

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.~~

§ 6674. RETAILER RESPONSIBILITY

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

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

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

§ 6675. AGENCY RESPONSIBILITY

(a) Within 90 days of receipt of a plan submitted under section 6673 of this 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.~~

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

*Subchapter 4. Paint Stewardship Program*

*§ 6671. POLICY*

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

~~§ 6672. DEFINITIONS~~

~~As used in this subchapter:~~

~~(1) "Architectural paint" means interior and exterior architectural coatings, including interior or exterior water- and oil-based coatings, primers, sealers, or wood coatings, that are sold in containers of five gallons or less.~~

~~"Architectural paint" does not mean industrial coatings, original equipment coatings, or specialty coatings.~~

~~(2) "Distributor" means a company that has a contractual relationship with one or more producers to market and sell architectural paint to retailers in Vermont.~~

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

~~(4) "Environmentally sound management practices" means policies to be implemented by a producer or a stewardship organization to ensure compliance with all applicable laws and also addressing such issues as 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 organization.~~

~~(5) "Municipality" means a city, town, or a village.~~

~~(6) "Paint stewardship assessment" means a one-time charge that is:~~

~~(A) added to the purchase price of architectural paint sold in~~

~~Vermont;~~

~~(B) passed from the producer to the wholesale purchaser to the  
retailer and then to a retail consumer; and~~

~~(C) necessary to cover the cost of collecting, transporting, and  
processing the postconsumer paint managed through the statewide program.~~

~~(7) "Postconsumer paint" means architectural paint and its containers  
not used and no longer wanted by a purchaser.~~

~~(8) "Producer" means a manufacturer of architectural paint who sells,  
offers for sale, or distributes that paint in Vermont under the producer's own  
name or brand.~~

~~(9) "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.~~

~~(10) "Retailer" means any person that offers architectural paint for sale  
at retail in Vermont.~~

~~(11) "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.~~

~~(12) "Secretary" means the Secretary of Natural Resources.~~

~~(13) "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.~~

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

§ 6673. PAINT STEWARDSHIP PROGRAM

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

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

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

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

~~(4) Describe the program and how it will provide for convenient and available statewide collection of postconsumer architectural paint in urban and rural areas of the State. The producer or stewardship organization shall use the existing household hazardous waste collection infrastructure when selecting collection points for postconsumer architectural paint. A paint retailer shall be authorized as a paint collection point of postconsumer architectural paint for a paint stewardship program if the paint retailer volunteers to act as a paint collection point and complies with all applicable laws and regulations.~~

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

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

~~(B) one additional permanent site will be established for every 10,000 residents of a municipality and additional sites shall be distributed to~~

~~provide convenient and reasonably equitable access for residents within each municipality, unless otherwise approved by the Secretary.~~

~~(6) Establish goals to reduce the generation of postconsumer paint, to promote the reuse of postconsumer paint, and for the proper management of postconsumer paint as practical based on current household hazardous waste program information. The goals may be revised by the producer or stewardship organization based on the information collected for the annual report.~~

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

~~(8) Describe education and outreach efforts to inform consumers of collection opportunities for postconsumer paint and to promote the source reduction and recycling of architectural paint for each of the following: consumers, contractors, and retailers.~~

~~(b) A plan submitted under subsection (a) of this section shall include a funding mechanism under which each architectural paint producer remits to a stewardship organization payment of a paint stewardship assessment for each container of architectural paint it sells in this State. The paint stewardship assessment shall be added to the cost of all architectural paint sold in~~

~~Vermont. To ensure that the funding mechanism is equitable and sustainable,  
a uniform paint stewardship assessment shall be established for all  
architectural paint sold. The paint stewardship assessment shall be approved  
by the Secretary and shall be sufficient to recover, but not exceed, the costs of  
the paint stewardship program.~~

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

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

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

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

~~(g) A producer or paint stewardship organization shall submit to the Secretary an amendment to an approved plan when there is:~~

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

~~(2) an addition to or removal of a product covered under the program;~~

~~or~~

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

~~(h) A plan approved by the Secretary under section 6675 of this title shall have a term not to exceed five years, provided that the producer remains in compliance with the requirements of this chapter and the terms of the approved plan.~~

~~(i) Upon submission of a plan to the Secretary under this section, a producer or a stewardship organization shall pay the fee required by 3 V.S.A. § 2822(j). Thereafter, the producer or stewardship organization shall pay the fee required by 3 V.S.A. § 2822(j) annually by July 1 of each year.~~

~~§ 6674. RETAILER RESPONSIBILITY~~

~~(a) A producer or retailer may not sell or offer for sale architectural paint to any person in Vermont unless the producer of that architectural paint brand or a stewardship program of which the producer of that architectural paint~~

~~brand is a member is implementing an approved plan for a paint stewardship program as required by section 6673 of this title. A retailer complies with the requirements of this section if, on the date the architectural paint was ordered from the producer or its agent, the producer or paint brand is listed on the Agency of Natural Resources' website as a producer or brand participating in an approved plan for a paint stewardship program.~~

~~(b) At the time of sale to a consumer, a producer, a stewardship organization, or a retailer selling or offering architectural paint for sale shall provide the consumer with information regarding available management options for postconsumer paint collected through the paint stewardship program or a brand of paint being sold under the program.~~

~~§ 6675. AGENCY RESPONSIBILITY~~

~~(a) Within 90 days of receipt of a plan submitted under section 6673 of this title, the Secretary shall review the plan and make a determination whether or not to approve the plan. The Secretary shall issue a letter of approval for a submitted plan if it provides for the establishment of a paint stewardship program that meets the requirements of subsections 6673(a) and (b) of this title. If the Secretary does not approve a plan, the Secretary shall issue to the paint stewardship organization a letter listing the reasons for the disapproval of the plan. If the Secretary disapproves a plan, a paint stewardship organization intending to sell or continue to sell architectural paint in the~~

~~State shall submit a new plan within 60 days of receipt of the letter of disapproval.~~

~~(b) The Secretary shall review and approve the stewardship assessment proposed by a producer pursuant to subsection 6673(c) of this title. In approving a proposed stewardship assessment, the Secretary shall determine that the assessment is reasonable and the assessment does not exceed the costs of implementing an approved plan.~~

~~(c) Facilities solely collecting paint for the paint stewardship program that would not otherwise be subject to solid waste certification requirements shall not be required to obtain a solid waste certification. Persons solely transporting paint for the paint stewardship program that would not otherwise be subject to solid waste hauler permitting requirements shall not be required to obtain a solid waste hauler's permit.~~

~~§ 6676. ANTICOMPETITIVE CONDUCT~~

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

~~§ 6677. PRODUCER REPORTING REQUIREMENTS~~

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

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

~~(2) the volume and type of postconsumer paint collected by the producer or stewardship program at each collection center in all regions of Vermont;~~

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

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

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

~~§ 6678. CONFIDENTIAL BUSINESS INFORMATION~~

~~Data reported to the Secretary by a producer or stewardship organization under this subchapter shall be a trade secret exempt from public inspection.~~

~~and copying under 1 V.S.A. § 317(e)(9), provided that the Secretary may use  
and disclose such information in summary or aggregated form that does not  
directly or indirectly identify individual producers, distributors, or retailers.  
The Secretary may require, as a part of the report submitted under section  
6677 of this title, that the manufacturer or stewardship organization provide a  
report that does not contain trade secret information and is available for  
public inspection and review.~~

~~§ 6679. RULEMAKING; PROCEDURE~~

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

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

~~(j) In accordance with subsection (i) of this section, the following fees are  
established for permits, licenses, certifications, approvals, registrations,  
orders, and other actions taken by the agency of natural resources.~~

~~\* \* \*~~

~~(31) For continuing review of plans required by 10 V.S.A. § 6673:~~

~~\$15,000.00.~~

~~Sec. 3. AGENCY OF NATURAL RESOURCES REPORT ON PAINT~~

~~STEWARDSHIP ASSESSMENT~~

~~On or before March 15, 2014, the Secretary of Natural Resources shall  
report to the House and Senate Committees on Natural Resources and Energy.~~

~~the House Committee on Ways and Means, and the Senate Committee on Finance regarding the paint stewardship assessment proposed by architectural paint producers or stewardship organizations under 10 V.S.A. § 6673. The report shall include:~~

~~(1) a summary of the number of paint producers or stewardship organizations submitting plans;~~

~~(2) the paint stewardship assessment proposed in any submitted plan;~~

~~(3) a recommendation from the Secretary as to whether a proposed paint stewardship assessment is adequate or should be modified; and~~

~~(4) a recommendation from the Secretary whether and at what amount to establish a statutory maximum cap on the amount of a paint stewardship assessment.~~

~~Sec. 4. EFFECTIVE DATE~~

~~This act shall take effect on passage.~~

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

~~Subchapter 4. Paint Stewardship Program~~

~~§ 6671. PURPOSE~~

~~The purpose of this subchapter is to establish an environmentally sound, cost-effective paint stewardship program in the State that will undertake responsibility for the development and implementation of strategies to reduce the generation of postconsumer paint; promote the reuse of postconsumer~~

paint; and collect, transport, and process postconsumer paint, including reuse, recycling, energy recovery, and disposal. The paint stewardship program will follow the waste management hierarchy for managing and reducing postconsumer paint in the order as follows: reduce consumer generation of postconsumer paint, reuse, recycle, provide for energy recovery, and dispose. The paint stewardship program will provide more opportunities for consumers to manage properly their postconsumer paint; provide fiscal relief for local government in managing postconsumer paint; keep paint out of the waste stream; and conserve natural resources.

§ 6672. DEFINITIONS

As used in this subchapter:

(1) “Architectural paint” means interior and exterior architectural coatings, including interior or exterior water- and oil-based coatings, primers, sealers, or wood coatings, that are sold in containers of five gallons or less. “Architectural paint” does not mean industrial coatings, original equipment coatings, or specialty coatings.

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

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

(4) “Environmentally sound management practices” means policies to be implemented by a producer or a stewardship organization to ensure compliance with all applicable laws and also addressing such issues as 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 organization.

(5) “Municipality” means a city, town, or a village.

(6) “Paint stewardship assessment” means a one-time charge that is:

(A) added to the purchase price of architectural paint sold in Vermont;

(B) passed from the producer to the wholesale purchaser to the retailer and then to a retail consumer; and

(C) necessary to cover the cost of collecting, transporting, and processing the postconsumer paint managed through the statewide program.

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

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

(9) “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.

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

(11) “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.

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

(13) “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.

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

§ 6673. PAINT STEWARDSHIP PROGRAM

(a) A producer or a stewardship organization representing producers shall submit a plan for the establishment of a paint stewardship program to the Secretary for approval by December 1, 2013. The plan shall address the following:

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

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

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

(4) Describe the program and how it will provide for convenient and available statewide collection of postconsumer architectural paint in urban and rural areas of the State. The producer or stewardship organization shall use the existing household hazardous waste collection infrastructure when selecting collection points for postconsumer architectural paint. A paint retailer shall be authorized as a paint collection point of postconsumer architectural paint for a paint stewardship program if the paint retailer

volunteers to act as a paint collection point and complies with all applicable laws and regulations.

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

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

(B) one additional permanent site will be established for every 10,000 residents of a municipality and additional sites shall be distributed to provide convenient and reasonably equitable access for residents within each municipality, unless otherwise approved by the Secretary.

(6) Establish goals to reduce the generation of postconsumer paint, to promote the reuse of postconsumer paint, and for the proper management of postconsumer paint as practical based on current household hazardous waste program information. The goals may be revised by the producer or stewardship organization based on the information collected for the annual report.

(7) Describe how postconsumer paint will be managed in the most environmentally and economically sound manner, including following the waste-management hierarchy. The management of paint under the program

shall use management activities that promote source reduction, reuse, recycling, energy recovery, and disposal.

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

(b) The producer or stewardship organization shall submit a budget for the program proposed under subsection (a) of this section, and for any amendment to the plan that would affect the program's costs. The budget shall include a funding mechanism under which each architectural paint producer remits to a stewardship organization payment of a paint stewardship assessment for each container of architectural paint it sells in this State. Prior to submitting the proposed budget and assessment to the Secretary, the producer or stewardship organization shall provide the budget and assessment to a third-party auditor agreed upon by the Secretary. The third-party auditor shall provide a recommendation as to whether the proposed budget and assessment is cost-effective, reasonable, and limited to covering the cost of the program. The paint stewardship assessment shall be added to the cost of all architectural paint sold in Vermont. To ensure that the funding mechanism is equitable and sustainable, a uniform paint stewardship assessment shall be established for all architectural paint sold. The paint stewardship assessment

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

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

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

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

(f) When a plan or amendment to an approved plan is submitted under this section, the Secretary shall make the proposed plan or amendment available for public review and comment for at least 30 days.

(g) A producer or paint stewardship organization shall submit to the Secretary for review, in the same manner as required under subsection 6675(a) of this title, an amendment to an approved plan when there is:

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

(2) an addition to or removal of a category of products covered under the program; or

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

(h) A plan approved by the Secretary under section 6675 of this title shall have a term not to exceed five years, provided that the producer remains in compliance with the requirements of this chapter and the terms of the approved plan.

(i) In addition to the requirements specified in subsection (a) of this section, a stewardship organization shall notify the Secretary in writing within 30 days of any change to:

(1) the number of collection sites for postconsumer architectural paint identified under this section as part of the plan;

(2) the producers identified under this section as part of the plan;

(3) the brands of architectural paint identified under this section as part of the plan; and

(4) the processors that manage postconsumer architectural paint identified under this section as part of the plan.

(j) Upon submission of a plan to the Secretary under this section, a producer or a stewardship organization shall pay the fee required by 3 V.S.A. § 2822(j)(31). Thereafter, the producer or stewardship organization shall pay the fee required by 3 V.S.A. § 2822(j)(31) annually by July 1 of each year.

§ 6674. RETAILER RESPONSIBILITY

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

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

§ 6675. AGENCY RESPONSIBILITY

(a)(1) Within 90 days of receipt of a plan submitted under section 6673 of this title, the Secretary shall review the plan and make a determination whether or not to approve the plan. The Secretary shall issue a letter of approval for a submitted plan if:

(A) the submitted plan provides for the establishment of a paint stewardship program that meets the requirements of subsection 6673(a); and

(B) the Secretary determines that the plan:

(i) achieves convenient collection for consumers;

(ii) educates the public on proper paint management;

(iii) manages waste paint in a manner that is environmentally safe and promotes reuse and recycling; and

(iv) is cost-effective.

(2) If the Secretary does not approve a submitted plan, the Secretary shall issue to the paint stewardship organization a letter listing the reasons for the disapproval of the plan. If the Secretary disapproves a plan, a paint stewardship organization intending to sell or continue to sell architectural paint in the State shall submit a new plan within 60 days of receipt of the letter of disapproval.

(b)(1) The Secretary shall review and approve the stewardship assessment proposed by a producer pursuant to subsection 6673(b) of this title. The

Secretary shall only approve the program budget and any assessment if the applicant has demonstrated that the costs of the program and any proposed assessment are reasonable and the assessment does not exceed the costs of implementing an approved plan.

(2) If an amended plan is submitted under subsection 6673(g) of this title that proposes to change the cost of the program or proposes to change the paint stewardship assessment under the plan, the disapproval of any proposed new assessment or the failure of an approved new assessment to cover the total costs of the program shall not relieve a producer or stewardship organization of its obligation to continue to implement the approved plan under the originally approved assessment.

(c) Facilities solely collecting paint for the paint stewardship program that would not otherwise be subject to solid waste certification requirements shall not be required to obtain a solid waste certification. Persons solely transporting paint for the paint stewardship program that would not otherwise be subject to solid waste hauler permitting requirements shall not be required to obtain a solid waste hauler's permit.

§ 6676. ANTICOMPETITIVE CONDUCT

(a) A producer or an organization of producers that manages postconsumer paint, including collection, transport, recycling, and processing of postconsumer paint, as required by this subchapter may engage in

anticompetitive conduct to the extent necessary to implement the plan approved by the Secretary and is immune from liability for the conduct relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce.

(b) The activity authorized and the immunity afforded under subsection (a) of this section shall not apply to any agreement among producers or paint stewardship organizations:

(1) establishing or affecting the price of paint, except for the paint stewardship assessment approved under subsection 6675(b) of this title;

(2) setting or limiting the output or production of paint;

(3) setting or limiting the volume of paint sold in a geographic area;

(4) restricting the geographic area where paint will be sold; or

(5) restricting the customers to whom paint will be sold or the volume of paint that will be sold.

#### § 6677. PRODUCER REPORTING REQUIREMENTS

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

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

(2) the volume and type of postconsumer paint collected by the producer or stewardship program at each collection center in all regions of Vermont;

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

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

(5) the prior year's actual direct and indirect costs for each program element and the administrative and overhead costs of administering the approved program; and

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

§ 6678. CONFIDENTIAL BUSINESS INFORMATION

Data reported to the Secretary by a producer or stewardship organization under this subchapter shall be a trade secret exempt from public inspection and copying under 1 V.S.A. § 317(c)(9), provided that the Secretary may use and disclose such information in summary or aggregated form that does not directly or indirectly identify individual producers, distributors, or retailers.

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

§ 6679. RULEMAKING; PROCEDURE

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

§ 6680. UNIVERSAL WASTE DESIGNATION FOR POSTCONSUMER

PAINT

(a) The requirements of Subchapter 9 of the Vermont Hazardous Waste Management Rules, which allow certain categories of hazardous waste to be managed as universal waste, shall apply to postconsumer paint until the postconsumer paint is discarded, provided that:

(1) the postconsumer paint is collected as a part of a stewardship plan approved under this subchapter; and

(2) the collected postconsumer paint is or includes paint that is a hazardous waste as defined and regulated by the Vermont Hazardous Waste Management Rules.

(b) When postconsumer paint is regulated as universal waste under subsection (a) of this section, small and large quantity handlers of the postconsumer paint shall manage the postconsumer paint in a manner that

prevents releases of any universal waste or component of the universal waste to the environment. Postconsumer paint regulated as universal waste shall, at a minimum, be contained in one or more of the following:

(1) A container that remains closed, structurally sound, and compatible with the postconsumer paint and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(2) A container that does not meet the requirements of subdivision (1) of this subsection, provided that the unacceptable container is overpacked in a container that meets the requirements of subdivision (1).

(c) Containers holding postconsumer paint that is regulated as universal waste shall be clearly labeled “Universal Waste Paint,” “Used Paint,” or “Waste Paint.”

(d) Unless otherwise provided by statute, the definitions of the Vermont Hazardous Waste Management Rules shall apply to this section.

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

(j) In accordance with subsection (i) of this section, the following fees are established for permits, licenses, certifications, approvals, registrations, orders, and other actions taken by the agency of natural resources.

\* \* \*

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

*Sec. 3. AGENCY OF NATURAL RESOURCES REPORT ON PAINT  
STEWARDSHIP ASSESSMENT*

*On or before January 15, 2014, the Secretary of Natural Resources shall report to the House and Senate Committees on Natural Resources and Energy, the House Committee on Ways and Means, and the Senate Committee on Finance regarding the paint stewardship assessment proposed by architectural paint producers or stewardship organizations under 10 V.S.A. § 6673. The report shall include:*

*(1) a summary of the number of paint producers or stewardship organizations submitting plans;*

*(2) the paint stewardship assessment proposed in any submitted plan;*

*(3) a recommendation from the Secretary as to whether a proposed paint stewardship assessment is adequate or should be modified; and*

*(4) a recommendation from the Secretary whether and at what amount to establish a statutory maximum cap on the amount of a paint stewardship assessment.*

*Sec. 4. EFFECTIVE DATE*

*This act shall take effect on passage.*