

Supreme Court Upholds the Alameda Ordinance that Producers Share in Responsibility for Product Waste: What Does That Mean for the Waste Industry?

The paradigm change to shared responsibility systems is not easy, but worth doing. We need to work together to be successful at reducing waste and the negative impacts of waste, and move to a more circular economy where we provide a positive and viable alternative to the “make, take, dispose” linear economic model we have now.

■ By Heidi Sanborn

As we all know, local governments and service providers are struggling to meet the public demand for services and trying to do more with less. One such example is public utilities trying their best to prevent household hazardous waste (HHW) from disposal via the garbage or flushing, but that is a real challenge and is costly knowing the variety of issues that come with products such as pesticides, batteries, needles and pharmaceuticals. Many problems are associated with safely collecting and managing some products translates into high costs; we have heard stories from jurisdictions that literally stop advertising their HHW collection program because they can't afford to increase collections. California Product Stewardship Council (CPSC) is working with the National Association of Counties and counties like Alameda, San Francisco, San Mateo and their hauling companies in the hopes to work to find solutions where producers of products share in the responsibility to reduce public impacts at the source and help provide more convenient collection opportunities with no charges at point of disposal. CPSC is a powerful network of local governments, non-government organizations, businesses and individuals supporting policies and projects where producers share in the responsibility for managing problem products at end of life. CPSC's Board includes a producer of needles, haulers (such as Marin Sanitary Service and Republic Services), a hospital and local governments including Los Angeles County and the rural county of Tehama.

Leading the Paradigm

Extended Producer Responsibility (EPR) is supported by 26,160,171 Californians. That's more than 67 percent of the state population and includes cities as big as Los Angeles and as small as like Arvin. California has passed 138 resolutions by local jurisdictions and organizations supporting a more sustainable and toxic-free environment through product stewardship.



From left to right: Judge M. Christen, Judge N.R. Smith and Judge Piersol.
Inset: Arthur J. Shartsis representing Alameda County.
Photo courtesy of the California Product Stewardship Council.

California and other states are looking to the producers, retailers and others in the product chain to assist with funding collections and public education for the proper management of problematic products in water such as pharmaceuticals and needles. California passed legislation on mercury thermostats in 2008, reducing copper in brake pads and recycling carpet and paint in 2010, and mattresses in 2013 to ensure producers have some share in the responsibility. However, passing statewide legislation for products where the producers do not want to share in any responsibility is hard to do, even when they have done it in many other countries for more than two decades.

California is leading the U.S. in this paradigm shift to producers sharing in the responsibility and the “legal rules of the road” are being laid down per CPSC's press release on the Alameda County Ordinance being upheld when the Supreme Court refused to hear the case on May 26, 2015. King County, WA (www.takebackyourmeds.org) also passed an EPR ordinance for medicines in 2013 and was sued by the same pharmaceutical associations, and it was also upheld.

The video of the hearing posted on www.calpsc.org is worth watching for 40 minutes (it starts 1 hour 2 minutes into the proceedings), as the court decided whether any county or local government can pass legislation that will make the manufacturers of pharmaceuticals or any product, share in the responsibility for its lifecycle costs. In the case of prescription drugs in Mexico, Brazil, Canada, France, Spain and other countries, the programs are funded by the pharmaceutical companies who design the collection, which has always been done by the pharmacies. CPSC has developed fact sheets on how those countries' programs work posted at <http://calpsc.org/products/pharmaceuticals>.

This case is just the beginning of the movement towards producers sharing the responsibility for a wide variety of products. As the appellant lawyer Michael A. Carvin, stated “There are 3,000 counties in the United States. If this court upholds this statute, what county is not going to go for this deal? What county is not going to say ‘I can either charge a lot of out-of-state pharmaceutical companies or I can charge the taxpayers who are going to re-elect me next time for this kind of waste disposal?’”

Impacting the Solid Waste Industry

So how does this impact the solid waste management industry? Now that the Alameda, CA and King County, WA ordinances have been upheld, every local government will be able to regulate to make producers pay for management systems for their end of life products—for any products not just pharmaceuticals. The floodgates have opened and just in the last few months, San Francisco, San Mateo and Santa Clara counties have all adopted similar ordinances for safe medicine disposal. In addition, Los Angeles County and Santa Barbara have begun public discussions about doing the same and Los Angeles is considering sharps/needles as well.



“With containers in the large pharmacy chains, it’s easy to find a place to drop off these expired or leftover products,” says Jose Antonio Aedo, General Manager of SINGREM. Photo courtesy of SINGREM and José Antonio Aedo Sordo.

So what about sharps—will they be next for an EPR approach? Sharps are a health and safety issue for the industry; a recent study documented that 7 percent of users still flush needles as a disposal method. A new report titled “Sustainable and Safe Recycling: Protecting Workers Who Protect the Planet” produced by the National Council for Occupational Safety and Health in partnership with MassCOSH, Partnership for Working Families and GAIA, states, “Growth in the recycling economy has the potential to not only conserve the environment, but also create 1.5 million new jobs. However, research indicates that recycling work can be dangerous, with injury rates more than double the national average.” This report lists needle sticks as a significant issue on sort lines, but EPR policies to reduce them from ending up in the trash in California died two years straight due to producer opposition and denial—that it is a problem. The court ruling may entice local governments to start implementing EPR ordinances for needles—or maybe the hauling community will request this to help increase proper collections so that they don’t end up on the sort line. In several provinces of Canada, sharps are managed and paid for by the pharmaceutical and sharps producers through the Health Product Stewardship Association of Canada. Why can’t the same companies that do it in Canada and Mexico provide the same sharing of responsibility in the U.S. What other products are ending up in waste streams and water where producers could help by redesigning the product or paying for cleanup?

There are many products that might be ripe for an EPR approach such as those that currently do not have a market, are problematic/costly to manage, and have negative health and environmental impacts. Products widely covered by EPR in other countries include e-waste, batteries, solvents, pesticides, solar panels, paint and even product categories as large as packaging.

A Positive and Viable Alternative

The paradigm change to shared responsibility systems is not easy, but worth

doing, and we need to work together to be successful at reducing waste and the negative impacts of waste. We need move to a more circular economy where we provide a positive and viable alternative to the “make, take, dispose” linear economic model we have now. EPR is a policy approach that is a tool towards driving a more circular economy like Denmark has done while achieving a 60 percent recycling rate and creating jobs and closed loop recovery systems.¹ As described in the new report by the Ellen MacArthur Foundation titled “Delivering the Circular Economy—A Toolkit for Policy Makers”, Denmark has much more it can do, but it is a leader and is showing the way to how we can drive a circular economy through policy changes that support the change, and EPR is one of those approaches.

Will other counties and cities across the country start adopting EPR ordinances for pharmaceuticals, sharps and other products? Will producers of these products now offer a voluntary solution? We don’t know for sure, but based on the calls being received at CPSC, we suspect there will be more ordinances in more states covering more products than pharmaceuticals. We will continue to share the latest policies developed with others across the country to reduce costs, collect and properly manage more product waste to protect public health, promote worker safety and the environment. | **WA**

Heidi Sanborn, M.P.A. is the Executive Director of the California Product Stewardship Council (Sacramento, CA). Heidi has worked in the solid waste field in California for 23 years starting as a consultant, advisor to the chair at the California Integrated Waste Management Board and was a founding director of CPSC. She can be reached at (916) 706-3420 or heidi@calpsc.org. For more information on sharing responsibility systems and how they are working or how to become engaged on this issue visit CPSCs Web site at www.calpsc.org.

Note

1. “Delivering the Circular Economy—A Toolkit for Policy Makers”, Ellen MacArthur Foundation 2015 p. 91.