

2019 -- H 5794

LC002009

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO HEALTH AND SAFETY -- PROPER MANAGEMENT OF UNUSED PAINT

Introduced By: Representatives Tobon, Alzate, Edwards, and Shekarchi

Date Introduced: March 01, 2019

Referred To: House Finance

(Lieutenant Governor)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 23-24.12-2 and 23-24.12-3 of the General Laws in Chapter 23-
2 24.12 entitled "Proper Management of Unused Paint" are hereby amended to read as follows:

3 **23-24.12-2. Management of unused architectural paint -- Definitions.**

4 (1) "Architectural paint" means interior and exterior architectural coatings sold in
5 containers of five (5) gallons or less. Architectural paint does not include industrial, original
6 equipment or specialty coatings.

7 (2) "Department" means the department of environmental management.

8 (3) "Director" means the director of the department of environmental management.

9 (4) "Distributor" means a company that has a contractual relationship with one or more
10 producers to market and sell architectural paint to retailers in this state.

11 (5) "Environmentally sound management practices" means procedures for the collection,
12 storage, transportation, reuse, recycling and disposal of architectural paint, to be implemented by
13 the representative organization or such representative organization's contracted partners to ensure
14 compliance with all applicable federal, state and local laws, regulations and ordinances and the
15 protection of human health and the environment. Environmentally sound management practices
16 include, but are not limited to, record keeping, the tracking and documenting of the use and
17 disposition of post-consumer paint in and outside of this state, and environmental liability
18 coverage for professional services and for the operations of the contractors working on behalf of
19 the representative organization.

1 (6) "Paint stewardship assessment" means the amount added to the purchase price of
2 architectural paint sold in this state that is necessary to cover the cost of collecting, transporting
3 and processing post-consumer paint by the representative organization pursuant to the paint
4 stewardship program.

5 (7) "Post-consumer paint" means architectural paint that is not used and that is no longer
6 wanted by a purchaser of architectural paint.

7 (8) "Producer" means a manufacturer of architectural paint who sells, offers for sale,
8 distributes or contracts to distribute architectural paint in this state.

9 (9) "Recycling" means any process by which discarded products, components and by-
10 products are transformed into new, usable or marketable materials in a manner in which the
11 original products may lose their identity.

12 (10) "Representative organization" means the ~~nonprofit organization created by producers~~
13 [organization selected](#) to implement the paint stewardship program described in ~~§ 23-24.11-3~~ [§ 23-](#)
14 [24.12-3](#).

15 (11) "Retailer" means any person who offers architectural paint for sale at retail in this
16 state.

17 (12) "Reuse" means the return of a product into the economic stream for use in the same
18 kind of application as the product was originally intended to be used, without a change in the
19 product's identity.

20 (13) "Sell" or "sale" means any transfer of title for consideration including, but not
21 limited to, remote sales conducted through sales outlets, catalogues, the Internet or any other
22 similar electronic means.

23 **23-24.12-3. Establishment of paint stewardship program.**

24 (a) On or before March 1, 2014, each producer shall join the representative organization
25 and such representative organization shall submit a plan for the establishment of a paint
26 stewardship program to the department for approval. The program shall minimize the public
27 sector involvement in the management of post-consumer paint by reducing the generation of post-
28 consumer paint, negotiating agreements to collect, transport, reuse, recycle, and/or burn for
29 energy recovery at an appropriately licensed facility post-consumer paint using environmentally
30 sound management practices.

31 (b) The program shall also provide for convenient and available state-wide collection of
32 post-consumer paint that, at a minimum, provides for collection rates and convenience greater
33 than the collection programs available to consumers prior to such paint stewardship program;
34 propose a paint stewardship assessment; include a funding mechanism that requires each producer

1 who participates in the representative organization to remit to the representative organization
2 payment of the paint stewardship assessment for each container of architectural paint sold within
3 the state; include an education and outreach program to help ensure the success of the program;
4 and, work with the department and Rhode Island commerce corporation to identify ways in which
5 the state can motivate local infrastructure investment, business development and job creation
6 related to the collection, transportation and processing of post-consumer paint.

7 (c) The plan submitted to the department pursuant to this section shall:

8 (1) Identify each producer participating in the paint stewardship program and the brands
9 of architectural paint sold in this state covered by the program;

10 (2) Identify how the representative organization will provide convenient, statewide
11 accessibility to the program;

12 (3) Set forth the process by which an independent auditor will be selected and identify the
13 criteria used by the representative organization in selecting independent auditor;

14 (4) Identify, in detail, the educational and outreach program that will be implemented to
15 inform consumers and retailers of the program and how to participate;

16 (5) Identify the methods and procedures under which the paint stewardship program will
17 be coordinated with the Rhode Island resource recovery corporation;

18 (6) Identify, in detail, the operational plans for interacting with retailers on the proper
19 handling and management of post-consumer paint;

20 (7) Include the proposed, audited paint assessment as identified in this section;

21 (8) Include the targeted annual collection rate;

22 (9) Include a description of the intended treatment, storage, transportation and disposal
23 options and methods for the collected post-consumer paint; and

24 (10) Be accompanied by a fee in the amount of two thousand five hundred dollars
25 (\$2,500) to be deposited into the environmental response fund to cover the review of said plan by
26 the department.

27 (d) Not later than sixty (60) days after submission of a plan pursuant to this section, the
28 department shall make a determination whether to:

29 (1) Approve the plan as submitted;

30 (2) Approve the plan with conditions; or

31 (3) Deny the plan.

32 (e) Not later than three (3) months after the date the plan is approved, the representative
33 organization shall implement the paint stewardship program.

34 (f) On or before March 1, 2014, the representative organization shall propose a uniform

1 paint stewardship assessment for all architectural paint sold in this state. Such proposed paint
2 stewardship assessment shall be reviewed by an independent auditor to assure that such
3 assessment is consistent with the budget of the paint stewardship program described in this
4 section and such independent auditor shall recommend an amount for such paint stewardship
5 assessment to the department. The department shall be responsible for the approval of such paint
6 stewardship assessment based upon the independent auditor's recommendation. If the paint
7 stewardship assessment previously approved by the department pursuant to this section is
8 proposed to be changed, the representative organization shall submit the new, adjusted uniform
9 paint stewardship assessment to an independent auditor for review. After such review has been
10 completed, the representative organization shall submit the results of said auditor's review and a
11 proposal to amend the paint stewardship assessment to the department for review. The department
12 shall review and approve, in writing, the adjusted paint stewardship assessment before the new
13 assessment can be implemented. Any proposed changes to the paint stewardship assessment shall
14 be submitted to the department no later than sixty (60) days prior to the date the representative
15 organization anticipates the adjusted assessment to take effect.

16 (g) On and after the date of implementation of the paint stewardship program pursuant to
17 this section, the paint stewardship assessment shall be added to the cost of all architectural paint
18 sold to retailers and distributors in this state by each producer. On and after such implementation
19 date, each retailer or distributor, as applicable, shall add the amount of such paint stewardship
20 assessment to the purchase price of all architectural paint sold in this state.

21 (h) Any retailer may participate, on a voluntary basis, as a paint collection point pursuant
22 to such paint stewardship program and in accordance with any applicable provision of law or
23 regulation.

24 (i) Each producer and the representative organization shall be immune from liability for
25 any claim of a violation of antitrust law or unfair trade practice if such conduct is a violation of
26 antitrust law, to the extent such producer or representative organization is exercising authority
27 pursuant to the provisions of this section.

28 (j) Not later than the implementation date of the paint stewardship program, the
29 department shall list the names of participating producers the brands of architectural paint
30 covered by such paint stewardship program and the cost of the approved paint stewardship
31 assessment on its website.

32 (k)(1) On and after the implementation date of the paint stewardship program, no
33 producer, distributor or retailer shall sell or offer for sale architectural paint to any person in this
34 state if the producer of such architectural paint is not a member of the representative organization.

1 (2) No retailer or distributor shall be found to be in violation of the provisions of this
2 section if, on the date the architectural paint was ordered from the producer or its agent, the
3 producer or the subject brand of architectural paint was listed on the department's website in
4 accordance with the provisions of this section.

5 (l) Producers or the representative organization shall provide retailers with educational
6 materials regarding the paint stewardship assessment and paint stewardship program to be
7 distributed at the point of sale to the consumer. Such materials shall include, but not be limited to,
8 information regarding available end-of-life management options for architectural paint offered
9 through the paint stewardship program and information that notifies consumers that a charge for
10 the operation of such paint stewardship program is included in the purchase price of all
11 architectural paint sold in this state.

12 (m) On or before October 15, 2015, and annually thereafter, the representative
13 organization shall submit a report to the director of the department of environmental management
14 that details the paint stewardship program. Said report shall include a copy of the independent
15 audit detailed in subdivision (4) below. Such annual report shall include, but not be limited to:

16 (1) A detailed description of the methods used to collect, transport and process post-
17 consumer paint in this state;

18 (2) The overall volume of post-consumer paint collected in this state;

19 (3) The volume and type of post-consumer paint collected in this state by method of
20 disposition, including reuse, recycling and other methods of processing or disposal;

21 (4) The total cost of implementing the program, as determined by an independent
22 financial audit, as performed by an independent auditor;

23 (5) An evaluation of the adequacy of the program's funding mechanism;

24 (6) Samples of all educational materials provided to consumers of architectural paint and
25 participating retailers; and

26 (7) A detailed list of efforts undertaken and an evaluation of the methods used to
27 disseminate such materials including recommendations, if any, for how the educational
28 component of the program can be improved.

29 (n) The representative organization shall update the plan, as needed, when there are
30 changes proposed to the current program. A new plan or amendment will be required to be
31 submitted to the department for approval when:

32 (1) There is a change to the amount of the assessment; or

33 (2) There is an addition to the products covered under the program; or

34 (3) There is a revision of the product stewardship organization's goals: or

1 (4) Every four (4) years, if requested, in writing, by the department the representative
2 organization shall notify the department annually, in writing, if there are no changes proposed to
3 the program and the representative organization intends to continue implementation of the
4 program as previously approved by the department.

5 (o) On or before July 1, 2019, and every two (2) years thereafter, the department shall
6 issue a request for proposals to solicit the procurement of a representative organization to operate
7 the paint stewardship program on behalf of the department in accordance with the provisions of
8 this chapter. The request for proposals shall include a proposal regarding the amount of the paint
9 stewardship assessment the representative organization would require to operate the paint
10 stewardship program for a period of two (2) years.

11 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO HEALTH AND SAFETY -- PROPER MANAGEMENT OF UNUSED PAINT

1 This act would require that the department of environmental management request
2 proposals, every two (2) years, to solicit procurement of a representative organization to operate
3 the paint stewardship program.

4 This act would take effect upon passage.

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