



## Review

# An examination of governance within extended producer responsibility policy regimes in North America



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## ABSTRACT

Extended producer responsibility seeks to integrate environmental impacts into the product lifecycle and achieve greater economic efficiencies in the management of products at end of life. For such integration to be actualized, however, producers may need to be accorded greater programmatic authority and flexibility than is often in some EPR policies that stipulate defined roles for other entities along the product chain. The proper allocation of responsibility among the parties and, in particular, the roles of the producers and local authorities remains a principal component of EPR policy construction. The analysis outlines four broad categories of financial and programmatic responsibility that currently reside within EPR programs in North America. The article concludes with recommendations for a research agenda to further define the governance characteristics that result in effective and efficient EPR programs.

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## Contents

1. Introduction.....	56
2. Overview of producer responsibility.....	56
3. Common allocation of responsibilities within EPR.....	57
3.1. Producers.....	57
3.2. Retailers.....	57
3.3. Regulatory authority.....	57
3.4. Municipalities.....	57
3.5. Consumers.....	58
4. Description of the current governance model for residential recycling.....	58
5. Private environmental governance.....	58
6. Intersection of private governance and EPR.....	59
7. Producer responsibility organizations.....	60
8. Responses to changing governance under EPR.....	61
9. Examples of governance within EPR.....	61
9.1. Full producer financial and management responsibility.....	61
9.2. Full producer financial responsibility with public management responsibility.....	61
9.3. Shared producer financial responsibility with public management responsibility.....	61
9.4. Producer responsibility with a government compliance option.....	62
10. Evaluation of governance mechanisms of EPR programs.....	62
11. Conclusion and recommendations.....	63
Acknowledgments.....	63
References.....	64

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## 1. Introduction

As extended producer responsibility (EPR) is applied to a greater number of products in an expanding number of jurisdictions, the question of governance, the processes and decisions grant power and define actions, and the proper allocation of responsibilities amongst key parties in EPR policy regimes is receiving greater scrutiny. To further the objectives of EPR beyond simply existing as a tool that transfers a financial obligation from municipalities to brand owners and achieving the internalization of environmental costs, the identification and evaluation of effective governance strategies is crucial.

As is frequently referenced, the changing, more complex nature of environmental problems necessitates not only innovative strategies, regulatory and otherwise, but also necessitates new governance mechanisms that, in the case of waste management and recycling, engage a multiplicity of actors including producers, local authorities, recyclers, and global commodity markets (Agrawal and Lemos, 2007). The diffuse supply chains for materials and products are indicative of the trend of globalization and not only require greater interaction among actors along the supply chain but necessitate a governance model that that departs from the prevailing public authority model that is in place today. Extended producer responsibility is an environmental policy tool that is illustrative of a governance mechanism that reflects many of the attributes associated with the conceptualization of private environmental governance, an approach to governance that is led in large measure by private actors.

The further definition of enabling private governance mechanisms within EPR may be critical if the policy tool is to achieve the vision of producer responsibility of creating informed decision-making and robust feedback throughout the product lifecycle. As Kalimo and colleagues (2012) observe, such full authority, whereby the producer needs the autonomy to fulfill the regulatory objectives and responsibility for their costs, may be necessary if EPR is to fully achieve the envisioned objective of stimulating product design for environment activities by firms. While there are a myriad of governance models within the context of EPR ranging from the firm level to governance structure within collective compliance organizations, this analysis focuses on the diverse approaches to allocation of responsibility, often stipulated through regulation, between producers and governmental authorities.

While a substantive body of literature exists that examines the changing nature of governance for a range of environmental governance, voluntary environmental management activities by private actors such as those engaged in product standards and certification programs such as the Forest Stewardship Council (FSC), has dominated the research. The governance of EPR programs has not received such scrutiny, in part due to, as Lane and Watson (2012) assert, that producer responsibility derives legitimacy from government rather than non-governmental organizations. However, extended producer responsibility occupies a hybrid governance structure or “mixed regime” as conceptualized by Falkner (2003). Under an EPR policy regime, a legislative body or regulatory authority imposes financial and often performance obligations on producers for the collection and recycling of products but the program design and management is conducted by producers, often realized through producer responsibility organizations (PRO), an illustration of the model of self-organization by producers. Despite the hybrid nature of governance for EPR programs, an analysis of the role, function and challenges facing producers in EPR regimes borrow heavily from the literature of private environmental governance.

The analysis examines the role of private governance within EPR and develops a typology for characterizing differing governance models under EPR. The paper outlines the allocation of

responsibilities often assumed by principal parties under an EPR regime and follows with a discussion of how “private governance” is illustrated within EPR and identifies how this departs from the prevailing municipal service model. Finally, a structure and recommendations for evaluation and future research are suggested.

## 2. Overview of producer responsibility

Extended producer responsibility is a policy tool that extends up and down the product chain and is intended to internalize the environmental costs of products and materials thus spurring the design for greener products with a smaller environmental footprint (Dubois, 2012). EPR seeks to embed within private enterprise the responsibility for the design and implementation of strategies for the collection, transportation and processing of discarded products. By transitioning the ‘end-of-life’ management costs to producers from municipalities, an incentive is created for producers to achieve greater economic efficiencies throughout the life-cycle of their products from product and service design through the ‘end-of-life’ management system. This enhanced efficiency in the context of ‘end-of-life’ management can be achieved through greater consistency across jurisdictions, product design changes to facilitate end-of-life management and investments in infrastructure and technology as well as via public outreach and education efforts.

Extended producer responsibility can be characterized as embracing an innovative strategy that is a public policy strategy that builds on corporate social responsibility (CSR) activities while recognizing the institutional barriers that create limitations for the local governmental model.

Extended producer responsibility functions as a remedy for the ineffectiveness of government, either actual or perceived to address problems with significant economic and social features (Buclet and Godard, 2001). Specifically, EPR is a policy reaction to the limitations of local government funded and administered recycling initiatives to achieve sustained and effective programs and as well as the inability of these efforts to spur producers to implement design for environment activities and product service strategies. As Kroepelien (2000) noted, EPR through the engagement of direct market actors may result in a fundamental rearrangement of the institutional relationship between public authorities and producers.

Extended producer responsibility is promoted as a market-based, life-cycle-oriented instrument that is positioned to be more effective than traditional “command and control” regulatory measures to address the environmental impacts, including end of life management, posed by the product chain in today’s globalized economy. While the traditional regulatory model often has limited capacity to address environmental externalities (Esty, 1999), market-based instruments are designed to promote the internalization of these externalities (OECD, 2007). By engaging in the marketplace, EPR often results in the institutional realignments of both private and public sector actors (Kroepelien, 2000). The policy emphasis on mitigating externalities as well as the engagement of non-state actors in governance falls within the ecological modernization theoretical framework (Sonnenfeld and Mol, 2002).

Producer responsibility, while instituted in policy measures in Europe starting in the early 1990s, most recognizably with the German Packaging Ordinance in 1991, is now embraced globally, particularly for packaging and waste electronics (Sachs, 2006). Typically, producer responsibility regulatory measures are implemented by one or more producer responsibility organizations (PROs), often referred to, as stewardship organizations in the North American context, that are the organizational vehicles for producers to execute the regulatory requirements. However, the formation and operation of PROs has garnered scrutiny from competition authorities and often necessitated a legislative response,

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