

Extended Producer Responsibility (EPR) On the Move: What's Next and How to Protect Your Company

Association of Corporate Counsel

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ACC E&S Network Legal Update

Agenda

- What is EPR?
- Recent EPR developments
- An EPR law is introduced—now what?
 - Legislative process
 - Regulatory process
 - Creating a team
 - Writing a plan
- Enforcement and Litigation
- Q&A

What is EPR?

EPR 101

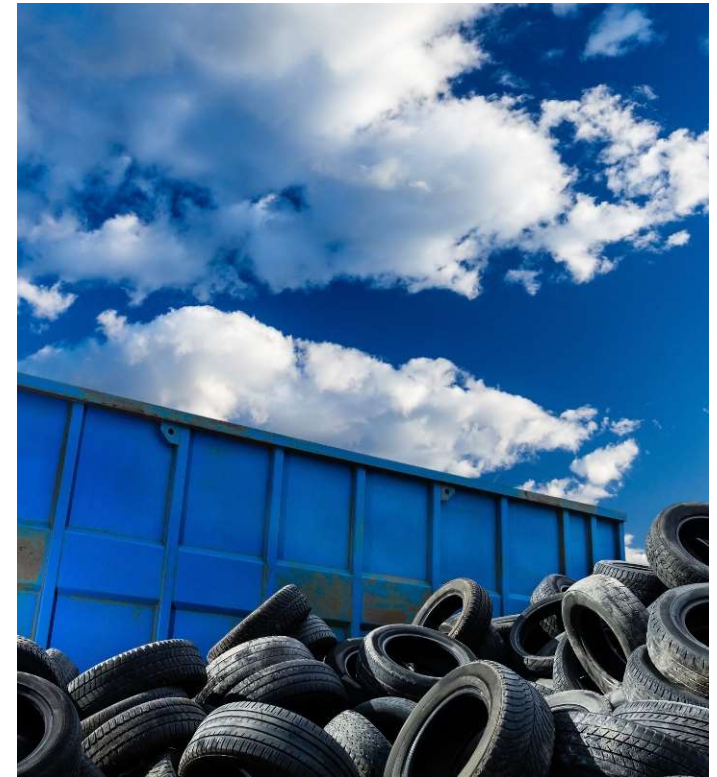
- Companies responsible for recycling or disposing of their products at end-of-life.
- Typical requirements:
 - Stewardship plans
 - Annual reporting
 - Collection and disposal
 - Funding
 - Producer Responsibility Organizations



Recent Developments

Recent Programs

- Gas Cylinders
- Tires
- Solar Panels
- Packaging!

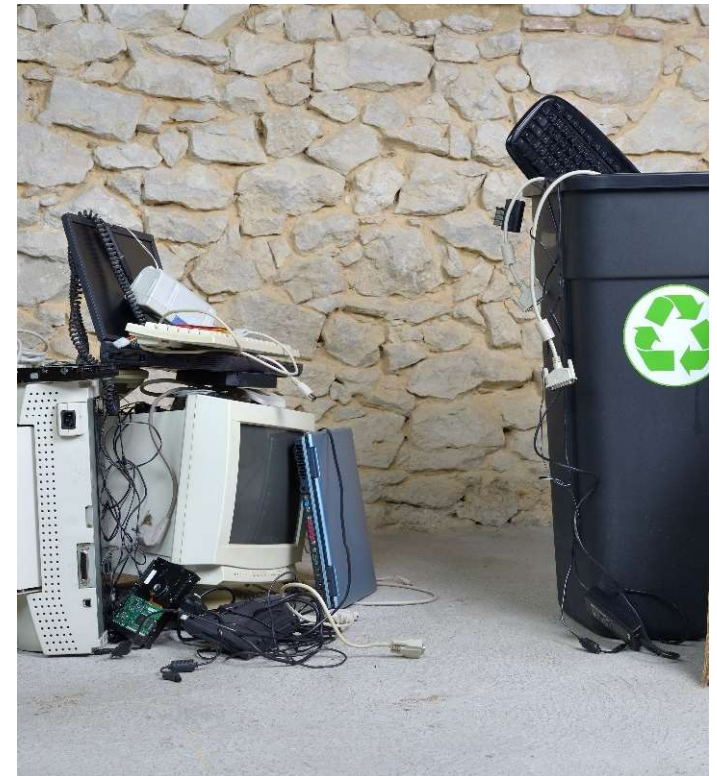


Packaging

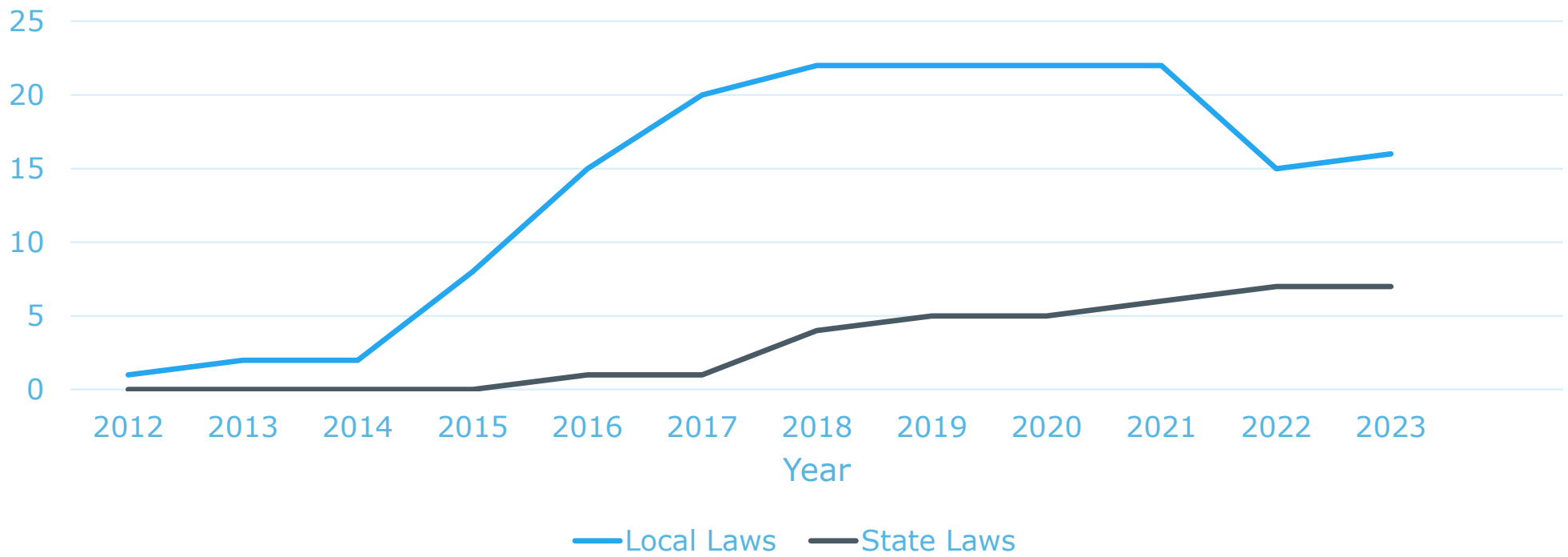
- EPR laws in 4 states (ME, CO, OR, CA)
- Bills introduced in 10+ states each of last three years
- Producer typically the manufacturer of the product that packaging is used for
- Packaging materials, printed paper, food service ware

How EPR Grows and Expands

- Webinars
- Stakeholder reports
- Draft legislation
- Lobbying
- State/county has a lot to gain



Drug and Sharps EPR Laws



Typical Map – Drugs EPR



What's Next?

Household Hazardous Waste

- Signed June 2023; effective January 2025
- "...state law has required municipalities to offer collection of HHW and the **costs have grown significantly**. This law requires manufacturers to help fund this collection system..."

Batteries

- 2014: Vermont, single-use household batteries
- 2021: Washington DC, single-use and rechargeable
- 2022: California, single-use and rechargeable
- 2023: Washington, single-use, rechargeable, and e-mobility device
- 2024: New Jersey, includes EV and hybrid vehicle

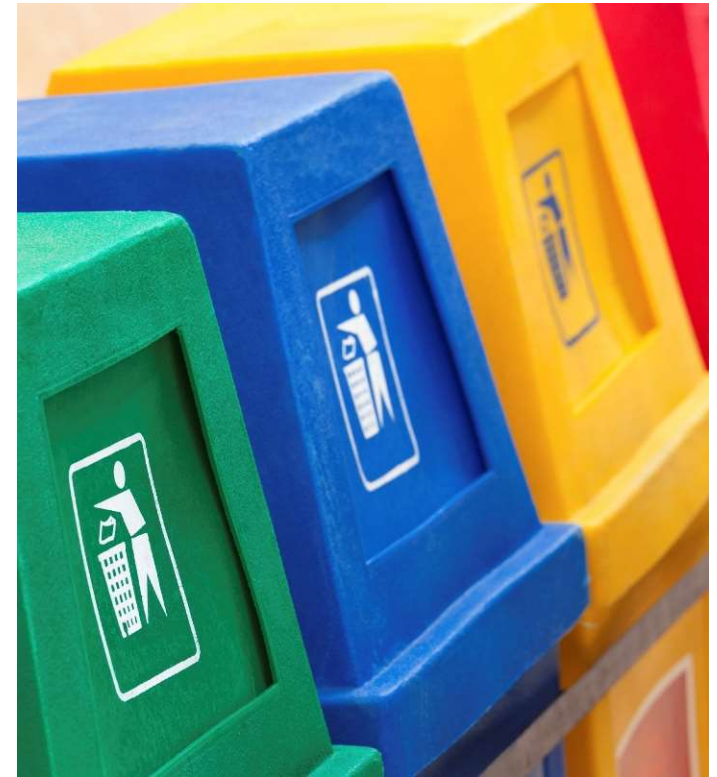
On the horizon...

- Textiles
- Lightbulbs (incandescent, fluorescent, LED)
- Packaging
- Household appliances containing refrigerants (air conditioners, refrigerators, freezers, dehumidifiers)

EPR Advocacy

Preparing for potential EPR advocacy

- Start voluntary initiatives
 - And publicize them!
- Monitor legislative developments
- Be prepared to break the glass if necessary



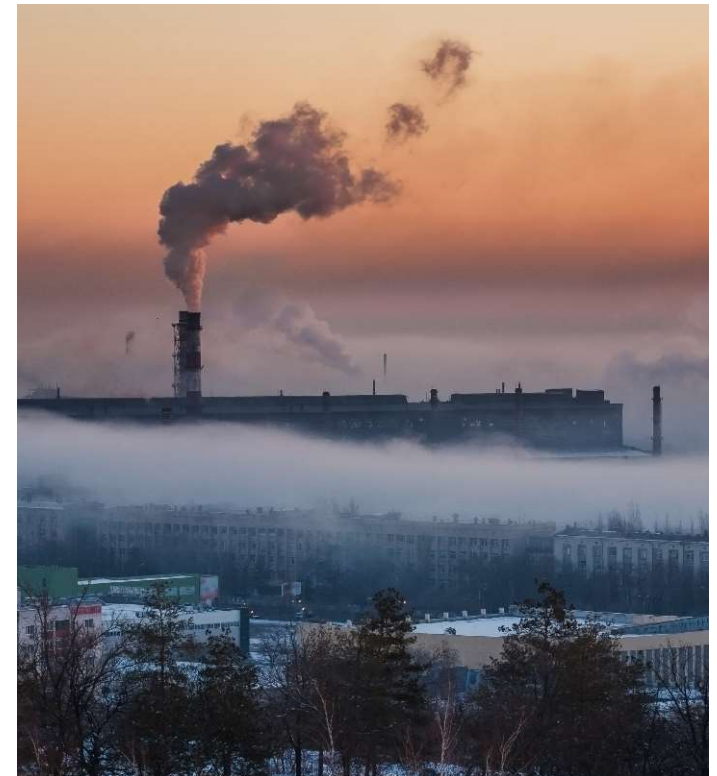
What to watch for in proposals

- “Covered Products”
- “Producers”
 - Does one industry sector shoulder too many burdens?
 - Small producer exemptions?
 - Do not count on rulemaking



What to watch for (cont.)

- Funding mechanism
- Recycling/disposal restrictions
- Implementation timeline
- Mandated performance goals



What to watch for (cont.)

- “Free riders”
- Preemption
- Sunsets!
- Antitrust protections



Legislation Passed-Now What?

Evaluate legislation for legal challenges



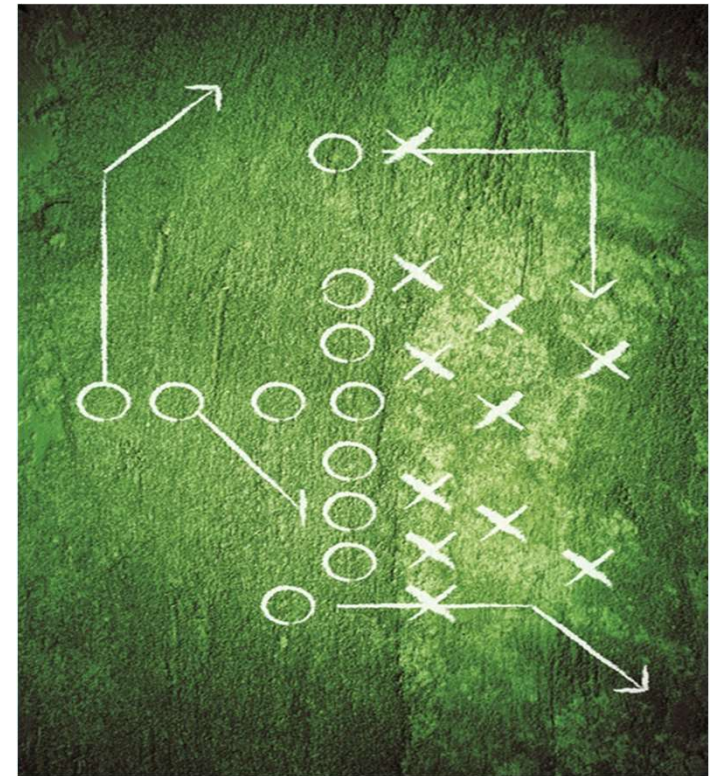
Participate in regulation promulgation process



Seek guidance or FAQs documents

Create a Team

1. Organizing producers
 - a. Retailers?
 - b. Distributors?
2. Legal support
 - a. Advice on how to comply with EPR law
 - b. Support forming necessary corporate entities
3. Program implementation
 - a. Consultant?
 - b. Steering committee of producers?



Plan Writing

Plan as a Permit

- EPR laws typically grant significant discretion to producers to draft a plan that complies with law
- Collaborative process with authority
- Compliance with plan *should* mean compliance with law

Plan as Enforcement Tool

- If created additional requirements, regulatory authority can enforce those requirements
- Balancing requirements vs. goals

Enforcement

Enforcement

Entity approving plan likely to be the same entity that enforces

A “win-win-win” for state

Litigation

- Challenges to legality of EPR programs
- Attorney general enforcement
- Consumer lawsuits



Questions?

Thank you!



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