

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

—
S.P. 370 - L.D. 1044

**An Act To Ensure That Collection Facilities Can Participate in the
Architectural Paint Stewardship Program**

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, implementation of an architectural paint stewardship program in Maine will allow for the safe, cost-effective and convenient collection of unused architectural paint; and

Whereas, a producer-sponsored paint stewardship program plan has been submitted to the Department of Environmental Protection for approval with an implementation date of August 1, 2015; and

Whereas, the changes proposed in this legislation regarding the establishment of an architectural paint stewardship program in Maine must be implemented before the submitted plan can be approved; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 38 MRSA §2144, sub-§1, ¶A, as enacted by PL 2013, c. 395, §1, is amended to read:

A. "Architectural paint" or "paint" means interior and exterior architectural coatings sold in containers of 5 gallons or less and does not mean industrial, original equipment or specialty coatings, arts and crafts paints, 2-component coatings, deck cleaners, industrial maintenance coatings, original equipment manufacturer paints and finishes, paint additives, colorants, tints, resins, roof patch and repair, tar and bitumen-based products, traffic and road marking paints, wood preservatives,

ignitable paint thinners or solvents used for cleaning paint-related equipment or contaminated with architectural paint or paint thinners or solvents identified as hazardous waste in 40 Code of Federal Regulations, Section 261.31 that are used for cleaning paint-related equipment or contaminated with architectural paint.

Sec. 2. 38 MRSA §2144, sub-§1, ¶¶A-1, A-2 and A-3 are enacted to read:

A-1. "Collection container" means a container that is designed to store more than one individual container of architectural paint that meets federal Department of Transportation specifications for containing those items.

A-2. "Collection site" means an entity that collects post-consumer paint directly from consumers for end-of-life management and may include, but is not limited to, retailers, hardware and home improvement stores, transfer stations and operations that otherwise collect household hazardous waste. A collection site may also accept universal wastes under the rules of the department.

A-3. "Conditionally exempt small quantity generator" means a conditionally exempt small quantity generator as defined in 40 Code of Federal Regulations, Section 261.5.

Sec. 3. 38 MRSA §2144, sub-§1, ¶B, as enacted by PL 2013, c. 395, §1, is amended to read:

B. "Consumer" means a purchaser or user of architectural paint. "Consumer" includes a purchaser or user of architectural paint who also generates post-consumer paint.

Sec. 4. 38 MRSA §2144, sub-§1, ¶K-1 is enacted to read:

K-1. "Post-consumer paint that is a hazardous waste" means post-consumer paint that is a hazardous waste as defined in 40 Code of Federal Regulations, Part 261, Subparts C and D.

Sec. 5. 38 MRSA §2144, sub-§2, ¶¶H and I, as enacted by PL 2013, c. 395, §1, are amended to read:

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

I. A description of how post-consumer paint collected under this section will be managed at each collection site, including how post-consumer paint will be labeled and provisions for secondary containment; and protecting post-consumer paint from weather and a description of how subsection 5-A, paragraph G will be satisfied.

Sec. 6. 38 MRSA §2144, sub-§2, ¶¶J and K, as enacted by PL 2013, c. 395, §1, are repealed.

Sec. 7. 38 MRSA §2144, sub-§5, ¶E, as amended by PL 2013, c. 483, §2, is further amended to read:

E. By October 15, 2016, and annually thereafter, the operator of a paint stewardship program shall submit a report to the commissioner regarding the paint stewardship program. If implementation of a plan begins before December 31, 2014, the commissioner may establish an earlier date for submission of the initial report. The report must include, but is not limited to:

- (1) A description of the methods used to collect, transport, reduce, reuse and process post-consumer paint in the State;
- (2) The volume of post-consumer paint collected in the State;
- (3) The volume and type of post-consumer paint collected in the State by method of disposition, including reuse, recycling and other methods of processing;
- (4) The total cost of implementing the paint stewardship program, as determined by an independent financial audit funded from the paint stewardship assessment. The report of total cost must include a breakdown of administrative, collection, transportation, disposition and communication costs;
- (5) A summary of outreach and educational activities undertaken and samples of educational materials provided to consumers of architectural paint;
- (6) The total volume of post-consumer paint collected by the paint stewardship program and a breakdown of the volume collected at each collection site;
- (7) Based on the paint stewardship assessment collected by the paint stewardship program, the total volume of architectural paint sold in the State during the preceding year;
- (8) A list of all processors, including recyclers and disposers, used to manage post-consumer paint collected by the paint stewardship program in the preceding year up to the paint's final disposition, the volume each processor accepted and the disposition method used by each processor; and
- (9) An evaluation of the effectiveness of the paint stewardship program compared to prior years and anticipated steps, if any are needed, to improve performance throughout the State.

Sec. 8. 38 MRSA §2144, sub-§5-A is enacted to read:

5-A. Requirements for collection sites. This subsection applies to collection sites.

A. Within 30 days of commencement of an approved paint stewardship program, a producer or representative organization shall notify the department of the name and location of each collection site added to or deleted from the list of collection sites provided under subsection 2, paragraph D.

B. A collection site shall track all outgoing shipments of post-consumer paint on a manifest or a bill of lading. The collection site shall maintain these records for at least 3 years.

C. A collection site shall maintain a record for each drop-off of post-consumer paint that is a hazardous waste from an entity other than a household, including the name and address of the entity, the date of the drop-off and a description and quantity of the

post-consumer paint that is a hazardous waste. The collection site shall maintain these records for at least 3 years.

D. A collection site shall store post-consumer paint in structurally sound collection containers that show no visible evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions, in a secure area, away from ignition sources, storm drains and floor drains. A collection container must be kept closed except when adding containers of post-consumer paint that have been collected from consumers. A collection container must be labeled with the words "Waste Paint." A collection site may not store more than 5,000 kilograms of post-consumer paint that is a hazardous waste at any one time. A collection site may store collected post-consumer paint that is a hazardous waste for up to one year.

E. A collection site may accept post-consumer paint that is a hazardous waste only from households and from conditionally exempt small quantity generators.

F. A collection site shall immediately contain and clean up any discharge or release of post-consumer paint that is a hazardous waste.

G. A collection site shall limit its activities to the collection and storage of post-consumer paint, except that transfer stations and operations that otherwise collect household hazardous waste may remove post-consumer paint that is a hazardous waste from the paint's original container and mix or consolidate that paint, as long as all transfer and mixing or consolidation activities are conducted over secondary containment and as long as any discharges or releases of hazardous waste, as defined in 40 Code of Federal Regulations, Part 261, Subparts C and D, are contained and cleaned up to the department's satisfaction.

H. A collection site shall ensure that it receives training from the producer or representative organization that implements the paint stewardship program on how to properly inspect and store post-consumer paint and shall maintain training manuals issued by the producer or representative organization.

I. A collection site shall ship post-consumer paint that is a hazardous waste to a universal waste consolidation facility or to a recycling, treatment, storage or disposal facility that is authorized to receive universal waste.

J. A collection site that accepts only post-consumer paint and post-consumer paint that is a hazardous waste under an approved plan from households and from conditionally exempt small quantity generators is not a central accumulation facility and does not require a hazardous waste identification number from the federal Environmental Protection Agency. Nothing in this section is intended to exempt a collection site from being considered a central accumulation facility or from being required to obtain a hazardous waste identification number based on activities unrelated to a paint stewardship program.

Sec. 9. 38 MRSA §2144, sub-§6, as enacted by PL 2013, c. 395, §1, is amended to read:

6. Administration and enforcement of program. The department shall enforce this section and may adopt rules as necessary for the purposes of implementing, administering and enforcing this section. ~~The department shall charge a reasonable fee to~~

~~be paid by an applicant for approval of a paint stewardship program for review of the plan. The department may establish a reasonable annual fee to cover the actual costs for annual report review, oversight, administration and enforcement. Fees established under this subsection may not exceed the greater of \$82,000 per year and 1% of total program costs as set forth in the independent financial auditing report required under subsection 5.~~

A. Except as may otherwise be required under federal law or by the producer or representative organization under an approved plan, the department may not impose a requirement by rule or otherwise on a collection site regarding the collection, handling, record-keeping, storage or shipping of post-consumer paint that is more stringent than the requirements of this section for collection sites.

B. A collection site that complies with the requirements of this section and that uses environmentally sound management practices is not subject to penalties for violation of the department's rules related to post-consumer paint.

C. The department shall charge a reasonable fee to be paid by an applicant for approval of a paint stewardship program for review of the plan. The department may establish a reasonable annual fee to cover the actual costs for annual report review, oversight, administration and enforcement. Fees established under this paragraph may not exceed the greater of \$82,000 per year and 1% of total program costs as set forth in the independent financial auditing report required under subsection 5.

Sec. 10. Appropriations and allocations. The following appropriations and allocations are made.

**ENVIRONMENTAL PROTECTION, DEPARTMENT OF
Remediation and Waste Management 0247**

Initiative: Provides funding for rulemaking related to changes in the stewardship program for architectural paint.

GENERAL FUND	2015-16	2016-17
All Other	\$5,000	\$0
GENERAL FUND TOTAL	<u>\$5,000</u>	<u>\$0</u>

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.