financial

Physical: Responsible for following directions provided by producers including stewardship organizations, retailers, local government, and EOL service providers. Utilize provided collection services and do not dispose of products through illegal or non-preferred means.

Financial: Pay the costs of proper EOL management.

D. General California State government responsibility: System effectiveness, informational, financial

Several state government entities have responsibilities with respect to the state government role in developing a level playing field and providing oversight. These include the Legislature, Cal/EPA, CIWMB, and other relevant state level authorities.

System effectiveness: Establish statutory requirements and regulations that provide the authority to mandate individual financial and/or physical take-back of designated products; ban designated hazardous materials from use in products and/or landfill disposal; set minimum reuse, recycling and recovery rates; establish minimum environmental standards (e.g., source reduction, collection, processing, and recycling, reuse/export).

Devise a state government coordination process to discuss and decide on environmental cross-media issues.

Review and approve stewardship plans submitted by producers or by stewardship organizations on behalf of producers.

The Board may consider a means for individual manufacturers to be exempt from the EPR requirements for certain (or select) products that conform to special environmental criteria, where it can be demonstrated that conferring the exemption would result in compliance with all EPR goals. General procedures and criteria for making exemption determinations would be developed as part of the regulation process following enactment of statute. Whether an individual manufacturer's product would be exempt would be considered as part of the process to select product categories and as part of the Board's evaluation of a proposed product stewardship plan.

Implement EPR using guiding principles set forth in the Framework, including procurement specifications that encourage green product design.

Participate in multi-stakeholder collaborative efforts to provide net environmental benefits, including efforts to establish product performance standards.

Create a level playing field by ensuring that all producers comply with the established requirements and that targets are being met. Provide timely enforcement, which may apply to producers and other stakeholders, as defined in regulations that would be developed following enactment of statute.

Consider the appropriateness for a neutral third-party organization to administer many of these responsibilities. Responsibility ultimately lies with government to assure environmental protection goals are being met.

State procurement officials must only purchase products that are covered (e.g., registered) in product stewardship programs, where they exist and State government should define environmentally preferable purchasing, in part, by the extent to which producers consider and incorporate management of toxics, packaging, and other EOL issues in their product design, production, and customer relationships.

Informational: Make product stewardship plans available to the public and assist in information dissemination. Ensure public access to performance information and evaluations.

Financial: Seek reimbursement for oversight and enforcement services, perhaps through product registration fees. Penalties should be considered, if producers or other stakeholders fail to meet the established requirements, or conversely, financial incentives may be offered for meeting or exceeding program requirements.

E. Local government responsibility: System effectiveness

System effectiveness: Local government procurement officials must only purchase products that are covered (e.g., registered) in product stewardship programs, where they exist. Local governments may choose to participate in informational, physical, and

financial roles at their discretion according to the needs of their community and may require/negotiate compensation by producers or stewardship organizations.

Informational: Make product stewardship plans available to the public and assist in information dissemination. Ensure public access to performance information and evaluations.

Physical or System Effectiveness: Responsible for exploring system effectiveness, as feasible, with producers and other stakeholders. Resulting collection systems may include use of curbside or other services as negotiated between the local governments and the producers.

Financial: Receive compensation for services.

F. Haulers' and collectors' responsibility: Physical, Financial, Informational

Physical or System Effectiveness: Meet standards or use best management practices for handling products and materials. Responsible for exploring system effectiveness, as feasible, with producers and other stakeholders. Resulting collection systems may include use of curbside or other services as negotiated between the haulers or collectors and the producers.

Financial: Receive compensation for services.

Information: Provide information to producers that can be used to design or label products to enhance recovery.

G. Recyclers', dismantlers', processors' responsibility: Physical, Financial, Informational

Physical or System Effectiveness: Meet standards or use best management practices for handling products and materials. Responsible for exploring system effectiveness, as feasible, with producers and other stakeholders.

Financial: Receive compensation for services.

Information: Provide information to producers that can be used to design or label products to enhance recovery.

H. Advisory Committees' and Working Groups' Responsibility: System effectiveness, Informational

This category applies to advisory committees, scientific peer review panels, technical coordination or problem-solving groups, inter-agency management coordination and working groups. These groups may be set up with or without government participation. Producers are encouraged to form groups with other stakeholders to identify and develop efficient systems for managing products and materials and reducing environmental impacts.

System Effectiveness: Participate in the developed of regulations and the design of measurement metrics to help ensure transparency and accountability.

Informational: Advise State government on product or process-specific issues related to producer responsibility. Areas for contributions by technical working groups may include, but are not limited to: product selection process and criteria; development of product performance standards and facility operation standards; options to finance EOL management of orphan and historic waste, compliance to ensure a level playing field among producers, including importers; coordination with existing environmental programs.

5. Governance

Staff recommends that the Board pursue statutory authority to develop and implement an overall product stewardship program through a public process. This authority should include, but is not necessarily limited to, the following:

1. Establish overall Extended Producer Responsibility regulations;
2. Subsequently determine initial products or product categories to be included;
3. Allow for the addition of new product categories in the future;
4. Allow for the creation and implementation of exemption criteria (determined by the Board) by which a producer may apply to have its product or products exempted from the EPR program.
5. Establish targets, measurement, and reporting requirements;
6. Require coverage of new, historic, and orphan products;
7. Allow independent and collective manufacturer programs;
8. Establish plan submission and reporting requirements;
9. Establish and collect penalties for non-compliance;
10. Establish transparency and accountability mechanisms;
11. Require use where appropriate of front-end financing mechanisms (e.g., point-of-manufacture or point-of-sale) as opposed to end-of-life fees;
12. Require coverage throughout the state, both urban and rural, at a level necessary to meet performance standards;
13. Require use of performance standards (may cover product performance, EOL management systems, and recycling/recovery facilities);
14. Require adherence to the State's solid waste hierarchy or other mechanism to ensure products are managed for highest use or proper disposal if hazardous and not recyclable;
15. Require best management practices for handling and various types of collection systems;
16. Require mechanisms/incentives to drive product design for environmental improvement (e.g., toxics reduction, greenhouse gas reduction); and
17. Require marketing, outreach, training and/or education of stakeholders, including outreach to consumers.

Provisions in the product stewardship plan may include, but would not be limited to, items 4-17 listed above. Legislation and regulations would further define the provisions covered in a plan, but not how each provision is to be implemented, as that would be defined in the product stewardship plan. There would be considerable flexibility allowing plans to be customized for individual producers and product categories.

6. Products/Product Categories Covered

While criteria used to select products/product categories would be determined within the regulatory process following enactment of statute, there are some general concepts that should be addressed in that process. The list below includes factors that would likely be addressed during this process, although it is not meant to be exhaustive or prescriptive, nor is it presented in order of importance:

1. Total volume being disposed in landfills
2. Level of toxicity or hazard to human or environmental health
3. Total lifecycle net environmental impact
4. Potential for net lifecycle impact improvement
5. Level of market/infrastructure currently in place
6. Effectiveness of programs currently in place, if any
7. Current impacts to local governments/general ratepayers
8. Usage trends (increasing, decreasing, steady)
9. Difficulty to manage
10. Existing problem with illegal dumping