

ENGROSSED ORIGINAL

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A BILL
20-886

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To require a producer of paint sold in the District to establish and implement a paint stewardship program in the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this act may be cited as the “Paint Stewardship Act of 2014”.

Sec. 2. Definitions.

For the purposes of this section, the term:

(1) “Paint” means interior and exterior architectural coatings sold in containers of 5 gallons or less and does not mean industrial, original equipment, or specialty coatings.

(2) “Distributor” means a company that has a contractual relationship with one or more producers to market and sell paint to retailers in the District.

(3) “Environmentally sound management practices” means procedures for the collection, storage, transportation, reuse, recycling, and disposal of paint, to be implemented by the producer, representative organization, or their contracted partners to ensure compliance with applicable federal and District laws and regulations and to protect human health and the environment. These procedures shall address adequate record keeping, tracking, and documenting the fate of materials, and adequate environmental liability coverage for professional services and for the contractors working on behalf of the producer or representative organization.

(4) “Paint stewardship assessment” means the amount added to the purchase price

ENGROSSED ORIGINAL

24 of paint sold in the District necessary to cover the paint stewardship program’s cost of collecting,
25 transporting, and processing the postconsumer paint District-wide.

26 (5) “Postconsumer paint” means paint not used and no longer wanted by a
27 purchaser.

28 (6) “Producer” means a manufacturer of paint who sells, offers for sale, or
29 distributes that paint in the District under the producer’s own name or brand. The term
30 “producer” does not include a retailer that adds tint, colorant, or other additives to paint at the
31 retail location.

32 (7) “Recycling” means a process by which discarded products, components, and
33 by-products are transformed into new usable or marketable materials in a manner in which the
34 original products may lose their identity but does not include energy recovery or energy
35 generation by means of incineration or combustion of discarded products, components, and by-
36 products with or without other waste products.

37 (8) “Retailer” means a person or entity that offers paint for sale at retail in the
38 District.

39 (9) “Reuse” means the return of a product into the economic stream for use in the
40 same kind of application as originally intended, without a change in the product’s identity.

41 (10) “Representative organization” means a nonprofit organization created by
42 producers to implement a paint stewardship plan established in section 3.

43 (11) “Sell” or “sale” means any transfer of title for consideration including remote
44 sales conducted through sales outlets, catalogues, or electronic means.

ENGROSSED ORIGINAL

45 Sec. 3. Producer paint stewardship plan required.

46 (a) By April 1, 2016, a producer of paint sold at retail in the District, or a representative
47 organization in which the producer is a member, shall submit a plan for the establishment of a
48 paint stewardship program to the Mayor for approval. The plan shall:

49 (1) Minimize District involvement in the management of postconsumer paint by
50 reducing its generation, promoting its reuse and recycling, and implementing agreements to
51 collect, transport, reuse, recycle, and dispose of postconsumer paint using environmentally sound
52 management practices;

53 (2) Provide for convenient and available collection of postconsumer paint that, at
54 a minimum, provides for collection rates and convenience equal to or greater than the collection
55 programs available to consumers before the paint stewardship program and addresses
56 coordination of the paint stewardship program with existing household hazardous waste
57 collection infrastructure;

58 (3) ~~Ensure collected postconsumer paint is provided to local nonprofit building~~
59 ~~material reuse organizations without charge;~~Ensure the program addresses coordination with
60 local nonprofit building material reuse organizations without charge to the organizations.

61 (4) Identify each producer participating in the program and the brands of paint
62 sold in the District covered by the program;

63 (5) Describe sufficient funding for the paint stewardship program, including a
64 funding mechanism for securing and dispersing funds to cover administrative, operational, and
65 capital costs, including the assessment of charges on paint sold by producers in the District. The

ENGROSSED ORIGINAL

66 funding mechanism shall provide for a paint stewardship assessment for each container of paint
67 sold in the District by producers and the assessment shall be remitted to the representative
68 organization, if applicable; and

69 (6) Describe how postconsumer paint will be managed in the most
70 environmentally and economically sound manner, including following the sustainable solid
71 waste management hierarchy established in section 102 of the Sustainable Solid Waste
72 Management Amendment Act of 2014, effective September 23, 2014 (D.C. Act 20-423; 61 DCR
73 9971).

74 (b)(1) A paint stewardship assessment established in accordance with paragraph (2) of
75 this subsection shall be added to the cost of all paint sold to retailers and distributors in the
76 District. Retailers and distributors shall add the assessment to the purchase price of all paint sold
77 in the District.

78 (2) The paint stewardship assessment shall be approved by the Mayor as part of
79 the plan, and shall be sufficient to recover, but not exceed, the cost of the paint stewardship
80 program. The plan shall require that any surplus funds be put back into the program to reduce the
81 costs of the program, including the assessment amount.

82 (c) A producer or its representative organization shall implement its paint stewardship
83 program plan within 3 months of the plan's approval by the Mayor.

84 (d) Beginning September 1, 2016, a producer shall not sell or offer for sale paint to any
85 person in the District unless the producer of the paint or a representative organization of which
86 the producer is ~~a member~~ a member submitted a paint stewardship plan to the Mayor on or prior

ENGROSSED ORIGINAL

87 to April 1, 2016, that has not been disapproved, or is implementing an approved paint
88 stewardship program plan as required by this section.

89 (e) A producer or representative organization shall provide consumers in the District with
90 educational materials regarding the paint stewardship assessment and paint stewardship program,
91 including information regarding available end-of-life management options for paint offered
92 through the paint stewardship program and information notifying consumers that a charge for the
93 operation of the program is included in the purchase price of all paint sold in the District.

94 (f) On or before October 1, 2017, and annually thereafter, a producer or representative
95 organization shall submit a paint stewardship program report to the Mayor that includes:

96 (1) A description of the methods used to collect, transport, and reuse or process
97 postconsumer paint in the District;

98 (2) The total volume and type of postconsumer paint collected in the District and
99 the volume by method of disposition;

100 (3) The total cost of implementing the program, as determined by an independent
101 financial audit funded from the paint stewardship assessment;

102 (4) Samples of educational information provided to consumers of paint and a
103 description of how the information is distributed; and

104 (5) Other information as required by the ~~Mayor~~ Mayor through rulemaking.

105 Sec. 4. Retailer obligations.

106 (a) Beginning ~~September 1, 2016,~~ September 1, 2016, or within 2 months of the Mayor's
107 first website publication of the list required under section 5(d), whichever is later, a retailer shall

ENGROSSED ORIGINAL

108 not sell or offer for sale paint to a person in the District unless the producer or the paint brand
109 was listed on the website maintained by the Mayor under section 5(d) on the date the paint was
110 ordered from the paint producer or the producer's agent.

111 (b) A paint retailer may participate as paint collection points pursuant to a paint
112 stewardship program on a voluntary basis.

113 Sec. 5. Mayor's responsibilities.

114 (a) The Mayor shall review and determine whether to approve a paint stewardship
115 program plan submitted under section 2 within 120 days of its receipt. The Mayor shall make the
116 plan available for public review for at least 30 days before determining whether to approve the
117 plan.

118 (b) The Mayor may approve or deny the plan, ~~in whole or in part~~, and may make
119 approval of the plan contingent upon the removal, change, or inclusion of specific actions,
120 practices, or covered products.

121 (c) ~~Within 60 days of submission of a report under subsection 3(f), the Mayor may~~
122 ~~request modifications to the producer or representative organization's paint stewardship program~~
123 ~~plan and may withdraw approval of the plan upon a determination that it does not meet the~~
124 ~~requirements of this act or regulations promulgated pursuant to this act.~~ Within 60 days of
125 submission of a report under subsection 3(f), upon a determination by the Mayor that the
126 implementation of the approved plan fails to meet the requirements of the act or regulations
127 promulgated pursuant to this act, the Mayor may request modifications to the producer of
128 representative organization's paint stewardship program plan. The Mayor may approve or deny

ENGROSSED ORIGINAL

129 the proposed modifications to the plan as set forth in section 5(b). The Mayor may impose civil
130 penalties under section 7 upon a determination that the paint stewardship organization or
131 producer is not complying with the modified plan.

132 (d) Within 7 days of approving a paint stewardship program plan, the Mayor shall list the
133 producers and brands implementing or participating in the plan on the Mayor's website.

134 (e) The Mayor shall impose an initial fee to be submitted with a proposed paint
135 stewardship program plan under section 3(a) and an annual fee to be submitted thereafter in an
136 amount sufficient to cover the costs of an agency reviewing a paint stewardship program plan,
137 conducting inspections, and enforcing the provisions of this act. Permit fees collected pursuant to
138 this section shall not exceed the cost of implementing and enforcing this act.

139 Sec. 6. Immunity from liability; confidential information.

140 (a) Notwithstanding the provisions of Chapter 45 of Title 28, a producer or producers and
141 a representative organization may negotiate, enter into agreements with, share the burdens of
142 their operation with, and conduct business with each other in accordance with this act in ways
143 that may affect competition. No producer or representative organization shall be prosecuted, held
144 liable, or subject to penalties or damages under Chapter 45 of Title 28 for actions conducted in
145 accordance with this act.

146 (b) Financial, production, and sales data reported to the Mayor by a producer or
147 representative organization shall not be subject to disclosure under the Freedom of Information
148 Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), or any other
149 law or regulation; provided, that the Mayor may release a summary form of the data that does not

ENGROSSED ORIGINAL

150 disclose individual producer information.

151 Sec. 7. Rules; enforcement.

152 (a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure
153 Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue
154 rules to implement the provisions of this act.

155 (b) The Mayor may impose civil fines and penalties as sanctions for violations of the
156 provisions of this act or any rules issued under the authority of this act, pursuant to the
157 Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October
158 5, 1985 (D.C. Law 6- 42; D.C. Official Code § 2-1801.01 *et seq.*) (“Civil Infractions Act”).
159 Enforcement and adjudication of an infraction shall be pursuant to the Civil Infractions Act.

160 (c) In addition to the enforcement authority provided in subsection (b) of this section, the
161 Mayor may seek injunctive relief or other appropriate remedy in any court of competent
162 jurisdiction to enforce compliance with the provisions of this Act.

163 Sec. 8. Fiscal impact statement.

164 The Council adopts the fiscal impact statement in the committee report as the fiscal
165 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
166 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

167 Sec. 9. Effective date.

168 This act shall take effect following approval by the Mayor (or in the event of veto by the
169 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
170 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENGROSSED ORIGINAL

171 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
172 Columbia Register.