

Overview of the State of EPR in Canada: What Have We Learned?

Across Canada extended producer responsibility policies, legislation and programs have grown in number, scope and scale over the six years since EPRC was founded in 2011. With the exception of Alberta, EPR has been broadly accepted by provincial governments as an effective environmental and waste management policy and regulatory instrument. The territories are faced with unique circumstances but are nevertheless considering EPR policies. Environment Canada has the legislative means to mandate EPR nationally for products containing toxic substances, such as mercury lamps, but to date has not used the authority.

Some areas of EPR Achievement

With some notable exceptions, such as packaging in the Atlantic provinces, the EPR program vision set out in the CCME's 2009 Canada-wide Action Plan for EPR has been largely fulfilled or is underway for the Phase 1 list of priority products that the Plan set out for management by 2015. Significant tonnages of products and materials that formerly would have ended up being disposed of are now recovered and recycled through over 120 full EPR and a few shared responsibility programs.

Since 2011, EPR has also become increasingly institutionalized with the formation and operation of regulated and voluntary regional, provincial and national producer responsibility organizations with large budgets and significant staff resources. Producers, manufacturers, brand-owners, distributors, and retailers have adapted to a world where responsibility for their products has been extended to the end-of-life. New markets and uses for recovered materials have been created and there is a new generation of companies that service EPR programs and operate recycling facilities at regional and national scales under contract to producer responsibility organizations.

Jurisdictions have responded positively to EPRC's efforts and our reporting has served a useful function in tracking and documenting EPR progress measured by commitment, implementation and accountability. It is clear that there is no serious debate, even from the private sector, about the reality of EPR in Canada. Attention is instead increasingly focused on where and how to further apply EPR, how programs can be made to perform more efficiently and effectively and especially on better oversight, accountability and reporting.

Continuing EPR Challenges

Despite these documented successes, there continues to be major challenges. Firstly and most importantly, the CCME goal for action by 2017 on the Phase 2 product list (construction and demolition materials, furniture, textiles and carpet, appliances and ozone depleting substances) will not be met. Construction and demolition materials are a major component of the solid waste stream both by weight and percentage and despite a few studies, small pilot programs and private initiatives there has been little progress in this area. With the exception of B.C., it is disappointing that there has been no action across the country on large and small appliances despite readily identifiable producers for such products, eminent recyclability and marketable recovered materials.

From its beginning over 20 years ago, EPR has been viewed as an environmental policy instrument that would provide incentives for producers to improve the environmental footprint of their products throughout the

product life cycle. However, the OECD's review of EPR in 2015 sadly confirmed that design for the environment improvements attributable to EPR have been few in number and anecdotal at best. This is certainly the case in Canada. Canada's relatively small size in a global marketplace is one reason but one of the other challenges is the phenomenon of flow through costing whereby producers of designated products do not raise program funds directly themselves as a cost of doing business but pass costs through to consumers through visible point of purchase fees, sometimes known as eco-fees, or environmental handling fees. There are, however, a number of programs, such as those for packaging, cell phones and pesticide containers, where the costs of end-of-life management are absorbed into the product price and are not separately identified to consumers. In addition, and with the notable exception of packaging, such fees, either visible to the consumer or internal to the producer, do not differentiate products based on their end-of-life recyclability or overall environmental performance

EPRC has commented before that program performance and accountability for EPR programs are areas where there is still a need for improvement. There is significant weakness in the setting of performance targets for programs. Often independent reporting on program performance is not required and in most cases, there are no penalties for failing to meet targets, suggesting that targets may be simply aspirational. There is also concern that third-party agency and departmental oversight functions are not sufficiently resourced to keep up with the performance measurement and enforcement demands imposed by the growing number and scope of programs.

One other major issue that has only occasionally publicly appeared in Canada but lies close to the surface is related to the prevalence of single dominant producer responsibility organizations. This stands in contrast to Europe where competitive producer responsibility organizations and markets have been created within product categories in response to government regulation or to the intervention of competition authorities. The Canadian Competition Bureau has raised cautions about how PROs are structured and operate in Canada but has not intervened directly. While a free and open marketplace is broadly sanctioned it is only in B.C. that smaller PROs have formed but failed to successfully compete with the larger established producer organizations. It is also in B.C. that legal action is currently being taken by a processor regarding the structure and operation of the EPR program for tires. While concerns about tonnage allocations, contracting and program structure have been raised in other parts of the country, the issue of competition within EPR programs remains below the radar of most jurisdictions.

Lack of program harmonization also continues to be problematic causing an unnecessary and expensive administrative and financial burden on producers and indirectly on consumers. Provincial regulations and standards have not aligned product lists or definitions, targets, key performance indicators or reporting requirements. In true Canadian fashion, all jurisdictions do the same thing differently with significant and unnecessary system wide costs. Partly because of this there is no national tracking of waste diversion attributable to EPR programs and these programs are not reported on by Statistics Canada in its national reporting on waste generation and waste diversion.

EPR as one means towards zero waste and the circular economy

It is apparent that EPR policies and programs in Canada are rarely managed in coordination with other, broader, higher level environmental policies and EPR regulations are commonly stand-alone instruments, albeit in the company of other EPR initiatives. The CCME Action Plan on EPR strongly suggested that EPR be buttressed with other supportive policies such as landfill bans, green procurement and disposal surcharges but while there are examples – both Manitoba and Quebec have disposal surcharges – these kinds of supportive measures are not widely used. In the majority of jurisdictions, EPR is not seen in the context of sustainable development, climate change and the emerging concepts of zero waste and the circular economy. Manitoba, Quebec and more recently Ontario's new Waste Free Ontario Act are exceptions to a degree but even here, there can be questions about the strength and commitment to these higher-level policy goals and what part

EPR can play. In Ontario's case where there are explicit commitments to a circular economy strategy, it is likely that the primary focus of action arising from the legislation in the immediate future is going to be on the mechanics of transitioning the existing EPR programs into the new legislative framework and not on broader environmental goals.

Conclusion

It has become clear over the six years that EPRC has been surveying and reporting on EPR that EPR has become a well-established regulatory instrument that has been successfully used by governments of all political persuasions. The focus over this period and before 2011 has very much been on the roll out of EPR regulations and programs. There are a number of newer challenges that follow from the successful roll out of the programs and now is an appropriate time to change gears and to focus more on the effectiveness and efficiency of the programs and on the goals, oversight, transparency and reporting that can assure both governments and the public that EPR programs are meeting their environmental objectives.

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