

1 S.224

2 Introduced by Senator Snelling

3 Referred to Committee on Natural Resources and Energy

4 Date: January 5, 2010

5 Subject: Conservation; waste management; paint stewardship

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

18 An act relating to the establishment of a paint stewardship program

19 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 for paint manufacturers to finance and manage an environmentally
6 sound, cost-effective paint stewardship program, undertaking responsibility for
7 the development and implementation of strategies to reduce the generation of
8 postconsumer paint, promote the reuse of postconsumer paint, and collect,
9 transport, and process postconsumer paint for end-of-life management,
10 including reuse, recycling, energy recovery, and disposal.

11 § 6672. DEFINITIONS

12 As used in this subchapter:

13 (1) "Architectural paint" means interior and exterior architectural
14 coatings sold in containers of five gallons or less and does not mean industrial,
15 original equipment, or specialty coatings.

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

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

1 ~~adequate record keeping, tracking and documenting the fate of materials within~~
2 ~~the state and beyond, and adequate environmental liability coverage for~~
3 ~~professional services and for the operations of the contractors working on~~
4 ~~behalf of the producer organization.~~

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

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

12 (6) “Postconsumer paint” means architectural paint not used and no
13 longer wanted by a purchaser.

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

17 (8) “Recycling” means any process by which discarded products,
18 components, and by-products are transformed into new usable or marketable
19 materials in a manner in which the original products may lose their identity but
20 does not include energy recovery or energy generation by means of

1 ~~combusting discarded products, components, and by products with or without~~
2 ~~other waste products.~~

3 (9) "Retailer" means any person that offers architectural paint for sale at
4 retail in Vermont.

5 (10) "Reuse" means the return of a product into the economic stream for
6 use in the same kind of application as originally intended, without a change in
7 the product's identity.

8 (11) "Secretary" means the secretary of natural resources.

9 (12) "Sell" or "sale" means any transfer of title for consideration,
10 including remote sales conducted through sales outlets, catalogues, or the
11 Internet or any other similar electronic means.

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

15 § 6673. PAINT STEWARDSHIP PROGRAM

16 (a) Beginning no later than July 1, 2012, or three months after approval of
17 the paint stewardship program plan under subsection (b) of this section, a
18 producer of architectural paint sold at retail or a stewardship organization of
19 which a producer is a member shall implement a statewide paint stewardship
20 pilot program for the development and implementation of strategies to reduce
21 the generation of postconsumer paint, promote the reuse of postconsumer

1 ~~paint, and undertake the responsibility of negotiating and executing contracts~~
2 to collect, transport, recycle, and process postconsumer paint for end-of-life
3 management, including recycling, energy recovery, and disposal, using
4 environmentally sound management practices.

5 (b) A producer or a stewardship organization representing producers shall
6 submit a plan for the establishment of a paint stewardship program to the
7 secretary for approval by July 1, 2011.

8 (c) A plan submitted under subsection (b) of this section shall include a
9 funding mechanism under which each architectural paint producer remits to a
10 stewardship organization payment of a paint stewardship assessment for each
11 container of architectural paint it sells in this state. The paint stewardship
12 assessment shall be added to the cost of all architectural paint sold to Vermont
13 retailers and distributors, and each Vermont retailer or distributor shall add the
14 paint stewardship assessment to the purchase price of all architectural paint
15 sold in this state. To ensure that the funding mechanism is equitable and
16 sustainable, a uniform paint stewardship assessment shall be established for all
17 architectural paint sold. The paint stewardship assessment shall be approved
18 by the secretary and shall be sufficient to recover, but not exceed, the costs of
19 the paint stewardship program.

20 (d) A producer or a stewardship organization of which a producer is a
21 member shall promote a paint stewardship program and provide consumers

1 ~~with educational and informational materials describing collection~~
2 opportunities for postconsumer paint statewide and promotion of waste
3 prevention, reuse, and recycling. The educational and informational program
4 shall make consumers aware that the funding for the operation of the paint
5 stewardship program has been added to the purchase price of all architectural
6 paint sold in the state.

7 § 6674. RETAILER RESPONSIBILITY

8 (a) A producer or retailer may not sell or offer for sale architectural paint to
9 any person in Vermont unless the producer of a paint brand or a stewardship
10 program of which the producer is a member is implementing an approved paint
11 stewardship program plan as required by section 6673 of this title. A retailer
12 complies with the requirements of this section if, on the date the architectural
13 paint was ordered from the producer or its agent, the producer of the paint
14 brand is listed on the agency of natural resources website as a producer
15 implementing an approved paint stewardship program plan.

16 (b) At the time of sale to a consumer, a producer or retailer selling or
17 offering architectural paint for sale shall provide the consumer with
18 information regarding available end-of-life management options for
19 architectural paint offered through the paint stewardship program.

§ 6675. ANTICOMPETITIVE CONDUCT

A producer or an organization of producers that manages end-of-life management options, 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.

§ 6676. PRODUCER REPORTING REQUIREMENTS

(a) No later than July 1, 2013, 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 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 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.~~

~~(b) Data reported to the secretary by a producer or stewardship organization~~

~~under this section as shall be deemed to be confidential business information~~

~~that is exempt from public disclosure, provided that the agency may use and~~

~~disclose such information in summary or aggregated form that does not~~

~~directly or indirectly identify individual producers, distributors, or retailers.~~

§ 6677. RULEMAKING; PROCEDURE

~~The secretary may adopt rules or procedures to implement the requirements~~

~~of this subchapter.~~

Sec. 2. EFFECTIVE DATE

~~This act shall take effect upon 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 paint, and collect, transport, and process postconsumer paint for end-of-life management, 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 properly manage 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 sold in containers of five gallons or less and does not mean industrial, original equipment, 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) "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.

(4) "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.

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

(6) "Postconsumer paint" means architectural paint not used and no longer wanted by a purchaser.

(7) "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.

(8) "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.

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

(10) "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.

(11) "Secretary" means the secretary of natural resources.

(12) "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.

(13) "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 July 1, 2011. The plan shall address the following:

(1) 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.

(2) 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 utilize the existing recycling infrastructure when selecting collection points for postconsumer architectural paint where cost effective.

(3) Provide for collection rates and convenience of collection equal to or greater than the collection programs available to consumers prior to the paint stewardship program.

(4) Provide the facility name, location, and hours of operation of facilities accepting paint for recycling under the program.

(5) Establish goals to reduce the generation of postconsumer paint, to promote the reuse of postconsumer paint, and for the proper end-of-life

management of postconsumer paint, as practical based on current household hazardous waste program information. The goals may be revised by the manufacturer or stewardship organization based on the information collected for the annual report.

(6) 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.

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

(b) Beginning no later than July 1, 2012, or three months after approval of the paint stewardship program plan under subsection (a) of this section, a producer of architectural paint sold at retail or a stewardship organization of which a producer is a member shall implement the approved paint stewardship program plan.

(c) 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 to Vermont retailers and distributors, and each Vermont retailer or distributor shall add the paint stewardship assessment to the purchase price of all architectural paint sold in this state. 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.

(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.

§ 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 paint stewardship program plan 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 of the paint brand is listed on the agency of natural resources website as a producer implementing an approved paint stewardship program plan.

(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.

§ 6675. AGENCY RESPONSIBILITY

(a) The secretary shall review and approve plans, and amendments to plans, describing a producer's or product stewardship organization's paint management program. Approvals under this subsection shall be valid for not more than five years. In approving a plan, in addition to finding all elements required by subsection 6673(a) of this title are adequately addressed, the secretary shall determine that the implementation of the plan will result in reasonably convenient services to consumers, and that reasonable efforts have been taken to control the cost of the program.

(b) A plan may be amended by a producer, a stewardship organization, or by the secretary.

(c) The secretary shall review and approve stewardship fees assessed by a producer pursuant to subsection 6673(c) of this title. Approvals under this subsection shall be valid for not more than one year. In approving a stewardship fee, the secretary shall determine that the fee is reasonable and the fee does not exceed the costs of implementing an approved plan. In no case shall the secretary approve a stewardship fee greater than \$0.75 per gallon without further justification of the necessity for a higher fee.

(d) 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 end-of-life management options, 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 July 1, 2013, 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 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) The total volume of architectural paint sold in this state during the preceding calendar year under the stewardship program;

(5) an independent financial audit of the paint stewardship program implemented by the producer or the stewardship 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 deemed to be confidential business information that is exempt from public disclosure, provided that the agency may use and disclose such information in summary or aggregated form that does not directly or indirectly identify individual producers, distributors, or retailers. The agency 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 confidential business 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)(29) is added to read:

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

Sec. 3. EFFECTIVE DATE

This act shall take effect upon passage.