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Corporate Policy Group LLP

# Ensuring efficiency and effectiveness under EPR

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**ZERO  
WASTE**  
CONFERENCE

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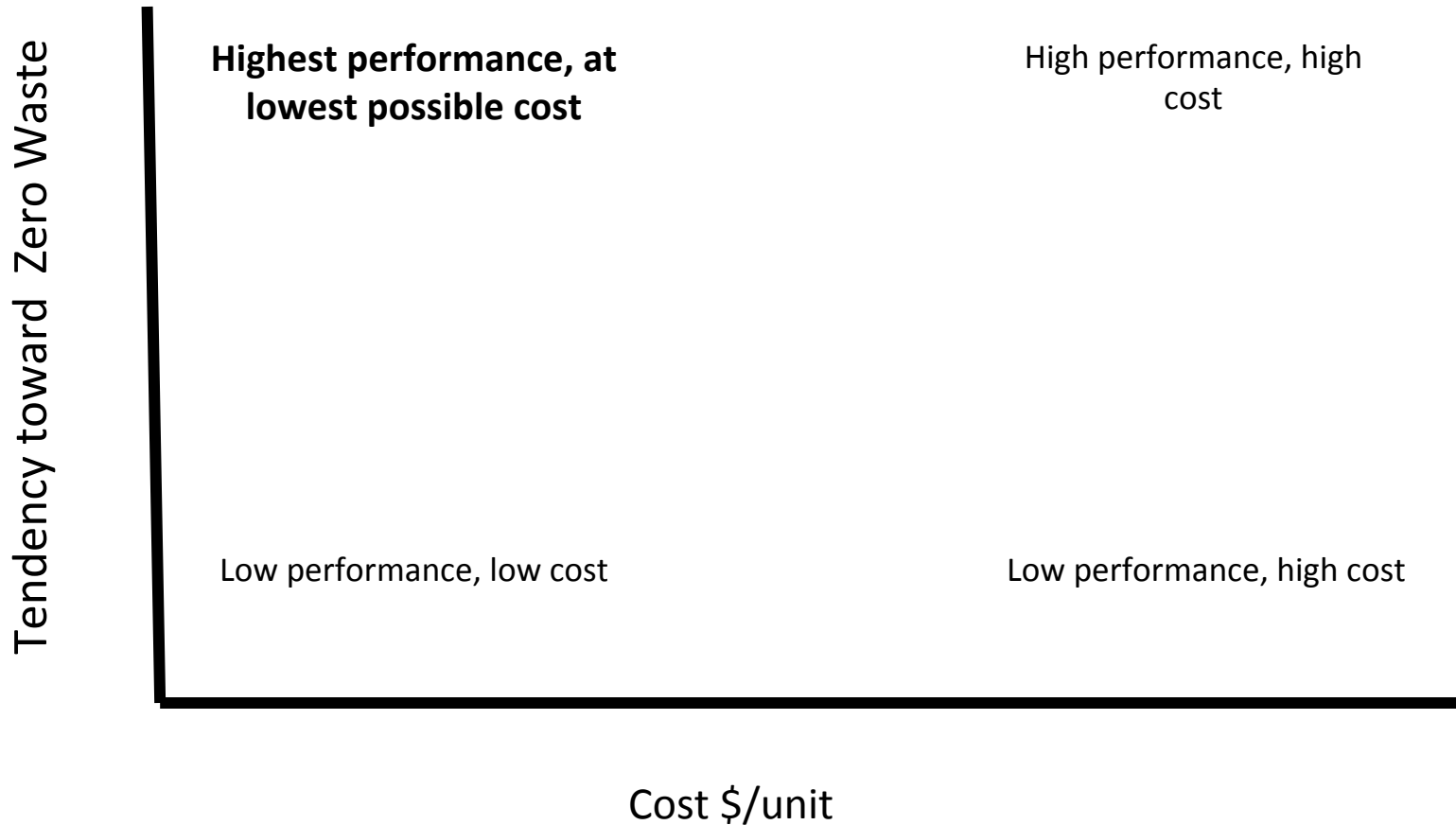


# The Rules of the Game



- Market: “...is one of the many varieties of systems, institutions, procedures, social relations and infrastructures whereby parties engage in exchange”
- EPR creates new markets through rules
  - The rules are set in law
  - Enforcement of the rules is undertaken by organizations (of government or its delegates)
  - The bundle of rules and the organizations that oversee the rules – an “institution”- dictates how the market will operate
- We seek efficiency
  - Static efficiency: minimizing the cost of waste reduction given the technology and institutions available today
  - Dynamic efficiency: Innovation; reducing the cost of waste reduction through technological progress
    - In producer markets
    - In recycler markets
- Poorly designed institutions lead to inefficiency

# Efficiency and effectiveness





# A thought exercise

## EPR imagined as a simple set of rules

- Producers must participate
  - Register and report what they supply that ends up as waste designated for end-of-life management
- Producers must meet a waste reduction target
  - A collection target; in concert with,
  - A definition of recycling and recycling efficiency standard
- Recyclers: to receive designated wastes recyclers must be approved by the government
- Producers must report on performance and be able to verify their collection and recycling claims

# Failure to uphold the rules: Producer participation



- Free riding: compliant producers bear costs of compliance while those that do not ride free
- Compliant producers cross-subsidize the non-compliant
  - MMBC subscribers are subsidizing newspaper producers in BC
- Undermines rule-of-law and EPR as a public policy tool



Failure to uphold the rules:  
Waste reduction targets and recycling standards

- No incentive for effectiveness and innovation in collection
  - Nickel-cadmium batteries will continue to go to landfill and incinerators because there is no penalty for not collecting them
- No incentive to up-cycle, every incentive to down-cycle and dump whatever isn't economic to recycle



## Failure to uphold the rules:

### Waste reduction targets and recycling standards

- Competition between producers: No level playing between individual producers or producer compliance schemes – a race to the bottom and chaos
- Competition between recyclers:
  - Where lowest bidder takes all in absence of enforced recycling standards the result is corner-cutting
- Producers dealing with one subset of diligent recyclers face loss of materials to recyclers operating to no standards in the free-market
  - Maximize financial gain by stripping commodity value at least cost and dumping the rest (WEEE)
  - Drives up compliance cost as producers must pay more to buy materials into compliance



# “Oversight” done wrong

- Waste Diversion Ontario (WDO)
  - Emerged from the concept of shared responsibility for PPP
    - At the outset controlled by producers and municipal representatives with focus on the Blue Box
  - Not a delegated administrative authority or crown agency
  - Conflict of interest: “...develop, implement and operate waste diversion programs for designated wastes...and monitor the effectiveness and efficiency of those programs”
  - Forays into policy-making without jurisdiction
  - Operating agreement with MOE provides for weak accountability





# WDO

- Rules under which IFOs operate are set through contracts with WDO – not regulations under statute
- Contractual oversight leads to backroom bargaining with no information on how “deals” are cut
  - i.e. deferring or reinterpreting environmental standards
- WDO does not exercise any legal power when it decides to allow IFOs to change their plans without deeming them “material changes”. As a result, any party challenging WDO’s decision will not be given standing in court
- There are no penalties for poor performance other than WDO “cancelling” programs (and potentially assuming full control)



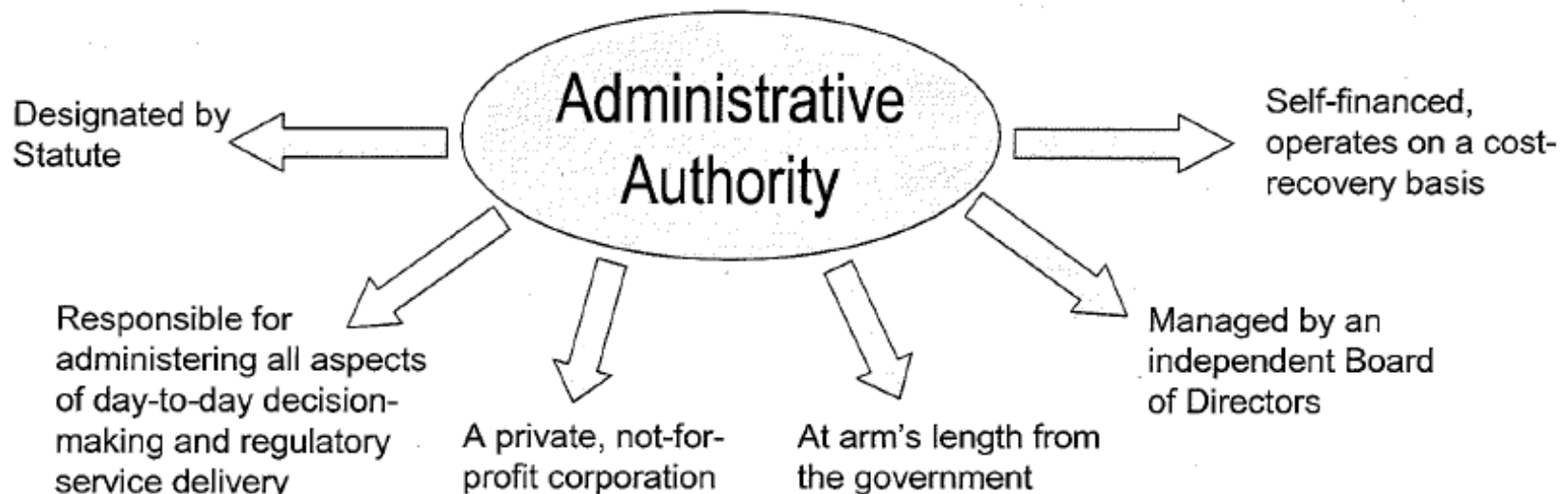
# Government oversight

- Example: BC MOE
  - Policy-making
  - Day-to-day issues management
  - Dozens of program plan approvals and renewals
    - Emerging competitive schemes for same materials
  - Dozens of annual reports and steward third party audit reviews
  - Law enforcement
  - Taxpayer funded
    - Fiscal constraints and attendant human resource constraints
    - Timely approvals and effective regulatory procedures undermined under those constraints



# The Administrative Authority Model

The Administrative Authority Model establishes an accountability and governance framework between a Ministry and private not-for-profit corporations that administer legislation on behalf of the government. A Ministry retains overall accountability and control of the regulating legislation





# Independent oversight

- E.g. Motor Vehicle Sales Authority of British Columbia (VSA) administers Motor Dealer Act
- Narrow focus on oversight and enforcement
  - Producer compliance
    - Free-riding
    - Attainment of collection and recycling targets
  - Recycler oversight and compliance: verification audits
  - Annual stewardship report review and verification
  - Enforcement: Inspections/investigations, compliance orders, AMPs, charges etc.
  - Data collation and clearinghouse function
  - Reporting to the Minister

# Role of government with independent oversight



- Policy analysis and the process of law making
  - What to designate and why
    - Environmental science and economic analysis
- Setting collection targets and service standards
- Setting recycling standards
- Stewardship plan approval
  - Note: With proper oversight and enforcement stewardship plans and their approvals become moot



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