

* * * Paint; Technical Corrections * * *

Sec. 1. 10 V.S.A. § 7181 is amended to read:

§ 7181. DEFINITIONS

As used in this chapter:

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(4)(A) “Covered household hazardous product” means a consumer product offered for retail sale that is contained in the receptacle in which the product is offered for retail sale, if the product has any of the following characteristics:

(i) the product or a component of the product is a hazardous waste under subchapter 2 of the Vermont Hazardous Waste Management Regulations, regardless of the status of the generator of the hazardous waste; or

(ii) the product is a gas cylinder.

(B) “Covered household hazardous product” does not mean any of the following:

(i) a primary or rechargeable battery;

(ii) a lamp that contains mercury;

(iii) a thermostat that contains mercury;

(iv) paint related products ~~architectural paint~~ as that term is defined in section 6672 of this title;

(v) a covered electronic device as that term is defined in section 7551 of this title;

(vi) a pharmaceutical drug;

(vii) citronella candles;

(viii) flea and tick collars;

(ix) pesticides required to be registered with the Agency of Agriculture, Food and Markets;

(x) products that are intended to be rubbed, poured, sprinkled on, sprayed on, introduced into, or otherwise applied to the human body or any part of a human for cleansing, moisturizing, sun protection, beautifying, promoting attractiveness, or altering appearance, unless designated as a hazardous material or a hazardous waste by the Secretary of Natural Resources; or

(xi) gas cylinders determined by the Secretary by rule not to pose an unacceptable risk to human health, solid waste facility operation, or the environment, and which are not hazardous waste.

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* * * Paint EPR; expansion to other paint related products * * *

Sec. 8. 10 V.S.A. chapter 159 subchapter 4 is amended to read:

§ 6671. PURPOSE

The purpose of this subchapter is to establish an environmentally sound, cost-effective Paint Product 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 Product 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 Product 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) “Aerosol coating product” means a pressurized coating product containing pigments or resins dispensed by means of a propellant and packaged and sold in a disposable aerosol container for handheld application, or for use in specialized equipment for ground traffic or marking applications.

(2) “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.

(3) “Coating-related product” means a product used as a paint additive, paint thinner, paint colorant, paint remover, surface sealant, surface preparation, surface adhesive, and sold for home improvement.

(4) (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.

(5) (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.

(6) (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.

(7) (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.~~

~~(8)-(7) “Nonindustrial coating” means arts and crafts paint, automotive refinish paint, driveway sealer, faux finish or glaze, furniture oil, furniture paint, lime wash, lime paint, marine paint, antifouling paint, road and traffic marking paint, two-component paint, wood preservative, fire retardant paint, dry fog paint, chalkboard paint, and conductive paint, sold in containers of five gallons or less for commercial and homeowner use, but does not include coatings purchased for industrial or original equipment manufacturer use.~~

~~(9)(A) “Paint product” includes:~~

~~(i) architectural coatings;~~

~~(ii) aerosol coating products;~~

~~(iii) coating-related products; and~~

~~(iii) nonindustrial coatings.~~

~~(B) “paint product” does not include a health and beauty product.~~

~~(10) “Postconsumer paint” means architectural paint product and its containers not used and no longer wanted by a purchaser.~~

~~(11) (8) “Producer” means a manufacturer of architectural paint products who sells, offers for sale, or distributes that paint in Vermont under the producer’s own name or brand.~~

~~(12) (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.

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

(14) ~~(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.

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

(16) ~~(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.

(17) ~~(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 PRODUCT STEWARDSHIP PROGRAM

(a) A producer or a stewardship organization representing producers shall submit ~~a~~ an amended plan for the establishment of a Paint Product 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 products 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 products 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 products. A paint retailer shall be authorized as a paint collection point ~~of postconsumer architectural paint~~ for a Paint Product Stewardship Program if the paint retailer volunteers to act as a ~~paint~~ collection point and complies with all applicable laws, rules, 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 products, to promote the reuse of postconsumer paint products, and for the proper management of postconsumer paint products 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 products 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 products and to promote the source reduction and recycling of ~~architectural~~ paint products 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 product producer remits to a stewardship organization payment of a paint product stewardship assessment for each ~~container of architectural~~ paint product 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 product stewardship assessment shall be added to the cost of all ~~architectural~~ paint products sold in Vermont. To ensure that the funding mechanism is equitable and sustainable, a uniform paint product stewardship assessment shall be established for all ~~architectural~~ paint products sold. The paint stewardship assessment shall be the amount established in section 6681 of this title ~~be approved by the Secretary and shall be sufficient to recover, but not exceed, the costs of the Paint Stewardship Program.~~

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

(d) A producer or a stewardship organization of which a producer is a member shall promote a Paint Product Stewardship Program and provide consumers with educational and informational materials describing collection opportunities for postconsumer paint products 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 Product Stewardship Program has been added to the purchase price of all ~~architectural~~ paint products sold in the State.

(e) A plan approved under this section shall provide for collection of postconsumer ~~architectural~~ paint products at no cost to the person from whom the ~~architectural~~ paint is collected. The program plan shall also provide for the payment of municipalities for collection, processing, and end-of-life management of aerosol coating products, coating-related products, and nonindustrial coatings contained in the receptacle in which the product is offered for retail sale. Collection costs include facility costs, equipment costs, labor, supplies, maintenance, events costs, and event contractor costs, including collection event set-up fees, environmental service fees, insurance fees, and shipping containers and materials.

(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

(2) ~~(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 products 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 products identified under this section as part of the plan; and

(4) the processors that manage postconsumer ~~architectural~~ paint products 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~~ a paint product to any person in Vermont unless the producer ~~of that architectural paint brand~~ or a stewardship program that the producer is a member of ~~of which the producer of that architectural paint brand is a member~~ is implementing an approved plan for a Paint Product 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 product 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 Product Stewardship Program.

(b) At the time of sale to a consumer, a producer, a stewardship organization, or a retailer selling or offering ~~architectural~~ paint products for sale shall provide the consumer with information regarding available management options for postconsumer paint products collected through the Paint Product 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 Product 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 product management; and

(iii) manages waste paint products 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 product stewardship organization a letter listing the reasons for the disapproval of the plan. If the Secretary disapproves a plan, a paint product 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.~~

~~(e) Facilities solely collecting paint products for the Paint Product 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 Product 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 manufacturer or representative organization implementing or participating in a stewardship program as required by this subchapter shall not be liable for any claim of a violation of antitrust, restraint of trade, unfair trade practice, or other anticompetitive conduct arising from conduct undertaken in accordance with the program.

~~(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

Annually ~~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 Product 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 products statewide in Vermont;

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

(3) the volume of postconsumer paint products 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 Product 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.

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§ 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 products until the postconsumer paint product is discarded, provided that:
 - (1) the postconsumer paint product is collected as a part of a stewardship plan approved under this subchapter; and
 - (2) the collected postconsumer paint product is or includes a paint product that is a hazardous waste as defined and regulated by the Vermont Hazardous Waste Management Rules.
- (b) When postconsumer paint product is regulated as universal waste under subsection (a) of this section, small and large quantity handlers of the postconsumer paint products shall manage the postconsumer paint products in a manner that prevents releases of any universal waste or component of the universal waste to the environment. Postconsumer paint products 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 products 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 products that is regulated as universal waste shall be clearly labeled to clearly identify the contents of the container, such as “Paint Related Waste,” “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.

§ 6681. PAINT CONSUMER FEES

The paint product stewardship assessment shall be sufficient to implement and sustain the Paint Product Stewardship Program. If at any time the stewardship assessments established in this section are not sufficient to implement and sustain the Paint Product Stewardship Program, the Paint Program shall propose new stewardship assessments that are sufficient to implement and sustain the program. A retailer shall charge the following assessment on paint products in the amount established by the approved stewardship organization, based on current material management costs according to the fees below:

(1) for architectural paint:

<u>(A) Half pint or smaller:</u>	<u>No fee.</u>
<u>(B) Greater than a half pint to less than one gallon:</u>	<u>\$0.65</u>
<u>(C) one gallon to two gallons:</u>	<u>\$1.35</u>
<u>(D) Greater than two gallons to five gallons:</u>	<u>\$2.45</u>

(2) for aerosol coating products, coating related products, and nonindustrial coatings:

<u>(A) Half pint or smaller:</u>	<u>No fee to \$0.75.</u>
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(B) Greater than a half pint to less than one gallon: \$0.50 to \$1.50

(C) one gallon to two gallons: \$1.00 to \$3.00

(D) Greater than two gallons to five gallons: \$2.00 to \$6.00

Sec. 9. IMPLEMENTATION

(a) The requirements for the sale of paint products under 10 V.S.A. § 6673 shall apply to architectural coatings beginning on July 1, 2013 and all paint products beginning July 1, 2026.

(b) The requirement under 10 V.S.A. § 6673 for an architectural coatings producer to submit a stewardship plan to the Secretary of Natural Resources currently applies to producers of architectural coatings as required beginning on July 1, 2013 and shall also apply to producers of paint related products beginning on July 1, 2026.

(d) The requirement under 10 V.S.A. § 6677 that an architectural coatings producer annually report to the Secretary of Natural Resources currently applies to producers of architectural coatings as required beginning on July 1, 2013 and shall also apply to producers of paint related products beginning on March 1, 2027.

Sec. 10. PAINT PRODUCT STEWARDSHIP; REPORT

On or before January 15, 2027 the Paint Product Stewardship Organization shall report the fees established for aerosol coating products, coating related products, and non-industrial coatings to the House Committees on Environment and Ways and Means and the Senate Committees on Finance and Natural Resources and Energy.