
Paint Stewardship and Counties

Examining product
stewardship and
paint recycling efforts
in California,
Minnesota and
Oregon

Produced by the



October, 2015



Product Stewardship Laws

Product stewardship laws create safe and environmentally-friendly processes to dispose of or recycle hazardous products such as batteries, electronics, and pharmaceuticals. Often these laws call on product manufacturers, retailers, and users to take responsibility for the product's safe disposal. Recently, eight states (California, Colorado, Connecticut, Maine, Minnesota, Oregon, Rhode Island, and Vermont) and the District of Columbia adopted paint stewardship laws to ensure the environmentally-safe disposal, or recycling of paint products.



Stewardship Law Structure

Paint stewardship laws require producers of architectural paint to develop and administer a statewide unused paint collection and recycling/disposal program. Producers can directly manage the paint recycling/disposal or operate through a stewardship organization. Thus far, paint producers have opted to operate through one organization, PaintCare, a non-profit created by the American Coatings Association. PaintCare is compensated through a fee attached to paint sales and contracts with counties, retailers, and other businesses to share the responsibilities of paint collection, transportation, and processing.

PaintCare and Counties

Environmentally-safe paint disposal and recycling is nothing new and is currently managed by local governments. Because the local government collection facilities are already established, they are an important component of new paint stewardship laws. Unfortunately, the incorporation of these facilities by PaintCare has not gone smoothly. Counties in Oregon, California, and Minnesota encountered delays in contract negotiations and unreasonable contract terms as they attempted to partner with PaintCare.

Oregon

PaintCare contracted with counties during the state's 2009 paint stewardship pilot program. When the program became permanent in 2013, counties entered into new contract negotiations with PaintCare. PaintCare insisted on negotiating with individual counties on the new, remarkably more complex contract. Below are some examples of the troubling contract terms that PaintCare attempted to include in its contracts with counties:

- Obligating counties to share confidential personnel records;
- Absolving PaintCare, but not counties, for liability of special, indirect, consequential, punitive, or incidental damages;
- Requiring counties to adopt prohibitively expensive insurance policies;
- Requiring indemnity owed by the counties to PaintCare to be substantially more onerous than the indemnity owed by PaintCare to the counties; and
- Penalizing counties, but not PaintCare, in the event of contract termination.



PaintCare also refused to offer counties reimbursement for collection costs, even when no retail sites were available to meet the convenience standards. However, it is important to note that after year-long contract negotiations, PaintCare and counties compromised on a number of important issues and since the contracts were finalized, PaintCare has worked collaboratively with counties.

California

Counties in California experienced considerable struggles in contract negotiations after the passage of its paint stewardship law in 2010. Several counties banded together to negotiate a mutual contract with PaintCare, but a number of contracts with rural counties are still outstanding five years later. Similar to Oregon, during contract negotiations PaintCare attempted to include a number of unreasonable provisions at the expense of counties such as:

- Prohibiting counties from lobbying for changes to the paint stewardship law or regulations;
- Requiring counties to adopt additional insurance coverage to relieve PaintCare of its liability for losses that are its responsibility;
- Allowing PaintCare, but not counties, to terminate a contract without cause; and
- Requiring counties to indemnify PaintCare against all possible claims including claims that occur after the paint has left a county's jurisdiction.

Minnesota

The Minnesota Pollution Control Agency, counties, and PaintCare negotiated for over a year attempting to implement the state's 2013 stewardship law. The protracted contract negotiations were partially due to inequitable insurance and indemnification terms, included by PaintCare that unfairly benefited PaintCare at the expense of counties. While the negotiations dragged on, PaintCare and counties both collected paint, but unlike PaintCare, counties did not receive compensation for their work. In July, the counties' negotiating team comprising of county attorneys representing all Minnesota counties, succeeded in reaching agreement on an equal level of reimbursement for all participating counties.

Recommendations

Stewardship laws are a powerful tool to improve the management of household waste, but if not carefully drafted, the laws can harm a state's current solid waste management system.

Policymakers may want to consider the following provisions before developing paint stewardship legislation:



- **Reimburse government facilities for collection:** Counties and their taxpayers have unfairly borne the costs of recycling and disposing of paint for years. Paint manufacturers and users should take responsibility for the reuse, safe disposal, or recycling of unused paint and not place that burden on taxpayers.
- **Ensure collection site convenience:** If state residents are required to pay the paint stewardship fee, they should have access to the program's services regardless of where they live. Stewardship legislation should outline specific criteria for the number of collection sites based on the state's geographic population density. Alternative collection methods such as collection events could be required if an insufficient number of collection sites join the program.
- **Require performance measures:** To effectively evaluate and develop program improvements, stewardship organizations and their partners need accurate and timely data as to the performance of the program. Specific performance measurement criteria should be outlined in statute or included in the program plan.
- **Promote a collaborative contract process:** Counties in Minnesota, California, and Oregon were given contracts with prohibitively expensive and inequitable insurance and indemnity terms. All three states resolved contract issues through a collaborative negotiating process involving counties, PaintCare, and the state agency charged with program oversight.

- **Ensure public oversight:** A public agency should establish parameters for the use of retail-collected paint fees; defining their allowable and prohibited uses. This was not done in California, and PaintCare used paint fee revenue in an unsuccessful lawsuit against CalRecycle to reduce the state's oversight of the program.
- **Create and enforce a timeline:** The implementation of California, Oregon, and Minnesota paint stewardship programs was delayed by drawn-out negotiations over unrealistic contract demands. Protracted contract negotiations waste county employee time and taxpayer dollars. State legislation could include provisions that incentivize prompt contracting such as escrowing retail-collected paint fees until contracts are finalized and signed.

For more information, please contact:

Jill Suurmeyer, Research Analyst
Association of Minnesota Counties
651-789-4357

jsuurmeyer@mncounties.org

Paint Stewardship Law Summaries

	Oregon	California	Connecticut
Introduced	January-2013	February-2009	January-2011
Passed	June-2013	September-2010	June-2011
Implementation Process	Amendment to existing paint stewardship pilot program. Revised stewardship plans must be submitted to the Department by January 1, 2014.	Manufacturer or stewardship organization to submit a stewardship plan by April 1, 2012. Department to review plan and make a determination within 90 days. Plan is to be implemented on or before July 1, 2012 or 3 months after the plan is approved.	Producers to join representative organization which is to submit proposed stewardship plan, including proposed assessment fee, on or before March 1, 2013. Commissioner to make a determination within 2 months of submission of the plan. Implementation to occur no later than 2 months after plan is approved.
Link to language	House Bill 2048	Assembly Bill 1343	Senate Bill 828
Product Scope	Interior and exterior architectural coatings sold in containers of 5 gallons or less. Does not include industrial, original equipment or specialty coatings.	Architectural paint sold in 5 gallon containers or less; does not include aerosol spray paint or paint for industrial or original equipment use	Architectural paint sold in containers of 5 gallons or less; does not include industrial, original equipment or specialty coatings
Program Plan	Stewardship plans must address the following requirements: <ul style="list-style-type: none"> •Specify educational and outreach materials to promote the program. •Specify activities related to the establishment and maintenance of a convenient collection system •Establish performance goals •Promote reuse of post-consumer paint •Undertake responsibility to negotiate and execute contracts for collection, transportation and end-of-life management •Describe end-of-life management process using environmentally sound management practices •Identify participating producers, brands, processors and transporters •Include anticipated annual operating budget for the next 4 years with specific line items •Include a funding mechanism by means of a paint stewardship assessment fee (see below) •Amended or updated plan required with change to assessment, types of paint collected, or goals, or if director finds certain triggers are reached. 	Paint stewardship plans submitted to the department must: <ul style="list-style-type: none"> •Demonstrate sufficient funding through a stewardship assessment on each container of paint sold in state, including a budget with revenue estimates from the assessment, operational costs, capital costs, and administrative costs •Address coordination of paint stewardship program with existing HHW programs and retailers as much as is reasonably feasible and mutually agreeable. Other stakeholders that may be consulted include, but are not limited to, consumers, retailers, architectural paint recyclers, contractors, and haulers •Include performance goals established by the manufacturer or stewardship organization including a baseline from which the goals will be measured and reported in the annual report. •Include a description of contractor, consumer and retailer education and outreach efforts to promote source reduction and recycling 	Paint stewardship plan submitted to the commissioner must: <ul style="list-style-type: none"> •ID participating producers and brands •Reduce generation of postconsumer paint •Promote reuse and recycling •Negotiate agreements for collection and disposal using sound environmental management practices •Provide for convenient and available statewide collection •Propose a paint stewardship assessment •Include a funding mechanism involving the payment of a paint stewardship assessment for each container of paint sold •Address coordination with existing HHW infrastructure
Funding Mechanism	Paint stewardship assessment for all architectural paint sold in the state. Added to the cost of paint sold to retailers and passed through to consumers at the point of purchase. Cannot be described as a recycling fee. Cannot be charged at the point of collection. Must be approved by DEQ as part of stewardship plan and must be sufficient to recover but not exceed the cost of the paint stewardship program.	Architectural paint stewardship assessment added to the cost of each container sold to California retailers and distributors and each California retailer and distributor adds the assessment to the purchase price of all architectural paint sold in the state. Approved by the department as part of the plan. Assessment amount is to be sufficient to recover, but not exceed, the cost of the program. Surplus funds to be put back into the program.	Paint stewardship assessment to be added to the cost of architectural paint sold to retailers and distributors and added to the purchase price for consumers. Assessment is proposed by the stewardship organization every two years, reviewed by an independent auditor. Independent auditor to make recommendation, which goes to DEEP for approval.

Paint Stewardship Law Summaries

	Oregon	California	Connecticut
Government Oversight	Oregon Department of Environmental Quality	Dept. of Resources Recycling and Recovery (CalRecycle)	Dept. of Energy and Environmental Protection
Reporting Requirements	<p>Stewardship organization must submit annual report to the department. Must contain:</p> <ul style="list-style-type: none"> •Description of methods used to collect, transport, recycle and process post-consumer paint •Calculation of total volume of paint collected in gallons, categorized by type •For each permanent collection site and collection event: total volume of paint collected, address or physical location, and description of the type of collection site or event •Estimate of total weight and disposition of paint containers collected through the program •Total volume of paint collected under the program, categorized by method of disposition •Data, conversion factors and methodology used to complete analysis •Independent financial audit •Description of program costs and revenues for the prior year, including specific line items •Updated budget for the next calendar year •Evaluation of the operation of the funding mechanism •Samples of education and outreach materials 	<p>Annual reports to the department to include:</p> <ul style="list-style-type: none"> •Total volume of paint sold in the state, by type •Total volume of paint recovered during the preceding calendar year, by type •Disposition of paint collected, by type and estimated volume, including names and addresses for contracted processors for each •Description of methods used to collect, transport and process postconsumer paint •Total cost of implementing the paint stewardship program including capital costs, cost/capita, cost/gal collected, education and outreach, EOL mgmt (with line items for method of disposition), program administration (including annual fee to dept. as well as how surplus funds will be applied to reduce program costs) •Evaluation of funding mechanism •Financial audit by an independent CPA •Examples of educational materials provided to consumers, and descriptions of activities undertaken •Documentation on how the assessment funds shall be kept separate from other activities of the manufacturer or stewardship organization and the methodology for distribution of shared costs (if applicable) 	<p>Stewardship organization submits annual reports to the DEEP Commissioner, including:</p> <ul style="list-style-type: none"> •Description of methods to collect, transport and process paint •Volume of postconsumer paint collected in state •Breakdown by method of disposition, including reuse, recycling and other methods of processing •Total cost of implementing the program •Evaluation of operation of program funding mechanism •Samples of educational materials
Audit Requirements	<p>Annual reports to the Department must include an independent financial audit.</p> <p>Stewardship assessments do not need to undergo an independent audit prior to approval by the Department.</p>	<p>Independent financial audit, conducted in accordance with generally accepted accounting principles by an independent CPA. To include an opinion by the CPA on the manufacturer or stewardship organization's compliance with the financial aspects of the statute, any findings and recommendations of the CPA, and a management letter by the CPA, if issued</p>	<p>Assessment is proposed by the stewardship organization every two years, reviewed by an independent auditor. Independent auditor to make recommendation, which goes to DEEP for approval. Auditor is selected by the department, which is responsible for reviewing the auditor's work. Department is to select a new independent auditor every 5 years. Cost of work performed by the auditor is funded by the stewardship assessment.</p>
Administrative Fees	<p>\$10,000 with the submission of a plan or updated plan; \$40,000 for each year that a plan is implemented.</p>	<p>Annual administrative fees in the amount that is sufficient to cover the department's full costs of administering and enforcing the program, including any program development costs or regulatory costs incurred by the department prior to the submittal of the stewardship plan</p>	<p>No administrative fees. The cost of work performed by independent auditors to evaluate the paint stewardship assessment is funded by the paint stewardship assessment.</p>
Oversight, Enforcement and Violations	<p>Civil penalty for violation not to exceed \$1000 per violation per day. Any retailer that does not provide required information to consumers at point of sale incurs a fine not to exceed \$100 per day.</p>	<p>Department may administratively impose a civil penalty of up to \$1000 per violation per day, or up to \$10,000 for intentional, knowing or negligent violations. Annual administrative fees charged by the department cover enforcement costs.</p>	<p>Commissioner may seek civil enforcement pursuant statutes governing the state department of energy and environment protection.</p>

Paint Stewardship Law Summaries

	Oregon	California	Connecticut
Report to Legislature	To be submitted November, 2018. Describing results of architectural paint stewardship programs, recommending modifications to the law. Must include an accounting of administrative fees paid to the department.	None	Biennial report to environmental committee describing results and recommending modifications.
Outreach and Education	Stewardship organization must provide educational and outreach materials for reproduction by retailers to be distributed to consumers at the point of sale. The materials shall identify collection opportunities, explain the paint stewardship assessment, and promote source reduction, reuse, recovery and recycling.	Plan to include a description of consumer, contractor, and retailer education and outreach efforts to promote source reduction and recycling of architectural paint	Producers or the representative organization shall provide educational materials regarding paint stewardship program and paint stewardship assessment to consumers.
Convenience Standards	<p>Convenient collection system must include:</p> <ul style="list-style-type: none"> •One permanent collection site for every 30,000 residents. •95% of residents within 15 miles of a collection site •At least one (no more than two) collection events per year in geographically underserved areas. <p>Stewardship organization can be exempted from complying with the 95% convenience standard if after a good faith effort:</p> <ul style="list-style-type: none"> •It is unable to identify an entity to coordinate with to establish a permanent collection site •It is unable to reach feasible, reasonable, mutually agreeable terms with an entity to act as a collection site <p>Stewardship organization shall make a good faith effort to coordinate with local governments and collection services to promote and pay for collection events. If unable to coordinate with another entity, stewardship organization shall promote and pay for the collection event.</p>	None. Retailers may participate as collection points on a voluntary basis.	Collection rates and convenience equal to or greater than the collection programs available prior to the paint stewardship program. Retailers participate as collection points on a voluntary basis.

Paint Stewardship Law Summaries

	Oregon	California	Connecticut
Performance Goals	Stewardship plans to establish and provide for the development and implementation of goals for: <ul style="list-style-type: none"> •Reducing generation of post-consumer paint •Increasing the recycling rate of post-consumer paint •Increasing public awareness of the paint stewardship program 	Stewardship plan to include goals established by the manufacturer or stewardship organization to reduce the generation of postconsumer paint, promote reuse, and for proper end of life management of postconsumer paint. Based on current HHW program information. May be revised by the manufacturer/stewardship organization.	None
Collector Compensation	Not required. Stewardship organization <u>may</u> enter into contracts with local governments or collection service providers. Required to make a good faith effort to contract with local governments for collection events. Terms of these contracts may include coverage of costs for accepting post-consumer paint and paint containers.	None	None
Anti-trust Language	Stewardship organization is granted immunity from federal and state antitrust laws for the limited purpose of establishing and operating a paint stewardship pilot program. Activities of the stewardship organization in compliance with the provisions of this section may not be considered to be in restraint of trade, a conspiracy, a combination or any other unlawful activity in violation of state or federal antitrust laws.	An action solely to increase recycling of architectural paint by a producer, stewardship organization or retailer that affects the types or quantities being recycled or the cost and structure of any return program is not a violation of the Cartwright Act (chapter 2) or the Unfair Practices Act (chapter 4). Does not apply to any agreement establishing or affecting the price of paint (except stewardship assessment), the output or production of paint, or the geographic region where paint is sold.	Each producer and the representative organization shall be immune from liability for any claim of a violation of antitrust law or unfair trade practice if such conduct is a violation of antitrust law, to the extent such producer or representative organization is exercising authority pursuant to the provisions of this section.
Data Disclosure	DEQ may not disclose any financial, cost, production or sales data obtained as part of the approval of a plan, updated plan, or an annual report. If DEQ determines that disclosure is necessary for the public to adequately understand the derivation of the stewardship assessment, data may be disclosed in aggregate form.	Approved plans are public record, except for financial data reported to the department. The department may release financial, production or sales data in summary form.	Not specified.

Paint Stewardship Law Summaries

	Oregon	California	Connecticut
Regulatory and Implementation Issues*	The paint stewardship organization, PaintCare insisted on negotiating with individual counties on the new, remarkably more complex contract. Most contract issues were resolved through a long collaborative process involving counties, PaintCare, and the DEQ. One remaining issue for some counties is the lack of reimbursement for collection costs.	In order to clarify statute, regulations were adopted by OAL on June 6, 2012. In October 2012, PaintCare and ACA filed a lawsuit against CalRecycle to cease implementation and enforcement of its Architectural Paint Recovery Program regulations on the grounds that the regulations were adopted contrary to law and failed to demonstrate necessity. Contracts with five counties are still outstanding five years after passage of the law.	

Paint Stewardship Law Summaries

	Rhode Island	Minnesota	Vermont
Introduced	January, 2012	February, 2013	February, 2013
Passed	June, 2012	May, 2013	May, 2013
Implementation Process	Producers to join representative organization, which is to submit proposed stewardship plan, including proposed assessment fee, for approval by March 1, 2014. Department to make a determination no later than 60 days after the submission of a plan. Implementation to occur no later than 3 months after a plan is approved.	On or before March 1, 2014 and before offering paint for sale in the state, producers must submit a stewardship plan for agency approval. Agency to make a determination within 90 days. On and after July 1, 2014 or 3 months after program plan approval, producers must participate in an approved stewardship program to sell paint in the state.	Program plans must be submitted to the agency for approval by December 1, 2013. Agency to make a determination within 90 days of the receipt of a plan. Implementation to occur by July 1, 2014 or 3 months after the approval of a plan.
Link to language	Senate Bill 2083 Substitute A	House Bill 976 (see section 78, Paint Stewardship)	House Bill 262
Product Scope	Architectural paint sold in containers of 5 gallons or less; does not include industrial, original equipment or specialty coatings	Architectural paint sold in containers of 5 gallons or less; does not include industrial, original equipment or specialty coatings	Architectural paint sold in containers of 5 gallons or less; does not include industrial, original equipment or specialty coatings
Program Plan	<p>Paint stewardship plan submitted to the department must:</p> <ul style="list-style-type: none"> •Reduce generation of post-consumer paint •Negotiate agreements for collection, transport and management using environmentally sound management practices •Provide for convenient and available state-wide collection •Include a funding mechanism through a paint stewardship assessment •Include education and outreach program •Work with the state to identify economic development and job creation opportunities •ID each participating producer and covered brand •Set forth process for selection of an independent auditor •Include targeted annual collection rate •Identify education and outreach program •Coordinate with RI resource recovery corporation •Describe intended treatment, transport, storage and disposal methods 	<p>Stewardship plan to be submitted to the agency must include:</p> <ul style="list-style-type: none"> •Certification that stewardship program will accept all discarded paint, regardless of producer or composition •Contact info for entity submitting program and ID of producers and brands covered •Description of methods for collection statewide without relying on end-of-life fees •Names and locations of collectors, transporters and recyclers that will manage the paint •Description of how the adequacy of the collection program will be monitored and maintained •Description of how discarded paint and its components be safely and securely transported, tracked and handled •Description of methods for reuse, deconstruction, or recycling of discarded paint •Description of promotion and outreach activities and how their effectiveness will be evaluated •Proposed uniform stewardship assessment, reviewed by independent auditor •Evidence of adequate insurance and financial assurance for collection, handling and disposal operations •5-year performance goals. Must include a specific collection goal for each program year. •Discussion of the adequacy of end markets for discarded paint 	<p>Program plans to be submitted to the department must:</p> <ul style="list-style-type: none"> •ID participating producers and brands •Provide specific information on products covered under the program •Describe how the program will collect, transport, recycle and process postconsumer paint using existing HHW collection infrastructure and any paint retailer that wishes to participate •Provide convenient and available collection in urban and rural areas of the state •Provide GIS modeling to determine number and distribution of collection sites •Establish goals to reduce generation, promote reuse, and for proper end of life management of paint •Describe how paint will be managed in the most environmentally and economically sound manner •Describe education and outreach efforts •Include a funding mechanism involving a paint stewardship assessment for each container sold based on third party audited budget reviewed by legislature
Funding Mechanism	Paint stewardship assessment to be added to the price of paint sold to retailers and distributors and added to the purchase price for consumers. Proposed as part of program plan, independently audited, and approved by the department	Assessment fee proposed by producers or stewardship organizations. Reviewed by independent auditor and approved by department. Must not exceed the cost of the stewardship program. Added to the price of paint sold to retailers and distributors in the state.	Paint stewardship assessment added to all architectural paint sold. To be added to price charged to retailers and distributors, and passed along to consumers. Uniform assessment for all architectural paint sold. Approved by department and capped by legislature. Sufficient to cover, but not exceed, stewardship program costs.

Paint Stewardship Law Summaries

	Rhode Island	Minnesota	Vermont
Government Oversight	Department of Environmental Management	Minnesota Pollution Control Agency	Agency of Natural Resources
Reporting Requirements	<p>Stewardship organization submits annual reports to the Department, including:</p> <ul style="list-style-type: none"> •Description of methods used to collect, transport and process postconsumer paint •Volume of postconsumer paint collected in state •Breakdown of paint collected by method of disposition •Total cost of implementing the program as determined by independent auditor •Evaluation of funding mechanism •Samples of educational materials •Evaluation and recommendations for improvement of educational component 	<p>Producers or stewardship organizations must submit annual reports to the agency, including:</p> <ul style="list-style-type: none"> •Description of methods to collect, transport and process architectural paint statewide •Weight of all paint collected statewide and comparison to collection goals •Breakdown of the amount of paint collected by method of disposition, including reuse, recycling and other methods of processing •Samples of educational materials provided to consumers •Independent financial audit 	<p>Producers or stewardship organizations submit annual reports to department, including:</p> <ul style="list-style-type: none"> •Description of the methods used to reduce, reuse, collect, transport, recycle and process postconsumer paint statewide •Volume and type of paint collected by location •Volume of paint collected, broken down by method of disposition •Independent financial audit of the program •Samples of educational materials •Previous year actual costs for each program element
Audit Requirements	Proposed paint assessment, as well as any proposed amendments to it, are to be reviewed by an independent auditor and approved by the department based on the auditor's recommendation. Annual reports to the department must include the results of an independent financial audit.	Proposed paint assessment must be reviewed by an independent auditor, who will recommend an assessment fee for agency approval. Annual reports to the agency must include an independent financial audit.	Proposed budget and paint assessment must be reviewed by an independent auditor agreed to by the Secretary. Auditor to provide recommendation on whether the proposed budget and assessment is cost-effective, reasonable, and limited to covering the cost of the program.
Administrative Fees	Program plans must be submitted along with a \$2500 fee to cover the cost of evaluation of the plan.	<p>Producers or stewardship organizations must pay an annual administrative fee to the commissioner. The agency may establish a variable fee. The amount of the fees collected must be adequate to cover but not exceed the agency's costs of administering the program.</p> <p>Agency to establish a fee to cover program development and regulatory costs, to be paid on the submission of a stewardship plan.</p>	\$15,000 on submission of a stewardship plan
Oversight, Enforcement and Violations	A violation of any of the provisions of this chapter or any rule or regulation promulgated pursuant to section 23-24.11-4 shall be punishable by a civil penalty not to exceed one thousand dollars (\$1,000). In the case of a second and any subsequent violation, the civil penalty shall not exceed five thousand dollars (\$5,000) for each violation. Administrative fee covers only evaluation of proposed plan and not costs related to enforcement and oversight.	Penalties for violations are not specified. For FY 2014 and 2015, all fees collected are appropriated to the agency for implementation and enforcement of the section.	Penalties for violations not specified. Administrative fees cover review of plans only and not enforcement activities.

Paint Stewardship Law Summaries

	Rhode Island	Minnesota	Vermont
Report to Legislature	Biennial report starting in 2016 describing results and recommending modifications	A report on implementation is required as part of another legislated required report.	ANR to report to House and Senate Natural Resources, House Ways and Means, and Senate Finance committees on the proposed stewardship assessment by January 15, 2014. Report to include: <ul style="list-style-type: none"> •Number of producers or stewardship organizations submitting plans •Proposed assessment fees in all plans •Recommendation from the Secretary as to whether proposed assessment is adequate •Secretary's recommendation as to whether and at how much to set a statutory maximum assessment fee
Outreach and Education	Producers or representative organization to provide retailers with educational materials regarding paint stewardship assessment and program to be distributed to consumers.	Producers must provide consumers with educational material about the stewardship assessment and the stewardship program.	Producers or stewardship organization to provide consumers with educational materials describing collection opportunities and promoting waste prevention, reuse and recycling. Consumers to be made aware that funds for program were added to the purchase price of paint sold.
Convenience Standards	Proposed stewardship plan must provide for collection rates and convenience greater than that available prior to the stewardship program.	Stewardship program must produce collection program that is convenient and adequate to meet needs of urban and rural areas of the state. Plans must include mechanism for monitoring adequacy.	At least 90% of residents to have a permanent collection site within a 15-mile radius; one additional site for each 10,000 residents of a municipality

Paint Stewardship Law Summaries

	Rhode Island	Minnesota	Vermont
Performance Goals	Stewardship plan submitted to department must include targeted annual collection rate. Methodology for setting this rate is not specified in the legislation.	Stewardship plans must include 5-year performance goals for collection, reuse and recycling over the first 5 years. Must include specific goal for each year. Stewardship plan must state the methodology used to determine these goals.	Program plans submitted to the department must establish goals to reduce the generation of postconsumer paint and for end of life management of postconsumer paint. Based on current HHW program information. May be revised based on information collected for annual report.
Collector Compensation	None	None	None
Anti-trust Language	Each producer and the representative organization shall be immune from liability for any claim of a violation of antitrust law or unfair trade practice if such conduct is a violation of antitrust law, to the extent such producer or representative organization is exercising authority pursuant to the provisions of this section.	A producer or stewardship organization that organizes collection, transport and processing of architectural paint under this section is immune from liability under state laws relating to antitrust, restraint of trade, unfair trade practices, and other regulation of trade or commerce only to the extent that the conduct is necessary to plan and implement the producer's or organization's chosen organized collection or recycling system.	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. Does not apply to agreements: <ul style="list-style-type: none"> • Establishing or affecting the price of paint (except for the assessment fee) • Setting or limiting output or production of paint • Setting or limiting the volume of paint sold in a geographic area • Restricting geographic area where paint is sold • Restricting customers to whom paint will be sold or the volume of paint that will be sold
Data Disclosure	Not specified.	All draft and approved stewardship plans to be placed on the agency's website for at least 30 days and made available at the agency's headquarters for public review and comment.	Data reported to the Secretary by a producer or stewardship organization is considered a trade secret exempt from public inspection and copying. Secretary may use or distribute in aggregate form that does not identify producers, distributors or retailers. Secretary may require producer or stewardship organization to provide a report that does not contain trade secret information.

Paint Stewardship Law Summaries

	Rhode Island	Minnesota	Vermont
Regulatory and Implementation Issues*		The Minnesota Pollution Control Agency, counties, and PaintCare negotiated for over a year attempting to implement the state's 2013 stewardship law. The protracted contract negotiations were partially due to inequitable insurance and indemnification terms, included by PaintCare, that unfairly benefit PaintCare at the expense of counties.	

Paint Stewardship Law Summaries

	Maine	Washington D.C. *	Colorado *
Introduced	April-2013	July-2014	January-2014
Passed	June-2013	December-2014	June-2014
Implementation Process	Producers, group of producers, or stewardship organization to submit paint stewardship plan to the Department by April 1, 2015. Department to make a determination within 120 days, and make the plan available for public review for 30 days. Implementation to begin. Program begins July 1, 2015 or 3 months after the department approves a plan.	Paint producers or a representative organization will submit a plan by April 1, 2016. The Mayor will review the plan and make a determination within 120 days of receipt of the plan. The paint producer or representative organization must implement the plan within 3 months of the Mayor's approval.	Producers or stewardship organizations will submit a plan for approval by January 1, 2015. The Executive Director of the Department of Public Health and Environment will approve or reject the plan within 90 days of receipt.
Link to language	Legislative Document 1308	D.C. Act 20-501	Senate Bill 14-029
Product Scope	Interior and exterior architectural coatings sold in containers of 5 gallons or less. Does not include industrial, original equipment or specialty coatings.	Interior and exterior architectural coatings sold in containers of 5 gallons or less; does not include industrial, original equipment, or specialty coatings.	Interior and exterior architectural paint sold in containers of 5 gallons or less; does not include industrial, original equipment or specialty coatings.
Program Plan	<p>Producers or stewardship organizations plans must include:</p> <ul style="list-style-type: none"> •Description of how the program will collect, transport, recycle, and process post-consumer paint to meet goals •Contact information for persons responsible for program and lists of brands and producers covered •Performance goals as practical; may be revised by representative organization annually •List of potential processors to manage post-consumer paint, list of collection sites, and list of all processors for final disposition •Method to determine number and geographic distribution of collection sites •Coordination with existing solid waste collection programs and events •Time frame for achieving geographic coverage goals •Anticipated budget and funding mechanism, including method for calculating suggested paint stewardship assessment •Description of management, labeling and secondary containment at collection sites •Description of consolidation facility operations to meet UW rules •Environmental monitoring plan, closure plan, financial assurance, and liability insurance for consolidation facilities transferring paint from original containers •Independent audit of any proposed assessment 	<p>The producer paint stewardship plan shall include:</p> <ul style="list-style-type: none"> •Methods to decrease District involvement in the management of postconsumer paint including agreements for the collection, transportation, reuse, recycling, and disposal of paint •Provide collection opportunities equal or better than current and work with existing HHW infrastructure •Ensure the program coordinates with local nonprofit material reuse organizations without charge to the nonprofits •Identify participating producers and list of brands •Describe the funding mechanism including a stewardship assessment •Describe how paint will be managed in the most environmentally and economically sound manner 	<p>A producer or stewardship organization must submit a plan to the executive director of the department of public health and environment for approval. The plan must include:</p> <ul style="list-style-type: none"> •Description of collection, transport, reuse, recycle, and process methods including energy recovery and disposal, and standards to ensure using environmentally sound management practices •List of participating brands •Description of convenient collection sites and methods including reaching geographically isolated populations •Description of methods to fairly compensate service providers for collecting paint, reuse or processing of paint, and transporting, recycling, and disposing of paint •List of participating paint collection sites •Description of how plan will reduce postconsumer paint generation, promote paint reuse, and use best practices •Identify specific persons responsible for program compliance and communication with the department •Demonstrate sufficient funding for the plan and a proposed budget
Funding Mechanism	Paint stewardship assessment for all architectural paint sold in the state. To be added to the cost of paint sold to retailers and distributors and passed along to consumers. Proposed by producers/stewardship organizations and approved by department.	A paint stewardship assessment shall be approved by the Mayor as part of the paint stewardship program plan. The assessment shall be sufficient to cover, but not exceed, cost of running stewardship program. Any surplus funds must be put back into the program to reduce the cost of the program, including the assessment amount.	Paint producers shall charge retailers and distributors an assessment for each container of the producer's paint. The producer shall then remit the collected assessments to the paint stewardship program. Paint retailers and distributors shall add the assessment to the purchase price of paint. The paint stewardship program shall not impose fees on customers for the collection of post-consumer paint.

Paint Stewardship Law Summaries

	Maine	Washington D.C. *	Colorado *
Government Oversight	Maine Department of Environmental Protection	District Department of the Environment	Department of Public Health and Environment
Reporting Requirements	<p>Annual report to the department must include:</p> <ul style="list-style-type: none"> •Description of methods used to collect, transport, reduce, reuse, and process post-consumer paint in the state •Volume of post-consumer paint collected in the state •Volume and type of post-consumer paint collected, broken down by method of disposition •Total cost of implementing the program, as determined by independent financial audit •Samples of educational materials 	<p>Annual report submitted to the Mayor must include:</p> <ul style="list-style-type: none"> •Description of methods used to collect, transport, reuse and process leftover paint •Volume of paint collected, type of paint collected, and the volume by method of disposition •Total cost of implementing the program, determined by an independent financial audit funded by the paint stewardship assessment •Samples of consumer educational information and information on how it is distributed •Other information required by the Mayor through rulemaking 	<p>Annually, the producer or stewardship organization shall submit a report that includes:</p> <ul style="list-style-type: none"> •Description of methods used to reduce, reuse, collect, transport, recycle and process leftover paint •Volume and type of paint collected in gallons •Volume of paint collected by collection site •Volume of paint collected by method of disposition including reuse, recycling, energy recovery and disposal •Total volume of paint sold in CO in the previous year •Samples and an evaluation of consumer educational material distributed •Name, location and hours of each collection sites •Independent financial audit of stewardship program •Any proposed changes to the plan
Audit Requirements	The commissioner may require a person submitting a stewardship plan for approval to provide an independent financial audit demonstrating the appropriateness of the stewardship assessment. Annual reports beginning in 2016 must include an independent financial audit.	The total cost of the program is determined by an independent financial audit annually.	A third party's report auditing the program must be included in the producer's or stewardship organization's annual report
Administrative Fees	Department to charge a "reasonable fee" for the review of a stewardship plan. Department may establish a reasonable annual fee for annual report review, oversight and enforcement. Annual fee not to exceed 1% of total program costs.	The Mayor will impose an annual fee to cover the costs of the agency reviewing a paint stewardship program plan, conducting inspections, and enforcing the act's provisions.	A producer or stewardship organization must pay a paint stewardship program plan fee, revised plan fee, or annual report fee in an amount that the Commission has established.
Oversight, Enforcement and Violations	Department to enforce the program and may adopt rules as necessary. Department may use the annual fee to cover oversight and enforcement costs.	The Mayor may impose civil penalties for violations of the provisions of the act or any rules issued under the authority of this act. This includes if a producer or representative organization has to modify a non-compliant plan and after modifications, the producer or representative organization does not adhere to the modified plan.	A producer or stewardship organization is liable for an administrative penalty assessment not to exceed \$1000 per day for the first violation and \$5000 per day for a second or subsequent violation.

Paint Stewardship Law Summaries

	Maine	Washington D.C. *	Colorado *
Report to Legislature	None	None	The Executive Director of the Department of Public Health and Environment shall submit a report annually to the Health and Human Services Committee of the Senate and the Public Health Care and Human Services Committee of the House of Representatives, or the successor committees
Outreach and Education	Education materials provided to consumers and retailers to include: <ul style="list-style-type: none"> •Information regarding available management options for end-of-life paint •Promoting waste prevention, reuse and recycling •Notification that a charge for the operation of a paint stewardship program is included in the price of paint 	The producer or representative organization shall provide consumers with educational materials regarding the paint stewardship assessment and paint stewardship program, including information regarding available end-of-life management options for paint offered through the program and information notifying consumers that a charge for the operation of the program is included in the purchase price of all paint sold.	The paint stewardship program plan must include an education and outreach program that targets consumers, painting contractors, and paint retailers; reach all architectural paint markets serviced by participating producers; and include a methodology for evaluating its effectiveness annually.
Convenience Standards	Number and distribution of collection sites to be determined using GIS modeling. At least 90% of residents must have a collection site within a 15-mile radius. At least one additional collection site for each 30,000 residents of a population center. Program plans must include strategies to reach the state residents that do not have a collection site within a 15-mile radius.	Provide for convenient and available collection of postconsumer paint that, at a minimum, provides for collection rates and convenience equal to or greater than the collection programs available to consumers before the paint stewardship program and addresses coordination of the paint stewardship program with existing household hazardous waste collection infrastructure	The plan will include collection practices that: <ul style="list-style-type: none"> •Provide convenient collection sites throughout the state •Ensure adequate collection coverage using demographic and geographic information •Provide sufficient collection sites so that 90% of Colorado residents have a permanent site within a 15 mile radius of their home <ul style="list-style-type: none"> •Provide collection options for residents who will not have a permanent site within 15 miles

Paint Stewardship Law Summaries

	Maine	Washington D.C. *	Colorado *
Performance Goals	Producers or stewardship organizations to set performance goals "as may be practical". Program plans submitted to the department must address the following goals: <ul style="list-style-type: none"> •Reduction in generation of unwanted paint and promotion of reuse and recycling •Provision of convenient and available statewide collection •Management of paint using environmentally sound management practices •Management of paint containers collected under the program •Negotiation of agreements to collect, transport, and manage end-of-life paint using environmentally sound management practices •Provision of education and outreach efforts 	None	The plan must include methodology for evaluating the effectiveness of the education and outreach program on an annual basis including methods to determine the number of plan participants who are aware of ways to reduce the generation of postconsumer paint and opportunities available for the reuse and recycling of postconsumer paint.
Collector Compensation	None	None	The plan will describe how the paint stewardship program will incorporate and fairly compensate service providers for a permanent collection site, collection events, curbside services; the costs for collecting postconsumer paint and paint containers; the reuse or processing of postconsumer paint at a permanent collection site; and the transportation, recycling, and proper disposal of postconsumer paint.
Anti-trust Language	A producer or a representative organization that organizes the collection, transportation and processing of post consumer paint, in accordance with a paint stewardship program, is immune from liability for any claim of a violation of antitrust, restraint of trade or unfair trade practice, including claims pursuant to Title 10, chapter 201, arising from conduct undertaken in accordance with the paint stewardship program.	A producer or representative organization may negotiate, enter into agreements with, share the burdens of their operation with, and conduct business with each other in accordance with this act in ways that may affect competition. No producer or representative organization shall be prosecuted, held liable for actions conducted in accordance with this act.	If a producer or stewardship organization engages in an activity performed solely in furtherance of implementing the paint stewardship program and in compliance with the provisions of the act, the activity is not a violation of the antitrust, restraint of trade, and unfair trade practices provisions of the "Unfair Practices Act."
Data Disclosure	All reports submitted to the department must be made available to the public on the department's publicly accessible website. Financial, production or sales data reported to the department by a producer, retailer or representative organization are not a public record subject to disclosure under Title 1, chapter 13. The commissioner may release a summary form of such data that does not disclose financial, production or sales data of the producer, retailer or representative organization.	Financial, production, and sales data reported to the Mayor by a producer or representative organization shall not be subject to disclosure.	Not discussed in legislation

Paint Stewardship Law Summaries

	Maine	Washington D.C. *	Colorado *
Regulatory and Implementation Issues*			