

VT PRODUCT STEWARDSHIP COUNCIL (VT PSC)

Elements of EPR Legislation: Packaging and Paper Products (PPP)

December 21, 2020

ELEMENT	VT PSC POSITION
<p>1. COVERED MATERIALS/ PRODUCTS/ MARKET SECTOR</p> <p><i>This element describes which materials producers would pay to introduce into the market in the state.</i></p>	<p><i>Packaging</i> is defined by its functions: containment and/or protection. Packaging includes consumer-facing (i.e., intended for the consumer market) primary, secondary, or tertiary packaging, as well as service packaging designed and intended to be filled at the point of sale (such as carry-out bags, bulk goods bags, take-out and home delivery food service packaging, and prescription bottles).</p> <p><i>Paper products</i> include paper sold as a product and all printed materials other than literary, text, and reference bound books.</p> <p>Covered Materials include all packaging and paper products regardless of recyclability.</p> <p>The term <i>packaging</i> includes:</p> <ul style="list-style-type: none"> (i) packaging intended for the consumer market; (ii) service packaging designed and intended to be used or filled at the point of sale, such as carry-out bags, bulk good bags, take-out bags, and home delivery food service packaging; (iii) secondary packaging used to group products for multiunit sale; (iv) tertiary packaging used for transportation or distribution directly to a consumer; and (v) ancillary elements hung or attached to a product and performing a packaging function. <p>The term <i>packaging</i> does not include packaging</p> <ul style="list-style-type: none"> (i) used for the long-term protection or storage of a product; and (ii) with a life of not less than 5 years.

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<p>2. COVERED ENTITIES</p> <p><i>This element describes which entities in the state are entitled to use the recycling system free of charge.</i></p>	<p>All generators in Vermont are required by the Universal Recycling Law to recycle, and all haulers that offer trash collection are mandated to collect recyclables as well. Covered materials are included in the program no matter where they are generated or by whom.</p> <p>Covered entities therefore include all generators:</p> <ul style="list-style-type: none"> • Households, both single- and multi-family dwellings; • Commercial/business locations; and • Publicly owned places such as sidewalks, schools, plazas, and parks, paired with trash cans where municipalities deem cans are needed <p>Note: Where haulers have an exemption under the URL in the Northeast Kingdom (NEK), producers/the PRO would be responsible for ensuring access to recycling services for these residents.</p>

	<p>Note: While other states may be seeking to have producers expand current “baseline” recycling services, Vermont already has service for all generators in the state. VT governments are seeking equitable investment in the recycling system through the financial involvement of producers.</p>
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<p>3. RESPONSIBLE PARTY (“PRODUCER”)</p> <p><i>This element describes who is responsible for funding the recycling program, and who is exempted.</i></p>	<p>“Responsible Party” means a party that has legal ownership of the brand of a product for sale, use, or distribution in the state, including online retailers who sell into the state, that utilizes covered material.</p> <p>Responsible parties shall be determined based on the following criteria:</p> <ul style="list-style-type: none"> (A) A brand owner or entity resident in the United States whose covered materials are supplied to Vermont consumers or residents; or (B) Where no brand owner or entity is resident in the United States, then the importer and others who are resident in Vermont who supply the covered materials to Vermont consumers or residents; or (C) Where no importer is resident in Vermont, then the retailer who supplies covered materials to Vermont residents or consumers. <p>De minimis:</p> <p>The legislation should set de minimis standards to exempt small businesses. The standards could be based on the total weight of all materials they place on the market annually or their total annual gross revenues (<i>for example, less than one ton of packaging produced or \$1 million in gross revenue per year</i>). The optimal outcome is reduced tonnage, but gross revenue thresholds may be used to reduce the administrative burden for small businesses.</p> <p>The law should also levy a flat fee on small-to-mid-sized businesses on a tiered basis. <i>For example (these figures are adapted from RecycleBC):</i></p> <ul style="list-style-type: none"> (D) 1 – 2.5 total tons produced: \$600/year (E) 2.5 – 5 total tons produced: \$1,200/year (F) 5 – 10 total tons produced: \$4,000/year (G) 10 – 15 total tons produced: \$6,000/year <p>For paper, producers are exempt if they produce less than 1 ton of covered material per year or have gross annual revenue less than \$1 million (same as for packaging). Paper producers are also exempt if they have no more than one point of retail sale in the state – except for newspapers.</p> <p>Eligible producers can choose to pay the flat fee with no requirement to produce a detailed annual report, or they can provide a detailed report of the amount of PPP supplied and pay fees in accordance with the regular fee schedule.</p> <p>There are no universal exclusions for non-profits or municipalities. They would have to meet the same de minimis standard as others to be excluded.</p>

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<p>4. STEWARDSHIP ORGANIZATION(S) (or Producer Responsibility Organization/s, PROs)</p> <p><i>PROs or Stewardship Organizations are groups of producers who work together to collect and recycle PPP. This element describes how PROs form, whether there can be multiple PROs in the system, and how PROs are governed, including how they solicit stakeholder input into decision-making.</i></p>	<p>The system should allow for compliance by individual producers, as well as multiple producers that form a stewardship organization (PRO) to conduct program management operations and administration on their behalf. Multiple PROs may be established. If there are multiple PROs and/or if producers choose to comply individually, they must coordinate to produce and submit a single stewardship plan to the state oversight agency (ANR) and must implement this single stewardship plan together that provides consistent services throughout the state. The bill can allow for (but will not require) a third-party entity to be established if multiple PROs form. The bill should specify that if a third-party entity is formed, it should adhere to the following guidelines:</p> <ol style="list-style-type: none"> a. The third-party entity submits one single stewardship plan to the state, working with PROs and/or individual producers to draft this plan and ensure seamless service for residents. b. The goal of the third-party entity is to assign responsibility equitably among PROs and/or individual producers and relieve the state (ANR) of responsibilities associated with coordinating multiple PROs. <p>PRO/s can be either non-profit or for-profit entities. Legislation should not specify. If producers wish to form one or multiple stewardship organizations, these organizations should follow the model of a PRO with a multi-stakeholder Advisory Council.</p> <p>The state will appoint a multi-stakeholder Advisory Council to provide non-binding input into all aspects of the stewardship plan. The Commissioner of the Department (or the Governor or the State) shall appoint a packaging stewardship program advisory council of 13 members reflecting a balanced and equitable participation that includes all supply chain participants in the recycling system. Selection considerations will include representing the state by geography and size of communities. Such members shall include:</p> <ul style="list-style-type: none"> • two individuals who are representatives of national associations of packaging producers; • two individuals who are representatives of MRFs; • two individuals representing hauling companies; • two individuals who are representatives of county or municipal government waste management programs; • one individual who is a representative of a statewide association representing retailers; • one individual who is a representative of a statewide environmental organization; and • one individual who is a representative of a community-based organization or an organization representing equity and under-represented stakeholders. • One individual that represents a privately owned transfer station or drop-off center that collects recyclables from the public. • One individual that represents a publicly owned transfer station or drop-off center that collects recyclables from the public. <p>The PRO will compensate Advisory Council members for their participation.</p> <p>In addition to non-binding input into the stewardship plan overall, the Advisory Council will have decision-making power over rates paid by the PRO to compensate haulers, transfer stations and drop-off sites that accept recyclables, as well as payment terms.</p>

	The Council will provide input to the PRO during the drafting of the stewardship plan, as well as to ANR during stewardship plan review. The Council will also monitor implementation of the program, advise on and review annual reports and revised stewardship plans, and recommend regulatory changes to ANR and the legislature.
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<p>5. FUNDING MECHANISM/ COVERED COSTS</p> <p><i>This element describes producers’ financial obligations and defines how producers will meet these obligations.</i></p> <p><i>Note: producer fees will be modulated to incentivize beneficial environmental outcomes, but these details are covered in Element #8 (Design for Environment). Funds for new infrastructure and R&D are also addressed in Element #19.</i></p>	<p>Fees are paid by producers to the PRO. All producers of covered materials should contribute funding, whether or not their materials are recycled. Producer internalized funding covers all recycling program costs, including collection, transportation, processing, reuse, recycling, other recovery, education, program administration, and government oversight/administration. The funding also covers disposal of contaminated recyclables that arrive at the MRF, as well as contamination (non-recyclable materials) arriving at the MRF and requiring disposal. A portion of fees should be used to develop markets and infrastructure to increase the recovery of covered materials over time, as well as for packaging-related litter/debris prevention and abatement. Regular, independent, standardized state-by-state audits inform funding decisions within each category of covered costs.</p> <p>Producers (via the PRO) shall assume responsibility for management of the system, including providing payment to haulers for collection services, drop-off stations, and MRFs for processing services. The PRO shall be responsible for all aspects of end-of-life management, including marketing of materials and meeting performance and convenience standards. <i>Note:</i> The collection of recyclables under this proposal needs to be done in compliance with the Universal Recycling Law (MSW customers must be offered recycling services) – and producers will pay for this service through the PRO.</p> <p>On Stranded Assets/Existing Infrastructure:</p> <p>Haulers: To protect haulers’ investments, the EPR law will implement a transition period (e.g., 3-5 years). During this time, haulers may choose to opt in or opt out of the EPR program. Haulers who opt out will continue to provide subscription trash, food waste, and/or recycling services to their customers, but will not receive payments from the PRO. The PRO must provide payment to any haulers that choose to opt into the program during the transition phase, paying them for their recycling services at a rate and with payment terms determined by the multi-stakeholder Advisory Council. These haulers shall not charge subscription customers for services that are paid for by the PRO. Haulers who opt in will still operate trash and/or food waste collection independently of the PRO, receiving payments from residential or commercial customers. After the transition period is over, there will no longer be an opt-in/opt-out option for haulers. The multi-stakeholder Advisory Council will decide how the PRO will provide payment to haulers from this point on.</p> <p>Transfer stations and drop-off sites that accept recyclables: To protect investments made in drop-off stations by public and private entities, the PRO will be required to either provide payment to existing facilities or provide equivalent services for the duration of the program.</p> <p>MRFs: To protect in-state MRF investments, the PRO will be required to provide payment to existing MRFs at their existing service levels. MRFs may not charge haulers tip fees for covered materials.</p>

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<p>6. PERFORMANCE STANDARDS</p>	<p>The EPR for PPP program must include ambitious, achievable program goals. Program performance standards must include reuse, recovery, recycling, and recycled content, and may also include other beneficial environmental outcomes such as a state-wide waste reduction goal, greenhouse gas emission reductions, reducing toxicity in packaging materials, and other standards. For example, the statute might say: By the end of XXXX (year), a minimum of XX% by weight of all covered materials will be reused or recycled. The statute should specify an overall waste reduction goal for the state, e.g. by XXXX (date), the amount of covered materials that is disposed shall be reduced by XX%. Program targets should take baseline data into account (i.e., initial targets should be achievable given the state’s current recovery and recycling rates, emissions, total or per capita waste generation, and other relevant figures). Covered materials should be managed in accordance with the following hierarchy:</p> <ol style="list-style-type: none"> 1. Source reduction 2. Reuse 3. Recycling 4. Incineration/WTE/landfilling. <p>Emerging chemical/advanced recycling technologies will be considered by the state on a case-by-case basis.</p> <p>For reuse, recovery, recycled content, and recycling targets, specific targets should start at or above existing rates, with penalties if the goals are not met. Performance should be calculated relative to the amount of material producers place on the market. Recycling rates should be calculated using the amount of material processed and sent to recycling markets (not the amount <i>recovered</i>). The statute or state regulatory process may set achievable minimum/baseline material-specific reuse, recovery, recycled content, and recycling targets as a starting point for the program, and the PRO should propose updated material-specific targets via the stewardship plan process over time. When performance targets are revised, they should reflect the state’s and PRO’s understanding of why they could not be reached (or why they were exceeded). If the state and the PRO do not agree on performance targets, the state has the authority to modify the submitted stewardship plan by setting performance targets. Regular, independent, standardized state-by-state audits will inform setting updated targets and progress towards performance standards.</p> <p>The state is authorized to promulgate any regulations necessary for the program.</p>

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<p>7. CONVENIENCE STANDARDS</p>	<p>Producers must provide and pay for convenient and on-going consumer access to collection facilities and/or collection services throughout the year.</p> <p>If there are existing state or local laws that set standards for service (e.g., curbside pick-up, plastic bag drop-off, etc.), producers must meet or exceed those standards (also see Related Laws #13). Collection services for mandatory recyclables must be as convenient as trash disposal. Per VT’s Universal Recycling Law (Act 148), recycling services must be offered wherever trash collection is offered. At minimum, the stewardship plan shall ensure that mandatory recyclables specified in Act 148 are collected and transported to MRFs.</p>

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	<p>If the state oversight authority agrees that a material (such as plastic bags) is not suitable for the most convenient means of collection available, another means of collection can be used. For non-mandatory recyclables, producers may propose collection systems in the stewardship plan. These programs may utilize existing drop-off and transfer facilities, provided such facilities are able to accommodate additional materials.</p> <p>The existing recycling system needs to be stabilized and improved (including expanded) to capture more covered materials.</p> <p>The EPR for PPP recycling program should, at minimum, continue via statute the same level of service as the existing recycling program. This is the “baseline” program, which includes but is not limited to municipal and private subscription services. The stewardship plan shall be required (via statute) to outline how the recycling program will also build on and expand beyond existing recycling opportunities to recover covered materials.</p> <p>A multi-stakeholder Advisory Council (see #4) can provide input into the stewardship plan, including making recommendations on future program expansion and improvements. Additionally, the state agency will have authority to approve (or disapprove) of the stewardship plan, including proposed program improvements/expansions.</p>

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<p>8. DESIGN FOR ENVIRONMENT AND INCENTIVES</p> <p><i>Note: this element only covers how material fees are set and modulated. All fees collected by the PRO will be used for recycling program costs and improvements, as well as other program needs – but these details are covered in Element # 5 (Funding Mechanism).</i></p>	<p>Covered Materials should be designed to minimize their overall environmental and health impacts. The statute or regulatory process will specify the state’s general desired environmental outcomes of the program. Examples of desired outcomes include eliminating or reducing the amount of material used, eliminating toxic substances, designing for reuse and lifespan extension, incorporating recycled content, designing to reduce environmental impacts across a product’s lifecycle, and improving recyclability. (Recyclability refers to the technical feasibility of recycling the materials, the practical ease of recycling the materials including access to convenient collection, market availability, and consumers’ ease in identifying materials as recyclable.) Specific fee amounts will be proposed by the PRO annually as part of the annual report process and will be subject to public input (including producers) and state approval. Fees may be assessed by weight (which inherently benefits light-weighted materials) and/or per customer sales unit or other measure.</p> <p>After XX years, the PRO will propose an updated fee structure that is eco-modulated to incentivize the desired environmental outcomes of the program* and disincentivize materials that more commonly become litter or aquatic debris or are disruptive to or become a contaminant at recycling facilities. Lifecycle assessments should account for the downstream impacts of compostable packaging, including contamination at processing facilities. Eco-modulated fees that incentivize compostable PPP will not be approved by the state unless all composting facilities in the state accept the material and producers use program funding to cover the costs of collecting and industrially composting these materials. Recyclability is a higher priority than compostability for covered materials.</p>

	<p>*Desired program outcomes:</p> <ul style="list-style-type: none"> • Less packaging is being used – waste is reduced overall • More packaging is reusable, has recycled content, and is recyclable • Packaging contains fewer toxics and other harmful materials
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9. STEWARDSHIP PLAN CONTENTS	<p>The stewardship plan should describe covered materials, covered entities, and responsible parties; stewardship organization structure; funding, including how fees will be structured and collected; any performance targets in addition to targets set in statute; material collection methods, consumer convenience and geographic coverage; consumer education (see element #11); a customer service process (e.g., a process for answering citizen or customer questions and resolving issues); sound management practices for worker health and safety; design-for-environment provisions (see element #8); how producers will work with the Advisory Council during the transition phase to accommodate all haulers who opt into the program and to determine how the program will compensate haulers for collection services after the transition period ends; how producers will receive input from the Advisory Council on all other elements of the program; and plans and funding for infrastructure and market development, including criteria for infrastructure investment. The stewardship plan should also propose a process by which residents may request collection services that are paid for by the PRO after the initial transition phase ends, in case a situation arises whereby residents in a given area do not have access to haulers that have opted into the program.</p> <p>The state should review the stewardship plan every five years and will have the authority to require that a plan be revised at this or any other time if program targets are not being met or if there is a change in circumstances that warrants a major revision.</p>

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10. REPORTING REQUIREMENTS	<p>On an annual basis, producers must report at minimum: production and collection amounts of covered materials by material type; management of materials by type relative to the state’s waste hierarchy or sustainable materials management policy (amounts by method, recycling rates based on a percentage of PPP produced, and amounts sent to end markets); data on the final destination of materials, including the form of any materials exported (e.g., whether they were mill-ready); contamination in the recycling stream; Advisory Committee composition; collection service vendors, collection locations, population coverage, and accessibility (geographic distribution of collection, distance to population, hours or frequency); expenses; educational efforts and results; customer service efforts and results; performance relative to targets in the approved plan, recommended updates to any performance targets, and any other information the agency deems appropriate or directs the producers to include.</p> <p>Annual reports must be published online.</p> <p>Reporting should be consistent with the state’s existing waste tracking plans (e.g., data tracking for overall trash generation and reduction) to provide consistency and enable comparisons across programs.</p>

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<p>11. OUTREACH AND EDUCATION REQUIREMENTS</p>	<p>Producers must educate consumers across the state through various VT media on proper end-of-life management for Covered Materials, as well as provide the location and availability of curbside and drop-off collection opportunities. Recycling instructions should be consistent statewide, easy to understand, and easily accessible. The stewardship plan must include a proposal for how producers will evaluate the reach and effectiveness of multi-media consumer education campaigns over time. Educational materials must include a website with recycling instructions specific to the state. Producers must develop outreach and education for the diverse ethnic populations in the state. The PRO should coordinate and fund outreach and education with solid waste management entities.</p> <p>If performance targets are not being met, producers are required to conduct an evaluation of outreach and education efforts to ensure that such efforts are sufficient and effective, as well as to provide information that can be used to target and improve outreach and education efforts. If existing efforts are found to be insufficient or ineffective, government should have authority to request additional efforts.</p> <p>In addition to the overall consumer education proposal, the stewardship plan will describe how labels will be used to educate consumers about proper end-of-life management of covered materials and include a proposal for how labeling will improve over time, including the creation of consistent national labeling standards that are also applicable to the local level.</p> <p>The PRO is also responsible for outreach to all haulers in the state during the initial transition phase to ensure they are aware of the program and the opportunity to opt in/opt out.</p>

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<p>12. ANTI-TRUST AND COMPETITION</p>	<p>A producer or stewardship organization is immune from liability for any claim of a violation of antitrust, restraint of trade or unfair trade practice, if such conduct is a violation of antitrust laws, to the extent the producer or stewardship organization is exercising authority to carry out the provisions of the law.</p>

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<p>13. PRE-EMPTION AND RELATED LAWS</p>	<p>The law should be as compatible as possible with existing state programs, regulations, and laws, including the deposit return system, any bans on toxics in packaging, and other EPR systems. However, EPR for PPP should not preempt local legislative authority from imposing additional standards or restrictions on products and packaging. The law must be compatible with Act 148 (the Universal Recycling Law).</p> <p>Legislation should address any regulatory hurdles that existing laws may impose that would prevent collection, transport, and recycling of flexible packaging. Legislation should not intentionally or inadvertently incentivize disposal over recycling.</p>

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<p>14. PENALTIES FOR VIOLATION</p>	<p>Provisions to ensure compliance must be included to ensure a level playing field. A producer may not sell, use, or distribute Covered Materials (including products packaged in Covered Materials) in the state unless the producer has an approved stewardship plan or is participating in a stewardship organization with an approved plan. Provisions for the state to ensure compliance should include assessing monetary penalties against producers and stewardship organizations, e.g. language from VT’s e-waste law (120%). They may also include seeking the issuance of orders requiring compliance with the law. Producers participating in an approved plan or stewardship organizations on their behalf should be allowed to take legal action against non-compliant producers.</p> <p>If the PRO/producer does not meet a given performance standard – e.g. for waste reduction of covered materials – a consequence could be providing a revised plan amendment with revised eco-modulated fee schedule that will improve program outcomes (e.g. penalize materials that are more wasteful).</p>

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<p>15. ADMINISTRATIVE FEES</p>	<p>Administrative fees should be set annually, and paid by the PRO. Fees should be reasonable and sufficient to cover actual state agency oversight costs, including rule writing, planning, plan review, annual oversight, compliance, enforcement, and other directly related tasks. All fees must be allocated to the PPP EPR program and should not become part of the state’s general fund. The law may specify that the fees support one or more staff positions within the oversight agency to administer the program.</p>

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<p>16. AUDIT REQUIREMENTS</p>	<p>Annual reports should include an independent financial audit.</p> <p>Regular, independent, standardized state-by-state audits will inform funding decisions within each category of covered costs (i.e. how much money is allocated to each covered cost).</p> <p>Regular, independent, standardized state-by-state audits will inform progress toward performance standards.</p>

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<p>17. STATE & LOCAL GOVERNMENT ROLES</p>	<p>The state government provides program oversight and enforcement, including reviewing, approving, amending, and rejecting stewardship plans and annual reports as appropriate. The state oversight agency will have authority to approve (or disapprove) all aspects of the stewardship plan and will receive expert input from the multi-stakeholder Advisory Council when reviewing the plan. ANR will continue to oversee the list of mandatory recyclables and will consider any alternative collection schemes proposed in the stewardship plan for non-mandatory recyclables. Program plans should include provisions to consult with state and local governments.</p>

	<p>The state (ANR) will also be authorized to promulgate any regulations necessary to implement the program – this is an optional tool. The state will also have a role in reviewing the results of any program audits, and may request program audits.</p> <p>Local gov'ts have the following roles:</p> <ul style="list-style-type: none"> • Local gov'ts are sometimes compensated as service providers • Local gov'ts are covered entities under the program when they offer recycling collection in public spaces - sidewalks, schools, plazas, parks, etc. • Local gov'ts are sometimes producers, if they do not meet the de minimis standards set forth in element # 3 • Representatives from local-gov't operated MRFs, transfer stations and drop-off sites that accept recyclables will participate on the Advisory Council to provide non-binding input to the PRO. SWMEs will also participate on the Advisory Council.
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ELEMENT	VT PSC POSITION
<p>18. IMPLEMENTATION SCHEDULE</p>	<p>Producers must submit a stewardship plan within 12 months* of enactment of this legislation. The state has 90 days to review the plan, plus a 30-day public comment period. If a plan is rejected, the producers must submit a revision within 60 days. The stewardship plan must be implemented within one year of plan approval.</p> <p>Require that stewardship organization(s) operate on an annual basis that is consistent with state recordkeeping (i.e., fiscal or calendar) to simplify reporting and comparisons across packaging and other stewardship or waste management programs.</p> <p>*Note: PSI can share a tool for planning an implementation schedule.</p>

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<p>19. MARKETS, RESEARCH & INFRASTRUCTURE</p>	<p>Producers shall use existing infrastructure to the extent it is technologically feasible and economically practical. See element #5 for details on the use of existing MRFs, transfer stations and drop-off sites that accept recyclables, and haulers.</p> <p>Producers must invest a portion of funds into expanded recycling infrastructure development. The amount of investment and criteria for new infrastructure investments should be specified in the stewardship plan. Such funds are in addition to the cost of recycling program operations.</p> <p>Producer funding must also be directed towards research and development. Decisions on research and development initiatives shall be made with input from the Advisory Council.</p>