



**THE DYNAMICS OF DIALOGUE:
LESSONS LEARNED FROM THE U.S. PRODUCT STEWARDSHIP MOVEMENT
By Scott Cassel**

INTRODUCTION

In December 2000, the Product Stewardship Institute (PSI) convened over 100 U.S. government officials from local, state, and federal agencies for an inaugural national Product Stewardship Forum that ignited interests to lower waste management costs, increase environmental protection, and shift the burden of managing wastes from taxpayer-funded government programs to manufacturers and consumers. PSI developed criteria for prioritizing products, placing a high value on the needs of its government members. It also introduced a collaborative process for working with manufacturers and retailers that has become a model in the U.S. for other products and industry sectors. This article will explain PSI's collaborative multi-stakeholder process, including how the organization gains trust and commitments from industry groups to engage with government officials and other stakeholders. The article will also discuss the successful application of the PSI process to the paint industry, resulting in model state product stewardship legislation for the management of leftover paint. The article will draw lessons learned from the eight-year paint dialogue, and also explore the application of the PSI process to other industry sectors.

BRINGING PRODUCT STEWARDSHIP TO THE U.S.

The Product Stewardship Institute (PSI), established as a national non-profit in the year 2000 and based in Boston, has membership from 47 states and more than 200 local governments, and partnerships with over 75 businesses, organizations, universities, and non-U.S. governments. When PSI was founded, the organization was seeking a way to bring product manufacturers and retailers into discussion with U.S. state and local government officials. These officials were struggling with managing a waste stream that was increasing in volume and complexity, and financially burdensome. They knew that without a paradigm shift in the way that waste was managed, the unacceptable status quo would continue. Product stewardship, which by then was well established in Europe and gaining traction in Canada and other countries, represented the type of programmatic shift needed. PSI set out to bring this new concept to the United States, seeking to harmonize programs nationally through the cooperation of the very group - manufacturers - from which it was seeking significant changes. Essentially, PSI exists to establish cooperative agreements among various stakeholders to reduce human health and environmental impacts from consumer products that cause problems owing to their high volume in the waste stream, toxicity, management cost, and other factors. The organization's ultimate mission is to pursue initiatives that ensure that all parties involved with a product's life cycle, particularly its producer, share in reducing these impacts.

PSI's COLLABORATIVE STAKEHOLDER PROCESS

As compared to Europe and Canada, United States corporations have greater political influence, requiring a unique approach to implement product stewardship policies. When it was created, PSI recognized this difference, incorporating the term “product stewardship” in its name because it had the connotation that all stakeholders have a role to play in ensuring product sustainability. PSI stressed the need for stakeholders to share responsibility for solving problems created by products along their lifecycle, even as manufacturers had primary responsibility. PSI highlighted each stakeholder's unique role in implementing product policy and believed that the negotiation of these roles was the basis for sustainable agreements.

PSI brought this collaborative perspective into discussions with those interested in translating product stewardship and its central tenet of producer responsibility to the U.S. PSI's approach involved a deliberative process that sought to engage manufacturers, retailers, and other businesses in understanding why their products and practices caused environmental problems and fiscal pressures on other parties, and what each stakeholder could do to alleviate those impacts. The process was based on objective research, but also involved face-to-face meetings, conference calls, and other forms of communication that sought to share information in a way that had the power to change individual and institutional positions.

The process described below idealizes the overall approach that PSI takes for each of the approximately 15 product categories on which it has worked. In some cases, the organization has followed this process closely. In other times, owing to various factors, including funding, PSI has truncated or changed the process to fit the circumstances. The origin of this process dates to 1996, when it was used to gain consensus among stakeholders in the development of used oil recycling legislation in Massachusetts.¹

Selecting Priority Products: PSI works on problems brought to it by its government members and corporate, organizational, academic, and non-U.S. government partners. Often, these products are considered a priority owing to their toxicity, volume in the waste stream, and cost of solving the problem. To an increasing degree, product lifecycle impacts play a role to the extent that they are known. In addition, funding, industry willingness to cooperate, and the degree to which the product represents an overall priority for a significant number of government agencies, are also major considerations. PSI will not embark on a project unless it knows that it has the national leverage to engage product manufacturers. Owing to PSI's large government membership, manufacturers often will work with PSI in hopes of developing a national model rather than risk state-by-state legislation that could create a patchwork of laws.

Stakeholder Identification: As a first step in its process, PSI identifies each group involved in the manufacture, distribution, sale, use, and end-of-life management of a product, as well as that group's potential role in the solution. PSI maintains an active list of stakeholders that is

¹ The process was developed by Scott Cassel, then the Director of Waste Policy and Planning for the Massachusetts Executive Office of Environmental Affairs.

continually updated throughout a dialogue process. Each list is subdivided into categories depending on the degree of investment that stakeholder has in the process and the level of information they will be provided. PSI does not limit the number of participants in its dialogue efforts, believing that each stakeholder with an interest in the issue has a role to play. PSI believes its role is to orchestrate these interests during the negotiations so that the best solution emerges that will satisfy the interests of all key players.

Key participants include manufacturers, retailers, and government officials, although depending on the product, other stakeholders will be considered candidates for the “inner circle.” PSI finds that it is best to include the association representing the manufacturers of a given product, along with at least three major market players. In this way, the burden of communicating negotiations does not fall entirely on either a company representative, who undoubtedly will primarily protect his or her own company’s interests, or the association representative, who will need to sell any agreement to the full member base. Retailers are the most powerful stakeholder group since they make the decision as to which companies’ products they will sell. However, since retailers sell an abundance of products, it is more difficult to attract them to the table for a negotiation on a single product category. Typically, retailers will enter later in the negotiations, although it is critical to keep them informed of developments and accept input as time allows.

Project Summary: PSI conducts targeted research on the product, stakeholders, and key issues prior to interviewing each major stakeholder. The goal of the initial research and interviews is to develop a Project Summary that will serve as a “single text” document that will be continually revised after each subsequent interview. As the Project Summary is refined, the project details come into sharper focus. As each stakeholder adds their input to the summary, they become invested in the project, particularly after seeing document changes that reflect their own unique viewpoint. PSI gains a degree of trust with the stakeholder while also having that expert correct any factual data and nuanced interpretations of stakeholder perspectives. There are several key components to each Project Summary: issue statement, focus, goals, key barriers, and potential strategies.

Issue Statement: PSI believes that the basis for all dialogues is a common understanding of the problem and opportunities for that particular waste stream. Without this initial step, all other efforts will rest upon a poor foundation. It is important for all stakeholders to agree why this particular product needs a product stewardship solution. The resulting Issue Statement will be a short paragraph that contains the problem and opportunities. For example, the opening sentence for PSI’s Issue Statement on leftover paint stated that, “Paint is a top concern based on its high volume in the waste stream, subsequent costs to manage, and high potential for increased recovery, reuse, and recycling.”

Focus: Another key aspect to shaping the dialogue is to understand the focus of the effort. It is not enough to want to address every problem waste, or every type of lighting, or each type of paint. There are limited resources in terms of staff time and finances, and these limits must be considered at every step of the process. PSI starts by urging stakeholders to narrow the problem

to the issues they believe are most urgent over the next few years. The sentence that helped focus PSI's dialogue on mattresses stated, "This project is focused on mattresses and box springs from residential sources (including both single and multi-dwelling units), as well as large-scale generators such as hospitals, hotels, universities, military, and other institutions."

Goals: No business, organization, or other entity should take another step if it doesn't know the direction in which it is headed. Although it might appear simple for each stakeholder to articulate the tasks it wishes to accomplish, it is important that all stakeholders commit to moving toward the same destination. This seemingly simple step will be important throughout the dialogue. Although stakeholders often differ on the best way to reach the goals, an agreement on the end game can help refocus conversations. It becomes the "home base" from which to venture into the territory of innovative thinking. Goals should be continually reassessed to be sure that stakeholders are still on the same page. One of the goals articulated in the national dialogue on fluorescent lamps was "...maximizing the safe collection and recycling of spent lamps from households and businesses through the development of a nationally-coordinated system that is financially sustainable."

Key Barriers: Once we know where we are going, it is likely we understand why we have not gotten there yet. These barriers are usually evident to each stakeholder whose efforts to reach the goals have been frustrated by obsolete regulations, lack of education about the problem or solutions, the lack of infrastructure to collect and process or dispose of the product, or the lack of incentives to change consumer behavior so that stakeholders can take advantage of existing solutions. By identifying the barriers that keep us from achieving our joint goals, PSI helps others understand exactly why they are working on this particular problem so that they can summons the resources and group strength to break down the steps needed to overcome those barriers. One of the key barriers identified in PSI's national dialogue on thermostats was that heating and cooling contractors lacked convenient locations to drop off thermostats for recycling, leading to the solution to set up criteria for safe collection at contractor locations nationwide.

Potential Solutions: There may be 101 ways to educate consumers about how to recycle a product. But what is the best way to do it for that particular product with its own unique circumstances? And is education more cost effective than changing regulations to strengthen a stakeholder's commitment or prohibiting that product from entering the waste stream? By asking each stakeholder what he or she thinks are the best solutions to overcome the key barriers, PSI gives a voice to that stakeholder's unique and special interests. It also allows PSI to assess how close, or far apart, the stakeholders are to developing an agreement, and it allows stakeholders to hear each other. Good ideas tend to rise to the top, while bad ideas sink to the bottom. Groups of representative stakeholders are very effective at identifying the best ideas. One of the key solutions identified in PSI's national dialogue for pressurized gas cylinders was the need to develop prototype equipment capable of puncturing visible holes in cylinders to alleviate concerns of scrap metal recyclers that gas remained in the tanks.

Check in Step: At the beginning of each project, at the end of each stakeholder interview, PSI asks each person if they would be willing to participate in a dialogue that attempts to further address the issues they just discussed. Almost invariably, the answer is yes. Why do companies agree to participate in a dialogue run by an organization that has no regulatory authority? PSI offers the chance to meet with other stakeholders in an objective forum to present their perspective in a process that might yield greater understanding among all stakeholders. At worst, stakeholders better understand each other's viewpoint and learn more about the complexity of the issue. At best, it offers the opportunity to reach a lasting agreement that can be replicated nationwide, casts the industry sector in a "green" light, and reduces the business risk of regulatory uncertainty.

Product Stewardship Action Plan: After 5 to 10 interviews, the Project Summary has served its useful purpose and PSI is ready to transform that piece into a slightly more extensive document that will serve as the basis for face-to-face negotiations. This *Product Stewardship Action Plan* will provide each stakeholder with a sufficient amount of knowledge about the issue so that they can participate actively in joint problem-solving. The Action Plan will include all key elements of the Project Summary, but will also include additional background technical information on the industry (e.g., major manufacturers, location of facilities, and extent of collection and recycling or disposal infrastructure). The plan also contains an outline of the PSI process and potential outcomes, so that participant expectations are clear and uncertainty is reduced. The Action Plan becomes a key document to prepare each participant for active discussion prior to the first meeting. PSI's first Action Plans were developed in 2000 on paint, electronics, mercury products, carpet, and tires for presentation at PSI's first national Product Stewardship Forum. Later Action Plans built on these initial versions.

Development of Project Team: Early in the dialogue, PSI selects a handful of key stakeholders to serve as an executive committee or project team, which plays the role of a multi-stakeholder focus group to guide the project. This group represents the key voices that must be integrated into an agreement if it is to be sustainable. Owing to their inherent business interest in the outcome of the dialogue, these stakeholders will naturally contribute their time to ensure that materials created for other stakeholders are as accurate as possible, saving all involved in the process time and resources.

Meetings and Workgroups: PSI dialogues typically consist of a year-long series of four face-to-face meetings and two to three workgroups operating via conference call between meetings to refine strategies for presentation to the full stakeholder group. PSI conducts the majority of its technical work outside of meetings and workgroup calls so that participants come to these meetings and onto the calls to make key decisions that will lead to agreement. Requiring stakeholders to conduct research and facilitate their own meetings and calls is often perceived as saving resources but risks reaching a result that does not satisfy all stakeholders, since participants will often seek to meet their own interests. This approach is usually much less efficient than a process guided by a project facilitator, where other stakeholders are tapped for particular tasks that feed into the overall project. While PSI often assumes that point role in its

projects, it relies heavily on the expertise of the stakeholder group and ensures that each workgroup and meeting has the multi-stakeholder representation to articulate the interests of all viewpoints. Not relying on volunteers (who have full-time jobs) to be the engines for the work assures that the group will not get burned out by the burden of meeting daily task deadlines, while ensuring consistency of work products.

PSI assumes the responsibility for developing a strategy and approach for meetings and workgroup calls, reviewing draft agendas with the project team, inviting and coordinating presenters, and creating slides for presentations. Throughout the process, PSI maintains an open registration link on its website to engage stakeholders not already involved. In addition, PSI manages meeting logistics, including securing space, covering expenses through public and private sponsorships, and facilitating the meeting to promote the diverse array of perspectives and ultimately an agreement outlining specific strategies. At the close of each meeting and workgroup call, PSI drafts a summary of issues and outcomes, distributes it to all participants for comment, and posts the final version on the PSI website along with presentations and documents shared at the meeting.

Between meetings, workgroups representing relevant stakeholder sectors meet by teleconference to conduct additional research, refine strategies, and prepare for key decisions at the next dialogue meeting. Throughout the dialogue process, agreements can emerge on which stakeholders want to immediately begin work. At other times, participants prefer a broad agreement that might take the form of a signed Memorandum of Understanding (MOU), model legislation, or other formal documentation of stakeholder commitment.

A RANGE OF INDUSTRY RESPONSES

Over the past decade, PSI has knocked on the proverbial door of over 15 industry sectors and offered to work collaboratively to jointly reduce the unintended lifecycle impacts resulting from their products. None of the companies in these industries likes to be told that they cause pollution and add to the financial strain of governments. They often see their role as providing useful products for society, which undoubtedly they do. None of them wants to be asked to change their business practices. Change will always mean a financial and organizational investment of resources.

Companies, like the people who run them, have responded in a range of ways to PSI's request to work together to reduce the environmental impacts from their products. These responses often fit within a trajectory of perspectives that reflects the culture of the industry sector and the individuals who lead it. Whether and how these perspectives change through discourse is also a reflection of the industry, its leadership, and external influence and circumstances. In general, PSI's experience is that the perspective of most industry sectors proceeds along the following path during the course of a dialogue: (1) there is no problem; (2) government should do more to address the problem; (3) More funding is not needed; (4) government programs should be paid for through a visible consumer fee; (5) industry programs are more efficient so the private sector should take programmatic control; (6) don't hold us responsible for meeting performance goals.

The Dynamics of Dialogue

Lessons Learned from the U.S. Product Stewardship Movement

(1) There is no problem: Most industry groups start at the denial stage, believing that, while product stewardship may work well for another industry's product, it does not make sense for their own product because of some unique variable. Paint manufacturers started discussions by saying that paint is intended to be used up, and any leftover paint was the responsibility of the user. Carpet manufacturers said that, because their product is non-toxic it deserves a voluntary industry approach. Mercury thermostat manufacturers said that their industry should not be regulated since they already had a voluntary program. Phone book publishers said that everyone who got the phone book used it. A first step for product manufacturers is for them to understand and acknowledge that their products cause social and environmental problems. Gaining stakeholder consensus on the nature of those problems is essential to begin to form group cohesion. If there is disagreement about the problem, there will be disagreement about strategies to solve it.

(2) Government should do more to address the problem: Once an industry group accepts that their product causes a problem, they usually want government to do more to solve it. They often say that, if government believes this problem is a priority, they should pay to fix it. However, once companies realize that this approach is akin to asking government to raise taxes to pay for more government services, they move to another strategy -- seeking ways to make the existing system more efficient. A typical perception among the private sector is that government is so inefficient that industry can solve the problem by applying basic business principles and limited private resources, but without producer responsibility legislation. This stage of the negotiations involves figuring out how to shrink system costs, like going from a large pie chart of costs to a medium or small pie chart. There will still be costs, but reducing those costs gives those being asked to assume the expense -- the manufacturers -- time to understand why these costs exist, why they cannot be eliminated, why additional funding is needed, and how these added costs might be introduced into their business model. This stage allows companies to better understand what an efficiently-run system looks like, and how much it might cost. However, many companies at this stage need more time to accept this responsibility, and still seek a way out.

(3) More funding is not needed: The most central element of all product stewardship negotiations is who will pay for what. But product stewardship does not mean a simple transfer of costs from government to business. A key concept for all stakeholders to understand is that a lack of available funding to manage wastes properly has led to missed business opportunities and pollution impacts that require taxpayer funding to alleviate. Funding is needed to expand current collection and processing infrastructure, and to educate the public and businesses to take action. Product stewardship will increase the supply of recycled materials and divert toxic materials from disposal, offering additional business opportunities. By requiring manufacturers to internalize the costs of reducing product impacts *before* they occur, they will innovate and operate more efficiently and at less cost than government programs. In addition, manufacturers gain control over valuable recycled materials for use back in the production process. Added funding, however, is only needed for certain materials. For example, the cost to collect, remanufacture, and sell recycled toner cartridges is lower than the value of that cartridge in the

resale market. Therefore, government mandated take-back programs for toner cartridges are not needed. Fluorescent lamps, on the other hand, cost more to collect and process than the value of that product's material components at end-of-life, and lamps have become a target for producer responsibility laws.

(4) Government programs should be paid for through a visible consumer fee: Once industry accepts that additional funding is needed to obtain economic and environmental benefits, their next step in the trajectory is often to seek a fee on their product that is visible to the consumer, known as an "advanced recycling fee" (ARF). They reason that, if additional funding is needed, the consumer should understand that they are paying extra for added benefits. Under ARF systems, retailers deposit funds collected from consumers into a state government account that provides grants to local government programs to address the problem. For product stewardship advocates, these ARFs require little involvement from manufacturers and treat end-of-life management costs separate from other business expenses. They also do not provide an incentive for manufacturers to redesign their products or lower management costs through greater efficiencies. Further, retailers adamantly oppose ARFs, which require them to manage funds and include multiple extra charges on a sales receipt. In addition, they are concerned that consumers in one state with an ARF law might travel to another state without such a law to avoid the product fee. California's electronics law, which passed in 2004, was the last ARF passed in the U.S. All other stewardship laws require greater manufacturer responsibility.

(5) Industry programs are more efficient so the private sector should take programmatic control: By this stage in the process, most companies come to understand that the product stewardship movement is bigger than their company or industry, and they can either fight it or try to make it work for them. They fully realize that the problems with the current system make the status quo, or even small changes, unsustainable, and that additional funds are needed to achieve real benefits. They also come to sense the growing public expectation that corporations should be responsible citizens, and face the decision to either lead or lose out to their competition. Some leading companies feel empowered by their ability to manage their own products at end of life, controlling costs and the material supply that can go back into new products. They agree to pay the cost directly or into a fund managed by a non-profit organization that they control. They hire contractors to collect and manage the products in the manner that suits their industry best, and allocate costs to companies based on finite program costs and equitable allocation formulas.

For manufacturers, arriving at this stage might seem like they travelled a long road. However, this stage is where most government officials and environmental activists expect product stewardship discussions to start. They are often frustrated at the slow pace of discussions, and wonder how to interact with their industry counterparts. They argue that manufacturers should assume the cost of managing products at end of life as just another cost of doing business. These costs, they argue, should be invisible to the consumer just as labor, capital, insurance, and other costs are transparent to the consumer. However, some manufacturers reject this premise, arguing that they should not be required to assume added costs without the

guarantee that these costs will be passed directly to the consumer, who should ultimately pay for the benefits of proper product management. This chasm in expectations needs to be bridged, and is a key task for a facilitator. Negotiations must determine which financing system will best meet stakeholder needs.

(6) Don't hold us responsible for meeting performance goals: This last step in the process characterizes the current status of product stewardship in the U.S., and perhaps around the world. While many manufacturers have begun to embrace their lead role in managing systems that collect and recycle or dispose of their products at end of life, they do not believe they should be responsible for meeting specific measures of performance. Manufacturers are concerned that, no matter how convenient they make collection objects, they cannot change consumer behavior to use available programs. Product stewardship advocates argue that all businesses use performance goals to motivate employees, and motivating consumers to bring back products at end-of-life is within their ability. Advocates believe that performance goals are needed to evaluate program progress, and that manufacturers should be accountable for meeting those goals.

"You can't pull a flower to make it grow"

The steps outlined above are intended as a general guide about how manufacturers respond to attempts to engage them in dialogue about the environmental problems caused by their products. Manufacturers enter at different places along this trajectory, and proceed at different speeds. In addition, all stakeholder viewpoints must change to some degree for negotiations to be successful. It takes a commitment of time and resources for groups of individuals who represent divergent viewpoints to jointly embrace a common idea. There is a dynamic tension that occurs in negotiations. For the dialogue to succeed, the pace of change must meet the expectations of its stakeholders, particularly the governments that are now paying the real cost of managing waste. Progress must be fast enough to keep them from unilaterally legislating. On the other hand, if these regulators proceed too quickly, before strong coalitions can be formed to support the desired changes, they risk not only alienating the industry groups they want to engage but other key stakeholders as well. Gilles Goddard, an industry representative from Canada, uses the following phrase to capture the delicate dance of negotiations: "You can't pull a flower to make it grow." Negotiations take time, perseverance, and the right individuals who want to reach an agreement. Timing is a key element. If government pushes too hard or pulls too fast, it can ruin the chance for success. But if industry moves too slowly, it can also sour the opportunity for an agreement, and result in unilateral government legislation.

PAINT: A MODEL FOR PRODUCT STEWARDSHIP

In preparation for PSI's first national Product Stewardship forum in the year 2000, solid waste managers from over 20 states identified paint as one of the top three problem products impacting the environment and their budgets. Paint represents 40 to 60 percent of all household hazardous waste (HHW) and the largest cost for local governments to collect and manage. An estimated 10 percent of more than 750 million gallons — approximately 75 million gallons — of architectural paint sold in the United States annually is not used, while the recycling and disposal of this waste costs U.S. governments about \$640 million dollars annually, or about \$8 per liquid gallon.

The Dynamics of Dialogue

Lessons Learned from the U.S. Product Stewardship Movement

While architectural paints are primarily known for brightening the home, those colorful cans contain a less conspicuous dark side, with 20 percent (oil-based paints) harboring hazardous constituents such as solvents, pigments, and organic residues that inflict negative impacts on human health and the natural environment. Benzene, for example, is an important component of oil-based paints and is a persistent contaminant of groundwater, as it does not readily evaporate or degrade underground. Also, the International Agency for Research on Cancer classifies benzene as a carcinogen. The remaining 80 percent of paints are latex based, and while considered non-hazardous except in California, they do create other critical impacts over their lifecycle, namely owing to the need to mine and replace resources that could be recovered by collecting and recycling leftover paint.

The following pages will focus on PSI's success in working with the paint industry sector, achieved through a collaborative process that engaged several hundred public and private stakeholders over an eight-year span. While the process is still ongoing, it has already engaged an entire industry, created a national model for extended producer responsibility, and implemented the model in three states.

ORIGIN OF THE PAINT DIALOGUE

In 2002, PSI delivered a presentation to the National Paint and Coatings Association (NPCA), now the American Coatings Association (ACA), about the governments' interest in working with the paint industry to address the problem of leftover paint. Traveling to New Orleans, PSI's Executive Director addressed ACA's Architectural Coatings Committee and laid out a dialogue process that would allow the paint industry to voice its perspective and solution to the problem along with other stakeholders. Following the presentation, there was silence. After asking if there were any questions (and there were none), PSI staff were quickly ushered out the door.

Not sure what to make of the incident, PSI waited several weeks before getting the message that ACA was indeed interested in engaging in a national dialogue. Apparently, the industry viewed the dialogue as perhaps an opportunity to jump ahead of regulation and improve the industry's reputation, and they liked the idea of collaboration. Being one of the oldest industry associations in the U.S., ACA had already tangled with government over lead paint and volatile organic compounds, and had learned that legal proceedings were resource intensive. They were open to a new idea, one that would allow the industry to be perceived as an environmental leader. They also wanted a national solution, instead of different laws in different states, and viewed PSI as an organization that could develop that model solution, since its membership included most states.

Maybe most importantly, PSI had already built a trusting relationship with Benjamin Moore, a company that had become an industry champion of EPR on a regional scale. As the waste policy director in Massachusetts in the 1990s, PSI's Executive Director had worked with Benjamin Moore to set up a first-in-the-nation take-back for Benjamin Moore paints at the company's Milford, Massachusetts, manufacturing plant. Regulatory clearance was provided for the collection of paint at municipal locations so that Benjamin Moore could transport paint at low

cost to its facility for recycling into new paint. Although it was a small pilot, this project provided a foundation for bigger changes ahead.

PAINT AND THE PSI PROCESS

Background Report and Action Plan: Following its initial presentation to ACA in March of 2004, PSI drafted a comprehensive technical background report on paint management, including sections on paint composition, environmental hazards of paint, paint production, leftover paint management, recycled paint markets, regulatory barriers, product stewardship examples, and major market players. Around this time, PSI also conducted interviews with key industry stakeholders and developed a *Paint Product Stewardship Action Plan* that included a definition of the problem, project focus, goals, barriers, and potential strategies. This plan set the stage for four face-to-face stakeholder meetings that would soon result in a nationally coordinated leftover paint management system. An ensuing national dialogue was taking shape as the Paint Product Stewardship Initiative (PPSI).

Dialogue Meetings: Between December 2003 and September 2004, PSI designed and facilitated four stakeholder meetings to identify and prioritize solutions to the growing problem of leftover paint management. Participants represented local, state, and federal governments; recycled paint manufacturers; retailers; painting contractors; and of course the ACA and many of its most prominent member companies.

At the first meeting, PSI highlighted the most contentious issue (also known as “the elephant in the room”) – whether latex paint should be dried and disposed. All stakeholders agreed that oil-based paint should not be disposed of in landfills and incinerators but should instead be collected for proper management. However, they differed on latex paint, which represents about 80 percent of all paint sold. The paint industry argued that latex paint is non-hazardous and perhaps should not be collected at all. Government officials argued that latex paint has resource value no different from what is collected in curbside bins, and that their residents would be confused by a disposal message. It soon became clear that much of the dialogue would hinge on the management of latex paint. At the conclusion of the first meeting, PSI was able to reach general consensus on the problem represented by leftover paint, the focus on architectural coatings (not specialty paints like automotive or artist paints), and dialogue goals. The group also agreed on the main barriers to reaching the goals and began to discuss the first few key issues and potential strategies to resolve them.

The nine-month meeting period included multiple workgroups that analyzed priority strategies for each issue that surfaced at the meetings. As facilitator, PSI was careful to gain consensus every step of the way. PSI planned each meeting, with agenda items placed in strategic order and participants strategically arranged around the table to foster discussion. Most importantly, PSI created informal opportunities for participants to develop personal relationships through evening receptions and dinners. These sessions offered the opportunity for individual follow up and

clarification, as well as to build personal rapport, which proved equally as valuable as technical command of the information.

Projects and MOUs: It took only nine months to develop the first major agreement, but another six months to get it signed by stakeholders since it had to be approved by ACA's Board of Directors, the U.S. EPA, and executives at government agencies and companies. The first paint agreement was captured in a memorandum of understanding (MOU), and was completed in April 2005. It was signed and endorsed by over 60 entities, which agreed to work for two years on eight projects, developing a greater understanding of the problem and tackling the solutions to solve it. PSI assisted in raising over \$1.5 million from government and industry to complete these projects, which follow the reduce, reuse, recycle hierarchy, and included a Paint Reuse Guidance Manual, a national paint infrastructure model (for leftover paint collection) and cost analysis, a recycled paint standard to develop the market for collected paint, and a lifecycle assessment and cost benefit analysis comparing collection and recycling with drying and disposal of latex paint. In short, all projects aimed to eliminate or lower leftover paint volume, cost, and environmental impact. During the ensuing two years, PSI facilitated four additional meetings to share information and data with stakeholders regarding the eight projects, which formed the basis for the nationally coordinated paint management system. These meetings also led to the development of a second paint MOU.

THE OREGON PAINT MODEL LAW

By participating directly in the eight technical projects, ACA developed a deeper understanding of the issue and how it could take a leadership role. They were able to explore all options for lowering system costs, as well as multiple ways to finance the remaining cost. They also listened to multiple presentations from Canadian companies, governments, and stewardship organizations that explained how industry-financed paint management systems operated in Canada.

In March 2007, ACA's Board of Directors issued a historic resolution committing to work with other stakeholders toward a national solution for the management of leftover paint. PSI assisted the PPSI dialogue to mediate a second paint MOU, finalized in October 2007 and signed by over 50 stakeholders and supporters, which outlined a timeline for establishing an industry-funded stewardship organization to finance a state demonstration project. A key element in the agreement has since become known as an "eco fee," which legislatively establishes an "assessment" to be paid by consumers on each can of paint. During negotiations, government officials argued for full cost internalization. However, ACA made it clear that any agreement would need to contain the assessment, and that full cost internalization would result in unequal competition among its members. ACA believed that, while some member companies could pass the cost on to consumers directly since they also owned retail paint stores, other companies selling through major retailers would be forced to assume the added costs. ACA also insisted that legislation include antitrust protection to allow each company to pass on the same fee to consumers to cover the cost of collection and end of life management.

Numerous times throughout the dialogue process the agreement seemed as if it would fall apart. However, what kept the stakeholders working together was the potential cost savings for government, the ramifications of failure and the threat of unilateral patchwork legislation for ACA, and the promise of a national system for all parties. In accordance with the second paint MOU, the stakeholder group chose Minnesota for the pilot state, with the intent of rolling out the agreement to the other eight states listed in the MOU timeline. All participants focused their resources on translating the MOU into legislation in Minnesota. Unfortunately, after ACA-sponsored legislation passed nearly unanimously in the Minnesota Legislature, Governor Tim Pawlenty vetoed the bill, claiming that the industry-supported eco-fee was a tax on consumers. The following year, again following near unanimous support from the legislature, the Governor again vetoed the same bill. However, this time, the PPSI group was ready, having already lined up Oregon as the fall-back demonstration state, but not without wasting 18 months in Minnesota.

The Oregon bill was endorsed by the ACA, the Oregon Department of Environmental Quality (DEQ), and Metro regional government (representing 1.3 million people in the Portland Metro area), among other stakeholders. The bill passed in July 2009, and in July 2010, Oregon launched the nation's first manufacturer-financed system for the end-of-life management of leftover architectural paint. The law is expected to result in the proper management of an estimated 800,000 gallons of leftover paint each year and to provide Oregon governments with direct financial savings and added service valued at over \$6 million annually.

The Oregon law requires that manufacturers and retailers follow steps critical to the program's success. Firstly, brands of paint sold by the manufacturer must be identified. Manufacturers must also pay "an architectural paint stewardship assessment" for each container of paint sold, which they recover from the retailer, which in turn recovers its cost by including the fee in the sale price of new paint. Retailers must inform consumers that a paint stewardship fee is included in the cost and educate consumers about how to reduce their paint waste and where to bring their leftover paint. Additionally, retailers and manufacturers must promote the reuse of leftover paint and develop and implement strategies to reduce the amount of post-consumer paint that becomes waste.

To ensure proper implementation and monitoring of the program, retailers and manufacturers must also pay an administrative fee to the Oregon DEQ for plan approval, oversight, and enforcement and submit an annual report to the DEQ. Retailers are required to ensure that manufacturers of any paint on their shelves have submitted an approved product stewardship plan indicating their participation in the pilot program, which can be accessed on the DEQ website after DEQ plan approval. The Oregon DEQ must report to the state legislature on the outcomes of the paint stewardship pilot program and recommend whether the effort should continue or if any changes should be made to the program.

As mentioned, the cost-recovery financing system is consumer based, with the cost of the program being passed onto the consumer through the purchase of architectural paint products and remitted back up the supply chain to cover the cost of the program. In Oregon, the fee is

currently 75 cents per gallon, with fees for other container sizes ranging from no cost (less than a half pint) to \$1.60 (up to 5 gallons). Manufacturers established Paint Care, a new nonprofit organization, to collect and manage the fees they are required to pay. Paint Care establishes service contracts with providers for the collection and reuse or recycling of leftover paint, which are collected from consumers at retailers, municipalities, and other entities. In Oregon, the contract currently is with PSC, which transports collected latex paint to Metro, a regional government agency that is also a Paint Care contractor. Metro operates a recycled paint manufacturing plant for latex. PSC transports latex paint not suitable for Metro's operation to Amazon Environmental for conversion into a cement additive, and ships oil-based paint for fuel blending and energy recovery in cement kilns.

The PPSI group is evaluating the Oregon pilot and will translate lessons learned to other states. California passed the nation's second paint stewardship law in 2010 and Connecticut passed it in 2011. Both bills were sponsored by ACA. Both laws are similar to the Oregon law, and are based on the model reflected in the MOU facilitated by PSI. ACA will support the introduction of model legislation in the six other states that were signatories to the 2007 MOU, but it has opposed legislation that falls outside the model. PSI is also working with ACA to develop a specific timeline for the introduction of paint legislation in states that were not signatories of the agreement.

LESSONS LEARNED THROUGH PAINT DIALOGUE MODEL

- **Need for Champions:** There were many individuals who were instrumental in developing the paint agreement, including those from government and from the paint industry. However, a few key individuals took risks, influencing the group and contributing to its success. Carl Minchew from Benjamin Moore was an early proponent of product take back, and developed a company-specific take back that demonstrated that leftover paint from consumers could be recycled back into new paint at reasonable cost. ACA's Alison Keane had the legal skills, access to the President and Board, and temperament needed to lead her company representatives into the agreement. U.S. EPA's Barry Elman had the analytical capability, knowledge of the bureaucracy, and patience to weave through channels to gain the agency's support and influence the industry actions.
- **Need Participation from Key Member Companies and their Association:** It was important for both the association and its key members to participate in the dialogue. Senior representatives for companies such as Sherwin Williams, Valspar, Benjamin Moore, ICI, PPG, Ace, True Value, Dunn-Edwards, and others were critical to gaining internal company support. They also supported ACA staff during Board decisions, including whether to agree to enter into MOUs. Without this support, ACA staff would have been left to convince company CEOs on their own, a much more daunting task. ACA's role, on the other hand, was critical in leveling the playing field for all company members and speaking on behalf of the entire industry.

- **The Importance of Legislative Drivers:** Although industry can often reduce product lifecycle impacts through voluntary means, gaining manufacturer agreement to internalize the cost of end of life management usually requires legislation. Without this driver, manufacturers will rarely make take-back a priority unless there is an inherent financial value. Some products, such as auto batteries and toner cartridges, have enough after-use market value that companies are motivated to collect them. But many other products end up being disposed because the cost to collect, process, and resell cannot be easily recovered. For these products, legislation is required that places the management responsibility on manufacturers. Regarding paint, California had introduced a product fee in the late 1990s, and Minnesota also expressed interest in legislating. During the PSI dialogue process, California, Minnesota, and other states expressed their intent to legislate if an agreement was not reached. Legislation gets industry's attention. It shows clear government intent and, when resolved, will provide certainty for industry, which has an intrinsic value since they can plan for it. Industry will rarely take voluntary action on product take-back *for products without intrinsic value* if they do not believe government will take action. The paint industry knew that, if it did not engage, government was well organized and would move unilaterally in a way that likely would not take into consideration many of its interests.
- **The Power of Information:** Dialogue is most fruitful when robust and balanced information is available. Without good data, you will not get good solutions. Presentations and data should be weaved into the discussion and packaged so that participants can make clear decisions efficiently. Data cannot provide part of the picture; it must provide the full picture. Knowing that fewer than five percent of mercury thermostats were recycled provided impetus for the thermostat manufacturers to engage in ways to collect more thermostats. Knowing that we did not know the source of used mattresses or how many are recycled showed key data gaps that need to be filled for that product dialogue. Decisions and negotiations are built on data, developed by either a trusted source or, better yet, by the multi-stakeholder group in the dialogue context.
- **Choose the Right Messenger:** We all know when a presenter grabs the attention of those who they want to influence. At times it is the passionate person who can articulately engage through emotions. Other times it is the quiet participant who gains attention through few, but powerful, words. In the paint dialogue, a presentation on government costs from paint management by Theresa Stiner of the Iowa Department of Natural Resources was a critical moment in the understanding by industry of core government concerns. Iowa plays a pivotal role in political campaigns owing to its centrist persona, and no less so in product dialogues.
- **Build on the Problem:** Without a clear understanding of the problem among all key stakeholders, it is inefficient to go the next step. Participants must first acknowledge that there is a problem, and describe it, before the group can move ahead to address it. PSI's process branches out from that basic foundation by developing relationships with all

parties and listening to their concerns, articulating them in writing, feeding them back constantly, and moving the entire group forward toward goals that are jointly established.

- **Time is Money:** PSI has coordinated the national paint dialogue for eight years, including the two vetoes from former MN Governor Tim Pawlenty that set the dialogue process back 18 months. These vetoes caused increased costs and stakeholder hesitation. It has also resulted in a contorted process that is akin to a train pile up from behind when the train suddenly comes to a grinding halt. The PPSI plan was for the pilot state to operate for a year, be evaluated by the group, and incorporate lessons learned into future state programs. As a result of the vetoes, legislation passed in California and Connecticut before Oregon could evaluate its program. In addition, states not part of the MOU now want to pass paint stewardship legislation owing to the significant costs of managing paint. ACA has spent considerable funds and staff time lobbying against these other bills because its resources could not handle the onslaught of new interest in the industry-sponsored program. There is a cost to communication and coordinating groups of people, and consistent communication is needed to keep the dialogue group together. Dragging out a process adds tremendous cost. People change jobs and new staff needs to be acclimated to the process. Group dynamics shift as new leadership takes over a company or agency, or new people change the group chemistry that was slowly formed during formal and informal meetings. Even active participants must juggle numerous other priorities and must be reengaged if a project slows, then starts again. Stakeholders also forget decisions previously made if the lag time is too long, as it was for paint, leading to the need to reeducate all stakeholders. The lag also caused some stakeholders to second guess key elements of the original MOU. Keeping the PPSI group together, particularly during and after the 18-month veto period, was a formidable challenge.
- **Attitudes can change:** Attitudes of stakeholders changed throughout the paint dialogue, sometimes drastically, and many times even personally. As with most first meetings, the first paint meeting was tense. It was as if the company representatives believed all government officials would be like the one that tied them up in regulatory knots, and government officials believed that the industry representatives would be like the person that grossly understated their company's impact on a major enforcement case. As the meetings unfolded and space was provided for honest discussion, each person felt empowered since they had time to provide their perspective. Good ideas rose as priorities to pursue and bad ideas sank. By the end of the dialogue, views on all sides changed, allowing consensus on major solutions to emerge.
- **Authority to Represent Your Constituency:** Some discussions suffer because those at the table do not have the authority to represent their agency, company, or organization. The paint dialogue had the right people. It was crucial for the paint negotiations that each key stakeholder could effectively represent their employer's interests. It was understood that each representative had to check back with upper management before the MOU

language was finalized. But effective participants will know what they can, and can't, agree to, and this was a key element of the success of the paint dialogue.

- **Meet Expectations:** A key driver for government to enter discussions was the need to reduce waste management costs. Manufacturers were motivated by the prospect of a unified approach rather than piecemeal legislation. Retailers wanted voluntary collection options with no administrative costs to handle fees. These interests were met in the paint dialogue, creating a strong desire by dialogue participants to resolve ongoing program details.
- **Trust the Process:** Stakeholder dialogues are needed because people have strong divergent viewpoints that have gone unresolved. Few stakeholders want to relinquish control of a process, and most would prefer that the outcome be the one they establish. The paint dialogue was no different. It takes time to build rapport with each stakeholder, and *among* the stakeholders. Stakeholders need to trust the process, and the facilitator needs to know when to step back and let the group momentum lead the way. Admittedly, there were a few times throughout the dialogue when PSI tried to force a direction when the group was not ready. Someone in the group objected, and adjustments were made. One gratifying moment, however, was when control of the process was appropriately tossed to the group and, almost miraculously, it became a key turning point that led to the first MOU. One industry participant described the moment as if the facilitator was body-surfacing around the room on the hands of all the participants. No one knew what would happen next and everyone was open to new ideas. Everybody trusted the process, and each other, to come up with the right next step. Having a positive attitude is often the key to finding the right solution.
- **Consistency and Perseverance:** Changing an industry sector requires a continual forum for discussion, as long as stakeholders believe that progress is being made. Such fundamental change will not happen quickly, and is better done with full stakeholder support. PSI's main role in the paint dialogue was its continual presence, and its ability to maintain momentum, reach closure on issues, and prepare the group to make decisions. It was the glue that held all the pieces together, including the eight projects developed after the first MOU, the ever-changing database of contacts, and bits of news that affect each stakeholder and the dialogue itself. As agreements were reached, PSI became the advocate for that agreement, whether that meant reminding ACA of decisions not yet made that required further negotiation, or reminding the government group of key elements of the agreement that could not be renegotiated. PSI's process became familiar to the group, and the group developed its own identity known as the Paint Product Stewardship Initiative. Decisions were made by the PPSI group, and not PSI.
- **Eco-fee vs. Cost Internalization:** From the very beginning of the dialogue, the government group pressed ACA for full cost internalization as its preferred financing mechanism. ACA made it clear that this point was non-negotiable. The MOU that

resulted shifted considerable burden from government to the paint industry, and the government group believed that this was enough of a win to sign the MOU. For at least one MOU signatory, however, this agreement did not sit well, and they sought a way to push for cost internalization in their state, particularly after the delay following the vetoes in Minnesota. They reasoned that the MOU laid out a process that was based on a pilot project, and that without an evaluation of that pilot, each state should decide whether they want to accept the eco-fee financing system. At the same time, the Vermont Legislature expressed concern over the eco-fee because the financing mechanism was different from recently passed legislation for electronics and thermostats. State legislators in Oregon, California, and Connecticut did not have these concerns. The debate over legislated eco-fees and cost internalization will continue on paint and other products. Objective data comparing programs that operate under each system will help determine the benefits and costs of each approach. At this point in time, however, government officials prefer cost internalization systems.

APPLYING THE PSI MODEL TO OTHER PRODUCTS

While paint was the first product dialogue initiated and fully facilitated by PSI, the organization has applied its multi-stakeholder dialogue approach to many other products, including mercury thermostats, fluorescent lamps, phone books, medical sharps, pharmaceuticals, gas cylinders, rechargeable batteries, tires, and mattresses. Just as each product is not appropriate for a cookie-cutter application of EPR policy, the dialogue process must be designed and implemented according to the particular circumstances pertaining to each product. The outcome of each dialogue depends on numerous factors, including commitment and good faith negotiation among all stakeholders, having the right stakeholders at the table, alignment and effective articulation of interests within stakeholder groups, the nature and timing of related legislative activity, and the availability of adequate resources to maintain momentum.

Each PSI product dialogue has followed its own trajectory. For example, PSI convened just two national stakeholder meetings for mercury thermostats that resulted in agreements to expand the voluntary industry recycling program run by the Thermostat Recycling Corporation (TRC) to wholesaler chain stores, contractors, household hazardous waste centers, and retail locations. The relationships developed during this time allowed PSI to successfully mediate an agreement on the nation's first mercury thermostat law in Maine in 2006. All key stakeholders, including the thermostat industry, testified in support of that bill, which was changed to accommodate the manufacturers' interests. Later, the thermostat industry asked PSI to develop model legislation that could be applied nationally to level the playing field for all thermostat manufacturers. Up to that point, the three largest manufacturers were paying for the recycling of all thermostat brands in the TRC program. However, after six months of negotiations and after agreement was reached on all key elements by multiple stakeholders, manufacturers pulled out of the agreement, leading to a backlash from other stakeholders. PSI completed the model, along with a menu of approaches, and assisted states interested in passing the model legislation. Nine states to date have successfully passed some version of the model, which differs mainly with regard to

financial incentives provided to consumers and contractors returning thermostats for recycling, as well as mandatory thermostat collection targets imposed on manufacturers. The thermostat industry has opposed the passage of legislation, although it has been forced to accept compromises in states with political clout.

Regarding phone book waste, after just two meetings, the PSI phone books dialogue resulted in an industry-wide pledge in three key areas of interest to participating state and local government officials – allowing consumers to opt out of receiving a directory, increased recycling of directories distributed, and more sustainable production practices. However, directory publishers attempted to keep their commitments completely voluntary, focused only on one of their commitments (opt out), opposed data transparency, and subsequently lobbied against legislation that attempted to achieve these goals. To date, Seattle and San Francisco have succeeded in passing phone book stewardship laws over the objection of directory publishers.

In all product dialogues, PSI's process has shared information related to the problem, focus, goals, issues, and potential strategies. It has identified key stakeholders and their interests, teased out key issues, and captured areas of agreement and disagreement among stakeholders. Most importantly, the process has led to concrete actions that produced economic and environmental benefits. Even when collaborative agreements were not reached, the dialogues provided information useful to stakeholders to assist in their own individual efforts.

CONCLUDING THOUGHTS

The field of product stewardship rests on principles that date back centuries, if not millennia. If your action causes harm to your neighbor, you must stop the action and pay for damages. If you kill your neighbor's ox, you compensate them. If your ox tramples your neighbor's child and your fence should have been repaired so that didn't happen, you are responsible. If the toy you manufacture has lead in the paint, you are liable if a child eats it and dies. But each successive case gets increasingly more difficult to pinpoint cause and effect. Today, with large corporations sourcing innumerable materials for complex products from multiple countries, many manufacturers have lost track of the true impacts of their products. How are the materials they use mined, grown, or created? How are they refined, transported, and assembled? What environmental rules exist in the country and locality where your shirt was made? Are the workers treated well? Where did the dye come from for your jeans? Was the cotton grown in a way that plows nutrients back to the soil, or did it rely on pesticides that seep into local drinking water? The fact is that we do not know.

While attention is paid to job losses in the U.S. as manufacturing shifts overseas, we pay little attention to the poor environmental and social conditions that exist in countries in which many of our consumer products are made. We do not ask ourselves why we would want to buy a product made in a country that applies environmental and social standards for their people that are not acceptable for our own people.

Product stewardship has started our world down that path of true product sustainability by holding companies responsible for products at end of life. This is the most tangible part of the supply chain, and one that has increasingly burdened local governments in terms of cost and management responsibility. We literally see garbage. It does not go away. And we know that waste is inefficiency, and that materials can be remade into new products, creating local jobs, lowering costs, and reducing environmental impacts.

The U.S. has lagged behind Canada and Europe in implementing the concept of producer responsibility, but it is catching up. And owing to its large size and market potential, the U.S. can be the game changer. Wal-Mart and other companies have started to search up and down the supply chain for ways to reduce their environmental impact, as well as that of its suppliers. But this focus on sustainability has often ignored end of life problems, and it has not yet addressed social impacts. As interest in the full lifecycle of a product increases, EPR laws in the U.S. have continued to pass, and in more states and on more products. But these laws are often divorced from supply chain impacts.

Product sustainability requires a comprehensive focus on the entire product lifecycle. That type of effort demands close communication among all aspects of the chain, which in turn requires a process for active learning and continuous improvement, as ideas are tested, evaluated, and improved. Too little attention is paid to the way that information is conveyed. A thoughtful process that includes the relevant stakeholders, with a well thought-out game plan and effective implementation, can save millions of dollars. This paper offers one model process that has worked to take lofty ideas and concepts and translate them into on-the-ground benefits. While the process is important, its success rests on a group's collective ability to meld the many voices that represent perspectives of those most impacted by the outcome. It requires the participation of everyday people, and challenges them to find common reasons to reach joint solutions. It is based on a democratic ideal, and we are fortunate to be able to participate in it.