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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- PROPER MANAGEMENT OF
UNUSED PAINT

Introduced By: Representatives Walsh, Ruggiero, Valencia, Tanzi, and Ferri

Date Introduced: January 25, 2012

Referred To: House Environment and Natural Resources

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
2 amended by adding thereto the following chapter:

CHAPTER 24.12

PROPER MANAGEMENT OF UNUSED PAINT

5 **23-24.12-1. Purpose. --** (a) To establish a cost-effective, convenient, statewide system
6 for the collection, recycling and reuse of post-consumer paint.

7 (b) To develop a comprehensive strategy, with the cooperation of state entities,
8 producers, and retailers, for the proper management of post-consumer paint in a safe and
9 environmentally sound manner.

10 (c) To provide fiscal and regulatory consistency for all producers of paint that participate
11 in the collection system authorized in this chapter.

12 (d) To establish effective collection, recycling, management and education programs
13 resulting in collection of amounts of unused paint consistent with the goals and targets established
14 pursuant to this chapter.

15 **23-24.12-2. Management of unused architectural paint – Definitions. --**

16 (1) “Architectural paint” means interior and exterior architectural coatings sold in
17 containers of five (5) gallons or less. Architectural paint does not include industrial, original
18 equipment or specialty coatings.

- 1 (2) “Department” means the department of environmental management.
- 2 (3) “Director” means the director of the department of environmental management.
- 3 (4) “Distributor” means a company that has a contractual relationship with one or more
4 producers to market and sell architectural paint to retailers in this state.
- 5 (5) “Environmentally sound management practices” means procedures for the collection,
6 storage, transportation, reuse, recycling and disposal of architectural paint, to be implemented by
7 the representative organization or such representative organization’s contracted partners to ensure
8 compliance with all applicable federal, state and local laws, regulations and ordinances and the
9 protection of human health and the environment. Environmentally sound management practices
10 include, but are not limited to, record keeping, the tracking and documenting of the use and
11 disposition of post- consumer paint in and outside of this state, and environmental liability
12 coverage for professional services and for the operations of the contractors working on behalf of
13 the representative organization.
- 14 (6) “Paint stewardship assessment” means the amount added to the purchase price of
15 architectural paint sold in this state that is necessary to cover the cost of collecting, transporting
16 and processing post-consumer paint by the representative organization pursuant to the paint
17 stewardship program.
- 18 (7) “Post-consumer paint” means architectural paint that is not used and that is no longer
19 wanted by a purchaser of architectural paint.
- 20 (8) “Producer” means a manufacturer of architectural paint who sells, offers for sale,
21 distributes or contracts to distribute architectural paint in this state.
- 22 (9) “Recycling” means any process by which discarded products, components and by-
23 products are transformed into new, usable or marketable materials in a manner in which the
24 original products may lose their identity.
- 25 (10) “Representative organization” means the nonprofit organization created by
26 producers to implement the paint stewardship program described in section 23-24.11-3.
- 27 (11) “Retailer” means any person who offers architectural paint for sale at retail in this
28 state.
- 29 (12) “Reuse” means the return of a product into the economic stream for use in the same
30 kind of application as the product was originally intended to be used, without a change in the
31 product’s identity.
- 32 (13) “Sell” or “sale” means any transfer of title for consideration including, but not
33 limited to, remote sales conducted through sales outlets, catalogues, the Internet or any other
34 similar electronic means.

1 **23-24.12-3. Establishment of paint stewardship program.** – (a) On or before March 1,
2 2014, each producer shall join the representative organization and such representative
3 organization shall submit a plan for the establishment of a paint stewardship program to the
4 department for approval. The program shall minimize the public sector involvement in the
5 management of post-consumer paint by reducing the generation of post-consumer paint,
6 negotiating agreements to collect, transport, reuse, recycle, and/or burn for energy recovery at an
7 appropriately licensed facility post-consumer paint using environmentally sound management
8 practices.

9 (b) The program shall also provide for convenient and available state-wide collection of
10 post-consumer paint that, at a minimum, provides for collection rates and convenience greater
11 than the collection programs available to consumers prior to such paint stewardship program;
12 propose a paint stewardship assessment; include a funding mechanism that requires each producer
13 who participates in the representative organization to remit to the representative organization
14 payment of the paint stewardship assessment for each container of architectural paint sold within
15 the state; include an education and outreach program to help ensure the success of the program;
16 and, work with the department and Rhode Island economic development corporation to identify
17 ways in which the state can motivate local infrastructure investment, business development and
18 job creation related to the collection, transportation and processing of post-consumer paint.

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

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

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

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

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

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

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

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

33 (8) Include the targeted annual collection rate;

34 (9) Include a description of the intended treatment, storage, transportation and disposal

1 options and methods for the collected post-consumer paint; and

2 (10) Be accompanied by a fee in the amount of two thousand five hundred dollars
3 (\$2,500) to be deposited into the environmental response fund to cover the review of said plan by
4 the department.

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

7 (1) Approve the plan as submitted;

8 (2) Approve the plan with conditions; or

9 (3) Deny the plan.

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

12 (f) On or before March 1, 2014, the representative organization shall propose a uniform
13 paint stewardship assessment for all architectural paint sold in this state. Such proposed paint
14 stewardship assessment shall be reviewed by an independent auditor to assure that such
15 assessment is consistent with the budget of the paint stewardship program described in this
16 section and such independent auditor shall recommend an amount for such paint stewardship
17 assessment to the department. The department shall be responsible for the approval of such paint
18 stewardship assessment based upon the independent auditor's recommendation. If the paint
19 stewardship assessment previously approved by the department pursuant to this section is
20 proposed to be changed, the representative organization shall submit the new, adjusted uniform
21 paint stewardship assessment to an independent auditor for review. After such review has been
22 completed, the representative organization shall submit the results of said auditor's review and a
23 proposal to amend the paint stewardship assessment to the department for review. The department
24 shall review and approve, in writing, the adjusted paint stewardship assessment before the new
25 assessment can be implemented. Any proposed changes to the paint stewardship assessment shall
26 be submitted to the department no later than sixty (60) days prior to the date the representative
27 organization anticipates the adjusted assessment to take effect.

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

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

1 regulation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **23-24.12-4. Regulations. --** The department shall promulgate regulations recognizing
18 conditionally exempt small quantity generators of hazardous waste consistent with federal
19 Environmental Protection Agency standards. The department is hereby authorized to promulgate
20 additional rules and regulations as necessary to implement and carry out the provisions of this
21 chapter.

22 **23-24.12-5. Violations. --** A violation of any of the provisions of this chapter or any rule
23 or regulation promulgated pursuant to section 23-24.11-4 shall be punishable by a civil penalty
24 not to exceed one thousand dollars (\$1,000). In the case of a second and any subsequent violation,
25 the civil penalty shall not exceed five thousand dollars (\$5,000) for each violation.

26 **23-24.12-6. Reporting to the general assembly. --** Not later than January 15, 2016 and
27 biennially thereafter, the director shall submit a report to the general assembly that describes the
28 results and activities of the paint stewardship program as enacted pursuant to this chapter
29 including any recommendations to improve the functioning and efficiency of the paint collection
30 program, as necessary.

31 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 STATE AFFAIRS AND GOVERNMENT -- PROPER MANAGEMENT OF
UNUSED PAINT

1 This act would create a program by which the disposal of unused paint products would be
2 managed by a paint trade organization created for that purpose, and funded by an assessment on
3 retail paint products.

4 This act would take effect upon passage.

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