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HOUSE BILL 135

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Karen E. Giannini

AN ACT

RELATING TO PAINT STEWARDSHIP; ENACTING THE SAFE PAINT STEWARDSHIP ACT; DIRECTING THE SECRETARY OF ENVIRONMENT TO CREATE AN ARCHITECTURAL PAINT STEWARDSHIP PILOT PROGRAM TO PROMOTE AND PROVIDE EDUCATION REGARDING ARCHITECTURAL PAINT WASTE PREVENTION, REUSE AND RECYCLING; CREATING THE SAFE PAINT STEWARDSHIP FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Safe Paint Stewardship Act".

Section 2. DEFINITIONS.--As used in the Safe Paint Stewardship Act:

A. "architectural paint" means interior and exterior architectural coatings sold in containers of five gallons or less and excludes industrial, original equipment or

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1 specialty coatings;

2 B. "department" means the department of  
3 environment;

4 C. "distributor" means a person that has a  
5 contractual relationship with one or more producers to market  
6 and sell architectural paint to retailers in the state;

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

11 E. "post-consumer architectural paint" means  
12 architectural paint not used and no longer wanted by its  
13 purchaser;

14 F. "producer" means a person that manufactures  
15 architectural paint, which is sold or offered for sale in the  
16 state;

17 G. "recycling" means a process by which discarded  
18 products, components and byproducts are transformed into new  
19 usable or marketable materials in a manner in which the  
20 products may lose their original composition; "recycling" does  
21 not include energy recovery or energy generation by means of  
22 combusting discarded products, components and byproducts with  
23 or without other waste products from post-consumer  
24 architectural paint;

25 H. "retailer" means a person that sells or offers

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1 for sale architectural paint at retail in the state;

2 I. "reuse" means the return of a product into the  
3 economic stream for use in the same kind of application  
4 intended for the use of the product, without a change in the  
5 product's original composition;

6 J. "secretary" means the secretary of environment;

7 K. "sell" or "sale" means a transfer of title for  
8 consideration, including remote sales conducted through sales  
9 outlets, catalogs or the internet or through any other similar  
10 electronic means;

11 L. "sound management practices" means policies that  
12 a producer or a stewardship organization implements to ensure  
13 compliance with applicable law and regulation; and

14 M. "stewardship organization" means a person  
15 created by a producer or group of producers to implement the  
16 architectural paint stewardship pilot program described in the  
17 Safe Paint Stewardship Act.

18 Section 3. ARCHITECTURAL PAINT STEWARDSHIP PILOT PROGRAM--  
19 PARTICIPATION.--

20 A. The secretary shall create a statewide  
21 architectural paint stewardship pilot program designed to  
22 promote and provide education regarding architectural paint  
23 waste prevention, reuse and recycling. The secretary shall  
24 appoint a stewardship organization to implement the pilot  
25 program and shall oversee the stewardship organization in:

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1 (1) tracking and documenting the use, reuse or  
2 disposal of post-consumer architectural paint within and  
3 outside the state;

4 (2) recordkeeping that meets the pilot program  
5 specifications pursuant to department regulations; and

6 (3) providing environmental liability coverage  
7 for professional services and for the operations of contractors  
8 working for producers or the stewardship organization that  
9 meets the specifications set forth in department regulations.

10 B. The department shall establish a uniform  
11 architectural paint stewardship assessment for all  
12 architectural paint sold in the state. The architectural paint  
13 stewardship assessment shall:

14 (1) be added to the cost of all architectural  
15 paint sold to New Mexico retailers and distributors;

16 (2) be added by each New Mexico retailer or  
17 distributor to the purchase price of all architectural paint  
18 sold in the state;

19 (3) be approved by the secretary of  
20 environment as part of the plan pursuant to Subsection C of  
21 this section;

22 (4) be sufficient to recover, but not exceed,  
23 the costs of the architectural paint stewardship pilot program;  
24 and

25 (5) not be a recycling fee at the point of

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1 retail.

2 C. No later than March 1, 2011, a stewardship  
3 organization shall submit a plan for a statewide architectural  
4 paint stewardship pilot program to the secretary of environment  
5 for approval. The plan shall:

6 (1) provide for convenient and available  
7 statewide collection of post-consumer architectural paint in  
8 urban and rural areas of the state;

9 (2) identify each producer participating in  
10 the program and the brands of architectural paint sold by each  
11 producer; and

12 (3) include a funding mechanism whereby each  
13 architectural paint producer remits to the stewardship  
14 organization payment of an architectural paint stewardship  
15 assessment for each container of architectural paint the  
16 producer sells in this state.

17 D. By July 1, 2011, or two months after the  
18 secretary approves the plan pursuant to Subsection A of this  
19 section, whichever occurs first, the stewardship organization  
20 shall:

21 (1) implement the architectural paint  
22 stewardship pilot program it described in its plan;

23 (2) provide for the development and  
24 implementation of strategies to reduce the generation of  
25 post-consumer architectural paint; and

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1 (3) promote the reuse of post-consumer  
2 architectural paint and undertake the responsibility of  
3 negotiating and executing contracts to collect, transport,  
4 recycle and process post-consumer architectural paint for  
5 end-of-product-life management that includes recycling, energy  
6 recovery and disposal using sound management practices.

7 E. In implementing the architectural paint  
8 stewardship pilot program, the stewardship organization shall:

9 (1) promote the architectural paint  
10 stewardship pilot program;

11 (2) provide consumers with educational  
12 materials describing collection opportunities for post-consumer  
13 architectural paint and information promoting waste prevention,  
14 reuse and recycling of architectural paint; and

15 (3) inform consumers that an assessment to be  
16 used for funding the operation of the architectural paint  
17 stewardship pilot program has been added to the purchase price  
18 of all architectural paint sold in the state.

19 Section 4. MANDATORY PRODUCER AND RETAILER PARTICIPATION--  
20 INFORMATION TO CONSUMER--BAN ON FEES TO CONSUMERS.--

21 A. A producer or retailer shall not sell or offer  
22 for sale architectural paint in the state unless the producer  
23 is participating in the architectural paint stewardship pilot  
24 program that the secretary has approved pursuant to Section 3  
25 of the Safe Paint Stewardship Act. A retailer is in compliance

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1 with this section if, on the date the retailer orders  
2 architectural paint from the producer or its agent, a web site  
3 that the department of environment maintains lists the  
4 producer, along with the producer's product brand, as  
5 participating in an architectural paint stewardship pilot  
6 program.

7 B. At the time of sale to a consumer, a producer or  
8 retailer selling or offering for sale architectural paint shall  
9 provide the consumer with information regarding available  
10 end-of-product-life management options offered through the  
11 architectural paint stewardship pilot program.

12 C. No fee or assessment shall be charged to the  
13 consumer at the point of collection of post-consumer  
14 architectural paint.

15 Section 5. DEPARTMENT OF ENVIRONMENT OVERSIGHT--  
16 RULEMAKING--PRODUCER PARTICIPATION LIST.--

17 A. The department shall oversee the implementation  
18 of the architectural paint stewardship pilot program that the  
19 secretary has approved pursuant to Section 3 of the Safe Paint  
20 Stewardship Act consistently with the provisions of the Safe  
21 Paint Stewardship Act and the rules that the secretary  
22 promulgates pursuant to that act.

23 B. The secretary shall promulgate rules to  
24 implement the pilot program and to oversee payments that the  
25 producers make to the stewardship organization for the

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1 architectural paint stewardship assessment specified in  
2 Subsection B of Section 3 of the Safe Paint Stewardship Act.

3 C. The department shall create on its web site a  
4 list of producers and the producers' product brands and  
5 indicate whether a producer is participating in the  
6 architectural paint stewardship pilot program.

7 Section 6. REPORTING TO THE SECRETARY OF ENVIRONMENT--  
8 REPORTING TO THE LEGISLATURE.--

9 A. No later than September 1, 2012, and by  
10 September 1 of each subsequent year, the stewardship  
11 organization implementing the architectural paint stewardship  
12 pilot program that the secretary has approved pursuant to  
13 Section 3 of the Safe Paint Stewardship Act shall submit a  
14 report to the secretary describing the pilot program. At a  
15 minimum, the report shall include:

16 (1) a description of the methods used to  
17 collect, transport, recycle and process post-consumer  
18 architectural paint in the state;

19 (2) the volume and type of post-consumer  
20 architectural paint collected in all regions of the state;

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

24 (4) an independent financial audit of the  
25 program;

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- 1 (5) a description of program costs;  
2 (6) an evaluation of the operation of the  
3 assessment;  
4 (7) samples of educational materials provided  
5 to consumers of architectural paint, an evaluation of the  
6 methods used to disseminate those materials and an assessment  
7 of the effectiveness of the education and outreach, including  
8 levels of waste prevention and reuse; and  
9 (8) an analysis of the environmental costs and  
10 benefits of collecting and recycling paint.

11 B. No later than October 1, 2012, the secretary  
12 shall submit a report to the appropriate committees of the  
13 legislature and provide the results of the architectural paint  
14 stewardship pilot program. The secretary shall recommend  
15 whether the pilot program should be made permanent and any  
16 modifications necessary to improve its functioning and  
17 efficiency. The report must include an accounting of the  
18 administrative fees paid by the producers to the department  
19 pursuant to Section 7 of the Safe Paint Stewardship Act.

20 Section 7. ADMINISTRATIVE FEES--COLLECTION BY DEPARTMENT  
21 OF ENVIRONMENT.--

22 A. The department may charge, for administering the  
23 architectural paint stewardship pilot program, the stewardship  
24 organization that implements the pilot program the following  
25 fees:

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1 (1) ten thousand dollars (\$10,000) when the  
2 plan specified in Section 3 of the Safe Paint Stewardship Act  
3 is submitted to the department; and

4 (2) ten thousand dollars (\$10,000) each year  
5 thereafter.

6 B. The department may establish a schedule of fees  
7 in lieu of the fees specified in Subsection A of this section  
8 that is based on an average of the results of the financial  
9 audits made pursuant to Section 6 of the Safe Paint Stewardship  
10 Act that do not exceed five hundredths of one percent of the  
11 average architectural paint stewardship pilot program costs  
12 reported in the financial audits.

13 C. Fees collected by the department under this  
14 section shall be deposited in the safe paint stewardship fund  
15 established pursuant to Section 8 of the Safe Paint Stewardship  
16 Act.

17 Section 8. SAFE PAINT STEWARDSHIP FUND--CREATION--  
18 DISTRIBUTION.--

19 A. There is created in the state treasury a fund to  
20 be known as the "safe paint stewardship fund". The department  
21 shall administer the fund and make grants from the fund in  
22 accordance with the Safe Paint Stewardship Act. Earnings on  
23 balances in the fund shall be credited to the fund. Money  
24 remaining in the fund at the end of any fiscal year shall not  
25 revert to the general fund but shall accrue to the credit of

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1 the safe paint stewardship fund. Money in the fund is  
2 appropriated to the department for the implementation of the  
3 provisions of the Safe Paint Stewardship Act.

4 B. Any money remaining in the safe paint  
5 stewardship fund on June 30, 2014, shall be transferred to the  
6 general fund.

7 Section 9. ENFORCEMENT.--The attorney general shall  
8 enforce the provisions of the Safe Paint Stewardship Act.

9 Section 10. DELAYED REPEAL.--The provisions of the Safe  
10 Paint Stewardship Act are repealed on June 30, 2014.