Product Stewardship Recommendations Report

Establishing a comprehensive product stewardship approach to reducing environmental and health risks posed by the use or disposal of products in Minnesota.

Minnesota Pollution Control Agency

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Introduction

This report fulfills the legislative requirement for the Minnesota Pollution Control Agency (MPCA) to develop recommendations related to a comprehensive framework for product stewardship.

The report provides an overview of product stewardship, including an overview of product stewardship in Minnesota and a summary of product stewardship policy development in North America. The report provides the recommendations, including an analysis that guided the MPCA's decision-making.

The product stewardship study and recommendations report is available for download from the MPCA's website (2009 Legislative Reports): http://www.pca.state.mn.us/legislature.

Legislative charge

The following language was enacted during the 2008 legislative session and directs the Minnesota Pollution Control Agency to:

> Develop recommendations for establishing a comprehensive product stewardship approach to reducing environmental and health risks posed by the use or disposal of products. These recommendations shall be submitted to the chairs and ranking minority members of the senate and house committees with jurisdiction over environmental policy and environmental finance by January 15, 2009. The recommendations shall include, at a minimum:
>
> 1. a set of criteria to be used to evaluate products proposed for product stewardship solutions
>
> 2. a process for designating products for product stewardship solutions and the role the Legislature would play in that process
>
> 3. typical components of product stewardship plans
>
> 4. options to facilitate the creation of industry-managed stewardship management organizations
>
> 5. methods to identify and monitor progress toward stewardship performance goals for specific products
>
> 6. strategies to implement the use of standards, certifications, and eco-labels to promote environmentally preferable products
>
> To the extent possible, the recommendations must be consistent with existing product stewardship programs in North America. In developing the recommendations, the commissioner must consult with manufacturers, retailers, recyclers, environmental advocacy organizations, local units of government, and other interested parties.
>
> For more information, please see Article 5, Section 3 (starting on line 59.21): https://www.revisor.leg.state.mn.us/bin/bldbill.php?bill=ccrhf1812C.html&session=ls85

Process for developing recommendations

In developing the recommendations, the MPCA consulted with manufacturers, retailers, recyclers, environmental advocacy organizations, local units of government, and other interested parties.

- September-October 2008: Conducted specific stakeholder meetings with local government, environmental advocacy community, business community

- October 2, 2008: Hosted stakeholder meeting to seek input on key questions

- November 17, 2008: Issued draft report for stakeholder review

- December 4, 2008: Hosted stakeholder meeting on draft report

- December 2008: Reviewed and incorporated relevant comments

- January 9, 2009: University of Minnesota hosted a forum on product standards, certifications, and eco-labels

- January 15, 2009: Final report delivered to Legislature

Overview of product stewardship

Product stewardship is a strategy whereby manufacturers and others along the product chain share in the financial and physical responsibility for collecting and recycling products at the end of their useful lives. When manufacturers share the costs of recycling products, they have an incentive to use recycled materials in new products and design products to be less toxic and easier to recycle, incorporating environmental concerns into the earliest phases of product design.

Through the internalization of end-of-life management costs, product stewardship may offer a more economically efficient approach to addressing the collection and recycling of certain products rather than relying on fees, taxes, and disposal bans or other traditional regulatory tools typically used to encourage recycling.

A key driver for product stewardship is the desire to relieve local government of primary financial responsibility for certain products. In 2006, Minnesota counties reported spending approximately $54 million on recycling efforts in the state. For example, Hennepin County, which has operated a collection program for waste electronics since 1992, realized cost savings of $681,982 during the first program year of the Minnesota Electronics Recycling Act.

Product stewardship programs may also result in an expanded collection infrastructure, further creating more convenience for residents. For example, several electronics retailers in Minnesota are now offering the collection of certain waste electronic from households. Similarly, paint retailers have voiced an interest in collecting waste paint as a service for their customers.

Principles of product stewardship

The principle of product stewardship is that all parties involved in designing, manufacturing, selling, and using a product, or its packaging, take responsibility for reducing environmental impacts at every stage of that product's life.

Generally accepted elements of this principle include, but are not limited to the following:

1. All parties who have a role in designing, producing, or selling a product or product components assume responsibility for achieving the following goals:

   - reducing or eliminating the toxic and hazardous constituents of products and product components

   - using materials, energy, and water efficiently at every stage of a product's life cycle, including product manufacture, distribution, sale, use, and recovery

2. All purchasers and users are responsible for reducing the amount of toxicity and waste that results from their use and disposal of products, and for using products in a manner that conserves resources, including reuse and recycling.

3. The greater the ability of a party to influence the life-cycle impacts of the product, the greater the degree of responsibility the party has for addressing those impacts.

4. Parties responsible for addressing environmental impacts of products have flexibility in determining how to best address those impacts.

5. The costs of recovering resources and managing products at the end of life are internalized into the costs of producing and selling products, so that those costs are not paid for by government.

6. Performance goals are critical to the program and must be established to measure and evaluate success.

7. Government provides leadership in product stewardship in all its activities, including but not limited to, promoting product stewardship in purchasing products, conducting outreach and education, and ensuring products are recycled or properly managed at the end of their useful lives.

Background on product stewardship in Minnesota

Minnesota was one of the first states to evaluate selected products for their environmental impacts and implement strategies to mitigate those impacts. To date, the primary, though not exclusive, focus has been on products with toxic or hazardous constituents, although resource conservation (energy and water use, materials usage, etc.) has increasingly guided efforts by a wide range of stakeholders.

Problem materials designation and management

In 1989, the state legislature directed the MPCA to develop a statewide plan to identify and recommend appropriate management methods for problem materials that are currently found in mixed municipal solid waste (Minn. Stat. § 115A.956).

As defined in statute (Minn. Stat. § 115A.03, subd. 24a), *problem materials* are those materials that contribute to the release of pollutants or contaminants, air or water pollution, and/or adversely affect the safe or efficient operation of a solid waste facility (including recycling facilities).

Between 1992 and 1995, the MPCA developed a two-part plan addressing problem materials that fulfilled the following problem material management objectives:

Plan I:
- designate (identify) problem materials

- identify available capacity for processing and disposal of problem materials, including household hazardous waste (HHW)

- consider relevant regional characteristics and the impact of problem materials on specific municipal solid waste and processing and disposal technologies

Plan II:
- certify that sufficient processing and disposal capacity is available for designated problem materials

- propose a statewide plan for separating, collecting, and transporting problem materials to appropriate processing and disposal facilities

Following the completion of Plan II, the MPCA is authorized to prohibit by rule the placement of designated problem materials in mixed municipal solid waste.

Rechargeable batteries

The state Legislature enacted a statute in 1994 requiring manufacturers of nickel-cadmium rechargeable batteries to establish a collection system for those batteries.

Manufacturers of rechargeable batteries and battery-containing products founded the Rechargeable Battery Recycling Corporation (RBRC) in 1994 in response to mandated manufacturer responsibility requirements for batteries in Minnesota and New Jersey.

The federal Mercury Containing and Rechargeable Battery Management Act of 1996 allowed for the implementation of the national program to collect rechargeable batteries. Since its inception, RBRC has continued to evolve its program, expanding to include additional rechargeable battery chemistries in 2001 and in 2004 adding cell phones. RBRC is currently collecting discarded rechargeable batteries at approximately 1,500 locations in Minnesota.

The legislative focus on rechargeable batteries has not only dramatically increased the availability of collection opportunities in the state but contributed to the momentum for manufacturers to create less-hazardous battery chemistries.

MPCA product stewardship policy

In 1999, the state of Minnesota adopted the first state product stewardship policy in the United States. The policy articulated the objectives and expectations for product stewardship in Minnesota as well as criteria for selecting "priority" products. The policy also named three products—cathode ray tube (CRT) containing products, paint, and carpet—as products for attention.

For more information, please see http://www.pca.state.mn.us/oea/stewardship/policy.cfm

Following the issuance of the product stewardship policy, several approaches were implemented in Minnesota to promote product stewardship, including legislative action, voluntary industry-wide agreements, and individual company programs and activities.

Selected examples of product stewardship programs in Minnesota

Thermostat Recycling Corporation

In 1992, the Legislature enacted legislation prohibiting disposal, requiring labeling, and establishing certain contractor and manufacturer responsibilities for management of waste mercury thermostats from businesses and households (Minn. Stat. §§ 115A.932 and 116.92). The statute requires manufacturers of mercury thermostats to provide incentives and sufficient information to purchasers to ensure that mercury thermostats are managed properly.

The MPCA and Honeywell worked together to establish a streamlined regulatory framework based on the proposed federal Universal Waste Rule to allow manufacturers to establish a variety of collection programs.

Pursuant to this legislation and regulatory framework, Honeywell established several no-cost collection systems for waste thermostats by 1995: a wholesaler reverse distribution system, a homeowner mail-back program, and a program for accepting thermostats collected by the state's household hazardous waste programs. Honeywell and MPCA conducted extensive outreach to contractors, wholesalers, and the general public to inform them of the program and the need to properly manage thermostats.

The national Thermostat Recycling Corporation (TRC) was formed in 1997 by General Electric, Honeywell, and White-Rogers to operate a national wholesaler reverse-distribution system. TRC has subsequently expanded its membership to more than 15 manufacturers. For a nominal deposit, TRC provides postpaid bins that hold about 100 thermostats. The program was expanded to HVAC contractors in 2005. Household hazardous waste programs in Minnesota are also eligible to obtain bins and participate directly in the TRC program. TRC reports collecting 12,372 thermostats and 14,967 ampules in Minnesota in 2008, representing approximately 93 pounds of mercury.

National Carpet Recycling Agreement

In January 2002, members of the carpet industry, representatives of government agencies at the federal, state and local levels, and non-governmental organizations signed a Memorandum of Understanding for Carpet Stewardship. Concluding a two-year process, the agreement established a 10-year schedule to increase the amount of recycling and reuse of post-consumer carpet and reduce the amount of waste carpet going to landfills.

By 2012, the parties plan to achieve a landfill diversion goal of 40 percent. These goals can be viewed as steps toward fulfilling a long-term commitment by the carpet industry for the eventual elimination of land disposal, incineration, and incineration with energy recovery (waste-to-energy) of waste carpet.

The agreement established a third-party organization, the Carpet America Recovery Effort (CARE), to serve as the coordinating entity to achieve the goals. The agreement also requires annual reporting on progress toward meeting the goals.

Minnesota Electronics Recycling Act of 2007

On May 8, 2007, Governor Pawlenty signed the Minnesota Electronics Recycling Act to facilitate the collection and recycling of video display devices (televisions, computer monitors, and laptop computers) from households in Minnesota.

The manufacturers of video display devices (VDDs) must annually register and pay a fee to the state as well as collect and recycle VDDs from households/consumers in Minnesota. The recycling obligation is determined by the weight of video display devices sold in Minnesota. At the end of each program year, manufacturers file a report detailing the results of their collections for the year.

There are also specified roles for retailers under the act. Retailers are required to provide manufacturers with sales data for their respective brands as well as provide consumers with information regarding collection opportunities in Minnesota.

During the first program year (July 1, 2007–June 30, 2008), 217 collection locations were registered with the MPCA, a substantial increase in the number of collection opportunities for Minnesota residents. Registered recyclers and collectors reported managing approximately 34 million pounds of covered electronic devices from households in Minnesota. This translates into approximately 6.5 pounds per capita and represents a substantial increase in the volume of electronics collected from households prior to 2007.

Local government has also benefited from a reduction in expenditures to manage e-waste. During the first program year of the e-waste law, St. Louis County which operates 10 collection sites for residents, realized a savings of approximately $90,000 over expected county-borne recycling costs if the e-waste program was not in place. As the result of agreements with manufacturers, the county was able to decrease drop-off fees by 80 percent for consumers from $8-12 per item to $1-2 per item.

For more information, please see http://www.pca.state.mn.us/electronics.

Other product stewardship initiatives in Minnesota

Product stewardship efforts are underway for a wide array of products in Minnesota. These products are being addressed through a range of strategies, including national and state product stewardship dialogues, legislative consideration, and industry-wide voluntary agreements.

- paint
- beverage containers
- telephone directories
- pharmaceuticals
- compact fluorescent lamps
- mercury auto switches
- mattresses
- gypsum wall board
- plastic bags

Product stewardship frameworks in North America

As part of the development of recommendations for a comprehensive approach to product stewardship, the MPCA was directed to consider other product stewardship programs in North America and identify opportunities for promoting consistency between existing and proposed programs in other jurisdictions.

In developing the recommendations, the MPCA analyzed the existing programs in selected Canadian provinces, and conducted extensive dialogue with the state environmental agencies in California, Oregon,

and Washington on the policy approach and components of their draft frameworks. With such dialogue, the MPCA had the opportunity to identify potential areas for harmonization and promote consistency among the state-level stewardship activities. For example, language that supports multi-state stewardship program planning activities with consistent performance goals should be considered.

California

Following a decision by the Department of Toxic Substances Control in 2006 to remove the hazardous waste exemption on household hazardous wastes thus banning them from disposal, local governments became increasingly interested in a producer responsibility framework to address the increase in management costs.

The California Integrated Waste Management Board (CIWMB) responded in February 2007 with the adoption of Strategic Direction 5 that signals a commitment to promote producer responsibility in the state. The CIWMB issued an Overall Framework for an Extended Producer Responsibility System in California in September 2007 and further refined in January 2008 that outlines staff recommendations for an approach to producer responsibility. The board has held several workshops on the framework as well as specific products.

The CIWMB or another organization in California is expected to seek legislative authorization for the framework approach during the 2009 legislative session.

For information on the stewardship framework in California, please see http://www.ciwmb.ca.gov/EPR/.

Oregon

The Oregon Department of Environmental Quality (DEQ) is drafting a proposal for a producer responsibility framework for potential legislative consideration in 2009. The approach is being coordinated with efforts in California and Washington.

A legislative concept was approved by the Environmental Quality Commission at its meeting in April 2008. The DEQ issued a draft framework proposal in September 2008 and has held four stakeholder meetings seeking input. For the second public meeting, the Oregon DEQ provided a list of possible products such as carpet, mercury-containing lights and thermostats, and rechargeable batteries as examples of the types of products to be considered for the framework. The framework proposal is likely to include two candidate products initially, with future products to be recommended to the legislature for inclusion every two years.

Oregon's draft proposal draws on its experience with e-waste legislation, conversations with other states, the Northwest Product Stewardship Council's stewardship principles, and stewardship regulations in Canadian provinces such as British Columbia. The Oregon proposal contemplates provisions such as:
- criteria to be used for the designation of products.

- requirements for producers, including components of stewardship

- plans and annual reporting

- establishment of performance standards

- Incentives for waste prevention and environmental product improvements

- evaluation procedures

For more information, please see http://www.deq.state.or.us/lq/sw/productstewardship.htm.

Washington

An effort is underway to develop framework legislation for consideration during the 2010 legislative session. This initiative is being harmonized with the efforts referenced above in Oregon and California, and is already being used to guide policy development for individual products such as pharmaceuticals and mercury-containing lighting. Draft framework language was developed by the Beyond Waste

Implementation Working Group of the Washington Climate Action Team as part of the effort to identify climate change reduction strategies relative to the Western Climate Initiative.

For more information, please see http://www.ecy.wa.gov/climatechange/2008CAT_iwg_bw.htm.

British Columbia

British Columbia has been the leader in establishing and implementing a flexible stewardship framework. Authorized by the statutory Environmental Management Act, the province has implemented a variety of stewardship programs, beginning with a regulation for managing leftover paint in 1994, with other regulations implemented soon thereafter. The province adopted the Recycling Regulation in 2004 to harmonize stewardship requirements and establish a results-based approach with producers exercising responsibility for achieving stewardship objectives. Products are designated by the Minister of the Environment who has responsibility for ensuring compliance with the regulation and conducting program evaluation. The province currently has stewardship programs in place for nine product categories: beverage containers, tires, used oil, electronics, paint, solvents and flammable liquids, gasoline, pesticides, and pharmaceuticals with the stated intention to add new products on a regular schedule.

For more information, please see http://www.env.gov.bc.ca/epd/recycling/.

Manitoba

The Waste Reduction and Prevention Act (WRAP) enacted in 1994 provides the statutory support for product stewardship regulations in Manitoba. The first stewardship program to move forward in the province assessed a two-cent levy on beverage containers to finance the collection and recycling of "blue box" materials. The province is moving forward with a suite of product stewardship regulations under the WRAP Act to address household hazardous waste, packaging and printed paper, and waste electronics.

For more information, please see http://mbgreen.ca.

Ontario

The Waste Diversion Act was passed by the Parliament in Ontario in 2002 to promote the reduction, reuse, and recycling of waste. The Waste Diversion Act authorizes the Minister of the Environment to designate products or materials for a stewardship program. The act also established Waste Diversion Ontario, a nonprofit organization, to develop, implement, and operate waste diversion programs for a wide range of materials. Waste Diversion Ontario is responsible for establishing the industry funding organizations (IFO) that executes the stewardship plans for particular products or categories of products.

The Minister of the Environment designates products through a Program Request Letter that outlines the details required of a program plan. Program Request Letters have been issued for blue box waste (2004), municipal hazardous or special waste (2007), waste electronics (2006), and used tires (2008).

The first industry funding organization, Stewardship Ontario, operates the "blue box" program, a shared responsibility approach with municipalities for traditional curbside recyclables. Stewardship Ontario has subsequently been selected as the IFO for the municipal hazardous or special waste program.

For more information, please see http://www.wdo.ca/.

Rationale for a product stewardship framework

While the majority of product stewardship efforts in the United States have emphasized individual products and programs, several states are exploring the development of a framework to bring efficiency and consistency to stewardship efforts akin to approaches to product stewardship in place in the Canadian provinces. A product stewardship framework that emphasizes flexibility offers the opportunity to move beyond the current product-by-product approach that has characterized product stewardship activity to date.

The desired outcomes sought by developing and implementing a product stewardship framework, include:

- developing a successful and sustainable approach for addressing the environmental impacts of products
- creating criteria to consider when evaluating products
- promoting consistency between product stewardship programs in Minnesota
- promoting harmonization between state programs to ease implementation of product-specific programs
- establishing and articulating expectations for parties along the product chain
- promoting robust voluntary programs
- reducing staff and resources necessary to address individual products

The product stewardship framework concept is intended to create a consistent approach to identifying potential products for stewardship programs, including a common set of expectations. The framework also recognizes that not all products are suited to a stewardship approach or that stewardship programs will operate the same for each product. The challenge in developing a framework policy is reconciling the need for consistency while recognizing that products and their production, sales, use, and end-of-life management strategies are varied.

Recommendations

In developing the following set of recommendations, the MPCA considered comments provided by stakeholders, previous experience of stewardship efforts in Minnesota and elsewhere, existing statutory language, and proposed policy language in other states. See appendix for a summary of comments offered at the stakeholder meetings.

In developing the recommendations, the MPCA applied several principles to guide analysis of the potential options. These principles include:

- an emphasis on flexibility
- the need for a performance-based system
- mechanisms to support accountability
- creating a structure to support competition among service providers
- does not require significant state resources for implementation

It is important to note that the MPCA, as part of the report, is not recommending any products for inclusion in the framework recommendations. The Legislature did not request that the MPCA provide potential products for stewardship consideration and to the extent possible, the recommendations were not developed to address any particular products that may be identified for consideration.

1. **Identify a set of criteria to be used to evaluate products proposed for product stewardship solutions.**

   In designating covered products or covered product categories, MPCA recommends that the following questions and criteria will be posed and considered:

   a. **Does the product present adverse environmental and public health impacts,** including:
      - impacts on public and/or environmental health
      - presence of toxic and hazardous constituents
      - opportunities for reducing waste and toxicity

b.   **Does the product have potential for enhanced resource conservation,** including

- climate change impacts and benefits
- potential for energy conservation
- potential resource recovery and material conservation
- opportunities for increasing reuse or recycling, recycled content, and design for reuse or recycling
- potential to act as a contaminant in solid waste management programs

c.   **Does the product significantly burden government solid waste programs and/or offer business opportunities,** including:

- management costs to governments, taxpayers, and solid waste ratepayers
- difficulty to manage in traditional recycling collection and other standard solid waste management systems
- opportunities for existing and new businesses and infrastructure to manage products or product categories
- level of collection/recycling infrastructure currently in place
- opportunities to increase markets for materials
- willingness of potential partners
- success of other stewardship programs in other jurisdictions

Discussion

The recommendation is intended to recognize the importance of public health and environmental impacts but also acknowledges that other life-cycle factors may be taken into account as well. The recommendation attempts to strike a balance between providing sufficient flexibility so that the framework is capable of addressing multiple products but also presents enough clarity and direction as to the factors that contribute to a product being evaluated. Given the variety of products and their attributes, it is assumed that all of the criteria above will not apply to all products being considered for inclusion in the product stewardship framework.

The identification of criteria to be used for the evaluation of products proposed for product stewardship received considerable attention at the stakeholder meetings. Much of the discussion emphasized the need to focus on public health and environmental impacts of products as the key criteria. Some stakeholders voiced that the criteria should embrace a life-cycle approach that recognizes climate change and energy impacts. Other stakeholders were concerned that the criteria not be focused simply on recycling but recognize a broad range of potential impacts and strategies.

Stakeholders also considered whether the criteria should be prioritized, screened, or weighted but there was a lack of consensus as to whether that would provide an enhanced level of guidance. There was also a discussion as to whether the potential impacts of products on Minnesota's environment should receive greater weight than impacts that may be occurring globally.

2.   **Create a process for designating products for product stewardship solutions and the role the Legislature would play in the designation process.**

Utilizing the product selection criteria, the MPCA will submit a recommended list of products or product categories to the Legislature for consideration under the product stewardship program. The MPCA will submit the list biennially with analysis based on the applicable criteria noted above that illustrates why the products or products are recommended for legislative consideration.

Prior to submitting a list of potential products to the Legislature, these products will be considered by the MPCA Citizen's Board, an established body with decision-making authority, that is already versed in environmental issues.

Discussion

The MPCA's recommendation suggests a role for the agency in recommending products but leaves the actual designation of products to the Legislature. The recommendation suggests the MPCA Citizen's Board will review recommendations as to products for designation and, pending board review and approval, will submit the products to the Legislature for consideration.

The recommendation seeks to take advantage of the Citizen Board's existing knowledge of environmental issues and established process for public comment. The MPCA did consider establishing a product stewardship advisory council as is being suggested in other state framework proposals but was concerned with the cost versus benefit of creating another entity.

Much of the stakeholder discussion on the process for designating products emphasized the pros and cons of designating products via administrative rulemaking or legislative action. The concerns with rulemaking included the time and resources necessary to complete a product designation. Others were concerned that the Legislature did not have the sufficient technical and policy background to identify and designate products with complex characteristics. Several stakeholders also suggested that a voluntary approach may be optimal, but recognized that a mandated approach may be necessary if sufficient action was not forthcoming.

Another question posed by several stakeholders addressed the issue as to the process for products to be removed from requirements imposed by the product stewardship framework. Presumably, the circumstances that may lead to a product's designation may change over time thus potentially negating the need for inclusion in a stewardship effort. However, the presence of historic product that will need to be addressed at some point in the future will certainly be considered as part of any recommendation or mechanism to remove products from a stewardship obligation.

The product stewardship framework may encourage the creation and implementation of voluntary stewardship efforts for particular products. The framework may offer a provision for those industry organizations that believe stewardship efforts may be more effectively accomplished by industry-wide action and promotes environmental outcomes and accountability. The voluntary option may also be feasible for those stewardship efforts with substantial participation so that a regulated approach to ensure a level playing field is not necessary.

For those product manufacturers that choose to pursue stewardship objectives voluntarily, they would, for example, enter an agreement with the MPCA to develop a stewardship plan with the components as described in the framework, including the identification of performance goals. Stewardship organizations would receive the protection from state anti-trust action related to the fulfillment of stewardship objectives.

3. **Establish possible components of industry-developed product stewardship plans.**

A manufacturer/brand owner/importer or a stewardship organization is required to submit a stewardship plan with the following components:

- description of the organization and contact information

- if a stewardship organization, full list of participating organizations

- definition and scope of products to be addressed, including orphan and historic products

- role and responsibilities for those along the product chain

- collection system information

- processing/recycling information, including what steps will be taken to ensure environmentally sound management

- anticipated resources and financing mechanism to implement the plan

- proposed performance goals

- strategies to promote design for the environment (toxicity reduction, recycled content, recyclability, product longevity) for the product as well as any attendant packaging

- public outreach and communications plan

- public and stakeholder consultation activities in preparation of the plan

- reporting and evaluation procedures

Following submittal of the stewardship plan, the MPCA recommends that the plan be reviewed and approved by the commissioner of the MPCA to ensure consistency with the desired components of the plan.

Discussion

The stakeholder discussion centered on the need for a clear plan with identified strategies for financing the stewardship program as well as public education and outreach. Stakeholders generally supported the rationale for stewardship plans as a tool to promote accountability but not require prescriptive or burdensome detail.

The MPCA reviewed the draft components of stewardship plans contained in the Oregon and Washington proposals and relied on those efforts as a starting point. The MPCA's recommendation suggests that the stewardship planning process may be a vehicle for identifying strategies to promote design for environment (reduction of toxic and hazardous constituents, facilitating recycling, etc.) in response to stakeholder comments identifying the need to support more environmentally preferable products.

4. Outline options to facilitate the creation of industry-managed stewardship management organizations.

The Minnesota Legislature has previously adopted language for two product categories—rechargeable batteries and video display devices—that authorizes joint industry action to fulfill the objectives of a stewardship program.

The product stewardship framework could contain language such as the following, found in Minn. Stat. § 115A.1323, to address antitrust concerns:

a. A manufacturer that organizes collection or recycling under this section is authorized to engage in anticompetitive conduct to the extent necessary to plan and implement its chosen organized collection or recycling system and is immune from liability under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

b. An organization of manufacturers, an individual manufacturer, and its officers, members, employees, and agents who cooperate with a political subdivision that organizes collection or recycling under this section are authorized to engage in anticompetitive conduct to the extent necessary to plan and implement the organized collection or recycling system, provided that the political subdivision actively supervises the participation of each entity. An organization, entity, or person covered by this paragraph is immune from liability under state law relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

Discussion

Many of the existing and proposed stewardship programs (e.g., rechargeable batteries and paint) rely on industry-managed organizations to manage the stewardship efforts. These stewardship organizations, often referred to as third-party organizations or producer responsibility organizations, create a mechanism for program decision-making and often become the public face for the stewardship effort. However, several impediments may exist for joint industry action, most prominently, concerns regarding potential activities that violate anticompetitive conduct regulations.

Recognizing the concerns of manufacturers and others regarding antitrust regulations, the MPCA recommendation authorizes industry collaboration to fulfill the objectives of the stewardship program and provides immunity from state antitrust regulations.

The Legislature has provided immunity on two previous occasions for rechargeable batteries and manufacturers of video display devices. During the 2008 legislative session, the paint industry, as part of legislation to support an industry-managed stewardship organization, was granted similar immunity. However, consistent language on this issue would negate the need for the Legislature to consider antitrust exemptions for each product and provide manufacturers with assurance that state antitrust regulations have been addressed.

It is important to note that while stewardship organizations play an important role in program implementation, the MPCA recognizes that individual companies may prefer to fulfill stewardship obligations independently (often referred to as individual responsibility) and stewardship programs should be tailored to support that outcome.

5. Methods to identify and monitor progress toward stewardship performance goals for specific products.

The identification of performance goals will be considered as a component of the stewardship plan development process. To the extent possible, the specific performance goals in place for each product will be correlated to the criteria, as recommended above, that contributed to the designation. Given the individual characteristics relative to specific products, it is anticipated that measurement strategies will vary by product.

Individual manufacturers or stewardship organizations will submit the following:

1. Annual recovery rate for the escalating collection of a specific amount or percentage of product for the first four years of the program. Recovery rates will consider the following:
   - current level of performance in the state
   - universe of available product for end-of-life management
   - projected flow through the system
   - collection performance of other programs nationally and internationally
   - lifespan of the product
   - sales data for the product

2. Methodology as to how the performance goals and capture rates were determined.

3. Other product goals to consider include:
   - qualitative and quantitative goals to reduce the environmental and health impacts of the product over its life cycle
   - assessment of the carbon footprint of the product
   - steps taken to reduce the energy and water consumed during production, use, and disposal of the product

The performance goals will be subject to the review by the commissioner as part of the approval of the stewardship plan.

Monitoring of performance goals

The entities subject to the stewardship requirements are to file annual reports on progress toward meeting the identified performance goals. As part of the MPCA's overall compliance and enforcement responsibilities related to the program, the MPCA will be responsible for evaluating the performance of the stewardship programs, including the progress toward meeting the performance

goals and making recommendations to the Legislature regarding any changes that may be necessary to strengthen the goal-setting methodology.

Discussion

The identification of performance goals and corresponding processes for monitoring and evaluation are a key component of a successful stewardship program. Given that several stakeholders commented that performance measures needed to be tailored to address particular characteristics of specific products or product categories, the MPCA recommendation attempts to establish a goal-setting mechanism that provides flexibility but requires accountability by acknowledging the methodology used.

6. Strategies to implement the use of standards, certifications, and eco-labels to promote environmentally preferable products.

The MPCA contracted with the Center for Sustainable Enterprise Development at the University of Minnesota to sponsor a forum on January 9, 2009, to address how standards, certifications, and eco-labels may be integrated into a state strategy to promote environmentally preferable products.

Recommendation

The MPCA will work with the Materials Management Division at the Minnesota Department of Administration to define the desired attributes of standards and certification tools to more effectively implement their use in state procurement.

Discussion

While product standards, certifications, and eco-labels are generally not considered within the context of existing or proposed product stewardship framework approaches, they do offer a promising market-based strategy for responding to growing consumer demands for greener products and establishing defined criteria for manufacturers to meet. In certain circumstances, standards and certification programs can achieve many of the life-cycle objectives of stewardship programs such as reductions in energy use and increases in recycling.

The adoption of existing, national standards can serve to reduce the resources necessary to implement governmental environmentally preferable purchasing objectives by not having to develop Minnesota-specific criteria for particular products. The increasing proliferation of standards and eco-labels in the marketplace is creating complexity and confusion for purchasers and suggests that an opportunity exists to promote standards and certification tools that are widely accepted in the marketplace. Several stakeholders have suggested that a set of criteria should be established to be used as a screening tool to help identify standards that exhibit desired attributes. These attributes may include an emphasis on life-cycle approaches; the use of multiple environmental attributes; development in an open, public process; embracing frequent evaluation and improvement of the standard; and utilizing independent certification bodies.

The MPCA, working in conjunction with the Minnesota Department of Administration, has supported the use of environmental standards and certifications for certain products. For example, the state contract for information technology equipment requires that desktop and laptop computers and monitors be Electronic Product Environmental Assessment Tool (EPEAT) registered products. EPEAT is multi-attribute tool that creates an incentive for manufacturers to design their products for lesser environmental impact while facilitating the adoption of environmental standards by purchasing officials.

Since June 2007, public entities have purchased approximately 84,000 IT units that are EPEAT registered products.

The issue did receive some discussion at the MPCA's stakeholder meetings with several comments offered. Stakeholders articulated support for those standards and eco-labels that embrace a multi-attribute approach rather than those that focus on a single attribute such as recycled content or energy

efficiency. Several stakeholders acknowledged the need to provide oversight of standards and eco-label programs to ensure that they are non-proprietary, robust, and stimulate continuous improvement. Several stakeholders suggested that state procurement should adopt standards for those products designated for stewardship efforts in order to further incentivize the design, manufacture, and marketing of environmentally preferable products.

Others discouraged any efforts to develop new labels that do not already exist in the marketplace, particularly if it was to be implemented as a state-specific label (e.g., the Minnesota eco-label). One concern that was voiced regarded the costs of certification required for many of the existing standards.

Appendix: Summary of Stakeholder Comments

The following comments were compiled from the December 4, 2008, public meeting. For the comments from the October 3, 2008, public meeting on the draft report, please see:
http://www.pca.state.mn.us/oea/stewardship/study.cfm#draft

Criteria

- Good set of criteria.

- How to determine the risk and how do we manage the risk?

- Definition of product stewardship makes sense but recommendations reflect extended producer responsibility.

- There needs to be more specificity with the criteria. It is not clear what are the deciding factors for a particular product. What is the tipping point for a specific product to be included in a product stewardship program?

- Criteria from Canadian stewardship programs may not be appropriate for U.S.

- More detail and explanation of the criteria would be helpful but a quantitative approach is not necessary.

- Criteria need to provide transparency to a process that is not transparent. The criteria can encourage management of problem materials and discourage resources being devoted to less harmful materials.

Process for designating products

- It should be clear that the Citizens Board process does not preclude others from naming products.

- Can the MPCA help guide the Legislature on which experts are more reliable as products are considered for designation?

- What happens once a product list is developed?

- How much more efficient is the recommended process than the current product-by-product approach?

- Will provide Legislature with consistent information about products.

Components of stewardship plans

- Does the financing mechanism component ensure that a product designation will not be vetoed?

- Does the design for environment component of plans include a zero waste initiative?

- The plan should not be solely focused on pursuing end of life management objectives.

Facilitating creation of industry-managed organizations (IMOs)

- No comments.

Identifying and monitoring of performance goals

- Performance goals are focused on recycling and recovery but should be based on the reasons for why the product was designated.

- Full life-cycle goals should be considered.

- Link performance goals with original criteria for which the product was considered.

- What happens if the performance goals are not achieved? What are the consequences and rewards?

- Should pursue the reduction of the occurrence of products in the waste stream.

- There is an opportunity to look at the program and evaluate methods to improve it and determine correct goals.

Reporting, evaluating, accountability

- No comments.

Standards, certifications, and eco-labels

- No comments.