EPR FOR PACKAGING: THEN AND NOW

A deep dive into the issues, and how to win

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UPSTREAM
There's a better way than throw-away
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Five years ago, my colleague Jamie Rhodes and I authored a piece for Plastics Recycling Update called "EPR is the Answer." It was the culmination of four years of work to develop and pass extended producer responsibility (EPR) for packaging legislation in the United States, which would require consumer brands to pay for the collection and recycling of their packaging, plus litter prevention and clean-up and public outreach.

For us, the drivers were the abysmally low-recycling rates for many materials; the waste of resources in landfills and incinerators; the challenges recycled materials faced in the marketplace versus virgin; the costs to local governments and taxpayers; and the wasted opportunities to build better systems for reducing unnecessary packaging and get people what they want and need without all the waste.

Over that time, UPSTREAM had facilitated stakeholder dialogues between the solid waste and recycling industry, local governments, brands, packaging suppliers and retailers. We developed multiple models of legislation and worked with our partners across the country to introduce them into half a dozen states.

We got close in a couple states but ultimately failed. Several of the brands that had tentatively supported EPR pulled out after leadership changes, and the momentum stalled. I could see the writing on the wall and felt demoralized. Instead of a galvanizing message to refocus efforts on amending and getting legislation passed, the piece for Plastics Recycling felt more like a post-mortem on what went wrong.

At that time, it seemed like we were a "solution in search of a problem." The general sense from a majority of policymakers was, "*I have a blue cart or a blue bin. Why should I care about who pays for recycling? Haven't we already solved this problem?*" There was also confusion about the role of bottle deposits and beverage companies' attempts to get bottle-bill states to "trade" out their existing deposit systems for EPR – a deal-breaker for us and many of our allies.

In 2016, China was still taking our low-value recyclables, and cities could make a little money or at least break even collecting even some of the lowest-value plastics. While they would be happy to take money from brands under EPR, local governments didn't want to lose control of their operations. And the big players in the solid waste and recycling industries didn't want their business models upended. Perhaps, most of all, consumer brands and their associations – which led the opposition – didn't feel like they had to do anything. A little sprinkling of money here and there on recycling initiatives for some good PR seemed to be enough to keep the regulators at bay.

IN SEARCH OF A "POSTER CHILD" FOR EPR

As the wheels were coming off the "EPR-for-packaging bus," we were starting to work more closely with organizations who were drawing attention to an emerging environmental crisis that we now call plastic pollution. Groups like the 5 Gyres Institute, Algalita, and the Plastic Pollution Coalition were literally sailing into the ocean gyres of plastic, conducting citizen science and documenting the problem for the world to see.

Moreover, artists and marine biologists were taking pictures and videos of the impact of plastics on marine wildlife and coastal ecosystems. Pictures of dead whales and albatross chicks with their bellies full of plastic, sea turtles eating plastic bags, and the video of a turtle having a plastic straw removed from its nostril went viral around

the world. Activists in the Global South started documenting the impact of the rampant plastic pollution in their streets, rivers and beaches and the human toll this pollution was taking in terms of public health. Reports were authored, documentaries developed, and media stories proliferated. In a very short time, the world became aware of and concerned about an environmental issue that was previously only understood by a relatively small group of scientists.

With our realization that plastic pollution was the "poster child" for why we needed corporate accountability for packaging waste (partly through EPR), we pivoted our work to support the development of #breakfreefromplastic (BFFP), a global movement of more 2,000 organizations working together to solve plastic pollution, and we also started a project to help city governments develop long-term strategies to address plastic pollution and waste. One of the most impactful strategies that BFFP developed was to turn beach clean-ups, which until that point had solely focused on counting and identifying the types of plastic products found in the environment, into "brand audits" – which would also ID and track the brands associated with the plastic products collected.

We now had a tool to show which brands were the biggest plastic polluters in the world, and not surprisingly, everywhere you looked – from Southeast Asia to Africa, to the US and Europe – the same brands kept showing up: Coca Cola, Nestle, Unilever, Pepsi-co, P&G, etc. What had been previously under the radar was now a full-blown PR crisis for these companies.

CHINA'S NATIONAL SWORD POLICY CHANGES THE GAME

In the spring of 2017, China announced their "National Sword" policy – building off their previous "Green Fence" policy. They began to inspect and halt shipments of low-value mixed recyclables. Up until that point, China had been accepting more than half the world's recyclable materials. Suddenly, bales of mixed-plastics which city governments could unload for a small profit became a massive cost. As one Boston City Councilor told me, "When I started, we could sell mixed plastic bales for $10 a ton. Now it costs me $140 a ton to recycle them and only $80 to send them to a landfill. You do the math."

And of course, local governments across the country did the math. Some decided it was still worth it to "try to recycle" the low-value recyclables, while others shut down their recycling operations as soon as the math didn't add up.

In addition, more reports, documentaries and media stories about the failure of recycling to reduce the impacts of commerce on the natural world surfaced. And the "big lie" promoted by the plastics industry that all plastic is recyclable started to break down. Suddenly, the sprinkling of corporate dollars for recycling initiatives here and there wasn't enough anymore.

FALSE SOLUTIONS PROLIFERATE

As the attention on single-use plastics heated up, large-scale commercial interests began promoting a new narrative saying, "Don't use single-use plastic. Use my single-use product, it's made out of_____(*fill in the blank – paper, corn, aluminum, sugar-cane*)." I started to get elated emails from friends and colleagues with pictures of bio-plastic cups and "compostable" paper boxes attached with optimistic notes about solving plastic pollution and waste.

But we knew better, and our team started documenting the available science showing that switching from one single-use product to another just trades one set of environmental issues for others. We might stop plastic in the ocean, but now we're creating more climate pollution, or using more toxic chemicals, or mowing down more trees.

However, we also saw that the science showed that for the environment, reuse beats single-use every single time. And if we can figure ways to get people what they want and need without generating waste, not only will we have done a great thing for the environment, but we can also save businesses and cities money, and create huge new opportunities for entrepreneurs and investors to build the new reuse economy.

EPR FOR PACKAGING TODAY

Over the last two years, as we focused more of our efforts on building the rationale, policies, infrastructure and public support for the new reuse economy, some of our partners began to revive the EPR for packaging debate.

And this time, the landscape is completely different.

With China's National Sword policy still firmly in place, the economics and benefits of recycling under scrutiny, and pressure on brands from the bad PR around plastic pollution, a big opportunity has opened up to develop and pass public policy around packaging waste.

However, as the EPR for packaging debate has been revived, the old stories and dynamics have resurfaced. And they largely have to do with money and control. Specifically, who pays for what? How much? How is the funding apportioned across the affected parties? And on the control side – who controls how that money is spent? On what? Who wins and who loses?

To bottom-line it, EPR is complicated, and it involves a lot of stakeholders. And because it's complicated, it's easier for powerful interests to shut it down or weaken it to serve the lowest common denominator. And unfortunately, as the EPR debate has resurfaced, it's been missing a huge opportunity to focus further upstream on source reduction and reuse – and building better, more circular systems – rather than just on who pays for recycling.

As Tim Debus from the Reusable Packaging Alliance writes in his excellent blog on EPR:

> *Circularity is about eliminating waste as a first option by keeping products at their maximum use and highest value, placing emphasis on packaging's durability, reusability, and repairability... US EPR legislation being considered today is more about strengthening the flow, recovery, and economics of waste materials. This is a fine but limiting goal, and it should be a part of a broader strategy for systems change favoring product longevity and value.*

OUR RECOMMENDATIONS

While we're not focused on EPR like we once were (we've got our hands full working to create the new reuse economy :), we're still peripherally engaged working as connectors and catalysts to ensure the right conversations are happening with the right people at the right times to move good EPR forward. Here's some thinking from an EPR veteran with the battle scars to prove it:

1. **EPR for packaging is a foundational policy for a circular economy, and we need to get it firmly established in the United States.** The US has been the holdover from the rest of the Global North and increasingly the Global South. The same companies that are still trying to resist EPR here are happily living with it (or coexisting peaceably) elsewhere.

2. **But the devil is in the details.** No surprise here. There's good EPR and bad EPR policy, and much of that has to do with how it's structured, who is involved in the decision-making, what the measurements of success are, and how it's enforced.

3. **EPR is not a panacea.** And it's not the ceiling, it's the floor. With the rhetoric from certain brands and associations around EPR, you would think it's either the pinnacle of progress or the most onerous regulation imaginable. The bottom line is that EPR as a principle – getting corporations involved and helping pay for the stewardship of the materials they put into the marketplace – is a starting point. But to get to a truly circular economy (that prioritizes the reduction of the resources we take from the planet while also growing a better standard of living for people around the world), we're going to need a lot more, including expanding container deposits and source reduction/reuse policies. UPSTREAM has developed a Policy Ladder to the Circular Economy to show how EPR fits into a series of policies that get us there. *Hint: EPR is one of the bottom rungs.*

4. **EPR shouldn't just be about who pays for recycling and how to optimize it.** The impacts of packaging waste are about more than whether packaging ends up in a landfill or a recycling facility. The upstream impacts of relying on "one-way, throw-away" packaging – whether it goes into the garbage or the recycling bin – can be greatly minimized by developing new reuse/refill systems for delivering the same products to consumers. Similarly, reducing unnecessary packaging where practical can have a huge impact on the overall environmental footprint of product delivery. Lastly, a recycling focus doesn't prevent or mitigate the packaging in the environment. **To accomplish broader goals, EPR for packaging legislation should:**

- **Set material-specific recycling targets.** Don't let one material subsidize the other – for example, collecting a lot of paper to offset the abysmally low recycling rates for plastics. Better to let each material (and the companies creating and using them) pay its own way.
- **Include targets for litter prevention and mitigation, and specific outreach and education around achieving these goals (not just recycling targets).** This is fairly straightforward: if you want to stop plastic pollution, you need more funding and better systems in place to prevent and mitigate it. EPR gets the brands involved rather than just local governments and taxpayers.

5. **Most importantly, EPR should also include packaging reduction and reuse/refill targets.** Remember that the first two Rs – reduce and reuse – are way more impactful for the environment than recycling. Critical studies on the benefits of recycling have yet to demonstrate a significant impact in reducing stress on the natural world from commerce. But getting people what they want and need without generating any waste in the first place always wins over recycling and single-use. Just like 30 years ago, when we didn't have much recycling infrastructure, we're at a similar point with reuse infrastructure. Then as now, it's going to take public policy and public and private investment to build this new infrastructure to transform how we get and use our products. Some thoughts here:
    - **EPR should include source reduction plans that achieve reduce/eliminate, reuse and refill.** Binding reuse targets create the conditions in which businesses can safely invest in the associated technology and infrastructure for reuse to scale. For example, for the following 5 business sectors that are using single-use packaging where there are already reusable systems available, each individual company should use reusable packaging at a rate of 25% within 5 years and 50% within 10 years of adoption *(*these are some of the proposed rates in the EU)*. 1. Food service: take out, delivery of prepared meals, meal kits; 2. Consumer packaged food and beverage products; 3. Consumer packaged Cleaning Products; 4. Consumer packaged Personal Care products. 5. Transportation/shipping packaging, both for wholesale and retail goods. *We are currently drafting legislative provisions for this recommendation. If you would like to stay engaged, please sign up for our e-mail list.*
    - **Follow the Reusable Packaging Alliance's recommendations in legislative drafting:**
        - **Exempt reusable packaging** from the scope of EPR covered products.
        - **Treat waste prevention (reuse) differently from waste management (recycling).**
        - **Establish EPR for all single-use packaging materials** and not just for plastics.
        - **Invest in reuse operations** in addition to recycling facilities.

I believe this will be the year that EPR for packaging moves forward in the United States. The conditions are ripe, and policymakers are engaged and educated around the issues in a way that they weren't five years ago. It's going to take a lot of hard work by stakeholders on all sides to get to the finish line. And the reality is that everyone is going to have to give up something to gain something more in its place.

I'm going to go back to Tim Debus from the Reusable Packaging Alliance who writes:

> *We need to make sure that EPR for packaging is not just a good tactic for increasing material recovery and recycling rates, but also a circular economy strategy to stimulate real change in preventing waste creation in the first place... If US policymakers look to the European experience for EPR, we can take a learned shortcut to a more advanced and impactful circular policy plan with an EPR component.*

It won't be easy, but the results will be worth it. Let's get it done.

For more information, visit EPR for Packaging in our Learning Hub.