

JAN 21 2010

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# A BILL FOR AN ACT

RELATING TO ARCHITECTURAL PAINT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that it is in the best  
2 interest of the State for architectural paint manufacturers to  
3 finance and manage an environmentally sound, cost-effective  
4 architectural paint stewardship pilot program that undertakes  
5 responsibility for the development and implementation of  
6 strategies to reduce the generation of post-consumer  
7 architectural paint; promote the reuse of post-consumer  
8 architectural paint; and collect, transport, and process post-  
9 consumer architectural paint for end-of-product-life management,  
10 including reuse, recycling, energy recovery, and disposal.

11           SECTION 2. Chapter 342I, Hawaii Revised Statutes, is  
12 amended by adding a new part to be appropriately designated and  
13 to read as follows:

14           "PART       .   ARCHITECTURAL PAINT STEWARDSHIP PROGRAM

15           §342I-A Definitions. For the purposes of this part:

16           "Architectural paint" means interior and exterior  
17 architectural coatings sold in containers of five gallons or



1 less but does not include industrial coatings, specialty  
2 coatings, or the coatings on original equipment or materials  
3 used in construction.

4 "Director" means the director of environmental quality  
5 control.

6 "Distributor" means a company that has a contractual  
7 relationship with one of more producers to market and sell  
8 architectural paint to retailers in this State.

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

13 "Post-consumer architectural paint" means architectural  
14 paint not used and no longer wanted by its purchaser.

15 "Producer" means a person or entity that manufactures  
16 architectural paint that is sold or offered for sale in this  
17 State.

18 "Program" means the statewide architectural paint  
19 stewardship program established by this part.

20 "Recycling" means any process by which discarded products,  
21 components, and byproducts are transformed into new usable or  
22 marketable materials in a manner in which the products may lose



1 their original composition but does not include energy recovery  
2 or energy generation by means of combusting discarded products,  
3 components, or byproducts with or without other waste products  
4 from post-consumer architectural paint.

5 "Retailer" means any person who sells or offers for sale  
6 architectural paint in this State.

7 "Reuse" means the return of a product into the economic  
8 stream for use in the same kind of application intended at the  
9 time of the product's original manufacture without a change in  
10 the product's original composition.

11 "Sell" or "sale" means the transfer of title for  
12 consideration and includes remote sales conducted through sales  
13 outlets, catalogs, the Internet, or other electronic means.

14 **§342I-B Participation in architectural paint stewardship**  
15 **program.** (a) No producer, distributor, or retailer shall sell  
16 or offer for sale architectural paint to any person in this  
17 State unless the producer of the architectural paint is a  
18 current participant in a statewide architectural paint  
19 stewardship program organized by a stewardship organization.  
20 For the purposes of this part, a distributor or retailer is in  
21 compliance with this section if, on the date that the  
22 architectural paint was purchased or ordered from the producer



1 or its agent, the website maintained by the office of  
2 environmental quality control lists the producer and the  
3 producer's product brand as participating in an architectural  
4 paint stewardship program.

5 (b) At the time of sale to an end user, a seller,  
6 including a producer, distributor, or retailer shall provide the  
7 purchaser with information on available end-of-product-life  
8 management options offered through an architectural paint  
9 stewardship program.

10 **§342I-C Architectural paint stewardship assessment. (a)**

11 Pursuant to chapter 91, the director of environmental quality  
12 control shall establish a uniform, statewide architectural paint  
13 stewardship assessment that is sufficient to pay for the cost of  
14 collecting, transporting, and processing post-consumer  
15 architectural paint and other necessary operating expenses of an  
16 approved architectural paint stewardship program.

17 (b) The architectural paint stewardship assessment shall  
18 be added to the cost of each unit of architectural paint sold by  
19 a producer to a retailer, distributor, or end user in the State.

20 (c) Each producer shall collect the architectural paint  
21 stewardship assessment added to each unit of architectural paint  
22 sold in the State and shall remit the collected amount to the



1 architectural paint stewardship program with which the producer  
2 is affiliated pursuant to section 342I-D.

3       **§342I-D Architectural paint stewardship program;**  
4 **stewardship organization; establishment.** (a) No later than  
5 January 1, 2011, each producer who sells or offers for sale  
6 architectural paint in this State shall establish or join a  
7 stewardship organization that shall meet the criteria  
8 established by this section.

9       (b) A stewardship organization shall be a corporation,  
10 non-profit corporation, or other entity created by a producer or  
11 group of producers to implement the architectural paint  
12 stewardship program described in this part.

13       (c) No later than March 1, 2011, a stewardship  
14 organization shall submit a plan for a statewide architectural  
15 paint stewardship program to the director of environmental  
16 quality control for approval.

17       (d) Every plan submitted pursuant to subsection (c) shall:

18       (1) Provide for convenient and available statewide  
19 collection of post-consumer architectural paint in all  
20 areas of the State;



- 1           (2) Identify each producer participating in the program  
2           and the brands of architectural paint produced by each  
3           producer;
- 4           (3) Include a funding mechanism whereby each architectural  
5           paint producer remits to the stewardship organization  
6           payment of the architectural paint stewardship  
7           assessment established under section 342I-C for each  
8           container of architectural paint the producer produces  
9           for sale in this State; provided that the  
10          architectural paint stewardship assessment shall not  
11          be collected directly from the end user at the point  
12          of collection of post-consumer architectural paint;
- 13          (4) Provide for the development and implementation of  
14          strategies to reduce the generation of post-consumer  
15          architectural paint;
- 16          (5) Include strategies to promote the reuse of post-  
17          consumer architectural paint;
- 18          (6) Include plans for the negotiation and execution of  
19          contracts for the collection, transportation, and  
20          processing of post-consumer architectural paint that  
21          include recycling, energy recovery, and disposal using  
22          sound management practices;



1 (7) Provide for the promotion of the architectural paint  
2 stewardship program, including through the  
3 distribution of educational materials describing  
4 collection opportunities, waste prevention, reuse,  
5 recycling, and disposal. All educational materials  
6 distributed pursuant to this paragraph shall include a  
7 statement that funding for the operation of the  
8 architectural paint stewardship program comes from the  
9 architectural paint stewardship assessment established  
10 by section 342I-C and added to the price of  
11 architectural paint sold in the State; and

12 (8) Ensure that the architectural paint stewardship  
13 program shall be operated according to sound  
14 management practices, which shall include adequate  
15 recordkeeping and the tracking and documentation of  
16 the use, reuse, recycling, energy recovery, and  
17 disposal of architectural paint within the State.

18 (e) The director of environmental quality control shall  
19 approve each plan that meets the criteria established by  
20 subsection (d).

21 (f) Beginning on July 1, 2011 or sixty days after the plan  
22 is approved under subsection (e), the stewardship organization



1 shall implement the architectural paint stewardship program  
2 approved by the director under this section and shall begin its  
3 operations which shall include implementation of all required  
4 elements of the approved plan.

5 **§342I-E Stewardship organization not a restraint on trade.**

6 A stewardship organization operating pursuant to this part and  
7 subject to the supervision of the office of environmental  
8 quality control shall be immune from federal or state antitrust  
9 laws for the limited purpose of establishing and operating an  
10 architectural paint stewardship program. The activities of the  
11 stewardship organization that comply with this part shall not be  
12 deemed a conspiracy or combination in restraint of trade or an  
13 illegal monopoly, or an attempt to lessen competition or fix  
14 prices arbitrarily, or the creation of a combination or pool, or  
15 to accomplish any improper or illegal purpose. Any cooperation  
16 or agreement to establish or operate a stewardship organization  
17 under this part shall not be considered as illegal, in restraint  
18 of trade, or as part of a conspiracy or combination to  
19 accomplish an illegal purpose or act.

20 **§342I-F Oversight of stewardship organizations.** (a) The  
21 office of environmental quality control shall supervise the  
22 conduct of a stewardship organization, including but not limited





1 to conduct related to payments made by architectural paint  
2 producers to the stewardship organization for the architectural  
3 paint stewardship assessment.

4 (b) The office of environmental quality control may  
5 require a stewardship organization to take any action that the  
6 director deems necessary to:

7 (1) Ensure that a stewardship organization is operating in  
8 compliance with this part;

9 (2) Ensure that an architectural paint stewardship program  
10 is in compliance with this part; and

11 (3) Enjoin conduct that is not authorized by the office of  
12 environmental quality control or by law.

13 (c) Effective July 1, 2011, the office of environmental  
14 quality control shall publish on its website a list of producers  
15 currently in compliance with section 342I-D and the brand names  
16 of the architectural paint products produced by those producers  
17 for sale in this State.

18 (d) The director may designate employees of the office of  
19 environmental quality control to carry out the responsibilities  
20 of the director or of the office of environmental quality  
21 control pursuant to this part.



1 (e) The director shall adopt rules pursuant to chapter 91  
2 to carry out the purposes of this part.

3 §342I-G Reporting requirements. (a) No later than  
4 September 1, 2012, and by September 1 of each successive year, a  
5 stewardship organization shall submit a report to the director  
6 describing the annual operations of the stewardship  
7 organization. The report shall contain, at minimum:

8 (1) A description of the methods used to collect,  
9 transport, recycle, process, reuse, recover energy  
10 from, and dispose of post-consumer architectural  
11 paint;

12 (2) The types of architectural paint collected in the  
13 State under the post-consumer architectural paint  
14 stewardship program and the total volume of each type  
15 collected;

16 (3) The volume of post-consumer architectural paint  
17 collected in the State by method of disposition  
18 including reuse, recycling, energy recovery, and  
19 disposal;

20 (4) An independent financial audit of the architectural  
21 paint stewardship program including itemized



1 statements of program expenditures and costs and an  
2 evaluation of the funding mechanism;

3 (5) Samples of educational materials provided to consumers  
4 of architectural paint;

5 (6) An evaluation of the methods used to disseminate  
6 educational materials and an assessment of the  
7 effectiveness of educational materials, including  
8 measurable levels of waste prevention and reuse; and

9 (7) An analysis of the environmental costs and benefits of  
10 collecting and recycling latex paint.

11 (b) Data contained in the annual report of a stewardship  
12 organization submitted pursuant to this section shall not be  
13 subject to disclosure under chapter 92; provided that the  
14 department may disclose information contained in the reports in  
15 aggregate form.

16 **§342I-H Enforcement and penalties.** (a) In accordance  
17 with chapter 91, the office of environmental quality control may  
18 issue declaratory rulings, hold contested case hearings, and  
19 issue decisions and orders to enforce this part. An action may  
20 be initiated by the office of environmental quality control or  
21 upon petition by an interested party pursuant to section 91-8.



1 (b) The office of environmental quality control may issue  
2 penalties upon a finding of noncompliance with this part.  
3 Penalties may include, but shall not be limited to, fines  
4 established by the director pursuant to chapter 91 and orders to  
5 cease the sale of architectural paint within the State.

6 **§342I-I Product stewardship fund.** (a) There is  
7 established outside of the state treasury a special fund to be  
8 known as the product stewardship fund to be administered by the  
9 office of environmental quality control to implement the  
10 policies and goals of this part. The fund shall consist of fees  
11 paid by stewardship organizations pursuant to section 342I-J.  
12 Interest earned from the balance of the fund shall become a part  
13 of the fund. The office of environmental quality control shall  
14 adopt rules regarding the distribution of moneys from the fund,  
15 including for administrative and personnel costs associated with  
16 oversight of stewardship organizations.

17 (b) The office of environmental quality control shall  
18 require all stewardship organizations to contribute to the  
19 product stewardship fund in accordance with section 342I-J.

20 (c) The office of environmental quality control shall  
21 designate the method by which contributions to the product  
22 stewardship fund shall be collected.



1           §342I-J Fees. (a) The following fees shall be paid by  
2 stewardship organizations to the office of environmental quality  
3 control for deposit into the product stewardship fund:

4           (1) \$10,000 upon submission of a plan for approval  
5           pursuant to section 342I-D; provided that the fee  
6           shall be returned to the stewardship organization if  
7           the plan does not receive approval; and

8           (2) \$10,000 annually thereafter on a date to be determined  
9           by the office of environmental quality control.

10          (b) As an alternative to the fees specified in this  
11 section, the office of environmental quality control may  
12 establish a fee schedule that is based on an average of the  
13 results of the financial audits described in section 342I-G;  
14 provided that fees adopted pursuant to this subsection shall not  
15 exceed 0.05 per cent of the average architectural paint  
16 stewardship program costs reported in the financial audits.

17          (c) All fees collected under this section shall be  
18 deposited into the product stewardship fund established by  
19 section 342I-I."

20          SECTION 3. The office of environmental quality control  
21 shall submit a report to the legislature no later than sixty  
22 days before the commencement of the 2015 regular session



1 describing the results of the architectural paint stewardship  
 2 program, recommending whether the program should be made  
 3 permanent, and recommending any modifications necessary to  
 4 improve its functioning and efficiency. The report shall  
 5 include an accounting of fees collected and deposited into the  
 6 product stewardship fund.

7 SECTION 4. This Act shall take effect on July 1, 2010, and  
 8 shall be repealed on June 30, 2015.

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INTRODUCED BY:

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**Report Title:**

Architectural Paint Stewardship Program; Office of Environmental Quality Control

**Description:**

Establishes a pilot program to require producers of architectural paint sold in this State to establish or join a stewardship organization to implement an architectural paint stewardship program that provides for the collection, transportation, and processing of post-consumer architectural paint. Provides for oversight by the office of environmental quality control. Establishes the product stewardship fund to offset administrative costs.

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