

1 H.262

2 Introduced by Representative Klein of East Montpelier

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; solid waste; paint stewardship

6 Statement of purpose of bill as introduced: This bill proposes to require the
7 manufacturers of architectural paint to establish a paint stewardship plan for
8 the collection, reuse, and recycling of architectural paint in Vermont. Each
9 manufacturer or stewardship organization to which a manufacturer belongs
10 shall submit a paint stewardship program plan for the Secretary of Natural
11 Resources' approval. Each plan shall include a funding mechanism for the
12 collection of a paint stewardship assessment for each container of architectural
13 paint sold by the manufacturer in the State. The paint stewardship assessment
14 shall be added to the cost of all architectural paint sold to Vermont retailers
15 and distributors. In addition, the bill would prohibit the retail sale of
16 architectural paint if the manufacturer of the paint is not implementing an
17 approved paint stewardship program plan.

18 An act relating to establishing a program for the collection and recycling
19 of paint

20 It is hereby enacted by the General Assembly of the State of Vermont:

1 Sec. 1. 10 V.S.A. chapter 159, subchapter 4 is added to read:

2 Subchapter 4. Paint Stewardship Program

3 § 6671. POLICY

4 The General Assembly finds and declares that it is in the best interest of
5 Vermont to have an environmentally sound, cost-effective paint stewardship
6 program that will undertake responsibility for the development and
7 implementation of strategies to reduce the generation of postconsumer paint;
8 promote the reuse of postconsumer paint; and collect, transport, and process
9 postconsumer paint for end-of-life management, including reuse, recycling,
10 energy recovery, and disposal. The paint stewardship program will follow the
11 waste management hierarchy for managing and reducing leftover paint in the
12 order as follows: reduce consumer generation of leftover paint, reuse, recycle,
13 provide for energy recovery, and dispose. The paint stewardship program will
14 provide more opportunities for consumers to manage properly their leftover
15 paint; provide fiscal relief for local government in managing postconsumer
16 paint; keep paint out of the waste stream; and conserve natural resources.

17 § 6672. DEFINITIONS

18 As used in this subchapter:

19 (1) “Architectural paint” means interior and exterior architectural
20 coatings sold in containers of five gallons or less. “Architectural paint” does

1 not mean industrial coatings, original equipment coatings, or specialty
2 coatings.

3 (2) “Distributor” means a company that has a contractual relationship
4 with one or more producers to market and sell architectural paint to retailers in
5 Vermont.

6 (3) “Energy recovery” means recovery in which all or a part of the solid
7 waste materials are processed in order to use the heat content or other forms of
8 energy of or from the material.

9 (4) “Environmentally sound management practices” means policies to
10 be implemented by a producer or a stewardship organization to ensure
11 compliance with all applicable laws and also addressing such issues as
12 adequate record keeping, tracking and documenting the fate of materials within
13 the State and beyond, and adequate environmental liability coverage for
14 professional services and for the operations of the contractors working on
15 behalf of the producer organization.

16 (5) “Paint stewardship assessment” means the amount added to the
17 purchase price of architectural paint sold in Vermont necessary to cover the
18 cost of collecting, transporting, and processing the postconsumer paint
19 managed through the statewide program.

20 (6) “Population center” means an urbanized area or an urban cluster.

1 (7) “Postconsumer paint” means architectural paint not used and no
2 longer wanted by a purchaser.

3 (8) “Producer” means a manufacturer of architectural paint who sells,
4 offers for sale, or distributes that paint in Vermont under the producer’s own
5 name or brand.

6 (9) “Recycling” means any process by which discarded products,
7 components, and by-products are transformed into new usable or marketable
8 materials in a manner in which the original products may lose their identity but
9 does not include energy recovery or energy generation by means of
10 combusting discarded products, components, and by-products with or without
11 other waste products.

12 (10) “Retailer” means any person that offers architectural paint for sale
13 at retail in Vermont.

14 (11) “Reuse” means the return of a product into the economic stream for
15 use in the same kind of application as originally intended, without a change in
16 the product’s identity.

17 (12) “Secretary” means the Secretary of Natural Resources.

18 (13) “Sell” or “sale” means any transfer of title for consideration,
19 including remote sales conducted through sales outlets, catalogues, or the
20 Internet or any other similar electronic means.

1 (14) “Stewardship organization” means a corporation, nonprofit
2 organization, or other legal entity created by a producer or group of producers
3 to implement the paint stewardship program required under this subchapter.

4 (15) “Urban cluster” means a statistical geographic entity identified by
5 the U.S. Census Bureau consisting of a densely settled core created from
6 census tracts or blocks and contiguous qualifying territory that together have at
7 least 2,500 persons but fewer than 50,000 persons.

8 (16) “Urbanized area” means a statistical geographic entity identified by
9 the U.S. Census Bureau consisting of a densely settled core created from
10 census tracts or blocks and contiguous qualifying territory that together have a
11 minimum population of at least 50,000 persons.

12 § 6673. PAINT STEWARDSHIP PROGRAM

13 (a) A producer or a stewardship organization representing producers shall
14 submit a plan for the establishment of a paint stewardship program to the
15 Secretary for approval by April 1, 2014. The plan shall address the following:

16 (1) Provide a list of participating producers and brands covered by the
17 program.

18 (2) Provide specific information on the architectural paint products
19 covered under the program, such as interior or exterior water- and oil-based
20 coatings, primers, sealers, or wood coatings.

1 (3) Describe how the program proposed under the plan will collect,
2 transport, recycle, and process postconsumer paint for end-of-life management,
3 including recycling, energy recovery, and disposal, using environmentally
4 sound management practices.

5 (4) Describe the program and how it will provide for convenient and
6 available statewide collection of postconsumer architectural paint in urban and
7 rural areas of the State. The producer or stewardship organization shall use the
8 existing recycling infrastructure when selecting collection points for
9 postconsumer architectural paint where cost effective.

10 (5) Provide geographic information modeling to determine the number
11 and distribution of sites for collection of postconsumer architectural paint
12 based on the following criteria:

13 (A) at least 90 percent of Vermont residents shall have a permanent
14 collection site within a 15-mile radius; and

15 (B) one additional permanent site will be established for every
16 30,000 residents of a population center distributed to provide convenient and
17 reasonably equitable access for residents within each population center, unless
18 otherwise approved by the Secretary.

19 (6) Establish goals to reduce the generation of postconsumer paint, to
20 promote the reuse of postconsumer paint, and for the proper end-of-life
21 management of postconsumer paint as practical based on current household

1 hazardous waste program information. The goals may be revised by the
2 manufacturer or stewardship organization based on the information collected
3 for the annual report.

4 (7) Describe how postconsumer paint will be managed in the most
5 environmentally and economically sound manner, including following the
6 waste-management hierarchy of source reduction, reuse, recycling, energy
7 recovery, and disposal.

8 (8) Describe education and outreach efforts to promote the source
9 reduction and recycling of architectural paint for each of the following:
10 consumers, contractors, and retailers.

11 (b) A plan submitted under subsection (a) of this section shall include a
12 funding mechanism under which each architectural paint producer remits to a
13 stewardship organization payment of a paint stewardship assessment for each
14 container of architectural paint it sells in this State. The paint stewardship
15 assessment shall be added to the cost of all architectural paint sold to Vermont
16 retailers and distributors, and each Vermont retailer or distributor shall add the
17 paint stewardship assessment to the purchase price of all architectural paint
18 sold in this State. To ensure that the funding mechanism is equitable and
19 sustainable, a uniform paint stewardship assessment shall be established for all
20 architectural paint sold. The paint stewardship assessment shall be approved

1 by the Secretary and shall be sufficient to recover, but not exceed, the costs of
2 the paint stewardship program.

3 (c) Beginning no later than July 1, 2014, or three months after approval of
4 the plan for a paint stewardship program required under subsection (a) of this
5 section, whichever occurs later, a producer of architectural paint sold at retail
6 or a stewardship organization of which a producer is a member shall
7 implement the approved plan for a paint stewardship program.

8 (d) A producer or a stewardship organization of which a producer is a
9 member shall promote a paint stewardship program and provide consumers
10 with educational and informational materials describing collection
11 opportunities for postconsumer paint statewide and promotion of waste
12 prevention, reuse, and recycling. The educational and informational program
13 shall make consumers aware that the funding for the operation of the paint
14 stewardship program has been added to the purchase price of all architectural
15 paint sold in the State.

16 (e) A plan approved under this section shall provide for collection of
17 postconsumer architectural paint at no cost to the person from whom the
18 architectural paint is collected.

19 (f) When a plan or amendment to an approved plan is submitted under this
20 section, the Secretary shall make the proposed plan or amendment available for
21 public review and comment for at least 15 days.

1 § 6674. RETAILER RESPONSIBILITY

2 (a) A producer or retailer may not sell or offer for sale architectural paint to
3 any person in Vermont unless the producer of a paint brand or a stewardship
4 program of which the producer is a member is implementing an approved plan
5 for a paint stewardship program as required by section 6673 of this title. A
6 retailer complies with the requirements of this section if, on the date the
7 architectural paint was ordered from the producer or its agent, the producer or
8 paint brand is listed on the Agency of Natural Resources' website as a
9 producer or brand participating in an approved plan for a paint stewardship
10 program.

11 (b) At the time of sale to a consumer, a producer, a stewardship
12 organization, or a retailer selling or offering architectural paint for sale shall
13 provide the consumer with information regarding available end-of-life
14 management options for architectural paint collected through the paint
15 stewardship program or a brand of paint being sold under the program.

16 (c) A paint retailer may participate as a paint collection point for a paint
17 stewardship program on a voluntary basis and pursuant to all applicable laws
18 and regulations.

19 § 6675. AGENCY RESPONSIBILITY

20 (a) Within 90 days of receipt of a plan submitted under section 6673 of this
21 title, the Secretary shall review the plan and make a determination whether or

1 not to approve the plan. The Secretary shall issue a letter of approval for a
2 submitted plan if it provides for the establishment of a paint stewardship
3 program that meets the requirements of subsections 6673(a) and (b) of this
4 title. If the Secretary does not approve a plan, the Secretary shall issue to the
5 paint stewardship organization a letter listing the reasons for the disapproval of
6 the plan. If the Secretary disapproves a plan, a paint stewardship organization
7 shall submit a new plan within 60 days of receipt of the letter of disapproval.

8 (b) A paint stewardship organization shall submit to the Secretary an
9 amendment to an approved plan when there is:

10 (1) a change to a paint stewardship assessment under the plan;

11 (2) an addition to the products covered under the program; or

12 (3) a revision of the product stewardship organization's goals.

13 (c) The Secretary shall review and approve stewardship fees assessed by a
14 producer pursuant to subsection 6673(c) of this title. In approving a
15 stewardship fee, the Secretary shall determine that the fee is reasonable and the
16 fee does not exceed the costs of implementing an approved plan.

17 (d) Facilities solely collecting paint for the paint stewardship program that
18 would not otherwise be subject to solid waste certification requirements shall
19 not be required to obtain a solid waste certification. Persons solely
20 transporting paint for the paint stewardship program that would not otherwise

1 be subject to solid waste hauler permitting requirements shall not be required
2 to obtain a solid waste hauler's permit.

3 § 6676. ANTICOMPETITIVE CONDUCT

4 A producer or an organization of producers that manages end-of-life
5 management options, including collection, transport, recycling, and processing,
6 for postconsumer paint as required by this subchapter may engage in
7 anticompetitive conduct to the extent necessary to implement the plan
8 approved by the Secretary and is immune from liability for the conduct under
9 state laws relating to antitrust, restraint of trade, unfair trade practices, and
10 other regulation of trade or commerce.

11 § 6677. PRODUCER REPORTING REQUIREMENTS

12 No later than October 15, 2015, and annually thereafter, a producer or a
13 stewardship program of which the producer is a member shall submit to the
14 Secretary a report describing the paint stewardship program that the producer
15 or stewardship program is implementing as required by section 6673 of this
16 title. At a minimum, the report shall include:

17 (1) a description of the methods the producer or stewardship program
18 used to reduce, reuse, collect, transport, recycle, and process postconsumer
19 paint statewide in Vermont;

20 (2) the volume and type of postconsumer paint collected by the producer
21 or stewardship program in all regions of Vermont;

1 (3) the volume of postconsumer paint collected by the producer or
2 stewardship program in Vermont by method of disposition, including reuse,
3 recycling, energy recovery, and disposal;

4 (4) an independent financial audit of the paint stewardship program
5 implemented by the producer or the stewardship program; and

6 (5) samples of the educational materials that the producer or stewardship
7 program provided to consumers of architectural paint.

8 § 6678. CONFIDENTIAL BUSINESS INFORMATION

9 Data reported to the Secretary by a producer or stewardship organization
10 under this subchapter shall be deemed to be confidential business information
11 that is exempt from public disclosure, provided that the Secretary may use and
12 disclose such information in summary or aggregated form that does not
13 directly or indirectly identify individual producers, distributors, or retailers.

14 The Secretary may require, as a part of the report submitted under section 6677
15 of this title, that the manufacturer or stewardship organization provide a report
16 that does not contain confidential business information and is available for
17 public inspection and review.

18 § 6679. RULEMAKING; PROCEDURE

19 The Secretary may adopt rules or procedures to implement the requirements
20 of this subchapter.

1 Sec. 2. 3 V.S.A. § 2822(j)(31) is added to read:

2 (31) For review of plans required by 10 V.S.A. § 6673: \$15,000.00.

3 Sec. 3. EFFECTIVE DATE

4 This act shall take effect on passage.