

## EPR WORKING GROUP

# REPORT CARD For California's Computer and TV recycling bill, Senate Bill 20

September 25, 2003

<u>ESSENTIAL EPR ELEMENT</u>	<u>GRADE</u>
1 Mandatory	PASS
2 Focus on products	<b>QUALIFIED FAIL</b>
3 Assignment of responsibility	<b>FAIL</b>
4 Physical or financial responsibility	<b>FAIL</b>
5 Performance standards and deadlines	<b>QUALIFIED FAIL</b>
6 Phase-out of hazardous materials	PASS
7 Ban waste disposal and exports	<b>FAIL</b>
8 Flexibility and accountability	QUALIFIED PASS
9 Historical waste	<b>FAIL</b>
10 Complementary measures	<b>FAIL</b>
11 Social justice	<b>FAIL</b>

**FINAL GRADE FOR EPR: **FAIL****

The *EPR Working Group* is a coalition of U.S. and Canadian environmental, labor, toxics and environmental justice organizations formed in 2002 to define and promote strong principles for **Extended Producer Responsibility** (EPR) to apply to most kinds of products in the global marketplace and to all product brand-owners. The Working Group developed a checklist of *Essential Elements of Effective EPR Programs* (posted at <http://www.eprworkinggroup.org>), based on experience in Europe, Japan and other parts of the world.

A bill just passed in California, Senate Bill 20, provides the first opportunity to apply these principles to policy that is moving in the U.S. After the European Union adopted regulations requiring brand owners of *all* electronic and electrical products to pay for taking them back at end of life, a number of states and provinces in North America have been considering similar legislation. Attention has focused especially on California, after the governor vetoed an electronics waste bill in 2002, saying he wanted to see producers take more responsibility for their products, like in Europe. In September 2003, Senate Bill 20 was passed by the California legislature.

### **How does California SB 20 perform against the EPR checklist?**

Unfortunately, SB 20 **FAILS** on most of the checklist criteria. Due to last minute changes sponsored by IBM, Sony and several TV makers, EPR provisions were stripped or

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changed. The resulting bill is emphatically *not* a model for Extended Producer Responsibility. It sets a bad example and puts the United States further behind Europe and Asia in this growing policy area. Here's a comparison of the bill with the EPR Working Group's *Essential Elements of Effective EPR Programs* (NOTE: this analysis draws on an analysis done by the Computer TakeBack Campaign; see [www.computertakeback.org](http://www.computertakeback.org)).

**1. Mandatory.** Programs are encoded in law so that all competing producers within a product category have to participate and meet the same high standards (level playing field and no free riders).

**SB 20: PASS – At least it's a law...**

By proposing a law, rather than a toothless voluntary program, California has set a level playing field for all affected products. However a bad law may be a step in the wrong direction, if it fails to bring the desired results.

**2. Focus on products.** Each program is focused on a specific product category or priority waste material to encourage competition (or collaboration) within the industry sector to develop more sustainable product design and material management systems.

**SB 20: QUALIFIED FAIL – ... it leaves out most electronic products**

The scope of the Bill is very narrow -- computer monitors and TVs only.

Dishwashers, dryers, video cassette players, computers, washers, dryers, vacuum cleaners, and thousands of other products are not covered.

**3. Assignment of responsibility.** Responsibility for the product belongs to the brand-owner. Individual brand-owner responsibility creates a direct feedback loop encouraging better product design and rewarding progressive companies. However, collective industry responsibility is needed for 'orphan' products, whose producers are no longer in business

**SB 20: FAIL – under SB 20 the producer is not responsible**

SB 20 effectively absolves producers of all responsibility, since the retailers collect the fee, the state-managed Electronic Waste Recovery and Recycling Account manages the money and local governments manage the collection. SB 20 is not an EPR program. It is a traditional recycling program, financed with a tax and managed by government. Because SB 20 creates a permanent government-run program, it does not involve producers in the recycling of their own products. Brand-owners will not be encouraged to form their own “producer responsibility organizations” (PROs) to manage recycling for their products.

**4. Physical or financial responsibility.** Producers are legally responsible for ensuring that their products are managed responsibly and must bear physical or financial responsibility for their management at their end of life. Physical responsibility means that producers operate a take-back program themselves. Financial responsibility means the producers contract with others to operate the program.

**SB 20: FAIL – producers not responsible for financing or running programs; no incentive for green design**

Under SB 20, producers have neither physical nor financial responsibility for collecting or recycling their products. Instead, the government has both financial and physical responsibility. Financially, SB 20 creates a new tax on consumers

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(the “Advance Recycling Fee” or ARF). This tax was set arbitrarily and is significantly lower than the fees that have been found necessary in established programs in Europe and Japan. If it fails to cover the full recycling costs, the shortfall may have to be covered by taxpayers (either through local government or state government).

**5. Performance standards and deadlines.** Rules establish clear outcomes reflecting the goal of minimizing product environmental life cycle impact, including measurable rates and deadlines. Performance standards should advance product reduction (dematerialization) and reuse before recycling. Likewise, leasing systems should be encouraged.

**SB 20: QUALIFIED FAIL – the only goals are statewide, not based on individual producer goals**

Recycling targets are essential to ensure accountability and to spur better product design. Because Europe and Japan have ratcheted up recycling targets, brand owners there have set up recycling and disassembly plants and introduced recycled plastic in new cars. Under SB 20, producers will have no such incentive in California. In SB 20, the burden of meeting statewide goals fall on the state waste board, local government and retailers. If the program fails, it will be blamed on government inefficiency.

**6. Mandated phase-out of hazardous materials.** Rules clearly define harmful materials that need to be phased out by a set deadline. Phase-out should take priority over product take-back.

**SB 20: PASS – consistent with European requirements**

**7. Ban waste disposal and exports.** Recovered products must not be landfilled or incinerated domestically and must be managed in accordance with international laws and conventions (hazardous or unsanitary used products must not be exported from developed to developing countries either for disposal or for recycling).

**SB 20: FAIL – exports not adequately controlled <sup>1</sup>**

The bill does not include a ban on export. While it does set up some restrictions on export, the language needs to be strengthened to close the loopholes that are currently in it. (Disposal of computer monitors and TVs from California landfills was already covered in an April 2003 ruling by the California Department of Toxics Substances Control clarified that cathode ray tubes found in electronic devices are banned from California landfills.)

**8. Flexibility and accountability.** Producers have the flexibility to design their own clean production and product take-back plans to meet performance standards and deadlines. Regulations establish clear and effective mechanisms for transparency and public accountability, including: clear labeling of products, public participation in the development of EPR programs, regular monitoring and reporting of progress, strict and

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<sup>1</sup> For a detailed analysis, see [http://www.ban.org/#ca\\_bill](http://www.ban.org/#ca_bill) .

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prompt enforcement of performance standards by government to protect both the public interest and to duly acknowledge progressive companies who act proactively.

### **SB 20: QUALIFIED PASS**

Article 4 requires annual reporting to the California Waste Board the volume of sales, the amount of hazardous materials contained in products, and goals for improved design. Civil liability in the amount of \$2,500 to \$25,000 may be imposed by the Board or by Superior court on those who fail to comply with the provisions (42474 (a)). But overall most responsibility lies with government and retailers, not producers.

**9. Historical waste.** Rules establish responsibility for historical waste -- products sold prior to the effective date of the program and orphan products -- products whose manufacturers are no longer in business.

### **SB 20: FAIL – depends on consumer financing for clean-up legacy waste**

The bill provides financing for historic waste only through the consumer fee, which is added on to current sales. This means consumers, and not the companies who manufactured the hazardous electronic waste, will foot the bill for cleaning-up the mess. SB20 doesn't distinguish between historic and future electronic waste, which lets companies like IBM off the hook. IBM is responsible for a major portion of the historic waste, however, they will not pay their fair share, since their current sales of computer monitors (CRTs) is minimal.

**10. Complementary measures.** EPR programs may be supported by complementary measures such as minimum recycled content and detailed procurement policies.

### **SB 20: FAIL – no recycled content specified**

**11. Social justice.**

### **SB 20: FAIL –**

By failing to clearly ban exports, SB 20 may increase the flow of scrap electronics going to communities in developing countries with few environmental safeguards.