

§2144. Stewardship program for architectural paint

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

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. [PL 2015, c. 331, §1 (AMD).]

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. [PL 2015, c. 331, §2 (NEW).]

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. [PL 2015, c. 331, §2 (NEW).]

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. [PL 2015, c. 331, §2 (NEW).]

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. [PL 2015, c. 331, §3 (AMD).]

C. "Distributor" means a business that has a contractual relationship with one or more producers to market and sell architectural paint to retailers in the State. [PL 2013, c. 395, §1 (NEW).]

D. "Energy recovery" means recovery in which all or a part of solid waste materials is processed in order to use the heat content or other forms of energy of or from the materials. [PL 2013, c. 395, §1 (NEW).]

E. "Environmentally sound management practices" means procedures for the collection, storage, transportation, reuse, recycling and disposal of post-consumer paint to be implemented by a producer or a representative organization to ensure compliance with all applicable federal, state and local laws, regulations, rules and ordinances and protection of human health and the environment. Such procedures must address adequate record keeping, tracking and documenting the fate of materials within the State and beyond and adequate environmental liability coverage for professional services and for the operations of the contractors working on behalf of the producer or the representative organization. [PL 2013, c. 395, §1 (NEW).]

F. "Final disposition" means the point beyond which no further processing takes place and paint has been transformed for direct use as a feedstock in producing new products or is disposed of, including for energy recovery, in permitted facilities. [PL 2013, c. 395, §1 (NEW).]

G. "Paint stewardship assessment" means the amount added to the purchase price of architectural paint sold in the State necessary to cover the cost of collecting, transporting and processing post-consumer paint statewide under a paint stewardship program. [PL 2013, c. 395, §1 (NEW).]

H. "Paint stewardship program" or "program" means a program for management of post-consumer paint to be operated by a producer or a representative organization. [PL 2013, c. 395, §1 (NEW).]

I. "Plan" means a plan to establish a paint stewardship program. [PL 2013, c. 395, §1 (NEW).]

J. "Population center" means an urbanized area or urban cluster as defined by the United States Department of Commerce, Bureau of the Census to identify areas of high population density and urban land use with a population of 2,500 or greater. [PL 2013, c. 395, §1 (NEW).]

K. "Post-consumer paint" means architectural paint not used and no longer wanted by a consumer. [PL 2013, c. 395, §1 (NEW).]

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. [PL 2015, c. 331, §4 (NEW).]

L. "Producer" means a manufacturer of architectural paint that sells, offers for sale, or distributes that paint in the State under the producer's own name or brand. [PL 2013, c. 395, §1 (NEW).]

M. "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 but does not include energy recovery or energy generation by means of combusting discarded products, components and by-products with or without other waste products. [PL 2013, c. 395, §1 (NEW).]

N. "Representative organization" means a nonprofit organization created by producers to operate a paint stewardship program. [PL 2013, c. 395, §1 (NEW).]

O. "Retailer" means a person that offers architectural paint for sale at retail in the State. [PL 2013, c. 395, §1 (NEW).]

P. "Reuse" means the return of a product into the economic stream for use in the same kind of application as originally intended, without a change in the product's identity. [PL 2013, c. 395, §1 (NEW).]

Q. "Sell" or "sale" means any transfer of title for consideration, including remote sales conducted through sales outlets, catalogues or the Internet or any other similar electronic means. [PL 2013, c. 395, §1 (NEW).]

[PL 2015, c. 331, §§1-4 (AMD).]

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

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

- (1) A reduction in the generation of unwanted paint and the promotion of its reuse and recycling;
- (2) Provision of convenient and available statewide collection of post-consumer paint from entities covered by the program in all areas of the State;
- (3) Management of post-consumer paint using environmentally sound management practices in an economically sound manner, including following the paint waste management hierarchy of source reduction, reuse, recycling, energy recovery and disposal;
- (4) Establishment of a process for managing paint containers collected under the program, including recycling all recyclable containers;

- (5) Negotiation and execution by the operator of agreements to collect, transport, reuse, recycle, burn for energy recovery and dispose of post-consumer paint using environmentally sound management practices; and
- (6) Provision of education and outreach efforts by the operator to promote the program. The education and outreach efforts must include strategies for reaching consumers in all areas of the State and the method the program will use to evaluate the effectiveness of its education and outreach efforts; [PL 2013, c. 395, §1 (NEW).]
- B. Contact information for all persons that will be responsible for the operation of the paint stewardship program and a list of paint brands and producers covered under the program; [PL 2013, c. 395, §1 (NEW).]
- C. Goals as may be practical to reduce the generation of post-consumer paint, to promote the reuse and recycling of post-consumer paint, for the overall collection of post-consumer paint and for the proper end-of-life management of post-consumer paint. The goals may be revised by a representative organization based on information collected annually; [PL 2013, c. 395, §1 (NEW).]
- D. A list of all potential processors that will be used to manage post-consumer paint collected by the paint stewardship program, a list of each collection site name and location that will accept post-consumer paint under the program and a list of all processors that will be used for final disposition; [PL 2013, c. 395, §1 (NEW).]
- E. A method to determine the number and geographic distribution of paint collection sites based on the use of geographic information modeling. The plan must provide that at least 90% of state residents have a permanent paint collection site within a 15-mile radius of their residences, unless the commissioner determines that the 90% requirement is not practicable due to geographical constraints. If the commissioner determines the 90% requirement is not practicable, the commissioner may approve a plan that includes a geographic distribution of paint collection sites that is practicable. The distribution of paint collection sites must include at least one additional paint collection site for each 30,000 residents in a population center that is located to provide convenient and reasonably equitable access for residents within the population center unless otherwise approved by the commissioner; [PL 2013, c. 395, §1 (NEW).]
- F. Identification of the ways in which the program will coordinate with existing solid waste collection programs and events, including strategies to reach the State's residents that do not have a permanent paint collection site within a 15-mile radius of their residences and to ensure adequate coverage of service center communities as defined in Title 30-A, section 4301, subsection 14-A; [PL 2013, c. 395, §1 (NEW).]
- G. A time frame for accomplishing the geographical coverage required under paragraphs E and F; [PL 2013, c. 395, §1 (NEW).]
- 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 [PL 2015, c. 331, §5 (AMD).]
- 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, provisions for secondary containment and protecting post-consumer paint from weather and a description of how subsection 5-A, paragraph G will be satisfied. [PL 2015, c. 331, §5 (AMD).]
- J. [PL 2015, c. 331, §6 (RP).]
- K. [PL 2015, c. 331, §6 (RP).]
[PL 2015, c. 331, §§5, 6 (AMD).]

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

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

[PL 2013, c. 395, §1 (NEW).]

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

A. A paint stewardship assessment must be added to the cost of all architectural paint sold to retailers and distributors in the State. A retailer or distributor shall add the paint stewardship assessment to the consumer's purchase price of the architectural paint sold by that retailer or distributor. A producer or a representative organization may not charge a paint stewardship assessment at the time of post-consumer paint collection. The collection of the paint stewardship assessment must commence no later than the implementation date established in subsection 5, paragraph A. [PL 2013, c. 395, §1 (NEW).]

B. An architectural paint producer participating in a representative organization shall remit to the representative organization payment of the paint stewardship assessment for each container of architectural paint it sells in the State. [PL 2013, c. 395, §1 (NEW).]

[PL 2013, c. 395, §1 (NEW).]

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

A. Unless an earlier implementation date is proposed in a plan and approved by the commissioner, beginning July 1, 2015 or 3 months after a plan is approved by the commissioner under subsection 3, whichever occurs later, a producer or a representative organization shall implement the plan. If an earlier implementation date is proposed in a plan and approved by the commissioner, a producer or representative organization shall implement the plan beginning on that date. [PL 2013, c. 483, §1 (AMD).]

B. Upon implementation of the plan, a producer may not sell or offer for sale architectural paint in the State unless the producer or a representative organization of which the producer is a member participates in a paint stewardship program. A representative organization shall notify the department of all producers participating in a paint stewardship program operated by the representative organization. [PL 2013, c. 395, §1 (NEW).]

C. A producer or a representative organization shall provide consumers and retailers with educational materials regarding the paint stewardship assessment and paint stewardship program. Such materials must include, but are not limited to, information regarding available end-of-life management options for architectural paint offered through the paint stewardship program, promoting waste prevention, reuse and recycling and notifying consumers that a charge for the

operation of the paint stewardship program is included in the purchase price of all architectural paint sold in the State. These materials may include, but are not limited to, the following:

- (1) Signage that is prominently displayed and easily visible to the consumer;
- (2) Printed materials and templates of materials for reproduction by retailers to be provided to the consumer at the time of purchase or delivery;
- (3) Advertising or other promotional materials that include references to the paint stewardship program; and
- (4) A manual for paint retailers providing collection site procedures to ensure the use of environmentally sound management practices when handling architectural paints. [PL 2013, c. 395, §1 (NEW).]

D. A producer or a representative organization that organizes the collection, transportation and processing of post-consumer paint, in accordance with a paint stewardship program, is immune from liability for any claim of a violation of antitrust, restraint of trade or unfair trade practice, including claims pursuant to Title 10, chapter 201, arising from conduct undertaken in accordance with the paint stewardship program. [PL 2013, c. 395, §1 (NEW).]

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. [PL 2015, c. 331, §7 (AMD).]

F. Reports submitted to the department under this section must be made available to the public on the department's publicly accessible website, except that proprietary information submitted to the department in a plan, in an amendment to a plan or pursuant to reporting requirements of this section

that is identified by the submitter as proprietary information is confidential and must be handled by the department in the same manner as confidential information is handled under section 1310-B.

As used in this paragraph, "proprietary information" means information that is a trade secret or production, commercial or financial information the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. [PL 2013, c. 395, §1 (NEW).]

G. A producer or representative organization shall submit to the department for approval a request to amend an approved plan if the producer or representative organization proposes to:

- (1) Change the paint stewardship assessment;
- (2) Cover an additional product under the plan; or
- (3) Modify the goals of the plan. [PL 2013, c. 395, §1 (NEW).]

[PL 2015, c. 331, §7 (AMD).]

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. [PL 2015, c. 331, §8 (NEW).]

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. [PL 2015, c. 331, §8 (NEW).]

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. [PL 2015, c. 331, §8 (NEW).]

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. [PL 2015, c. 331, §8 (NEW).]

E. A collection site may accept post-consumer paint that is a hazardous waste only from households and from conditionally exempt small quantity generators. [PL 2015, c. 331, §8 (NEW).]

F. A collection site shall immediately contain and clean up any discharge or release of post-consumer paint that is a hazardous waste. [PL 2015, c. 331, §8 (NEW).]

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. [PL 2015, c. 331, §8 (NEW).]

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. [PL 2015, c. 331, §8 (NEW).]

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. [PL 2015, c. 331, §8 (NEW).]

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. [PL 2015, c. 331, §8 (NEW).]

[PL 2015, c. 331, §8 (NEW).]

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.

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. [PL 2015, c. 331, §9 (NEW).]

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. [PL 2015, c. 331, §9 (NEW).]

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. [PL 2015, c. 331, §9 (NEW).]

[PL 2015, c. 331, §9 (AMD).]

7. Retailers. Unless an earlier implementation date is approved by the commissioner pursuant to subsection 5, paragraph A, beginning July 1, 2015 or 3 months after a plan is approved by the commissioner under subsection 3, whichever occurs later, a retailer may not sell architectural paint unless, on the date the retailer orders the architectural paint from the producer or its agent, the producer or the paint brand is listed on the department's publicly accessible website as implementing or participating in an approved paint stewardship program. A retailer may participate as a paint collection point pursuant to the paint stewardship program on a voluntary basis and pursuant to all applicable laws and rules. A retailer that collects post-consumer paint must follow a collection site procedure manual developed by a producer or representative organization to ensure the use of environmentally sound management practices when handling architectural paints at collection locations. If an earlier implementation date is approved by the commissioner pursuant to subsection 5, paragraph A, the provisions of this subsection apply with respect to the plan as of that date.

[PL 2013, c. 483, §3 (AMD).]

8. List of producers and brands. The department shall post on its publicly accessible website a list of the producers participating and the brands included in a paint stewardship program.

[PL 2013, c. 395, §1 (NEW).]

9. Relationship to other product stewardship program laws. A paint stewardship program established pursuant to this section is governed by the provisions of this section and is exempt from any requirements related to product stewardship programs established under chapter 18 unless otherwise specifically provided.

[PL 2013, c. 395, §1 (NEW).]

10. Rules. The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2013, c. 395, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 395, §1 (NEW). PL 2013, c. 483, §§1-3 (AMD). PL 2015, c. 331, §§1-9 (AMD).

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