



# Senate

General Assembly

**File No. 205**

January Session, 2011

Senate Bill No. 828

*Senate, March 24, 2011*

The Committee on Environment reported through SEN. MEYER of the 12th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## ***AN ACT ESTABLISHING A PAINT STEWARDSHIP PROGRAM.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) For purposes of this section  
2 and section 2 of this act:

3 (1) "Architectural paint" means interior and exterior architectural  
4 coatings sold in containers of five gallons or less. Architectural paint  
5 does not include industrial, original equipment or specialty coatings.

6 (2) "Distributor" means a company that has a contractual  
7 relationship with one or more producers to market and sell  
8 architectural paint to retailers in this state.

9 (3) "Environmentally sound management practices" means  
10 procedures for the collection, storage, transportation, reuse, recycling  
11 and disposal of architectural paint, to be implemented by the  
12 representative organization or such representative organization's  
13 contracted partners to ensure compliance with all applicable federal,

14 state and local laws, regulations and ordinances and the protection of  
15 human health and the environment. Environmentally sound  
16 management practices include, but are not limited to, record keeping,  
17 the tracking and documenting of the fate of postconsumer paint in and  
18 outside of this state, and environmental liability coverage for  
19 professional services and for the operations of the contractors working  
20 on behalf of the representative organization.

21 (4) "Energy recovery" means the process by which all or a portion of  
22 solid waste materials are processed or combusted in order to utilize the  
23 heat content or other forms of energy derived from such solid waste  
24 materials.

25 (5) "Paint stewardship assessment" means the amount added to the  
26 purchase price of architectural paint sold in this state that is necessary  
27 to cover the cost of collecting, transporting and processing  
28 postconsumer paint by the representative organization pursuant to the  
29 paint stewardship program.

30 (6) "Postconsumer paint" means architectural paint that is not used  
31 and that is no longer wanted by a purchaser of architectural paint.

32 (7) "Producer" means a manufacturer of architectural paint who  
33 sells, offers for sale, distributes or contracts to distribute architectural  
34 paint in this state.

35 (8) "Recycling" means any process by which discarded products,  
36 components and by-products are transformed into new, usable or  
37 marketable materials in a manner in which the original products may  
38 lose their identity. "Recycling" does not include energy recovery.

39 (9) "Retailer" means any person who offers architectural paint for  
40 sale at retail in this state.

41 (10) "Reuse" means the return of a product into the economic stream  
42 for use in the same kind of application as the product was originally  
43 intended to be used, without a change in the product's identity.

44 (11) "Commissioner" means the Commissioner of Environmental  
45 Protection.

46 (12) "Sell" or "sale" means any transfer of title for consideration  
47 including, but not limited to, remote sales conducted through sales  
48 outlets, catalogues, the Internet or any other similar electronic means.

49 (13) "Representative organization" means the nonprofit organization  
50 created by producers to implement the paint stewardship program  
51 described in section 2 of this act.

52 (14) "Department" means the Department of Environmental  
53 Protection.

54 Sec. 2. (NEW) (*Effective from passage*) (a) (1) On or before March 1,  
55 2013, each producer shall join the representative organization and such  
56 representative organization shall submit a plan for the establishment  
57 of a paint stewardship program described in this subdivision to the  
58 commissioner for approval. Such paint stewardship program shall: (A)  
59 Minimize public sector involvement in the management of  
60 postconsumer paint by: (i) Reducing the generation of postconsumer  
61 paint, (ii) promoting the reuse and recycling of postconsumer paint,  
62 and (iii) negotiating and executing agreements to collect, transport,  
63 reuse, recycle, burn for energy recovery and dispose of postconsumer  
64 paint using environmentally sound management practices; (B) provide  
65 for convenient and available state-wide collection of postconsumer  
66 paint that, at a minimum, provides for collection rates and convenience  
67 equal to, or greater than, the collection programs available to  
68 consumers prior to such paint stewardship program; (C) propose a  
69 paint stewardship assessment; and (D) include a funding mechanism  
70 that requires each producer who participates in the representative  
71 organization to remit to the representative organization payment of  
72 the paint stewardship assessment for each container of architectural  
73 paint such producer sells in this state.

74 (2) The plan submitted pursuant to subdivision (1) of this subsection  
75 shall: (A) Identify each producer participating in the paint stewardship

76 program and the brands of architectural paint sold in this state covered  
77 by the program; and (B) address the coordination of the paint  
78 stewardship program with existing household hazardous waste  
79 collection infrastructure, as much as is reasonably feasible and  
80 mutually agreeable.

81 (3) The commissioner may approve the plan for the establishment of  
82 a paint stewardship program that meets the requirements of  
83 subdivisions (1) and (2) of this subsection. Not later than two months  
84 after submission of the plan pursuant to this subsection, the  
85 commissioner shall make a determination whether or not to approve  
86 the plan.

87 (4) Not later than two months after the date the plan is approved  
88 pursuant to subdivision (3) of this subsection, the representative  
89 organization shall implement the paint stewardship program.

90 (b) (1) On or before March 1, 2013, and every two years thereafter,  
91 the representative organization shall propose a uniform paint  
92 stewardship assessment for all architectural paint sold in this state.  
93 Such proposed paint stewardship assessment shall be reviewed by an  
94 independent auditor to assure that such assessment does not exceed  
95 the costs of the paint stewardship program described in subsection (a)  
96 of this section and such independent auditor shall recommend an  
97 amount for such paint stewardship assessment to the department. The  
98 department shall be responsible for the approval of such paint  
99 stewardship assessment. Such independent auditor shall be selected by  
100 the department and the department shall be responsible for the review  
101 of the work product of such independent auditor, including, but not  
102 limited to, the review of such auditor's assessment of the bid and  
103 purchase procedures utilized by the representative organization to  
104 implement such program. The department may terminate the services  
105 of any such independent auditor. Not less than once every five years,  
106 the department shall select a different independent auditor to perform  
107 the duties described in this subdivision and subdivision (4) of  
108 subsection (h) of this section. The cost of any work performed by such

109 independent auditor pursuant to the provisions of this subdivision and  
110 subdivision (4) of subsection (h) of this section shall be funded by the  
111 paint stewardship assessment.

112 (2) On and after the date of implementation of the paint stewardship  
113 program pursuant to subdivision (4) of subsection (a) of this section,  
114 the paint stewardship assessment, as established pursuant to  
115 subdivision (1) of this subsection, shall be added to the cost of all  
116 architectural paint sold to retailers and distributors in this state by each  
117 producer. On and after such implementation date, each retailer or  
118 distributor, as applicable, shall add the amount of such paint  
119 stewardship assessment to the purchase price of all architectural paint  
120 sold in this state.

121 (c) Any retailer may participate, on a voluntary basis, as a paint  
122 collection point pursuant to such paint stewardship program and in  
123 accordance with any applicable provision of law or regulation.

124 (d) Each producer and the representative organization shall be  
125 immune from liability for any claim of a violation of antitrust law or  
126 unfair trade practice if such conduct is a violation of antitrust law, to  
127 the extent such producer or representative organization is exercising  
128 authority pursuant to the provisions of this section.

129 (e) Not later than the implementation date of the paint stewardship  
130 program, the department shall list the names of participating  
131 producers and the brands of architectural paint covered by such paint  
132 stewardship program on its web site.

133 (f) (1) On and after the implementation date of the paint  
134 stewardship program, no producer, distributor or retailer shall sell or  
135 offer for sale architectural paint to any person in this state if the  
136 producer of such architectural paint is not a member of the  
137 representative organization.

138 (2) No retailer or distributor shall be found to be in violation of the  
139 provisions of subdivision (1) of this subsection if, on the date the

140 architectural paint was ordered from the producer or its agent, the  
141 producer or the subject brand of architectural paint was listed on the  
142 department's web site in accordance with the provisions of subsection  
143 (e) of this section.

144 (3) The commissioner may seek civil enforcement of the provisions  
145 of this subsection pursuant to chapter 439 of the general statutes.

146 (g) Producers or the representative organization shall provide  
147 consumers with educational materials regarding the paint stewardship  
148 assessment and paint stewardship program. Such materials shall  
149 include, but not be limited to, information regarding available end-of-  
150 life management options for architectural paint offered through the  
151 paint stewardship program and information that notifies consumers  
152 that a charge for the operation of such paint stewardship program is  
153 included in the purchase price of all architectural paint sold in this  
154 state.

155 (h) On or before August 15, 2014, and annually thereafter, the  
156 representative organization shall submit a report to the Commissioner  
157 of Environmental Protection that details the paint stewardship  
158 program. Such report shall include, but not be limited to: (1) A  
159 description of the methods used to collect, transport and process  
160 postconsumer paint in this state; (2) the volume of postconsumer paint  
161 collected in this state; (3) the volume and type of postconsumer paint  
162 collected in this state by method of disposition, including reuse,  
163 recycling and other methods of processing; (4) the total cost of  
164 implementing the program, as determined by an independent financial  
165 audit, as performed by the independent auditor described in  
166 subdivision (1) of subsection (b) of this section and funded by the paint  
167 stewardship assessment; (5) an evaluation of the operation of the  
168 program's funding mechanism; and (6) samples of educational  
169 materials provided to consumers of architectural paint and an  
170 evaluation of the methods used to disseminate such materials.

171 (i) Not later than January 15, 2015, and biennially thereafter, the  
172 Commissioner of Environmental Protection shall submit, in accordance

173 with section 11-4a of the general statutes, a report to the joint standing  
174 committee of the General Assembly having cognizance of matters  
175 relating to the environment that describes the results of the paint  
176 stewardship program and recommends modifications to improve the  
177 functioning and efficiency of such program, as necessary.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section

**ENV**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:** None

**Municipal Impact:**

The fiscal impact of the bill occurs in the out years.

**The Out Years**

**State Impact:** None

**Municipal Impact:**

<b>Municipalities</b>	<b>Effect</b>	<b>FY 14 \$</b>	<b>FY 15 \$</b>	<b>FY 16 \$</b>
Various Municipalities	Potential Savings	Up to 500,000	Up to 500,000	Up to 500,000

The bill establishes a privately-operated paint stewardship program funded by an assessment on each container of architectural paint sold. It also allows retailers to participate as paint collection points. The program must be reviewed and implemented by July 2013 (FY 14).

Currently, municipalities are responsible for the disposal of architectural paint through household hazardous waste (HHW) collections<sup>1</sup>. It is estimated that municipalities who operate HHW programs collectively spend over \$500,000 annually to dispose of architectural paint.

To the extent that municipalities collect less architectural paint through the voluntary participation of retailers, municipalities may realize annual savings of up to \$500,000 collectively in FY 14 and beyond resulting from reduced volume of paint and associated disposal costs. Individual savings would vary by municipality,

<sup>1</sup> approximately 155 of the state's municipalities participate in HHW programs

depending on HHW costs and the amount of architectural paint recycled.

**OLR Bill Analysis****SB 828*****AN ACT ESTABLISHING A PAINT STEWARDSHIP PROGRAM.*****SUMMARY:**

This bill establishes a “paint stewardship program” for managing unused and unwanted architectural paint in the state. It defines “architectural paint” as interior or exterior architectural coatings sold in containers of five gallons or less excluding industrial, original equipment, or specialty coatings. The program is funded through an assessment on each container of architectural paint sold in Connecticut.

Under the bill, paint producers are responsible for managing the program through the establishment of and participation in a paint stewardship representative organization. The representative organization must develop a plan to minimize public sector involvement in managing unused and unwanted architectural paint. The plan must be submitted to the Department of Environmental Protection (DEP) for approval.

The bill provides immunity to producers and the representative organization from claims of antitrust violations under certain circumstances.

Finally, the bill requires producers or the representative organization to give consumers information about the program, allows retailers to participate as paint collection points, and establishes reporting requirements related to the program.

EFFECTIVE DATE: Upon passage

**PAINT STEWARDSHIP PROGRAM**

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**Program Purposes and Establishment**

By March 1, 2013, the bill requires each manufacturer of architectural paint who sells, offers for sale, distributes, or contracts to distribute architectural paint in Connecticut (a “producer”) to join the representative organization, a nonprofit organization created by producers to implement the paint stewardship program. The bill defines “sell” or “sale” as any transfer of title for consideration, including remote sales through sales outlets, catalogues, the Internet, or any other similar electronic means.

The representative organization must submit a plan for establishing a paint stewardship program to the DEP commissioner for approval. The program must minimize public sector involvement in managing postconsumer paint by (1) reducing its generation; (2) promoting reuse and recycling; and (3) negotiating and executing agreements to collect, transport, reuse, recycle, burn for energy recovery, and dispose of postconsumer paint through “environmentally sound management practices.” These include procedures for collecting, storing, transporting, reusing, recycling, and disposing of architectural paint to ensure protection of human health and the environment and compliance with applicable laws, regulations, and ordinances. Environmentally sound management practices include record keeping, tracking and documenting the fate of postconsumer paint, and environmental liability coverage for professional services and the operations of contractors working on behalf of the representative organization. The bill defines “postconsumer paint” as architectural paint that is not used and is no longer wanted.

The paint stewardship program must also (1) provide for statewide postconsumer paint collection that provides for collection rates and convenience at least equal to the collection programs available to consumers prior to the paint stewardship program, (2) propose a paint stewardship assessment (see below), and (3) include a funding mechanism that requires each producer participating in the representative organization to pay the organization for each container of architectural paint it sells in the state.

**Plan Components and DEP Approval**

The representative organization's plan must identify each participating producer and the covered brands of architectural paint sold in the state. It must also address the program's coordination with existing household hazardous waste collection infrastructure, to the extent feasible and mutually agreeable.

The bill authorizes the DEP commissioner to approve the plan if it meets the bill's requirements. The commissioner must determine whether to approve the plan within two months of its submission. The representative organization must implement the paint stewardship program within two months of DEP's approval.

By the program implementation date, DEP must list on its website the names of participating producers and the brands of paint covered.

**PAINT STEWARDSHIP ASSESSMENT**

The bill's paint stewardship assessment is the amount added to the purchase price of architectural paint sold in the state that is necessary to cover the representative organization's cost of collecting, transporting, and processing postconsumer paint. By March 1, 2013, and every two years afterward, the bill requires the representative organization to propose a uniform paint stewardship assessment for all architectural paint sold in the state.

An independent auditor must ensure that the proposed assessment does not exceed the cost of the program and recommend an assessment amount to DEP, which is responsible for approving it. The assessment becomes part of the cost of all architectural paint that producers sell to retailers and distributors. "Retailers" offer architectural paint for sale at retail in the state and "distributors" are companies that have contractual relationships with one or more producers to market and sell architectural paint to retailers in the state.

DEP must select the auditor and review the auditor's work product, including the auditor's evaluation of the bid and purchase procedures used by the representative organization to implement the program.

DEP can terminate the auditor's services. The bill requires DEP to select a different auditor at least once every five years. The paint stewardship assessment funds the cost of the auditor.

Under the bill, once implementation begins, the assessment must be added to the cost of all architectural paint sold to retailers and distributors by each producer and each retailer and distributor must add the assessment amount to the purchase price of all architectural paint they sell in the state.

Once the program is implemented, a producer, distributor, or retailer may not sell or offer for sale architectural paint in the state if the producer is not a member of the representative organization. But a retailer or distributor is not in violation of this provision if, on the date the paint was ordered from the producer or its agent, the producer or the brand of paint was listed on DEP's website according to the bill's provisions. The DEP commissioner may seek civil enforcement of these provisions.

#### **PAINT COLLECTION POINTS**

The bill allows any retailer to volunteer as a paint collection point under the program and according to any applicable law or regulation.

#### **CONSUMER INFORMATION**

The bill requires producers or the representative organization to give consumers educational materials about the program and assessment. The materials must include information (1) notifying consumers that a charge to operate the program is included in the architectural paint's purchase price and (2) concerning end-of-life management options for paint offered through the program.

#### **LIABILITY PROTECTION**

Under the bill, to the extent a producer or the representative organization is exercising authority according to the bill's provisions, it is immune from liability for any claims of antitrust violation or unfair trade practice if such conduct is a violation of antitrust law.

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**REPORTS**

By August 15, 2014, and annually afterward, the representative organization must submit a report to the DEP commissioner on the program. The report must include:

1. a description of the methods used to collect, transport, and process postconsumer paint in the state;
2. the volume of postconsumer paint collected;
3. the volume and type of postconsumer paint collected by method of disposition, including reuse, recycling, and other processing methods;
4. the total cost of implementing the program, as determined by an independent audit performed by the independent auditor and funded by the paint stewardship assessment;
5. an evaluation of the program's funding mechanism; and
6. samples of educational materials provided to consumers and an evaluation of the methods used to disseminate them.

By January 15, 2015, and biennially afterward, the DEP commissioner must submit a report to the Environment Committee on program results and any recommended changes to improve the program.

**COMMITTEE ACTION**

Environment Committee

Joint Favorable

Yea 26 Nay 0 (03/09/2011)