

Connecticut

Senate Bill No. 828

Public Act No. 11-24

AN ACT ESTABLISHING A PAINT STEWARDSHIP PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective from passage*) For purposes of this section and section 2 of this act:

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

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

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

(4) "Energy recovery" means the process by which all or a portion of solid waste materials are processed or combusted in order to utilize the heat content or other forms of energy derived from such solid waste materials.

(5) "Paint stewardship assessment" means the amount added to the purchase price of architectural paint sold in this state that is necessary to cover the cost of collecting, transporting and processing postconsumer paint by the representative organization pursuant to the paint stewardship program.

(6) "Postconsumer paint" means architectural paint that is not used and that is no longer wanted by a purchaser of architectural paint.

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

(8) "Recycling" means any process by which discarded products, components and by-products are transformed into new, usable or marketable materials in a manner in which the original products may lose their identity. "Recycling" does not include energy recovery.

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

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

(11) "Commissioner" means the Commissioner of Environmental Protection.

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

(13) "Representative organization" means the nonprofit organization created by producers to implement the paint stewardship program described in section 2 of this act.

(14) "Department" means the Department of Environmental Protection.

Sec. 2. (NEW) (*Effective from passage*) (a) (1) On or before March 1, 2013, each producer shall join the representative organization and such representative organization shall submit a plan for the establishment of a paint stewardship program described in this subdivision to the commissioner for approval. Such paint stewardship program shall: (A) Minimize public sector involvement in the management of postconsumer paint by: (i) Reducing the generation of postconsumer paint, (ii) promoting the reuse and recycling of postconsumer paint, and (iii) negotiating and executing agreements to collect, transport, reuse, recycle, burn for energy recovery and dispose of postconsumer paint using environmentally sound management practices; (B) provide for convenient and available state-wide collection of postconsumer paint that, at a minimum, provides for collection rates and convenience equal to, or greater than, the collection programs available to consumers prior to such paint stewardship program; (C) propose a paint stewardship assessment; and (D) include a funding mechanism that requires each producer who participates in the representative organization to remit to the representative organization payment of the paint stewardship assessment for each container of architectural paint such producer sells in this state.

(2) The plan submitted pursuant to subdivision (1) of this subsection shall: (A) Identify each producer participating in the paint stewardship program and the brands of architectural paint sold in this state covered by the program; and (B) address the coordination of the paint stewardship program with existing household hazardous waste collection infrastructure, as much as is reasonably feasible and mutually agreeable.

(3) The commissioner may approve the plan for the establishment of a paint stewardship program that meets the requirements of subdivisions (1) and (2) of this subsection. Not later than two months after submission of the plan pursuant to this subsection, the commissioner shall make a determination whether or not to approve the plan.

(4) Not later than two months after the date the plan is approved pursuant to subdivision (3) of this subsection, the representative organization shall implement the paint stewardship program.

(b) (1) On or before March 1, 2013, and every two years thereafter, the representative organization shall propose a uniform paint stewardship assessment for all architectural paint sold in this state. Such proposed paint stewardship assessment shall be reviewed by an independent auditor to assure that such assessment does not exceed the costs of the paint stewardship program described in subsection (a) of this section and such independent auditor shall recommend an amount for such paint stewardship assessment to the department. The department shall be responsible for the approval of such paint stewardship assessment. Such independent auditor shall be selected by the department and the department shall be responsible for the review of the work product of such independent auditor, including, but not limited to, the review of such

auditor's assessment of the bid and purchase procedures utilized by the representative organization to implement such program. The department may terminate the services of any such independent auditor. Not less than once every five years, the department shall select a different independent auditor to perform the duties described in this subdivision and subdivision (4) of subsection (h) of this section. The cost of any work performed by such independent auditor pursuant to the provisions of this subdivision and subdivision (4) of subsection (h) of this section shall be funded by the paint stewardship assessment.

(2) On and after the date of implementation of the paint stewardship program pursuant to subdivision (4) of subsection (a) of this section, the paint stewardship assessment, as established pursuant to subdivision (1) of this subsection, shall be added to the cost of all architectural paint sold to retailers and distributors in this state by each producer. On and after such implementation date, each retailer or distributor, as applicable, shall add the amount of such paint stewardship assessment to the purchase price of all architectural paint sold in this state.

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

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

(e) Not later than the implementation date of the paint stewardship program, the department shall list the names of participating producers and the brands of architectural paint covered by such paint stewardship program on its web site.

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

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

(3) The commissioner may seek civil enforcement of the provisions of this subsection pursuant to chapter 439 of the general statutes.

(g) Producers or the representative organization shall provide consumers with educational materials regarding the paint stewardship assessment and paint stewardship program. Such materials shall include, but not be limited to, information regarding available end-of-life management options for architectural paint offered through the paint stewardship program and information that notifies consumers that a charge for the operation of such paint stewardship program is included in the purchase price of all architectural paint sold in this state.

(h) On or before August 15, 2014, and annually thereafter, the representative organization shall submit a report to the Commissioner of Environmental Protection that details the paint stewardship program. Such report shall include, but not be limited to: (1) A description of the methods used to collect, transport and process postconsumer paint in this state; (2) the volume of postconsumer paint collected in this state; (3) the

volume and type of postconsumer paint collected in this state by method of disposition, including reuse, recycling and other methods of processing; (4) the total cost of implementing the program, as determined by an independent financial audit, as performed by the independent auditor described in subdivision (1) of subsection (b) of this section and funded by the paint stewardship assessment; (5) an evaluation of the operation of the program's funding mechanism; and (6) samples of educational materials provided to consumers of architectural paint and an evaluation of the methods used to disseminate such materials.

(i) Not later than January 15, 2015, and biennially thereafter, the Commissioner of Environmental Protection shall submit, in accordance with section 11-4a of the general statutes, a report to the joint standing committee of the General Assembly having cognizance of matters relating to the environment that describes the results of the paint stewardship program and recommends modifications to improve the functioning and efficiency of such program, as necessary.

Approved June 3, 2011