



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1433

H.P. 1054

House of Representatives, April 7, 2011

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

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative INNES of Yarmouth.
Cosponsored by Senator BRANNIGAN of Cumberland and
Representatives: CHIPMAN of Portland, DUCHESNE of Hudson, RUSSELL of Portland.

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

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3 and c. 610, §1, is repealed and the following enacted in its place:

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

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

1 **§1776. Paint stewardship**

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

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

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

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

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

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

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

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

29 H. "Recycling" means any process by which discarded products, components and
30 by-products are transformed into new usable or marketable materials in a manner in
31 which the original products may lose their identity but does not include energy
32 recovery or energy generation by means of combusting discarded products,
33 components and by-products with or without other waste products.

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

36 J. "Reuse" means the return of a product into the economic stream for use in the
37 same kind of application as originally intended without a change in the product's
38 identity.

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

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

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

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

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

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

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

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

34 (5) Establish goals to reduce the generation of post-consumer paint, to promote
35 the reuse of post-consumer paint and for the proper management of post-
36 consumer paint, and describe the methodology used to measure program
37 performance in achieving the goals. At a minimum, the goals must include that
38 80% of consumers are aware of the collection opportunities for recycling post-
39 consumer paint within 5 years of the start of the program. Based on the
40 information collected and presented in the annual report, the producer or
41 stewardship organization may propose revisions to the goals for review and
42 approval by the department;

- 1 (6) Describe how post-consumer paint will be managed in the most
2 environmentally and economically sound manner, including following the waste-
3 management hierarchy of source reduction, reuse, recycling, energy recovery and
4 disposal;
- 5 (7) Describe education and outreach efforts to promote the paint stewardship
6 program and the source reduction and recycling of architectural paint to
7 consumers, painting contractors and paint retailers and describe how the
8 education and outreach efforts will be tailored to reach all sectors of the State's
9 population, including immigrant and senior populations. The plan must provide
10 for the program to evaluate annually the effectiveness of its education and
11 outreach, including a method for determining the percentage of consumers,
12 painting contractors and retailers that are aware of ways to reduce the generation
13 of post-consumer paint, opportunities for reuse of post-consumer paint and
14 collection options for paint recycling; and
- 15 (8) Describe the financing mechanism for the program and any activities
16 necessary to implement the program that are not funded by the program and the
17 source of funding for those activities. If the producer is financing the program
18 through payment to a stewardship organization, any assessment imposed by the
19 producer through its retailer must reflect the producer's actual program costs and
20 must not be described at wholesale or retail as a tax or government-imposed fee.
21 Any information provided to the consumer about the assessment must clearly
22 state that it is imposed by the producer and must not identify the assessment as,
23 or imply that the assessment is, a tax or government-imposed fee or mandate.
- 24 B. Beginning no later than July 1, 2012, or 3 months after approval of the paint
25 stewardship program plan under paragraph A, whichever occurs later, a producer or a
26 stewardship organization shall implement the approved paint stewardship program.
27 All collection sites identified in the plan as necessary to meet the convenience
28 standards in paragraph A, subparagraph (3) must be operating as of the start date.
- 29 C. A producer may not sell or offer for sale architectural paint to any person in the
30 State unless the producer or a stewardship organization of which the producer is a
31 member is implementing an approved paint stewardship program.
- 32 D. By March 31, 2013, and annually thereafter, a producer or a stewardship
33 organization of which the producer is a member shall submit to the department a
34 report describing the paint stewardship program that the producer or stewardship
35 organization implemented for the preceding calendar year. At a minimum, the report
36 must include:
- 37 (1) A description of the methods the producer or stewardship organization used
38 to reduce, reuse, collect, transport, recycle and process post-consumer paint
39 statewide;
- 40 (2) The volume and type of post-consumer paint collected by the producer or
41 stewardship organization by region of the State;
- 42 (3) The volume of post-consumer paint collected by the producer or stewardship
43 organization in the State by method of disposition, including reuse, recycling,
44 energy recovery and disposal;

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

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

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

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

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

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

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

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

34 A. A retailer may not sell or offer for sale architectural paint unless the producer of
35 the paint or the stewardship organization of which the producer is a member is
36 implementing an approved paint stewardship program. A retailer complies with the
37 requirements of this section if, on the date the architectural paint was ordered from
38 the producer or its agent, the producer of the paint brand is listed on the department's
39 publicly accessible website as a producer implementing an approved paint
40 stewardship program.

41 B. At the time of sale to a consumer, a retailer selling or offering architectural paint
42 for sale shall provide the consumer with information provided from the producer or a

1 stewardship organization regarding available management options for post-consumer
2 paint collected through the paint stewardship program.

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

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

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

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

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

31 **7. Confidential business information.** The department may keep information
32 submitted pursuant to this section confidential as provided under section 1310-B, except
33 that the department may use and disclose such information in summary or aggregated
34 form that does not directly or indirectly identify individual producers, distributors or
35 retailers. The department may require, as a part of the report submitted under subsection
36 2, paragraph D, that the producer or stewardship organization provide a report that does
37 not contain confidential business information and is available for public inspection and
38 review.

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

