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January 25, 2016

The Honorable Kevin Mullin
California State Assembly
State Capitol, Room
Sacramento, CA 95814

Subject: **AB 45 (Mullin) – Household Hazardous Waste OPPOSE;
As Amended January 21, 2016**

The California Product Stewardship Council (CPSC) is a non-profit organization which formed in 2006 and is comprised of local governments and their associations, businesses, the general public and other entities, that works with product manufacturers and partners with them to encourage a producer responsibility approach to product management.

CPSC must regretfully continue to OPPOSE your AB 45, as amended January 21, 2016 for the following reasons:

- 1) The findings and declarations establish a questionable basis upon which to evaluate the public policy in the bill;
- 2) The bill fails to require a fair sharing of responsibility by producers;
- 3) The bill does not establish the comprehensive approach to managing Household Hazardous Waste (HHW) that is advertised, and;
- 4) The bill would undermine tried and true approaches to managing HHW that are opposed by the supporters of AB 45.

While we certainly appreciate the movement away from a completely unfunded comprehensive HHW diversion mandate on cities and counties – an extraordinarily expensive undertaking for cash-strapped local jurisdictions – the new amendments present a completely new set of problems.

FINDINGS AND DECLARATIONS

First, we acknowledge the reality expressed in the findings and declarations – specifically that HHW creates environmental, health, and workplace safety impacts, and that efficient disposal remains an extraordinary challenge. Moreover, we are pleased to see the findings and declarations specifically call out pharmaceutical waste as a problem.

However, we would challenge the assertion in (b) that “even the most effective programs have very low consumer participation” and that other approaches being promoted

throughout the state “move collection away from consumer convenience”. In fact, several Extended Producer Responsibility (EPR) and product stewardship programs established for hard-to-handle products enjoy high rates of consumer participation. For example, the paint product stewardship program established in California has resulted in increasing convenience for consumers by adding 590 new retail locations and saving local governments on average \$150,000 per year, as was outlined by CalRecycle to the [Assembly Select Committee on Waste Reduction and Recycling in 21st Century California](#) on November 4, 2015. Similarly, EPR programs are being debated extensively by the legislature and adopted by cities and counties starting with Alameda in 2012, then followed after a Supreme Court challenge by the pharmaceutical industry all the way to the US Supreme Court which Alameda successfully defended. In March of 2015, next was San Francisco, followed closely thereafter by San Mateo, Santa Clara, Marin, and Santa Cruz and now being considered by Los Angeles and Santa Barbara. Across California, counties are mandating that producers have a fair sharing of responsibility for consumer convenience by augmenting existing brick and mortar take-back locations funded by local governments with retail and other take back options funded by those companies that put the product into the stream of commerce. We would assert that taking paint back to a local hardware or paint store is, in fact, just about the most convenient option for consumers outside of a curbside pickup approach that is extraordinarily expensive, has low participation rates, and causes unacceptable environmental, public health, and workplace safety impacts.

In 2008, after a year and a half of public hearings, CalRecycle adopted the [EPR Framework](#), which outlines the appropriate role for producers and others in the system and it goes well beyond public education. While we support the assertion in (c) that there is “also a role for manufacturers and distributors of these products”, we must respectfully push back on the assertion that “that role should be based on the ability of manufacturers and distributors to communicate with consumers”. Communication to the public is a vital component of any program, but we believe that manufacturers of products falling into the HHW definition have a duty that extends well beyond simply communicating to consumers about where to bring products - they make the design and marketing decisions and put them into the stream of commerce and simply advertising to increase collections paid for by taxpayers and ratepayers in unacceptable. Page 26 of the [AB 341 report to the legislature](#) from August of 2015 outlines that the recommended strategy for managing hazardous materials be toxic material bans coupled with EPR.

AMENDMENTS ESTABLISH A NEW LOCAL MANDATE

As amended on January 21, 2016, §47120 of the bill includes a vastly expanded definition of Household Hazardous Waste that adds, among other products, home-generated pharmaceutical and sharps waste to the definition. Unfortunately, the inclusion of these products in the definition of HHW *establishes an affirmative obligation* on the part of local governments to manage them appropriately. While we support the diversion of many of these items from disposal in landfill for environmental, public health, and occupational safety and health reasons, the approach taken in AB 45 once again places the responsibility squarely on the shoulders of local governments.

As you know, CPSC supports an EPR approach to reduce HHW generation and landfilling, which increases workplace safety and reduces negative public health impacts of these products, and is also consistent with hazardous waste reduction goals. EPR requires manufacturers of some products to accept *a fair portion* of the responsibility for managing the end-of-life public health,

environmental, workplace safety, and financial implications *directly resulting* from the products they manufacture. This approach is, of course, aggressively opposed in California by the same companies that are already quite successful in complying with 80 EPR laws in the US alone. In fact, EPR is growing in popularity around the world, with over 400 programs for products ranging from packaging to automobiles and electronics.

MODEL ORDINANCE REQUIREMENT IS PROBLEMATIC

The bill, in §47121, creates a new requirement for CalRecycle to adopt one or more model ordinances for a “comprehensive program for the collection of household hazardous waste” for adoption by local governments. The bill then authorizes local governments to adopt one of these model ordinances. There are several problems with this portion of the bill.

First, the definition of “comprehensive program for the collection of household hazardous waste” is not, in actuality, representative of all the approaches currently being pursued by local jurisdictions. In fact, it appears to be reflective of only the programs supported by industry. Local governments around the state have already made locally-sponsored collection sites, publicly advertised drop-off days, door-to-door collection, and educational outreach to consumers a routine part of the existing HHW management paradigm that, despite all of the associated investment of public moneys, has left consumers with the “extraordinary challenge” described in the bill’s findings and declarations.

Surprisingly, what is not included in the definition of a comprehensive program are the approaches being increasingly implemented at the local level that take a serious look at the extent to which manufacturers of those products, correctly identified in the findings and declarations as “creating environmental, health, and workplace safety issues”, should participate in the management of the end-of-life consequences of the products they make and sell. We believe that this is a vital component of any comprehensive program. As described above, CalRecycle, in their AB 341 report to the legislature, correctly states that EPR is a key strategy in effectively tackling this portion of the waste stream. Moreover, it is widely supported by virtually all stakeholders, other than the manufacturers, as demonstrated at the November 4th Assembly Select Committee hearing, that this is a proven and reasonable policy approach to any comprehensive strategy to effectively manage waste in California.

NON-PROFIT PROVISION CONFUSING AND INADEQUATE

The portion of AB 45 that is intended to provide an industry contribution for the management of HHW is, in our opinion, confusing and inadequate. The bill calls for CalRecycle to determine whether or not “an appropriate nonprofit organization has been created and funded for the purpose of making grants to local governments” to assist in educating communities about existing HHW programs. We see the following problems with the structure and function of the nonprofit organization as follows:

- ***NO GUIDELINES ON GRANT PRIORITIES***: The bill states that the role of this nonprofit will be to provide grants to local governments to assist with community education and offsetting programmatic costs. However, no additional detail is provided. We are concerned that this industry-funded nonprofit will be able to, frankly, punish jurisdictions

- that pursue local ordinances that the members of the non-profit oppose. Funding should be consistent with priorities established by CalRecycle and all stakeholders.
- *INSUFFICIENT FUNDING REQUIREMENTS:* The only funding requirements in the bill are that the nonprofit organization, 1) has \$5 million “dedicated” to grants “at the time of the determination”, and 2) has “sufficient funding to allocate grants to local governments throughout the state for five years”. Local governments in California spend approximately \$100 million each year to manage what is estimated to be only 7-10% of HHW, and the grants anticipated by AB 45 would be insufficient to make a dent in the problems identified by the bill. A cursory examination of the numbers makes this clear. If the nonprofit organization has \$5 million to provide grants over five years, that works out to \$1 million per year. Either every county (forget the 482 CA cities for now) would not receive a grant on an annual basis, or each of the 58 counties would only be eligible for an annual grant of \$17,241. If, instead, all of the money was equally split among the cities the annual share for each city would be \$2,074. Simply put, the nonprofit organization established by AB 45 will not make a dent in the “extraordinary challenge” described in the findings and declarations.
 - *NO ANNUAL FUNDING REQUIREMENT:* AB 45 is completely silent on the annual funding requirement for the nonprofit organization, and the bill only requires the nonprofit organization to provide grants for five years. Local governments would not be able to reliably budget to expand services to the community because of insufficient funding levels and a lack of certainty about future funding. Any effective program needs a sustainable funding source for the community and program administrators.
 - *NO STAKEHOLDER INVOLVEMENT:* The nonprofit organization established by AB 45 does not have any requirement to work with stakeholders – local governments, haulers, environmental groups, etc. – when administering the nonprofit, despite its obvious role in public policy. Any effective program needs to have a robust stakeholder input process to ensure the existing expertise is utilized and program messaging is harmonized.
 - *GIVES INDUSTRY OPPORTUNITY TO DELAY:* The entire bill sunsets on January 1, 2019 if CalRecycle has not made a determination that an “appropriate nonprofit organization” has been created. At the end of the day, AB 45 can result in absolutely no progress if industry decides instead, as has been seen in the past, to simply delay. CPSC believes that this is an unacceptable potential outcome to have imbedded in legislation. We must oppose legislation where one of the possible outcomes is absolutely nothing.

PREEMPTION

Prior versions of the amendments taken in AB 45 on January 21, 2016 contained explicit preemption for local government ordinance. That version (RN 16 02641) explicitly required local governments to adopt one of the CalRecycle model ordinances once they had been adopted in accordance with the bill. CPSC wants to go on record and state that we strongly oppose any version of local government preemption in AB 45. The bulk of the innovation in managing solid waste and HHW comes via local government ordinance, and the type of blanket preemption contained in prior versions of the amendments would smother local innovation and leadership.



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MOVING FORWARD

CPSC would recommend that a balanced stakeholder process be established to examine the various legislative proposals focused on managing hard-to-handle products, and seek consensus. We would be happy to work with the legislature, CalRecycle, and stakeholders on how to best address the issues identified in this letter.

Should you have any questions about our position, or wish to discuss your legislation, please feel free to contact Jason Schmelzer at 916-549-0898.

Sincerely,

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Executive Director

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