

Chapter 442
2012 -- S 2083 SUBSTITUTE A
Enacted 06/25/12

A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT -- PROPER MANAGEMENT OF UNUSED PAINT

Introduced By: Senators Ruggerio, Sosnowski, Lombardo, DiPalma, and Miller
Date Introduced: January 18, 2012

It is enacted by the General Assembly as follows:

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

CHAPTER 24.12
PROPER MANAGEMENT OF UNUSED PAINT

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

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

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

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

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

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

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

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

(4) "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.

(5) "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 use and

disposition of post-consumer 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.

(6) "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 post-consumer paint by the representative organization pursuant to the paint stewardship program.

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

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

(9) "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.

(10) "Representative organization" means the nonprofit organization created by producers to implement the paint stewardship program described in section 23-24.11-3.

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

(12) "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.

(13) "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.

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

(b) The program shall also provide for convenient and available state-wide collection of post-consumer paint that, at a minimum, provides for collection rates and convenience greater than the collection programs available to consumers prior to such paint stewardship program; propose a paint stewardship assessment; 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 sold within the state; include an education and outreach program to help ensure the success of the program; and, work with the department and Rhode Island economic development corporation to identify ways in which the state can motivate local infrastructure investment, business development and job creation related to the collection, transportation and processing of post-consumer paint.

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

- (1) Identify each producer participating in the paint stewardship program and the brands of architectural paint sold in this state covered by the program;
- (2) Identify how the representative organization will provide convenient, statewide accessibility to the program;
- (3) Set forth the process by which an independent auditor will be selected and identify the criteria used by the representative organization in selecting independent auditor;
- (4) Identify, in detail, the educational and outreach program that will be implemented to inform consumers and retailers of the program and how to participate;
- (5) Identify the methods and procedures under which the paint stewardship program will be coordinated with the Rhode Island resource recovery corporation;
- (6) Identify, in detail, the operational plans for interacting with retailers on the proper handling and management of post-consumer paint;
- (7) Include the proposed, audited paint assessment as identified in this section;
- (8) Include the targeted annual collection rate;
- (9) Include a description of the intended treatment, storage, transportation and disposal options and methods for the collected post-consumer paint; and
- (10) Be accompanied by a fee in the amount of two thousand five hundred dollars (\$2,500) to be deposited into the environmental response fund to cover the review of said plan by the department.

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

- (1) Approve the plan as submitted;
- (2) Approve the plan with conditions; or
- (3) Deny the plan.

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

(f) On or before March 1, 2014, 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 is consistent with the budget of the paint stewardship program described in 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 based upon the independent auditor's recommendation. If the paint stewardship assessment previously approved by the department pursuant to this section is proposed to be changed, the representative organization shall submit the new, adjusted uniform paint stewardship assessment to an independent auditor for review. After such review has been completed, the representative organization shall submit the results of said auditor's review and a proposal to amend the paint stewardship assessment to the department for review. The department shall review and approve, in writing, the adjusted paint stewardship assessment before the new assessment can be implemented. Any proposed changes to the paint stewardship assessment shall be submitted to the department no later than sixty (60) days prior to the date the representative organization anticipates the adjusted assessment to take effect.

(g) On and after the date of implementation of the paint stewardship program pursuant to this section, the paint stewardship assessment 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.

(h) 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.

(i) 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.

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

(k)(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 this section 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 website in accordance with the provisions of this section.

(l) Producers or the representative organization shall provide retailers with educational materials regarding the paint stewardship assessment and paint stewardship program to be distributed at the point of sale to the consumer. 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.

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

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

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

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

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

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

(6) Samples of all educational materials provided to consumers of architectural paint and

participating retailers; and

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

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

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

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

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

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

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

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

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

SECTION 2. This act shall take effect upon passage.

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