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VIA ELECTRONIC AND U.S. MAIL

Fareed Ferhut
Integrated Waste Management Specialist
Buy Recycled Section
CIWMB
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Sacramento, CA 95812

Dear Mr. Ferhut:

Hewlett-Packard ("HP") has received Mr. Jerry Hart's most recent letters regarding the proposed environmentally preferable purchasing ("EPP") standard for printer and duplication cartridges. We appreciate the opportunity to continue to provide input as the standard is being developed.

We offer below our comments about the parties' efforts, to date, to better define the four benchmarks for satisfying EPP that the CIWMB has proposed. Prior to making those comments, however, we share here our global views about the printer and duplication cartridge EPP effort to date. First, we are disappointed by the lack of transparency and openness in the standard development process thus far. As you know, we have on more than one occasion requested the opportunity to review and comment upon the other interested parties' suggestions and CIWMB's responses, because no provision had been made to publish those documents. We appreciate your accommodation of these requests. However, we remain concerned that the process of soliciting written comments has not fostered dialogue, which we believe to be essential in creating effective, consensus-based standards.

Active dialogue will allow CIWMB to effectively tap into the knowledge base of the relevant industries, which the present state of the draft standard illustrates is needed. To date, the proposed criteria employ terminology not directly relevant in the addressed market. The performance thresholds are not appropriate given the current state of cartridge technology and the marketplace. We have not observed any investigation into the likely effects of the proposed standard on the cartridge market nor on the environment.

We are also concerned that the draft EPP standard demonstrates a disparate treatment that favors remanufacturers of printer and duplication cartridges over original equipment manufacturers ("OEMs"). In its present state, the draft EPP standard is one which virtually all remanufacturers can meet and which seems practically unattainable by the OEMs. In so doing, we believe the proposal has overlooked the purpose of EPP as it is articulated in Section 12400 of the California Public Contract Code (to promote goods and services that "have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose"). Additionally, by favoring remanufacturers over OEMs,

the standard would serve to reduce competition, thereby defeating an important value promoted by California Public Contract Code.

HP is prepared to address the concerns raised above. Our representatives are prepared to attend meetings or participate in teleconference calls, on short notice, to foster the dialogue we seek. We are also willing to participate in investigations of the likely effects of the proposed EPP standard on human health and the environment.

Although HP has significant concerns with the process and the proposed standard to date, we remain committed to helping California achieve the best possible EPP standard that is fair to all potential sellers. It is in that spirit that we offer the following comments on the most recent draft of the standard proposed by CIWMB.

General Approach to EPP

HP supports the rights of third-party remanufacturers to compete in the marketplace, and HP does not design its print cartridges to prevent remanufacturing. HP's original, reliable and high-quality cartridges differ greatly from aftermarket cartridges, which seek to fill a very separate industry niche. HP believes that any EPP standard should foster a competitive marketplace where vendors who deliver superior environmental performance are rewarded. In the cartridge secondary market, that means the standard must differentiate superior environmental performance within the ranks of both original and remanufactured cartridges.

As you have expressed and implied in previous correspondence, Benchmarks 2 and 3 address recycled content and processes applicable to remanufactured or reused products, while Benchmark 4 addresses post-use collection, applicable to OEM products. In order to ensure a fair standard that rewards environmentally preferable products, criteria addressing environmental management practices should apply within Benchmarks 2 and 3, as well as Benchmark 4. Under such an approach, purchasers of cartridges designated as EPP, whether they prefer the superior quality and reliability typical of OEM cartridges or the lower acquisition cost typical of remanufactured cartridges, can be assured they are indeed purchasing a cartridge that offers among the best environmental performance in its product category.

Benchmark 2

As presently written, Benchmark 2 does not serve to differentiate environmentally preferable remanufactured cartridges from other remanufactured cartridges. In fact, the point system proposed in Benchmark 2 would guarantee that virtually all remanufactured cartridges would achieve full EPP attainment, or 100 points.

For example, under the proposed scheme, 100 points are achieved by products utilizing 30 percent postconsumer recycled material. For a typical toner cartridge, the weight of the exterior housing is frequently over 30 percent of the cartridge weight. Thus, remanufactured cartridges, typically built from a recovered housing with new and used internal components, would practically by definition be EPP. Under such a scheme a cartridge remanufacturer operating in California could replace all internal components, discard in the municipal solid waste stream all replaced parts and used toner as well as all collected cartridges that are not remanufactured, and offer its product for sale to procuring agencies without any provisions for collection or recycling of the remanufactured cartridge after use, and still be designated EPP. Such a vendor's operations and used cartridges would contribute far more waste to California's landfills than those of other, better managed remanufacturers, or those of OEMs that offer collection and recycling programs to their customers.

We strongly recommend some demonstration of sound environmental management practices be required for remanufactured cartridges, in order to differentiate those products that represent EPP, from those that do not. At a minimum, in order to achieve EPP, a remanufactured cartridge should (1) be processed in such a way that replaced components and collected cartridges that are not remanufactured are responsibly managed, preferably by recycling, and (2) be covered after customer use by a vendor provided collection and recycling or reuse program.

Benchmark 3

Similar to Benchmark 2, the third Benchmark effectively provides no differentiation among remanufactured cartridges. "Remanufactured" as defined in the proposed benchmark would encompass virtually all used cartridges processed for resale, except those that are simply refilled (commonly known as "drill and fill" processing within the cartridge industry). Even the least sophisticated cartridge remanufacturer could claim they are using a "formal process...or other documented standard operating procedures." Cartridge disassembly and assembly instructions that could be called "standard operating procedures" can be downloaded for a nominal or no fee from a number of internet sites.

If the intent of this Benchmark is to favorably differentiate those remanufactured cartridges that have been processed in an operation with ISO 9001 certified management systems, or a similar recognized standard, then that is what the language of the Benchmark should reflect. Otherwise, the Benchmark should be eliminated in its entirety.

Benchmark 4

In our comments of August 29, we noted three areas of concern with a collection rate threshold, as it was envisioned in Benchmark 4. These were, (1) a collection rate threshold would disrupt the cartridge secondary market, which is functioning effectively to collect and reuse or recycle used cartridges; (2) demonstrating a collection rate will create an administrative burden disproportionate with environmental benefits; and (3) the management of used cartridge collection is a shared responsibility.

Based on your letters of September 19, we do not feel that our concerns have been adequately addressed or, in the case of our market disruption concern, even considered. We urge CIWMB to reconsider the current approach to Benchmark 4. In many respects, the toner cartridge secondary market is an example of the free market creating an environmental solution, one that results in the recycling and reuse of many used cartridges. Introducing a collection rate threshold tied to market access and applicable only to individual OEM cartridge producers has the potential to affect the dynamics of the marketplace.

In addition, there are a number of practical problems with the approach CIWMB has outlined:

Addressed Market: The present text of the proposed standard fails to define the market to which the collection rate applies. Application of a mandatory collection rate to a limited market – State Agencies for example – could provide vendors with the ability to address the shared responsibility concerns we have noted in previous correspondence. Delimiting the addressed market in such a way, may present a workable approach. Attempting to address all California sales is not a viable option as explained below.

Cartridge Distribution Tracking: Cartridge manufacturers typically utilize a multi-tiered distribution system. As such, users may acquire cartridges via direct sales from manufacturers, through internet orders from a wide variety of web-based vendors, in stores of major retail chains that have their own national distribution system, and in local establishments. Creating a

system to discretely and accurately track California sales, if it is possible at all, would require substantial investment disproportionate to the environmental benefit of acquiring such data. Delimiting the market addressed by the collection rate in the manner suggested above could mitigate this issue.

Basis for Proposed Threshold to Achieve EPP (40%): We are interested to know the basis for your proposed threshold collection rate of 40%. Our research indicates that such a rate is quite high, even for materials with curbside collection like newspapers and beverage bottles. Still, based on accepted industry data, the cartridge secondary market as a whole achieves a far higher collection rate for many products. This situation is achieved when OEMs and remanufacturers compete freely in the marketplace. Implementing a requirement that OEMs achieve a collection rate of 40% would put OEMs, like HP, who support fair competition and customer choice in the cartridge secondary market, at a competitive disadvantage.

In summary, the present approach to Benchmark 4 is seriously flawed. We believe it is possible to address these flaws through delimiting the addressed market, and possibly through other provisions. We urge CIWMB to rethink its approach to differentiating environmental performance among OEM cartridges. HP is eager to assist CIWMB in developing an appropriate and workable solution.

Once again, thank you for the opportunity to provide comments.

Sincerely,



J. Scott Canonico
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