

Perspectives: The EPR Landscape

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A conversation with Heidi Sanborn, Executive Director of the National Stewardship Action Council, on eliminating toxics, EPR, the truth in labeling, and taking the lead to combat misinformation.

Discuss the EPR landscape in 2022. How did it differ from 2021?

In 2021 we saw a lot of “truth in labeling” and the first two statewide EPR for packaging bills pass. But in 2022 we saw two more EPR bills for packaging pass in California and Colorado and battery EPR for both loose and embedded batteries in electronics, Truth in Labeling bills introduced in other states, and lots of PFAS ban bills for a variety of products including carpet, cosmetics, and textiles. Both years we saw strong efforts to introduce and expand bottle bills too. On the downside, we saw a hard push for “chemical” recycling, whatever that is. “Chemical Recycling” is a term of art by the chemical industry that has not yet been defined and in my opinion, is a replay of what the chemical industry did decades ago with the chasing arrows—they shopped model bills and passed them in 39 states to require the resin number surrounded by a chasing arrow be on the labels, which not only created disharmony in laws between states, but it legalized lying on the labels because chasing arrows implies the package is recyclable based on industry reports and consumer surveys. When we try to fix this problem by banning chasing arrows unless they hit some recycling metrics, the industry suggests that we are trying to create disharmony. Really? Who created the disharmonized rules? The chemical industry is doing the same thing today pushing to pass bills promoting “chemical recycling”—they are using the old playbook. This is a smoke and mirrors effort to make people good about plastic recycling when our recycling rates are abysmal, and they are doing little of substance to help us improve them—and creating disharmonized rules along the way.

In short, the 2021 – 2022 legislative sessions started getting to the root of our recycling system problem of contamination with PFAS and other materials resulting in skyrocketing costs and low value materials, which is “tell the truth” on the label and in advertising so the public can make good purchasing and end-of-life choices. This will result in a cleaner system, lower costs, and higher recycling rates.

What was involved in getting California’s SB 54, SB 343, AB 1201 passed? What are the next steps for implementation?

I was deeply involved in SB54 negotiations and co-sponsored

SB 343, so I am very familiar with those processes, but AB 1201 came from a policy developed from the Recycling Commission which I chaired, but I was not involved in the negotiations.

I will tell you that the SB 343 (Allen) Truth in Recycling Labeling in 2021 was much harder to pass than it should have been. We had to work hard to pass it and gathered a lot of support from broad stakeholder groups. I will also tip my hat to Republic Services, WM, and Recology, because without them and their lobbyists, I am not sure we could have passed it. When environmental groups and waste haulers work together to reduce contamination and increase recycling, we all win and are very effective advocates! That is a big lesson for everyone—when waste haulers and environmentalists can agree and work together, you pass hard bills! SB 343 was also a precursor to SB54, because without having already determined what was “recyclable” and “compostable” in AB 1201, we would have had to include those issues in the EPR packaging discussion and that would likely have made it too big to pass. I am encouraging all the states that want to take on packaging EPR to follow California’s lead and first take on the labeling and chemical contamination, then work on the recycling system and implementing EPR. When the bathtub is overflowing you don’t grab the mop first, you turn off the spigot. The same thinking applies here—if your state has not yet addressed that the public is lied to on the label and is basing purchasing and recycling decisions on those labels, you have a fundamental problem that cannot be fixed in an EPR system because the materials coming to the system are the problem.

SB 54 was a different situation in that it had failed to pass three years prior, so we needed to hit the reset button and rework the entire strategy. The new strategy was to get the broad group stakeholders in a room, hammer out the bill language, and then release it in concentric circles broader to gather information and support until we had something that could pass. It took eight months of negotiations and 100 meetings with 25 or so people representing a broad group of stakeholders. It also took enormous amounts of time and focus for a lot of people to get agreement, release it, and then explain the bill to thousands of people over three weeks to get enough support to pass it. The process was right, the result was unbelievably good, and the entire product chain has buy-in to make it work. I obtained my undergraduate degree at UC Davis in political science and my master’s degree from USC in Public Administration, so I care about process and good governance. I truly believe the SB 54 bill drafting process was the best process I have witnessed in 32 years of doing this work and I give the credit to Senator Ben Allen and his lead staff Tina Andolina for facilitating an excellent process and picking the right people to be at the table who would be active listeners, openly share their concerns, and be willing, and want, to get to YES. It is the right way to develop policy and I hope we see a lot more of it in 2023 in California and beyond.

Can the waste and recycling industry be a key player in educating and working with packaging producers? How?

One hundred percent yes, and in short, they must! In fact, we have a SB54 working group that started meeting January 20th to discuss the bill, the process of regulation development, and allowing the broad stakeholder groups to hear each other and their concerns so we can all develop better regulations. We have four key stakeholder groups participating in the working group: producers/recyclers, haulers, NGOs, and local governments. We sincerely hope we will introduce stakeholders who we have never met before and allow them to talk offline and collaborate to ensure we can implement SB54 as envisioned. The waste and recycling industry must act like a mirror to the producers—it's our responsibility to tell them what their packaging is doing to our systems and educate them on how our systems work so they can design packaging we can cost-effectively recycle at very high rates. We should be inviting them to MRFs and offering to run their latest packaging designs through the sorting systems to see if they get captured. No package should hit the market without a pilot and confirmation that their package works in our sorting and recycling systems. And producers should be on notice if they do, we will target them for campaigns and legislation if the product is a problem in the recycling system.

What does 2023 hold for EPR and legislation?

My prediction is that in California where we have led on so many things like Truth in Labeling, defining recyclable and compostable, and banning toxics like mercury lighting and PFAS in products, the focus will be to fix the broken carpet program and take up the gas cylinder legislation, which the Governor vetoed last year. The only new bill will likely be on textiles. Most of California's focus will be on implementation of the bills passed in the 2021 – 2022 session. For the rest of the nation, I predict a lot of following California's lead on Truth in Labeling laws for composable, recyclable, and flushable, and bottle bills in the 40 states that do not have them and a national bottle bill, as well as removing toxics from the waste stream to make it safer and less contaminated. For example, bills like our AB2208 (Kalra), which bans the sale of mercury containing lamps by 2025 in California, battery EPR, and PFAS bans bills everywhere. We must turn off the PFAS spigot because we cannot afford to mop it up and truthfully, we cannot get it out of our bodies once it's in us, so is the only thing to do is to ban their sale ASAP. It will be in leachate when our industry is the passive receiver of this chemical in products that are not labeled as "containing toxic PFAS". It just shouldn't be allowed. It is our generation's DDT.

Lastly, I do predict the "green energy" technologies such as PV panels, EV batteries and battery walls, and even windmill blades, are all going to be in the crosshairs. They are not "green" if they have no end-of-life management plan, so you will see a lot of new bills on those products.

We accomplished so much in California in the last two years and even have California Attorney General Rob Bonta suing companies on their recycling claims and efforts to mislead the public on plastic recyclability, that I hope others follow our lead and increase the pressure

for “radical transparency” when it comes to telling the public the truth in advertising and labeling about the safety and reusability/recyclability/compostability of products. I hope other state Attorney Generals consider doing the same or joining in these efforts.

My parents told me to “tell the truth”. We must rebuild trust in our recycling systems and that will only happen with radical transparency and ensuring Truth in Labeling, which is why we are also working to update the FTC Green Guides. Later, I hope states will take it further and make the guides law, because guidance is not enough to ensure the public is told the truth. | WA

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References

<https://oag.ca.gov/news/press-releases/attorney-general-bonta-demands-manufacturers-plastic-bags-substantiate>

<https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-investigation-fossil-fuel-and-petrochemical>