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LC005151

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO HEALTH AND SAFETY - PROPER MANAGEMENT OF UNUSED PAINT

Introduced By: Representatives Tobon, and Barros

Date Introduced: March 04, 2022

Referred To: House Environment and Natural Resources

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 23-24.12  
2 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 coverage  
18 for professional services and for the operations of the contractors working on behalf of the  
19 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 original  
11 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 limited  
21 to, remote sales conducted through sales outlets, catalogues, the Internet or any other similar  
22 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 stewardship  
26 program to the department for approval. The program shall minimize the public sector involvement  
27 in the management of post-consumer paint by reducing the generation of post-consumer paint,  
28 negotiating agreements to collect, transport, reuse, recycle, and/or burn for energy recovery at an  
29 appropriately licensed facility post-consumer paint using environmentally sound management  
30 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 than  
33 the collection programs available to consumers prior to such paint stewardship program; propose a  
34 paint stewardship assessment; include a funding mechanism that requires each producer who

1 participates in the representative organization to remit to the representative organization payment  
2 of the paint stewardship assessment for each container of architectural paint sold within the state;  
3 include an education and outreach program to help ensure the success of the program; and, work  
4 with the department and Rhode Island commerce corporation to identify ways in which the state  
5 can motivate local infrastructure investment, business development and job creation related to the  
6 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 of  
9 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 (\$2,500)  
25 to be deposited into the environmental response fund to cover the review of said plan by the  
26 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 assessment  
3 is consistent with the budget of the paint stewardship program described in this section and such  
4 independent auditor shall recommend an amount for such paint stewardship assessment to the  
5 department. The department shall be responsible for the approval of such paint stewardship  
6 assessment based upon the independent auditor's recommendation. If the paint stewardship  
7 assessment previously approved by the department pursuant to this section is proposed to be  
8 changed, the representative organization shall submit the new, adjusted uniform paint stewardship  
9 assessment to an independent auditor for review. After such review has been completed, the  
10 representative organization shall submit the results of said auditor's review and a proposal to amend  
11 the paint stewardship assessment to the department for review. The department shall review and  
12 approve, in writing, the adjusted paint stewardship assessment before the new assessment can be  
13 implemented. Any proposed changes to the paint stewardship assessment shall be submitted to the  
14 department no later than sixty (60) days prior to the date the representative organization anticipates  
15 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 department  
29 shall list the names of participating producers the brands of architectural paint covered by such  
30 paint stewardship program and the cost of the approved paint stewardship assessment on its  
31 website.

32 (k)(1) On and after the implementation date of the paint stewardship program, no producer,  
33 distributor or retailer shall sell or offer for sale architectural paint to any person in this state if the  
34 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 section  
2 if, on the date the architectural paint was ordered from the producer or its agent, the producer or  
3 the subject brand of architectural paint was listed on the department's website in accordance with  
4 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 architectural  
11 paint sold in this state.

12 (m) On or before October 15, 2015, and annually thereafter, the representative organization  
13 shall submit a report to the director of the department of environmental management that details  
14 the paint stewardship program. Said report shall include a copy of the independent audit detailed  
15 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 financial  
22 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 component  
28 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 program  
4 as previously approved by the department.

5           (o) On or before September 1, 2022, and every two (2) years thereafter, the department  
6 shall issue a request for proposals to solicit the procurement of a representative organization to  
7 operate the paint stewardship program on behalf of the department in accordance with the  
8 provisions of this chapter. The request for proposals shall include a proposal regarding the amount  
9 of the paint stewardship assessment the representative organization would require to operate the  
10 paint 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

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

4           This act would take effect upon passage.

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