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Mr. Fareed Ferhut  
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Buy Recycled Section  
CIWMB  
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Dear Mr. Ferhut,

This letter responds to the invitation extended by Mark Leary, Executive Director, California Integrated Waste Management Board (the "Board") for members of industry to provide comments and suggestions regarding a proposed environmentally preferable product (EPP) standard for printing cartridges. While the objective of the effort and the ultimate effect of the EPP designation are not clear at this time, Lexmark International, Inc. ("Lexmark") appreciates the opportunity to participate and looks forward to a more clear explanation of these points in future iterations and/or dialogue. Lexmark also requests that the Board continue to include Lexmark in its correspondence and opportunities to comment as the proposed standard evolves. In addition to the formal written comment process, we believe it would be very helpful for all parties to have a more direct interchange as well, and would suggest that the Board organize a stakeholder workshop early in the process.

#### **I. About Lexmark**

Lexmark makes it easier for businesses and consumers to move information between the digital and paper worlds. Since its inception in 1991, Lexmark has become a leading developer, manufacturer and supplier of printing and imaging solutions for customers in more than 150 countries. Founded in 1991, Lexmark reported \$5.3 billion in revenue in 2004.

Lexmark also is one of the largest toner cartridge remanufacturing companies in the world. In part through its cartridge Return Program for new toner cartridges, as well as its toner cartridge remanufacturing program, Lexmark has kept millions of pounds of materials out of the solid waste stream. Customers wishing to purchase a genuine Lexmark cartridge may choose among: (1) A new cartridge that may be recycled or remanufactured by anyone; (2) a new, lower priced cartridge that must be used only once and returned only to Lexmark for remanufacturing or recycling; or (3) a remanufactured, even lower priced cartridge that may be used only once and returned only to Lexmark for remanufacturing or recycling. Cartridges returned to Lexmark through its programs are then either remanufactured and resold by Lexmark as remanufactured cartridges or recycled by Lexmark.

Lexmark's Return Program is environmentally friendly and thus is consistent with the objectives of this EPP standard initiative.

## **II. Scope of the Standard**

Given the present State of California purchasing practices, Lexmark believes the proposed EPP print cartridge standard should include only those products that California state agencies currently purchase on contract – toner cartridges. As it is believed that inkjet cartridges are acquired primarily at the micropurchase level, it would be more appropriate to formulate an EPP standard for those products at a time when they are purchased by the state on a scale similar to toner cartridges.

Lexmark also would like to receive additional information and be afforded an opportunity to comment regarding the expected effect of this standard, as to date such information has not been provided.

## **III. California Public Contract Code Benchmarks**

Any EPP toner cartridge definition should be consistent with the requirements of applicable provisions of the California Public Contract Code (the “Code”). To adopt a standard that is inconsistent with the Code would not only be unfair to industry, which has relied on the existing Code provisions for years in making the investments necessary to produce remanufactured products, it would raise concerns regarding whether such an inconsistent standard would be within the Board’s authority.

### *A. Section 12200*

Any EPP standard should clearly define what constitutes “recycled products,” “postconsumer material,” and “secondary material.” Lexmark submits that the definitions presently contained in the Code at Section 12200 are most appropriate to fit this requirement because they apply to present industry practices and provide a suitable environmental benefit. In the toner cartridge remanufacturing process, it is common to re-use a majority of the toner cartridge by weight. Components commonly re-used include the toner cartridge’s plastic carcass, cleaner blade, toner adder roll, developer roll, doctor blade, and others. While some industry participants may re-use other electrophotographic components (e.g., the photoconductor roll), it is also common among other industry participants for quality reasons to replace such components with new parts. Under the present Code scheme, even remanufactured toner cartridges that contain no “Secondary materials” comprise “Recycled products” because they are products that “could have been disposed of as solid waste having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of its form.” Code Section 12200(a)(1). Accordingly, Any EPP standard should expressly adopt the definitions of “Recycled product”, “Postconsumer material,” and “Secondary material” contained in Section 12200 of the Code.<sup>1</sup>

### *Section 12156, subdivisions (a) and (b)*

Public Contract Code Section 12156(a), which is paraphrased in Mr. Leary’s May 23, 2005 letter, contains certain prohibitions against the restriction of remanufacturing or recycling, unless an exception contained in subdivision (b) of that Section applies. Because this section of the Code already carries to force of law, to restate it in any EPP standard would be redundant. Moreover, the subdivision is merely a prohibition. It does not contain any affirmative statements regarding the qualifications of an EPP cartridge. Lexmark suggests there is no need to include

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<sup>1</sup> To that end, Lexmark suggests, at least with respect to benchmarks labeled 2 and 3 of the Board’s May 23, 2005 letter, that any EPP standard clearly present these benchmarks in the alternative. There is no reading of the Code in its present form which suggests that a remanufactured product must include “Secondary material” in order to qualify as a “Recycled product.”

the provisions of Section 12156 in any EPP standard because industry members will be required to comply with its provisions in any event in order to sell products to the State.

To the extent the Board disagrees and proposes to include subdivision (a) into the EPP standard, then the Board should refrain from adopting a standard that is inconsistent with the entire Section 12156 and must therefore include Section 12156 subdivision (b), which is the sister provision to subdivision (a).<sup>2</sup> Specifically, Section 12156(b) of the Code states that:

“Notwithstanding subdivision (a) [of Section 12156], a manufacturer, wholesaler, distributor, retailer, or remanufacturer who establishes a recycling or remanufacturing program that is available to its customers may enter into signed agreements with those customers consenting to the return of the used cartridge to the manufacturer, wholesaler, distributor, retailer, or remanufacturer, only for either of the following purposes:

- (1) Recycling and remanufacturing, for purposes of making the remanufactured cartridge available for purchase.
- (2) Recycling.”<sup>3</sup>

Any EPP standard that is adopted, to the extent it includes the requirements of Section 12156(a), must also include the above sister provision in order to satisfy the Code’s requirements. The intent and effect of Code Subdivision (b) is to allow industry participants to offer customers incentives to return empty cartridges for remanufacturing or recycling, which is entirely consistent with an EPP objective. In order to sell remanufactured cartridges, producers need a reliable source of used products. The customer incentives permitted by subdivision (b) help producers achieve that goal.

### **Conclusion**

Lexmark appreciates being afforded the opportunity to make suggestions regarding the proposed EPP standard. Lexmark submits the proposed standard should be applied to toner cartridges, should not contradict the Code, and, for the key terms of recycled products, secondary materials, and postconsumer materials, should employ the definitions contained in Section 12200 of the Code. Lexmark looks forward to participating in the ongoing process.

Yours sincerely,



Patrick T. Brewer  
Director, Government Affairs



Tonya Jackson,  
Director, Sustainable Practices –  
Environmental, Health and Safety

cc: Gene Erbin, Neilson, Merksamer, Parrinello, Mueller & Naylor  
Andy Logan, Lexmark  
Don Wright, Lexmark  
Martin Zutt, Lexmark

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<sup>2</sup> Subdivision (b) was not referenced in the Board’s May 23 letter.

<sup>3</sup> Lexmark also suggests that the proposed standard need not include the language of Section 12156 subdivision (e), which merely serves to define the terms “Printer” “Recycled” and “Remanufactured” as they are employed in subdivisions (a), (b), and (c) of that Section.