



30 April 2003

Mr Mark Gorta  
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Environment Protection Authority  
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Dear Mark

The Australian Environment Business Network (AEBN) welcomes the opportunity to comment on the NSW Government's Consultation Paper: Extended Producer Responsibility Priority Statement (EPR Scheme).

AEBN is Australia's premier specialised industry information and representation network on environment & energy issues. AEBN is a member based Network consisting of industries from manufacturing sectors including automotive, food, chemical and petroleum industries and also service providers including environmental consultants suppliers and legal practitioners.

The submission was developed under the assistance and guidance of AEBN's NSW Policy Reference Group, comprises of most of NSW leading environmental managers in industry and business. The PRG is also considered a leading voice on industry policy.

## **1 EPR vs Product Stewardship**

AEBN is concerned over the multiple uses and definitions of Extended Producer Responsibility (EPR). EPR is by AEBN's understanding a process in which industry can be forced to take-back and recycle its post consumer products. The philosophy behind such regulatory actions is to make manufacturers bear substantial physical and financial responsibility for the environmental impacts of their products. A priority of the EPR approach is to reduce waste, especially to landfill.

Regulatory tools available under the EPR Scheme are limited to:

- Take back schemes
- Deposit refund schemes
- Advance recovery fees
- Levies of particular materials
- Performance standards, such as recycled content

Virtually all the regulatory tools available under EPR scheme have a focus on reducing waste to landfill and increasing recycling.

While a focus on waste reduction is a worthy goal in many cases it can ignore—even undermine—approaches and methods, which bring improved environmental outcomes. An underlying assumption behind the EPR Scheme is that landfill avoidance is beneficial to the environment. However, it is not always the case that reducing waste to landfill will result in overall environmental improvement. There are many wastes where the best environmental outcome is to send them to landfill. This outcome would occur when the environmental impacts and costs of recycling the material exceeds that of landfilling the material<sup>1</sup>. What typically limits the environmental outcomes of recycling is its consumption of energy per unit processed. The EPA must be careful in imposing EPR regulations to avoid lowering overall environmental outcomes. Hence AEBN considers the EPA and NSW Government must undertake a science-based process to investigate the full environmental outcomes of a particular product and its environmental impacts, before considering applying EPR style regulations. On this basis the priority list lacks scientific rigour. Consequently, there is a lack of ability by the government to scientifically claim that use of the scheme will result in improved environmental outcomes.

A key issue for AEBN is the potential for misinterpretation of the meaning of EPR and its confusion with other mechanisms that industry adopts to improve environmental outcomes via product changes and management. AEBN particularly wishes to separate the term Product Stewardship from EPR. Product Stewardship is a far broader approach to product management in which environmental outcomes are the primary goal. As a result of the broad approach that product stewardship can encompass it is not as easily regulated, nor should it be.

The National Packaging Covenant, largely through its use of Action Plans, is considered by AEBN as one example of product stewardship. It is not to be confused with EPR. The EPR Scheme document calls the NPC a voluntary EPR scheme. AEBN considers this to be misleading and confusing the terminology between product stewardship and EPR.

***R1 AEBN recommends that:***

- ***EPR regulations be only applied after a scientific assessment of its impacts demonstrate a clear improvement in environmental outcomes.***
- ***EPR be better defined along with Product Stewardship with a clear delineation between the two approaches.***

**2 Limitations on products**

Internationally Australia is a small player in the development and design of new products. As a consequence, it is extremely difficult for Australia to dictate changes to product design and material mix. Most of the international design centres are progressing down the path of product stewardship. Many products currently listed under the EPR priority list will change without any effort from Australia.

For example, the Japanese electronic industry is leading in undertaking steps to phase out lead based solder. The United Nations has a taskforce called Global Mercury Assessment, which may result in international efforts to reduce and perhaps ban mercury from consumer products. The United States has already passed legislation banning mercury thermometers to the general public.

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<sup>1</sup> This would largely apply to low-energy wastes and where energy from wastes is not an option. Purification via recycling will require energy input, however going with the flow, under the second law of thermodynamics, energy from waste goes with the flow and increases entropy.

Nevertheless, leading companies will welcome regulations that support their products over other products that do not have the same level of product stewardship. AEBN considers that implementation of EPR regulations too early, when only a small portion of products will comply, would be punitive, rather than striving to achieve an improved environmental outcomes. The punitive nature will result if NSW leapfrogs international product design changes. Australian industry, except for a few, will have little means in which to comply.

***R2 AEBN recommends that use of EPR regulations recognise the limitations to product design by Australian companies, and be applied to achieve an improved environment outcome, and not for a punitive action.***

### **3 Developing new regulatory guidance for the beneficial use of wastes**

The current and expected rapidly rising costs of landfilling wastes, accompanied by the government's strong drive to reduce waste to landfill, is already placing increasing pressure on industry and business to find alternative management methods for their wastes and by-products. The EPR Scheme is another means in which to pressure certain priority sectors of industry to reduce waste to landfill.

Landfill prices are expected to increase sharply over the next 8 years. Currently the waste levy in Sydney is at \$18.20 per tonne, but is estimated to increase to \$32 by 2010. In addition, the reduction in solid waste landfill capacity in the Sydney area will force landfill prices even higher. Prices in the order of \$130—\$150 per tonne are expected to be reached over the next 10 years, given the current waste market.

As a consequence of these cost increases, AEBN is sensitive to EPA guidelines and policies that affect alternative uses for wastes. Industry produces a wide range of wastes, many of which are recycled or reused and some are landfilled. With greater cost pressure the incentive to better segregate wastes—or find alternate uses for wastes that do not have to go to landfill—is already considerable and will obviously increase.

Under ever-increasing legal scrutiny, industry and business turn to government to produce policies that will provide certainty and an appropriate level of legal comfort for actions undertaken in following such policies. Unfortunately there is a void in regulatory and policy guidelines on how to beneficially use many waste types other than disposing them to landfill. AEBN considers there is a lack of government guidance and acceptable practice for the management of industrial wastes for beneficial purposes. The EPA needs to discuss with industry the lack of government approved guidance on alternative means to divert waste from landfill and red tape which currently slows industry's ability to develop and enhance the beneficial use of post consumer wastes.

The current waste management system for controlled wastes requires that company sites that accept controlled waste to have a waste facility licence. This is an enormous burden especially if the quantities of the waste are small.

Further plaguing the acceptance of waste resources in industrial processes are the planning laws. Uncertainty and community opposition to any type of waste management infrastructure development greatly reduces the commercial incentives for industry to invest in such projects. This is typified by the caution of the NSW cement industry to accept various wastes. The economics and willingness is there but the planning process and its uncertainty are impeding the use of tyres and other wastes into NSW cement kilns, which is a widespread practice in other states and overseas.

Industry only has the Waste Guidelines as an official method for classifying of waste, but it is focused, mainly on acceptance to landfills. Ideally industry requires a set of criteria for the acceptance of treated or special types of waste for use in areas and products outside landfills<sup>2</sup>. Areas for consideration in developing such guidelines on the beneficial use of wastes include:

- Use in stabilised or sealed earth works, (ie contained fill material)
- Energy from waste (including permitting and upgrading cement kilns to accept wastes as well as the use of the alternative technologies energy from waste to accept a broad range of industrial wastes)
- Use in marine environments
- Use in concrete, asphalt and other bonded matrices for non-residential purposes, for those exposed to weather and sealed from weather
- Use in soil conditioners
- Landfarming of wastes
- Re-used in building products
- Re-used in other non-residential products
- Re-use in infrastructural projects

AEBN has taken a step in the direction of developing new guidance materials to progress alternative uses of wastes currently sent to landfill. At the date of writing this submission the final draft of *AEBN's Scoping Study: Blending Various Wastes Resources Into Asphalt* recommends the development of environmental guidelines for acceptance of various wastes into asphalt. The paper is supported by many references of environmental guidance values used overseas.

***R3 AEBN recommends that the EPA consult and innovate with industry on various innovative recycling approaches to:***

- *Cut regulatory red tape, especially planning and EPA licence requirements*
- *Develop new end product based environmental guidelines to promote innovative recycling of waste materials*
- *Accept products by end users that contain various waste materials, such as asphalt, concrete and other large volume fill type products.*

Should you require to discuss the recommendations please contact me on 9924 7515.

Yours sincerely

*Andrew Doig*

ANDREW DOIG  
Director  
AUSTRALIAN ENVIRONMENT BUSINESS NETWORK

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<sup>2</sup> AEBN envisages waste that is treated and/or passes certain environmental criteria, like the clean waters TCLP limits used by the US EPA, could be used in major infrastructural projects, such as dams, roads and retaining walls etc.