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Legislative Document

No. 1308

S.P. 451

In Senate, April 2, 2013

An Act To Establish a Stewardship Program for Architectural Paint

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator SAVIELLO of Franklin.
Cosponsored by Senators: President ALFOND of Cumberland, BOYLE of Cumberland,
GOODALL of Sagadahoc, GRATWICK of Penobscot, KATZ of Kennebec, LACHOWICZ of
Kennebec, Representative: WELSH of Rockport.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 38 MRSA §2144** is enacted to read:

3 **§2144. Stewardship program for architectural paint**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Architectural paint" or "paint" means interior and exterior architectural coatings
7 sold in containers of 5 gallons or less and does not mean industrial, original
8 equipment or specialty coatings.

9 B. "Consumer" means a purchaser or user of architectural paint.

10 C. "Distributor" means a business that has a contractual relationship with one or
11 more producers to market and sell architectural paint to retailers in the State.

12 D. "Energy recovery" means recovery in which all or a part of solid waste materials
13 is processed in order to use the heat content or other forms of energy of or from the
14 materials.

15 E. "Environmentally sound management practices" means procedures for the
16 collection, storage, transportation, reuse, recycling and disposal of post-consumer
17 paint to be implemented by a producer or a representative organization to ensure
18 compliance with all applicable federal, state and local laws, regulations, rules and
19 ordinances and protection of human health and the environment. Such procedures
20 must address adequate record keeping, tracking and documenting the fate of materials
21 within the State and beyond and adequate environmental liability coverage for
22 professional services and for the operations of the contractors working on behalf of
23 the producer or the representative organization.

24 F. "Final disposition" means the point beyond which no further processing takes
25 place and paint has been transformed for direct use as a feedstock in producing new
26 products or is disposed of, including for energy recovery, in permitted facilities.

27 G. "Paint stewardship assessment" means the amount added to the purchase price of
28 architectural paint sold in the State necessary to cover the cost of collecting,
29 transporting and processing post-consumer paint statewide under a paint stewardship
30 program.

31 H. "Paint stewardship program" or "program" means a program for management of
32 post-consumer paint to be operated by a producer or a representative organization.

33 I. "Plan" means a plan to establish a paint stewardship program.

34 J. "Population center" means an urbanized area or urban cluster as defined by the
35 United States Department of Commerce, Bureau of the Census to identify areas of
36 high population density and urban land use with a population of 2,500 or greater.

37 K. "Post-consumer paint" means architectural paint not used and no longer wanted
38 by a consumer.

1 L. "Producer" means a manufacturer of architectural paint that sells, offers for sale,
2 or distributes that paint in the State under the producer's own name or brand.

3 M. "Recycling" means any process by which discarded products, components and
4 by-products are transformed into new, usable or marketable materials in a manner in
5 which the original products may lose their identity but does not include energy
6 recovery or energy generation by means of combusting discarded products,
7 components and by-products with or without other waste products.

8 N. "Representative organization" means a nonprofit organization created by
9 producers to operate a paint stewardship program.

10 O. "Retailer" means a person that offers architectural paint for sale at retail in the
11 State.

12 P. "Reuse" means the return of a product into the economic stream for use in the
13 same kind of application as originally intended, without a change in the product's
14 identity.

15 Q. "Sell" or "sale" means any transfer of title for consideration, including remote
16 sales conducted through sales outlets, catalogues or the Internet or any other similar
17 electronic means.

18 **2. Establishment of a paint stewardship program.** By April 1, 2015, a producer, a
19 group of producers or a representative organization may submit a plan for the
20 establishment of a paint stewardship program to the commissioner for approval. The plan
21 must include:

22 A. A description of how the program will collect, transport, recycle and process post-
23 consumer paint from entities covered by the program for end-of-life management to
24 meet the following goals:

25 (1) A reduction in the generation of unwanted paint and the promotion of its
26 reuse and recycling;

27 (2) Provision of convenient and available statewide collection of post-consumer
28 paint from entities covered by the program in all areas of the State;

29 (3) Management of post-consumer paint using environmentally sound
30 management practices in an economically sound manner, including following the
31 paint waste management hierarchy of: source reduction; reuse; recycling; energy
32 recovery and disposal;

33 (4) Establishment of a process for managing paint containers collected under the
34 program, with an emphasis on recycling containers, when practical;

35 (5) Negotiation and execution by the operator of agreements to collect, transport,
36 reuse, recycle, burn for energy recovery and dispose of post-consumer paint
37 using environmentally sound management practices; and

38 (6) Provision of education and outreach efforts by the operator to promote the
39 program. The education and outreach efforts must include strategies for reaching
40 consumers in all areas of the State and the method the program will use to
41 evaluate the effectiveness of its education and outreach efforts;

1 B. Contact information for all persons that will be responsible for the operation of
2 the paint stewardship program and a list of paint brands and producers covered under
3 the program;

4 C. Goals as may be practical to reduce the generation of post-consumer paint, to
5 promote the reuse and recycling of post-consumer paint, for the overall collection of
6 post-consumer paint, and for the proper end-of-life management of post-consumer
7 paint. The goals may be revised by a representative organization based on
8 information collected annually;

9 D. A list of processors that will be used to manage post-consumer paint collected by
10 the paint stewardship program and a list of all processors that will be used for final
11 disposition;

12 E. A method to determine the number and geographic distribution of paint collection
13 sites based on the use of geographic information modeling. The plan must provide
14 that at least 90% of state residents have a permanent paint collection site within a 15-
15 mile radius of their residences. The distribution of paint collection sites must include
16 at least one additional paint collection site for each 30,000 residents in a population
17 center that is located to provide convenient and reasonably equitable access for
18 residents within the population center unless otherwise approved by the
19 commissioner;

20 F. Identification of the ways in which the program will coordinate with existing solid
21 waste collection programs and events, including strategies to reach the state residents
22 that do not have a permanent paint collection site within a 15-mile radius of their
23 residences and to ensure adequate coverage of service center communities as defined
24 in Title 30-A, section 4301, subsection 14-A;

25 G. A time frame for accomplishing the geographical coverage goals required under
26 paragraphs E and F; and

27 H. An anticipated budget for operation of the paint stewardship program, including
28 the suggested method of funding the program, which must include the method of
29 calculating a paint stewardship assessment that meets the requirements of subsection
30 4.

31 **3. Approval of plan.** The commissioner shall review a plan submitted under
32 subsection 2 and make a determination of whether to approve the plan within 120 days of
33 receipt. The commissioner shall make the plan available for public review for at least 30
34 days prior to making a determination of whether to approve the plan. The commissioner
35 shall approve a plan if the commissioner determines that the plan demonstrates the ability
36 of the paint stewardship program to meet the goals specified in subsection 2, paragraph A
37 and meets the other requirements for submission of a plan under subsection 2. The
38 commissioner's approval of a plan must include approval of the method by which the
39 program will be funded. The commissioner may require the person submitting the plan to
40 provide an independent audit indicating the appropriateness of the proposed paint
41 stewardship assessment.

1 If a plan is rejected, the commissioner shall provide the reasons for rejecting the plan to
2 the person submitting the plan. The person submitting the plan may submit an amended
3 plan within 60 days of a rejection.

4 **4. Funding of paint stewardship program.** An operator of a paint stewardship
5 program shall administer a paint stewardship assessment for all architectural paint sold in
6 the State. The amount of the assessment must be approved by the commissioner under
7 subsection 3 and may not exceed the cost of the paint stewardship program. If the funds
8 generated by the program exceed the amount necessary to operate the program, excess
9 funds must be used to reduce future assessments or improve services under the program.

10 A. A paint stewardship assessment must be added to the cost of all architectural paint
11 sold to retailers and distributors in the State. A retailer or distributor shall add the
12 assessment to the consumers' purchase price of the architectural paint sold by that
13 retailer or distributor. An assessment may not be charged at the time of post-
14 consumer paint collection. The collection of the assessment must commence no later
15 than the implementation date established in subsection 5, paragraph A.

16 B. An architectural paint producer participating in a representative organization shall
17 remit to the representative organization payment of the paint stewardship assessment
18 for each container of architectural paint it sells in the State.

19 **5. Operation of paint stewardship program.** A paint stewardship program must be
20 operated as follows.

21 A. Beginning 3 months after a plan is approved by the commissioner under
22 subsection 2, a producer or a representative organization shall implement the plan.

23 B. Upon implementation of the plan, a producer may not sell or offer for sale
24 architectural paint in the State unless the producer or a representative organization of
25 which the producer is a member participates in a paint stewardship program.

26 C. A producer or a representative organization shall provide consumers and retailers
27 with educational materials regarding the paint stewardship assessment and paint
28 stewardship program. Such materials must include, but are not limited to,
29 information regarding available end-of-life management options for architectural
30 paint offered through the paint stewardship program, promoting waste prevention,
31 reuse and recycling and notifying consumers that a charge for the operation of the
32 paint stewardship program is included in the purchase price of all architectural paint
33 sold in the State. These materials may include, but are not limited to, the following:

34 (1) Signage that is prominently displayed and easily visible to the consumer;

35 (2) Printed materials and templates of materials for reproduction by retailers to
36 be provided to the consumer at the time of purchase or delivery;

37 (3) Advertising or other promotional materials that include references to the
38 paint stewardship program; and

39 (4) A manual for paint retailers providing collection site procedures to ensure the
40 use of environmentally sound management practices when handling architectural
41 paints.

1 D. A producer or a representative organization that organizes the collection,
2 transportation and processing of post-consumer paint, in accordance with a paint
3 stewardship program, is immune from liability for any claim of a violation of
4 antitrust, restraint of trade or unfair trade practice, including claims pursuant to Title
5 10, chapter 201, arising from conduct undertaken in accordance with the paint
6 stewardship program.

7 E. By October 15, 2016, and annually thereafter, the operator of a paint stewardship
8 program shall submit a report to the commissioner regarding the paint stewardship
9 program. The report must include, but is not limited to:

10 (1) A description of the methods used to collect, transport, reduce, reuse and
11 process post-consumer paint in the State;

12 (2) The volume of post-consumer paint collected in the State;

13 (3) The volume and type of post-consumer paint collected in the State by method
14 of disposition, including reuse, recycling and other methods of processing;

15 (4) The total cost of implementing the paint stewardship program, as determined
16 by an independent financial audit funded from the paint stewardship assessment;
17 and

18 (5) Samples of educational materials provided to consumers of architectural
19 paint.

20 F. All reports submitted to the department must be made available to the public on
21 the department's publicly accessible website. Financial, production or sales data
22 reported to the department by a producer, retailer or representative organization are
23 not a public record subject to disclosure under Title 1, chapter 13. The commissioner
24 may release a summary form of such data that does not disclose financial, production
25 or sales data of the producer, retailer or representative organization.

26 **6. Administration and enforcement of program.** The department shall enforce
27 this section and may adopt rules as necessary for the purposes of implementing,
28 administering and enforcing this section. The department shall charge a reasonable fee to
29 be paid by an applicant for approval of a paint stewardship program for review of the
30 plan. The department may establish a reasonable annual fee for annual report review,
31 oversight and enforcement. Fees established under this subsection may not exceed 1% of
32 total program costs as set forth in the independent financial auditing report required under
33 subsection 5.

34 **7. Retailers.** A retailer may not sell architectural paint unless, on the date the
35 retailer orders the architectural paint from the producer or its agent, the producer or the
36 paint brand is listed on the department's publicly accessible website as implementing or
37 participating in an approved paint stewardship program. A retailer may participate as a
38 paint collection point pursuant to the paint stewardship program on a voluntary basis and
39 pursuant to all applicable laws and rules. A paint retailer that collects post-consumer
40 paint must follow a collection site procedure manual developed by a producer or
41 representative organization to ensure the use of environmentally sound management
42 practices when handling architectural paints at collection locations.

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SUMMARY

This bill establishes a product stewardship program for architectural paints sold in the State. Under the program, consumers are able to return their unused architectural paint to designated locations throughout the State for recycling and proper disposal. The collection, transportation and recycling of paint is managed by architectural paint manufacturers or a designated representative organization. The program is financed by a stewardship assessment on architectural paint sold in the State.