

**Enrolled**  
**House Bill 3037**

Sponsored by COMMITTEE ON SUSTAINABILITY AND ECONOMIC DEVELOPMENT

CHAPTER .....

AN ACT

Relating to paint stewardship; appropriating money; and declaring an emergency.

The Legislative Assembly finds that an architectural paint stewardship pilot program would allow paint manufacturers to:

- (1) Establish an environmentally sound and cost-effective architectural paint stewardship program;
- (2) Undertake responsibility for the development and implementation of strategies to reduce the generation of post-consumer architectural paint;
- (3) Promote the reuse of post-consumer architectural paint; and
- (4) Collect, transport and process post-consumer architectural paint for end-of-product-life management.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Findings.** The Legislative Assembly finds that it is in the best interest of this state for architectural paint manufacturers to finance and manage an environmentally sound, cost-effective architectural paint stewardship pilot program, undertaking responsibility for the development and implementation of strategies to reduce the generation of post-consumer architectural paint, promote the reuse of post-consumer architectural paint and collect, transport and process post-consumer architectural paint for end-of-product-life management, including reuse, recycling, energy recovery and disposal.

**SECTION 2. Definitions.** As used in sections 1 to 10 of this 2009 Act:

- (1)(a) "Architectural paint" means interior and exterior architectural coatings sold in containers of five gallons or less.
- (b) "Architectural paint" does not mean industrial, original equipment or specialty coatings.
- (2) "Architectural paint stewardship assessment" means the amount added to the purchase price of architectural paint sold in this state necessary to cover the cost of collecting, transporting and processing the post-consumer architectural paint managed through a statewide architectural paint stewardship pilot program.
- (3) "Distributor" means a company that has a contractual relationship with one or more producers to market and sell architectural paint to retailers in this state.
- (4) "Energy recovery" means recovery in which all or a part of the solid waste materials of architectural paint are processed to use the heat content or other forms of energy from the solid waste materials.
- (5) "Post-consumer architectural paint" means architectural paint not used and no longer wanted by its purchaser.

(6) "Producer" means a person that manufactures architectural paint that is sold or offered for sale in this state.

(7)(a) "Recycling" means any process by which discarded products, components and by-products are transformed into new usable or marketable materials in a manner in which the products may lose their original composition.

(b) "Recycling" does not include energy recovery or energy generation by means of combusting discarded products, components and by-products with or without other waste products from post-consumer architectural paint.

(8) "Retailer" means any person that sells or offers for sale architectural paint at retail in this state.

(9) "Reuse" means the return of a product into the economic stream for use in the same kind of application intended for the use of the product, without a change in the product's original composition.

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

(11) "Sound management practices" means policies to be implemented by a producer or a stewardship organization to ensure compliance with all applicable laws and that address:

(a) Adequate record keeping;

(b) The tracking and documentation of the use, reuse or disposal of post-consumer architectural paint within this state and outside this state; and

(c) Adequate environmental liability coverage for professional services and for the operations of contractors working for producers or a stewardship organization.

(12) "Stewardship organization" means a corporation, nonprofit organization or other legal entity created by a producer or group of producers to implement the architectural paint stewardship pilot program described in sections 1 to 10 of this 2009 Act.

**SECTION 3. Participation in architectural paint stewardship pilot program.** (1) A producer or retailer may not sell or offer for sale architectural paint to any person in this state unless the producer is participating in a statewide architectural paint stewardship pilot program organized by a stewardship organization. A retailer is in compliance with this section if, on the date the architectural paint was ordered from the producer or its agent, the website maintained by the Department of Environmental Quality lists the producer, along with the producer's product brand, as participating in an architectural paint stewardship pilot program.

(2) At the time of sale to a consumer, a producer or retailer selling or offering for sale architectural paint must provide the consumer with information on available end-of-product-life management options offered through an architectural paint stewardship pilot program.

**SECTION 4. Architectural paint stewardship pilot program.** (1) No later than March 1, 2010, a stewardship organization must submit a plan for a statewide architectural paint stewardship pilot program to the Director of the Department of Environmental Quality for approval.

(2) The plan must:

(a) Provide for convenient and available statewide collection of post-consumer architectural paint in urban and rural areas of this state;

(b) Identify each producer participating in the program and the brands of architectural paint sold by each producer; and

(c) Include a funding mechanism whereby each architectural paint producer remits to the stewardship organization payment of an architectural paint stewardship assessment for each container of architectural paint the producer sells in this state. The architectural paint stewardship assessment must be added to the cost of all architectural paint sold to Oregon retailers and distributors, and each Oregon retailer or distributor shall add the assessment

to the purchase price of all architectural paint sold in this state. The architectural paint stewardship assessment may not be described as an Oregon recycling fee at the point of retail, and a fee may not be charged to the consumer at the point of collection of post-consumer architectural paint. To ensure that the funding mechanism is equitable and sustainable, a uniform architectural paint stewardship assessment must be established for all architectural paint sold in this state. The architectural paint stewardship assessment must be approved by the director as part of the plan and must be sufficient to recover, but not exceed, the costs of the architectural paint stewardship pilot program.

(3) Beginning no later than July 1, 2010, or two months after the plan is approved under subsection (1) of this section, whichever occurs first, the stewardship organization must:

- (a) Implement an architectural paint stewardship pilot program described in the plan;
- (b) Provide for the development and implementation of strategies to reduce the generation of post-consumer architectural paint; and
- (c) Promote the reuse of post-consumer architectural paint and undertake the responsibility of negotiating and executing contracts to collect, transport, recycle and process post-consumer architectural paint for end-of-product-life management that includes recycling, energy recovery and disposal using sound management practices.

(4) A stewardship organization shall promote the architectural paint stewardship pilot program and provide consumers with educational materials describing collection opportunities for post-consumer architectural paint and information promoting waste prevention, reuse and recycling. The educational materials must also make consumers aware that funding for the operation of the architectural paint stewardship pilot program has been added to the purchase price of all architectural paint sold in this state.

**SECTION 5. Conduct authorized.** (1) It is the intent of this section that a stewardship organization operating an architectural paint stewardship pilot program pursuant to sections 1 to 10 of this 2009 Act, approved by the Department of Environmental Quality and subject to the regulatory supervision of the department, is granted immunity from federal and state antitrust laws for the limited purpose of establishing and operating an architectural paint stewardship pilot program. The activities of the stewardship organization that comply with the provisions of this section may not be considered to be in restraint of trade, a conspiracy or combination or any other unlawful activity in violation of any provisions of ORS 646.705 to 646.826 or federal antitrust laws.

(2) The department shall actively supervise the conduct of the stewardship organization, including but not limited to conduct related to payments made by architectural paint producers to the stewardship organization for the architectural paint stewardship assessment specified in section 4 of this 2009 Act. The department may require the stewardship organization to take whatever action the department considers necessary to:

- (a) Ensure that the stewardship organization is engaging in conduct authorized under this section;
- (b) Ensure that the policies of this state are being fulfilled by an architectural paint stewardship pilot program; and
- (c) Enjoin conduct that is not authorized by the department or conduct that the department finds does not advance the interests of this state in carrying out the architectural paint stewardship pilot program.

(3) The Director of the Department of Environmental Quality may designate employees of the department to carry out the responsibility of actively supervising the conduct of the stewardship organization.

(4) The Environmental Quality Commission may adopt rules to carry out the purposes of this section.

**SECTION 6. Reports.** No later than September 1, 2011, and by September 1 of each subsequent year, a stewardship organization must submit a report to the Director of the Department of Environmental Quality describing the architectural paint stewardship pilot

program approved by the director under section 4 of this 2009 Act. At a minimum, the report must contain:

(1) A description of the methods used to collect, transport, recycle and process post-consumer architectural paint in this state;

(2) The volume and type of post-consumer architectural paint collected in all regions of this state;

(3) The volume of post-consumer architectural paint collected in this state by method of disposition, including reuse, recycling, energy recovery and disposal;

(4) An independent financial audit of the program;

(5) A description of program costs;

(6) An evaluation of the operation of the program's funding mechanism;

(7) Samples of educational materials provided to consumers of architectural paint, an evaluation of the methods used to disseminate those materials and an assessment of the effectiveness of the education and outreach, including levels of waste prevention and reuse; and

(8) An analysis of the environmental costs and benefits of collecting and recycling latex paint.

**SECTION 7. Data disclosure.** The Department of Environmental Quality may not disclose data reported by a stewardship organization under section 6 of this 2009 Act. The department may disclose information contained in the records obtained by the department under section 6 of this 2009 Act in aggregate form.

**SECTION 8. Orders and actions.** (1) In accordance with the applicable provisions of ORS chapter 183 relating to contested case proceedings, the Department of Environmental Quality may issue an order requiring compliance with the provisions of sections 1 to 10 of this 2009 Act.

(2) The department may bring an action against any producer or stewardship organization in violation of the provisions of sections 1 to 10 of this 2009 Act.

**SECTION 9. Administrative fees.** (1) The Department of Environmental Quality shall charge the following fees to be paid by a stewardship organization for administering sections 1 to 10 of this 2009 Act:

(a) \$10,000 when the plan specified in section 4 of this 2009 Act is submitted to the department; and

(b) \$10,000 each year thereafter for administrative costs related to the architectural paint stewardship pilot program.

(2) The department may establish a schedule of fees in lieu of the fees specified in subsection (1) of this section that is based on an average of the results of the financial audits described in section 6 of this 2009 Act and that do not exceed 0.05 percent of the average architectural paint stewardship pilot program costs reported in the financial audits.

(3) Fees collected by the department under this section shall be deposited in the Product Stewardship Fund established under section 10 of this 2009 Act.

**SECTION 10. Product Stewardship Fund.** The Product Stewardship Fund is established, separate and distinct from the General Fund. Fees collected by the Department of Environmental Quality under section 9 of this 2009 Act shall be deposited in the State Treasury to the credit of the Product Stewardship Fund. Interest earned by the Product Stewardship Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of Environmental Quality and may be used only to pay the costs of implementing the provisions of sections 1 to 10 of this 2009 Act.

**SECTION 11. Report to Legislative Assembly.** No later than October 1, 2011, the Director of the Department of Environmental Quality shall submit a report to the Legislative Assembly describing the results of the architectural paint stewardship pilot program and recommending whether the program should be made permanent and any modifications necessary to improve its functioning and efficiency. The report must include an accounting

of the administrative fees paid by the producers to the Department of Environmental Quality under section 9 of this 2009 Act.

**SECTION 12. Section captions.** The section captions used in this 2009 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2009 Act.

**SECTION 13. Repeal.** Sections 1 to 10 of this 2009 Act are repealed on June 30, 2014.

**SECTION 14. Transfer.** Any moneys remaining in the Product Stewardship Fund on June 30, 2014, are transferred to the General Fund.

**SECTION 15. Effective date.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House June 24, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 27, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State