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An Act To Provide for the Recycling or Proper Disposal of Architectural Paint

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1310-B, sub-§2, as amended by PL 2009, c. 579, Pt. A, §1 and c. 610, §1, is repealed and the following enacted in its place:

2. Hazardous waste information and information on mercury-added products and electronic devices and mercury reduction plans; chemicals; architectural paint.

Information relating to hazardous waste submitted to the department under this subchapter, information relating to mercury-added products submitted to the department under chapter 16-B, information relating to electronic devices submitted to the department under section 1610, subsection 6-A, information relating to mercury reduction plans submitted to the department under section 585-B, subsection 6, information related to priority toxic chemicals submitted to the department under chapter 27, information relating to architectural paint submitted to the department under section 1776 or information related to products that contain the "deca" mixture of polybrominated diphenyl ethers submitted to the department under section 1609 may be designated by the person submitting it as being only for the confidential use of the department, its agents and employees, the Department of Agriculture, Food and Rural Resources and the Department of Health and Human Services and their agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency and the Attorney General and, for waste information, employees of the municipality in which the waste is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the person submitting the information and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal only to the Superior Court in accordance with the provisions of section 346. All information provided by the department to the municipality under this subsection is confidential and not a public record under Title 1, chapter 13. In the event a request for such information is submitted to the municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this subsection.

Sec. 2. 38 MRSA §1776 is enacted to read:

§ 1776. Paint stewardship

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

A. "Architectural paint" means a coating sold in a container of 5 gallons or less, including aerosols, for interior or exterior application to buildings or structures. "Architectural paint" does not mean adhesives, spackling paste or compound or coatings for industrial application, application on equipment, application on transportation infrastructure or specialty applications.

B. "Distributor" means a company that has a contractual relationship with one or more producers to market and sell architectural paint to retailers.

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

D. "Environmentally sound management practices" means policies implemented by a producer or a stewardship organization to ensure compliance with all applicable laws and addressing such issues as adequate record keeping, tracking and documenting the disposition of materials within and outside the State and adequate environmental liability coverage for professional services and for the operations of contractors working on behalf of the producer or stewardship organization.

E. "Paint stewardship program" means a statewide program financed and either managed or provided by producers individually or collectively that includes, but is not limited to, the collection, transportation, reuse, recycling and disposal of unwanted architectural paint and initiatives to reduce the generation of unwanted architectural paint.

F. "Post-consumer paint" means architectural paint not used and no longer wanted by a purchaser.

G. "Producer" means a producer of architectural paint that sells, offers for sale or distributes that paint in or into the State under the producer's own name or brand.

H. "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.

I. "Retailer" means any person that offers architectural paint for sale at retail in or into the State.

J. "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.

K. "Sell" or "sale" means to transfer or the transfer of title for consideration, including remote sales conducted through sales outlets, catalogs or the Internet or any other similar electronic means.

L. "Stewardship organization" means a corporation nonprofit organization or other legal entity created or contracted by a producer or group of producers to implement a paint stewardship program.

2. Producer responsibilities. The responsibilities of producers are as set out in this subsection.

A. By January 1, 2012, a producer or a stewardship organization shall submit a plan for the establishment of a statewide paint stewardship program to the department for approval. Within 3 months of submittal of an annual report under paragraph D that shows approved performance goals were not met, a producer or a stewardship organization shall submit a revised plan for the continuation of a statewide paint stewardship program to the department for approval. Each plan or revised plan must:

(1) Identify each producer participating in the program, the contact information for each producer and the brands covered by each producer;

(2) Describe how the program will collect, transport, reuse, recycle and process post-consumer paint, including recycling, energy recovery and disposal, using environmentally sound management practices, including standards for retailers and other collection sites;

(3) Describe how the program will provide for convenient and available statewide collection of post-consumer paint at no cost to consumers in both urban and rural areas of the State. At a minimum, convenient collection must include, for all brands of architectural paint, a minimum of 2 collection sites in each county and one collection site or alternate collection service for each city or town with a population greater than 10,000 providing collection at least 5 days per week on an ongoing year-round basis. A collection site for a county may be the same as a collection site for a city or town in the county. The producer or stewardship organization shall pay fair compensation for collection costs to collection sites other than retailers. Once the required minimum of collection services is established, a stewardship organization shall accept any additional retailer that volunteers to serve as a post-consumer paint collection site, so long as that retailer agrees to meet approved standards and abide by comparable terms for other retailers participating in the program;

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

(5) Establish goals to reduce the generation of post-consumer paint, to promote the reuse of post-consumer paint and for the proper management of post-consumer paint, and describe the methodology used to measure program performance in achieving the goals. At a minimum, the goals must include that 80% of consumers are aware of the collection opportunities for recycling post-consumer paint within 5 years of the start of the program. Based on the information collected and presented in the annual report, the producer or stewardship organization may propose revisions to the goals for review and approval by the department;

(6) Describe how post-consumer 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 paint stewardship program and the source reduction and recycling of architectural paint to consumers, painting contractors and paint retailers and describe how the education and outreach efforts will be tailored to reach all sectors of the State's population, including immigrant and senior populations. The plan must provide for the program to evaluate annually the effectiveness of its education and outreach, including a method for determining the percentage of consumers, painting contractors and retailers that are aware of ways to reduce the generation of post-consumer paint, opportunities for reuse of post-consumer paint and collection options for paint recycling; and

(8) Describe the financing mechanism for the program and any activities necessary to implement the program that are not funded by the program and the source of funding for those activities. If the producer is financing the program through payment to a stewardship organization, any assessment imposed by the producer through its retailer must reflect the producer's actual program costs and must not be described at wholesale or retail as a tax or government-imposed fee. Any information provided to the consumer about the assessment must clearly state that it is imposed by the producer and must not identify the assessment as, or imply that the assessment is, a tax or government-imposed fee or mandate.

B. Beginning no later than July 1, 2012, or 3 months after approval of the paint stewardship program plan under paragraph A, whichever occurs later, a producer or a stewardship organization shall implement the approved paint stewardship program. All collection sites identified in the plan as necessary to meet the convenience standards in paragraph A, subparagraph (3) must be operating as of the start date.

C. A producer may not sell or offer for sale architectural paint to any person in the State unless the producer or a stewardship organization of which the producer is a member is implementing an approved paint stewardship program.

D. By March 31, 2013, and annually thereafter, a producer or a stewardship organization of which the producer is a member shall submit to the department a report describing the paint stewardship program that the producer or stewardship organization implemented for the preceding calendar year. At a minimum, the report must include:

(1) A description of the methods the producer or stewardship organization used to reduce, reuse, collect, transport, recycle and process post-consumer paint statewide;

(2) The volume and type of post-consumer paint collected by the producer or stewardship organization by region of the State;

(3) The volume of post-consumer paint collected by the producer or stewardship organization in the State by method of disposition, including reuse, recycling, energy recovery and disposal;

(4) The total volume of architectural paint sold in the State during the preceding calendar year by the producer or by producers within the stewardship organization;

(5) Samples of the educational materials required by the plan under paragraph A, subparagraph (7) that the producer or stewardship organization provided to consumers of architectural paint;

(6) A description of the annual evaluation of the effectiveness of the education and outreach efforts required by the plan under paragraph A, subparagraph (7), including the percentage of consumers, painting contractors and retailers that are aware of the ways to reduce the generation of post-consumer paint, opportunities for reuse of post-consumer paint and collection options for paint recycling;

(7) Beginning with the report submitted for calendar year 2013, a copy of a report from an independent 3rd-party audit on the financing and expenditures of the program, including but not limited to detailed costs and revenues of the program, the basis and calculations for determining producers' financial responsibilities and the basis and calculations for any assessment imposed by the producer or the stewardship organization on product sales; and

(8) Proposed amendments to the plan under paragraph A for review and approval by the department.

E. A producer or a stewardship organization shall pay an application fee of \$15,000 upon submittal of its initial plan under paragraph A for approval, and an application fee of \$10,000 upon the submittal of each revised plan under paragraph A for approval.

A producer or a stewardship organization shall pay an annual report fee of \$10,000 to the department with each annual report submitted under paragraph D. The department may establish a schedule of fees that do not exceed 0.05% of the average paint stewardship program costs reported in the financial audits described in paragraph D, subparagraph (7) in lieu of the \$10,000 annual report fee that is based on an average of the results of the financial audits. Application and reporting fees collected by the department pursuant to this paragraph must be deposited in the Maine Environmental Protection Fund established in section 351.

3. Requirements. The following requirements apply to the sale of architectural paint.

A. A retailer may not sell or offer for sale architectural paint unless the producer of the paint or the stewardship organization of which the producer is a member is implementing an approved paint stewardship program. 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 department's publicly accessible website as a producer implementing an approved paint stewardship program.

B. At the time of sale to a consumer, a retailer selling or offering architectural paint for sale shall provide the consumer with information provided from the producer or a stewardship organization regarding available management options for post-consumer paint collected through the paint stewardship program.

C. A retailer may not be required by a producer or stewardship organization to serve as a post-consumer paint collection facility unless the retailer expressly agrees to participation under the plan submitted by the producer or stewardship organization under subsection 2.

4. Solid waste facility license not required. Facilities solely collecting paint for the paint stewardship program that would not otherwise be subject to solid waste facility licensing requirements are not required to obtain a solid waste facility license under section 1310-N.

5. Anticompetitive conduct. A stewardship organization that manages or operates a paint stewardship program pursuant to this section is granted immunity from state laws relating to antitrust, restraint of trade and unfair trade practices and other regulation of trade and commerce for the limited purpose of establishing and operating the paint stewardship program. The activities of the stewardship organization that comply with the provisions of this section may not be considered to be in restraint of trade, a conspiracy or a combination or any other unlawful activity in violation of Title 10.

6. Enforcement; cost recovery. If a producer fails to implement a paint stewardship program approved by the department or fails to pay costs allocated to it by a stewardship organization for its responsibilities pursuant to subsection 2, the department may pay for the legitimate costs of collection and recycling of the producer's post-consumer paint from the Maine Solid Waste Management Fund established in section 2201 and seek cost recovery from the nonpaying producer. Any nonpaying producer is liable to the State for costs incurred by the State in an amount up to 3 times the amount incurred as a result of the failure to comply.

The Attorney General is authorized to commence a civil action against any producer to recover the costs described in this subsection, which are in addition to any fines and penalties established pursuant to section 349. Any money received by the State pursuant to this subsection must be deposited in the Maine Solid Waste Management Fund established in section 2201.

7. Confidential business information. The department may keep information submitted pursuant to this section confidential as provided under section 1310-B, except that the department may use and disclose such information in summary or aggregated form that does not directly or indirectly

identify individual producers, distributors or retailers. The department may require, as a part of the report submitted under subsection 2, paragraph D, that the producer or stewardship organization provide a report that does not contain confidential business information and is available for public inspection and review.

8. Rulemaking. The department may adopt rules or procedures to implement the requirements of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 3. 38 MRSA §2133, sub-§2-B, as amended by PL 2003, c. 567, §1, is further amended to read:

2-B. Household hazardous waste collection. The office may, within available resources, award grants to eligible municipalities, regional associations, sanitary districts ~~and, sewer districts and private businesses for household hazardous waste collection, recycling and disposal programs for~~ household hazardous waste and other solid wastes. In implementing this program, the office shall attempt to:

- A. ~~Coordinate the household hazardous waste collection programs with overall recycling and waste management;~~
- B. Encourage regional economies of scale;
- C. Coordinate programs between private and public institutions;
- D. Maximize opportunities for federal grants and pilot programs; and
- E. By January 1, 2002 and as necessary thereafter, fund capital improvements and operating expenses to facilitate the development of collection programs throughout the State for hazardous waste that is universal waste, as identified in board rules, generated by households, small-quantity generators, public schools and municipalities.

Preference in allocating resources under this subsection must be given to municipalities that participate in a household hazardous waste collection region as defined in subsection 2-D.

At a minimum, the office shall award grants to public schools and municipalities for reasonable costs incurred as a result of managing waste mercury-added products generated by those public schools and municipalities, in compliance with the requirements in sections 1663 and 1664, that would not otherwise be incurred by complying with existing laws, rules or regulations as of July 15, 2002.

SUMMARY

This bill establishes a product stewardship program for the environmentally sound disposal of architectural paint.