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December 5, 2005

VIA ELECTRONIC AND U.S. MAIL

Fareed Ferhut  
Integrated Waste Management Specialist  
Buy Recycled Section  
CIWMB  
P.O. Box 4025, MS-12  
Sacramento, CA 95812

Re. EPP Standard for printer and duplication cartridges, California Integrated Waste Management Board letter to interested parties, dated November 17, 2005

Dear Mr. Ferhut:

We write in response to your letter dated November 17, 2005, concerning the continuing efforts of the California Integrated Management Waste Board ("the Waste Board") to develop an environmentally preferable product ("EPP") standard for printer and duplication cartridges ("cartridges"). Hewlett Packard ("HP") supports your announcement of the December 12, 2005, workshop among the EPP stakeholders, and appreciates the Waste Board's inclusion of HP in that process. We also appreciate your agency's willingness to engage in direct conversations with stakeholders, as you did with HP during our November 29 conference call.

We have a number of benchmark-specific comments, and will address those in the sections that follow. Prior to addressing those specifics, however, it is important to voice HP's general policy concerns with the process to date. We believe that these are consistent with our recent conversation.

First, we do not agree with the hasty timeline itemized by the Waste Board in your most recent letter. Significant policy changes such as the one the Waste Board has undertaken warrant a period of time that is sufficient to analyze complex environmental and policy questions, particularly when they involve multiple stakeholders. There were several very significant changes to the proposed standard in your most recent letter. We anticipate that these changes will draw comment from stakeholders, just as HP comments below. A single workshop, while a worthwhile effort, will not be sufficient to resolve the issues that remain with the proposed standard. For this reason, although HP will participate enthusiastically in the December 12 workshop, we do not support your office's apparent desire to conclude the process immediately thereafter when numerous issues remain unresolved.

Second, while we want to be optimistic about the progress being made, we have not observed a "consensus" among the Waste Board and stakeholders as you assert on the first page of your November 17 letter. As we demonstrate below, HP continues to have significant disagreements with the EPP standard developed to date by the Waste Board. HP is not alone. For example, there appears to be little consensus between the Waste Board and stakeholders concerning the

method of certification and documentation required. Canon, Sharp and Xerox continue to comment that collection rate language requires improvement due to the impracticality of tracking return quantities. Sharp and Xerox likewise continue to express concerns about the treatment of energy recovery. In addition, with respect to Benchmark 2, Canon and Sharp have in their most recent comments suggested revisions and expressed concerns regarding lack of clarity and achievability.

Third, the Waste Board has in many cases not provided sufficient factual basis for the positions it takes. Instead of supporting its benchmarks with empirical data tied to the purpose of EPP, the Waste Board has in many instances offered positions without providing a data-based rationale. For example, in the most recent proposal, a new cartridge incorporating 10% recycled plastic resin receives 100 points, or full EPP attainment, while a cartridge incorporating 9% receives 50 points. This apparently indicates a Waste Board position that a cartridge with 9% recycled content is far less environmentally preferable than a cartridge with 10% recycled content (presumably half as good). Why are not 90 points awarded, for example? No basis for the proposed point structure is given in your letter.

In another instance, your letter responding to HP's October 10 comment letter includes a statement that, "We [the Waste Board] feel that this marketplace approach to collection rate...can be reasonably calculated...." HP does not understand the basis on which that conclusion was reached. In the last round of stakeholder comments, four stakeholders, including HP, indicated that the documentation or data required for certification were unclear, or that the collection rate calculation could not be reliably made. These comments were based on manufacturer collection rates. Your latest proposal includes a collection rate threshold based on the performance of the *entire marketplace*. It is reasonable to assume that the latter collection rate would be even more complex to measure and calculate than the manufacturer rate which elicited a number of stakeholder comments. We suggest that – unless the Waste Board has additional, as yet unreleased information regarding such a calculation – additional research, a call for more information or a change in position is appropriate.

To make this project successful, we urge the Waste Board to provide the factual bases for its positions. The stakeholders cannot effectively comment on the Waste Board's positions without access to the Waste Board's evidence. If the Waste Board cannot share its factual bases, or if it has none, then stakeholders and observers are left to presume the Waste Board's positions are conjecture-based or, in the worst case, arbitrary. We are aware of no other situation where an administrative board formulated policy or regulations without publishing and defending its factual predicate.

Our further comments are specific to the various Benchmarks.

#### Benchmark 1

We agree with the apparent intent and the language of Benchmark 1. HP supports customer choice and the right of all responsible parties to collect, and if they so choose, to remanufacture our products. Clearly we want cartridge users to choose our products, but we do not interfere with their ability to choose cartridges placed on the market by other parties.

#### Benchmark 2

We appreciate your clarifying your intent with respect to Benchmark 2. We now understand that this Benchmark contemplates new cartridges incorporating post-consumer recycled plastic resins.

We find the current wording of Benchmark 2 to be unclear as to how the levels of recycled content will be measured. Specifically, when a manufacturer calculates the percentage of recycled content, the basis (i.e., the denominator) could be the weight of the entire cartridge,

inclusive or not inclusive of toner. Alternatively, the calculation could be based on the weight of the subject component, the cartridge housing. We suggest as a basis the exterior plastic housing, which does not include the weight of the cartridge's internal components, toner, seals, labels, fasteners or other parts that do not make up the plastic housing. The 10% threshold is appropriate given the current lack of availability of suitable post-consumer recycled content.

#### Benchmark 3

We appreciate your adoption of our suggestion regarding remanufacturer environmental management practices. It is important to note that our suggestion was directional in nature. The term "preferably" has no legal basis and is therefore unenforceable. In lieu of the byproducts management provision as currently drafted, we suggest the following:

*Collected cartridges must be processed in an environmentally responsible manner. Replaced parts and cartridges that are collected but not remanufactured, including residual toner, must be diverted from landfill disposal, through a recycling program which has as its primary function the recovery of materials.*

We continue to recommend that all Benchmarks incorporate within their scope a requirement for a vendor-provided collection and recycling program. It is our view that all vendors seeking to certify their cartridges as EPP should offer such waste management options.

#### Benchmark 4

We appreciate your recognition that the free and unconstrained cartridge secondary market has created an effective environmental solution that is resulting in the collection and recycling or remanufacturing of a great number of used cartridges. You apparently agree with our assertion that accepted industry data indicate that for many products this occurs at a rate far above your originally proposed manufacturer collection rate of 40%. We are confident that industry insiders and observers would also concur.

While establishing this standard, though, it is important to keep in mind that the degree of certainty required for industry acceptance is markedly different from that required in order to make "auditable and verifiable" certifications to the State of California "under the penalty of perjury." We have in previous correspondence indicated as a source of significant uncertainty in any calculation of cartridge collection rates the multi-tiered distribution system common in the cartridge industry. This system makes precisely tracking cartridge sales volume throughout all of California impractical. Likewise, Canon pointed out in their October 19 comment letter the uncertainty introduced by variability in time between sales and returns. Many other sources of uncertainty in a calculation of a market-wide collection rate exist.

HP will prepare a statistical analysis of these uncertainties, for submission under separate cover no later than January 27, 2006. We are confident that the analysis will demonstrate that reliably calculating the rate of collections as contemplated in the most recent proposal is not practical.

In addition, you have proposed that vendors seeking to attain EPP through Benchmark 4 must ensure that "the relevant collection rate ... be maintained for the duration of a contract in order to substantiate an EPP claim for a cartridge model." While vendors will be able to certify that their own collection programs are maintained, they will not be able to certify that future collection rates, which are dependent on customer behavior, will not change. Similarly, certification of the future performance of other entities collecting cartridges is not possible.

Neither will vendors seeking to attain EPP through Benchmark 4 be able to certify any level of process environmental performance for other entities. This appears to be contemplated by the proposed text, "Furthermore, all collected cartridges must be processed in such a way that the

replaced components that are not remanufactured are responsibly managed, preferably by recycling." We recommend deletion of that language from Benchmark 4.

Finally, the proposed standard requires certification of a collection rate for each cartridge model. This creates unnecessary complexity and introduces some practical problems. HP sells over 90 different toner cartridge models to California State agencies. We expect other vendors have similarly broad product portfolios, making it inappropriate to require model-by-model certification. Xerox, for example, commented in their August 29 letter to the Waste Board that, "There are some products for which Xerox tracks the percent of returns, but it would impractical for us to track quantities of every cartridge. In addition, we don't understand the value of this requirement." We concur with Xerox.

It is also unclear how newly introduced cartridge models, which have no collection rate history, will be treated. We do not see how a newly introduced cartridge model, even one that is covered by a vendor provided collection program, could attain EPP status under the present provisions of Benchmark 4.

The Waste Board is in the best position to create incentives for data submission from the various entities that make up the cartridge market, rather than placing that burden solely on vendors seeking to attain EPP status through Benchmark 4. Estimated collection rates, which are a trailing metric, are appropriate for judging the efficacy of procurement preferences, but do not represent a practical threshold criterion for product certification. We strongly recommend that CIWMB use them only in the former context.

#### Summary

As we have suggested in previous correspondence, we support an approach to EPP that recognizes vendors who provide a convenient and readily available method of return, free of charge to California agency purchasers. We recommend alternate language to that effect in our August 29 letter to the Waste Board. Such an approach, which focuses on performance requirements which are under vendors' control, is consistent with prominent examples of public policies that pursue similar goals. This approach is also consistent with the recent amendments to the Public Contract Code that authorize state agencies to purchase printer or duplication cartridges that are covered by a recycling program. The Waste Board should incorporate this requirement into the EPP program, rather than frustrating the intent of the legislature by adding unrelated requirements.

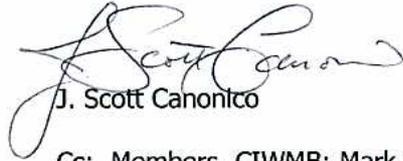
During our recent teleconference, the Waste Board expressed a willingness to consider additional approaches to demonstrating preferable environmental performance, through an additional benchmark or other construct. We appreciate that flexibility and are eager to assist in the development of a workable solution for waste diversion and data gathering, per your stated policy priorities. To that end, we will submit an alternate benchmark or other approach to EPP, which conforms to the following objectives, which you have outlined:

- Recognition for recycled or reused content
- Recognition for bona fide recycling programs, creating a "level playing field" for cartridge vendors
- Measurable impact on waste diversion
- State-wide waste diversion impacts

We will provide that proposal no later than Friday, February 3, 2006.

Once again, we appreciate the opportunity to comment. We are available to discuss these comments further. Our representatives will be present at the upcoming workshop.

Sincerely,



J. Scott Canonico

Cc: Members, CIWMB; Mark Leary, Executive Director, CIWMB; Ron Joseph, Director, Department of General Services