

2012 -- S 2083

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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: Senators Ruggerio, Sosnowski, Lombardo, DiPalma, and Miller

Date Introduced: January 18, 2012

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 42-17.1 of the General Laws entitled "Department of
2 Environmental Management" is hereby amended by adding thereto the following section:

3 **42-17.1-46. Management of unused architectural paint. -- Definitions – (a)**

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

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

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

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

14 (f) "Environmentally sound management practices" means procedures for the collection,
15 storage, transportation, reuse, recycling and disposal of architectural paint, to be implemented by
16 the representative organization or such representative organization's contracted partners to ensure
17 compliance with all applicable federal, state and local laws, regulations and ordinances and the
18 protection of human health and the environment. Environmentally sound management practices

1 include, but are not limited to, record keeping, the tracking and documenting of the fate of post-
2 consumer paint in and outside of this state, and environmental liability coverage for professional
3 services and for the operations of the contractors working on behalf of the representative
4 organization.

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

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

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

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

16 (k) "Representative organization" means the nonprofit organization created by producers
17 to implement the paint stewardship program described in section 42-17.1-17.

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

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

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

26 **42-17.1-47. Establishment of paint stewardship program. --** (a) On or before March 1,
27 2013, each producer shall join the representative organization and such representative
28 organization shall submit a plan for the establishment of a paint stewardship program to the
29 director for approval. The program shall minimize the public sector involvement in the
30 management of post-consumer paint by reducing the generation of post-consumer paint,
31 negotiating agreements to collect, transport, reuse, recycle, and/or burn for energy recovery post-
32 consumer paint using environmentally sound management practices.

33 (b) The program shall also provide for convenient and available state-wide collection of
34 post-consumer paint that, at a minimum, provides for collection rates and convenience equal to,

1 or greater than, the collection programs available to consumers prior to such paint stewardship
2 program; propose a paint stewardship assessment; and include a funding mechanism that requires
3 each producer who participates in the representative organization to remit to the representative
4 organization payment of the paint stewardship assessment for each container of architectural paint
5 sold within the state.

6 (c) The plan submitted pursuant to this section shall identify each producer participating
7 in the paint stewardship program and the brands of architectural paint sold in this state covered by
8 the program; and address the coordination of the paint stewardship program with existing
9 household hazardous waste collection infrastructure, as much as is reasonably feasible and
10 mutually agreeable.

11 (d) The director may approve the plan for the establishment of a paint stewardship
12 program that meets the requirements of this section. Not later than two (2) months after
13 submission of a plan pursuant to this section, the director shall make a determination whether or
14 not to approve the plan.

15 (e) Not later than two (2) months after the date the plan is approved, the representative
16 organization shall implement the paint stewardship program.

17 (f) On or before March 1, 2013, and every two (2) years thereafter, the representative
18 organization shall propose a uniform paint stewardship assessment for all architectural paint sold
19 in this state. Such proposed paint stewardship assessment shall be reviewed by an independent
20 auditor to assure that such assessment does not exceed the costs of the paint stewardship program
21 described in this section and such independent auditor shall recommend an amount for such paint
22 stewardship assessment to the department. The department shall be responsible for the approval
23 of such paint stewardship assessment. Such independent auditor shall be selected by the
24 department and the department shall be responsible for the review of the work product of such
25 independent auditor, including, but not limited to, the review of such auditor's assessment of the
26 bid and purchase procedures utilized by the representative organization to implement such
27 program. The department may terminate the services of any such independent auditor. Not less
28 than once every five (5) years, the department shall select a different independent auditor to
29 perform the duties described in this section. The cost of any work performed by such independent
30 auditor pursuant to the provisions of this section shall be funded by the paint stewardship
31 assessment.

32 (g) On and after the date of implementation of the paint stewardship program pursuant to
33 this section, the paint stewardship assessment shall be added to the cost of all architectural paint
34 sold to retailers and distributors in this state by each producer. On and after such implementation

1 date, each retailer or distributor, as applicable, shall add the amount of such paint stewardship
2 assessment to the purchase price of all architectural paint sold in this state.

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

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

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

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

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

20 (3) The director may seek civil enforcement of the provisions of this section.

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

27 (m) On or before August 15, 2014, and annually thereafter, the representative
28 organization shall submit a report to the director of the department of environmental management
29 that details the paint stewardship program. Such report shall include, but not be limited to, a
30 description of the methods used to collect, transport and process post-consumer paint in this state;
31 the volume of post-consumer paint collected in this state; the volume and type of post-consumer
32 paint collected in this state by method of disposition, including reuse, recycling and other
33 methods of processing; the total cost of implementing the program, as determined by an
34 independent financial audit, as performed by the independent auditor; an evaluation of the

1 operation of the program's funding mechanism; and samples of educational materials provided to
2 consumers of architectural paint and an evaluation of the methods used to disseminate such
3 materials.

4 (n) Not later than January 15, 2015, and biennially thereafter, the director shall submit, a
5 report to the general assembly that describes the results of the paint stewardship program and
6 recommends modifications to improve the functioning and efficiency of such program, as
7 necessary.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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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 a surtax on retail
3 paint products.

4 This act would take effect upon passage.

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