

Amendment to HB 1504-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2  
3 1 New Subdivision; Architectural Paint Recycling Program. Amend RSA 149-M by inserting  
4 after section 63 the following new subdivision:

5 Architectural Paint Recycling Program

6 149-M:64 Purpose.

7 I. The general court recognizes that it is unusual for any painting project to use all of the  
8 paints purchased for the project, and that current disposal practices for the remaining paints are  
9 inefficient and can be costly. The general court further recognizes that the recycling cannot be done  
10 efficiently and economically, and in a way that allows a level playing field for producer competition,  
11 without the collaboration of all paint producers. The general court thus establishes a paint  
12 stewardship program to support and encourage the collection and recycling of latex paint and of oil-  
13 based paints and stains that can be exempt from regulation as hazardous waste if properly managed.

14 II. The goals of the paint stewardship program are:

15 (a) To reduce the amount of unwanted paint generated and promote the reuse and  
16 recycling of such paint.

17 (b) To establish collection points for post-consumer paints that are convenient and  
18 accessible to all areas of the state; to manage post-consumer paint collected at the collection points  
19 established under the program using environmentally-sound management practices.

20 (c) To manage post-consumer paint and paint containers using environmentally-sound  
21 management practices in an economically sound manner, while adhering to the waste management  
22 hierarchy of source reduction, reuse, recycling, energy recovery, and disposal; and to generate  
23 sufficient revenues to cover all costs of the paint stewardship program.

24 149-M:65 Definitions. In this chapter:

25 I. "Architectural paint" or "paint" means any interior or exterior architectural coating sold in  
26 containers of 5 gallons or less which is either latex-based paint, oil-based paint, or stain that, if  
27 properly managed, can be exempt from regulation as hazardous waste under RSA 147-A and has  
28 been exempted by rules adopted by the commissioner under RSA 147-A.

29 II. "Collection point" means a location that is under the direct supervision and control of a  
30 retailer, producer, or political subdivision at which there is a suitable container dedicated to  
31 collecting and consolidating post-consumer paint.

32 III. "Consumer" means a purchaser or user of architectural paint.

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1           IV. “Costs of the paint stewardship program” means the actual costs incurred by the  
2 stewardship organization to establish and maintain the program plus the actual costs of the  
3 department for program oversight and compliance assurance.

4           V. “Distributor” means a business that has a contractual relationship with one or more  
5 producers to market and sell architectural paint to retailers in the state.

6           VI. “Energy recovery” means recovery in which all or a part of solid waste materials is  
7 processed in order to use the heat content or other forms of energy of or from the materials.

8           VII. “Environmentally-sound management practices” means procedures for the collection,  
9 storage, transportation, reuse, recycling, and disposal of post-consumer paint to be implemented to  
10 ensure compliance with all applicable federal, state, and local laws, regulations, rules, and  
11 ordinances and protection of human health and the environment. Such procedures shall include  
12 adequate recordkeeping, tracking, and documentation of the final disposition of collected materials  
13 both within the state and beyond, as well as adequate environmental liability coverage for  
14 professional services and for the operations of the contractors working on behalf of the stewardship  
15 organization.

16           VIII. “Final disposition” means the point after which no further processing takes place and  
17 the paint has been transformed for reuse as a feedstock in producing new products or is disposed of,  
18 including for energy recovery, at permitted facilities.

19           IX. “Paint stewardship assessment” means the amount added to the purchase price of  
20 architectural paint sold in the state to cover the costs of the paint stewardship program.

21           X. “Paint stewardship program” or “program” means a program for management of post-  
22 consumer paint to be operated by a stewardship organization.

23           XI. “Post-consumer paint” means architectural paint that was purchased by or for a  
24 consumer that was not used and is no longer wanted by the consumer.

25           XII. “Producer” means a manufacturer of architectural paint that sells, offers for sale, or  
26 distributes such paint in the state under the producer’s own name or brand.

27           XIII. “Recycling rate” means the percentage of the total amount of post-consumer paint  
28 collected by a stewardship organization in a calendar year that is recycled within 12 months of being  
29 collected.

30           XIV. “Recycling” means any process by which discarded products, components, and  
31 byproducts are transformed into new, usable, or marketable materials in a manner in which the  
32 original products may lose their identity but does not include energy recovery or energy generation  
33 by means of combusting discarded products, components, and by products with or without other  
34 waste products, for purposes of this subdivision.

35           XV. “Representative organization” means a nonprofit organization created by producers to  
36 operate a paint stewardship program that is open to all producers on a nondiscriminatory basis.

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1           XVI. “Retailer” means a person that offers architectural paint for sale directly to consumers  
2 in the state, whether from a physical location or through catalogs or electronically via the Internet or  
3 similar conduits.

4           XVII. “Reuse” means the return of a product into the economic stream for use in the same  
5 kind of application as originally intended.

6           XVIII. “Stewardship organization” means a producer or representative organization that has  
7 submitted a paint stewardship program plan in accordance with RSA 149-M:66 and has received  
8 approval for the plan pursuant to RSA 149-M:67, II.

9           149-M:66 Proposals to Establish a Paint Stewardship Program.

10          I. Any producer or representative organization that wishes to become the stewardship  
11 organization shall, by January 1, 2025, submit a plan for the establishment of a paint stewardship  
12 program to the department for approval, together with a non-refundable application fee as specified  
13 in paragraph III and established in rules.

14          II. A retailer or political subdivision, may participate in being a collection site, but paint  
15 manufacturers shall participate in the paint stewardship program and fees associated within the  
16 state of New Hampshire to ensure the paint stewardship program remains viable for years to come.

17          III. The plan required by paragraph I shall include:

18           (a) A description of the applicant, including whether it is a producer or a representative  
19 organization, how it is managed and operated, how it is funded, and whether it is operating or has  
20 operated a paint stewardship program or similar product stewardship program in another  
21 jurisdiction and, if so, a description of that program.

22           (b) A description of how the applicant proposes to collect, transport, recycle, and process  
23 post-consumer paint covered by the program to meet the goals stated in RSA 149-M:64, II, including  
24 the number and location of proposed collection points, which shall be situated so as to ensure that at  
25 least 90 percent of state residents have a permanent collection point within a 25-mile radius of their  
26 residence.

27           (c) A description of how containers used to collect and consolidate post-consumer paint  
28 will be managed and protected against damage that could result in a spill, leak, or other discharge.

29           (d) The proposed initial amount of the paint stewardship assessment and the  
30 information on which the initial amount was determined, together with a description of the process  
31 by which the applicant will review and propose adjustments to the assessment, and the frequency of  
32 such review and proposed adjustments. A description of the financial assurance mechanism the  
33 applicant proposes to use as required by RSA 149-M:70.

34          IV. A non-refundable application fee shall be paid by an applicant for review of a paint  
35 stewardship plan the application fee structure shall be determined in rulemaking. The applicant  
36 shall pay such costs prior to the department issuing a decision under RSA 149-M:67.

37          149-M:67 Approval of Plan.

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1           I. The department shall review a plan submitted under RSA 149-M:66 as provided in RSA  
2 541-A:29. The department shall publish a notice on its web site that the plan is available for public  
3 review at least 30 days prior to making a determination of whether to approve the plan.

4           II. The department shall approve a plan and send written notification of such approval to  
5 the organization that submitted the plan upon determining that:

6               (a) The organization submitting the plan appears capable of implementing the plan;

7               (b) The proposed methods of collecting, transporting, and processing post-consumer  
8 paint appear adequate to meet the goals stated in RSA 149-M:64, II; and

9               (c) The funding mechanism proposed in the plan appears adequate to meet the  
10 requirements of RSA 149-M:68, I; and the proposed financial assurance mechanism meets applicable  
11 requirements.

12           III. If the department does not approve the plan, the department shall provide written  
13 notification to the organization that submitted the plan of the reason for the denial. Such denial  
14 shall not preclude the organization from submitting an amended plan.

15           149-M:68 Paint Stewardship Program Funding.

16           I. The stewardship organization shall administer the paint stewardship assessment for all  
17 architectural paint sold by participating producers in the state. The amount of the assessment shall  
18 be set so as to recover the costs of the paint stewardship program without exceeding such costs,  
19 based on a good faith estimate of those costs. If the funds generated by the assessment exceed the  
20 amount necessary to recover the costs of the program, the excess funds shall be used by the  
21 stewardship organization as stated in the approved plan to reduce future paint stewardship  
22 assessments and to improve services under the program. The department shall approve such  
23 changes in services before they are instituted.

24               (a) The original assessment shall not be more than: \$3.50 for cans above one gallon and  
25 no less than \$0.75 for quantities less than or equal to one pint. Otherwise, these fees, as set forth in  
26 the rulemaking process, shall be reviewed annually to ensure the fees continue to meet the cost of  
27 the program. However, nothing in this section shall be construed to require the product stewardship  
28 organization to implement the paint stewardship program if the amount of the approved assessment  
29 does not recover the costs of the paint stewardship program based on a good faith estimate of those  
30 costs.

31               (b) By July 1, 2025 the department shall establish the assessment by rule. Any change  
32 in the assessment shall be proposed by the department with the approval of the joint legislative  
33 committee on administrative rules and copies of the proposal shall be sent to the chairs of the house  
34 and senate ways and means committees at least 2 weeks before the public hearing.

35           II. All paint manufacturers shall add the paint stewardship assessment to the cost of all  
36 architectural paint sold for sale or other distribution in the state. Each producer/manufacturer shall

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1 remit the assessments collected to the stewardship organization. Collection of the paint stewardship  
2 assessment shall commence no later than July 1, 2025.

3 III. A retailer or distributor shall include the paint stewardship assessment in the  
4 consumer's purchase price of the architectural paint sold by that retailer or distributor. The  
5 organization managing the program shall provide sample language to be displayed in the paint  
6 department explaining the paint stewardship program.

7 IV. No additional charge of any type shall be made at the time of post-consumer paint  
8 collection by a retailer or distributor.

9 V. The department shall send an invoice to the stewardship organization in each quarter  
10 that accrued costs exceed \$100, with documentation of the costs being invoiced to the organization.  
11 The stewardship organization shall pay such costs within 30 days of the date of the invoice. In any  
12 quarter that the department's costs do not exceed \$100, the amounts shall continue to accrue and be  
13 invoiced when the total exceeds \$100. All funds received at the department as recovered costs shall  
14 be deposited to the hazardous waste cleanup fund established under RSA 147-B:3.

15 149-M:69 Operation of Paint Stewardship Program.

16 I. The stewardship organization shall implement the approved plan within 3 months of  
17 receiving approval under RSA 149-M:67, II.

18 II. Upon implementation of the plan, no producer shall sell or offer for sale architectural  
19 paint in the state unless the producer participates in the paint stewardship program. The  
20 stewardship organization shall notify the department within 30 days of which producers are  
21 participating in that organization's paint stewardship program.

22 III.(a) The stewardship organization shall provide consumers and retailers with educational  
23 materials regarding the paint stewardship assessment and paint stewardship program. Such  
24 materials shall include information regarding available end-of-life management options for  
25 architectural paint offered through the paint stewardship program; promote waste prevention, reuse  
26 and recycling; and notify consumers that the assessment to fund the paint stewardship program is  
27 included in the purchase price of architectural paint sold in the state and that state law prohibits  
28 consumers from being charged any fee at the point of collection of waste paint.

29 (b) The materials provided pursuant to subparagraph (a) may include the following:

30 (1) Signage that is prominently displayed and easily visible to consumers;

31 (2) Printed materials and templates of materials for reproduction by retailers to be  
32 provided to the consumer at the time of purchase or delivery;

33 (3) Advertising or other promotional materials that include references to the paint  
34 stewardship program; and

35 (4) A manual for the operator of a collection point to ensure the use of  
36 environmentally-sound management practices when handling architectural paints.

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1           IV. The stewardship organization shall notify the department in writing within 30 days of  
2 establishing any additional collection points, changing the location of a collection point, or  
3 terminating a collection point.

4           V. If the stewardship organization wishes to change the paint stewardship assessment, the  
5 stewardship organization shall submit a request to change the assessment to the department. The  
6 organization shall explain in detail the basis for the change and include audited financial reports to  
7 support the request. The department shall submit the request to the joint legislative committee on  
8 administrative rules by the process provided in RSA 149-M:68, I(b) if it determines that the change  
9 is necessary to cover the actual reasonable costs of the program.

10          VI. The stewardship organization that organizes the collection, transportation, and  
11 processing of post-consumer paint, in accordance with the paint stewardship program approved by  
12 the department under this subdivision, shall be exempt from RSA 356 with respect to any claims of a  
13 violation of antitrust arising from conduct undertaken in accordance with the paint stewardship  
14 program.

15          VII. Paint received at a collection location shall be considered universal waste pursuant to  
16 rules adopted by the department of environmental services. Nothing in this section shall otherwise  
17 reclassify paint as universal waste elsewhere in statute. This classification applies only to the paint  
18 stewardship collection receiving locations under the oversight of the nonprofit organization.

19           149-M:70 Financial Assurance Required.

20           I. Upon receiving approval of a proposed paint stewardship program, the stewardship  
21 organization shall take such steps as are necessary to ensure that financial assurance is in place. No  
22 post-consumer paint shall be collected until financial assurance is in place.

23           II. Financial assurance shall be in the form of a bond, letter of credit, or some other financial  
24 mechanism, with or without a trust or standby trust, provided that whatever mechanism is used  
25 shall:

26               (a) Be in an amount sufficient to remove all collected post-consumer paint if the  
27 stewardship organization terminates the program unexpectedly or fails to provide collection services  
28 that are consistent with the approved plan.

29               (b) Insure to the benefit of, and be payable to, the state of New Hampshire, department  
30 of environmental services, upon presentation of appropriate documentation; and require at least 120  
31 days prior notice to the department prior to termination.

32           149-M:71 Annual Report Required.

33           I. The stewardship organization shall submit a report to the department annually, with the  
34 first report due 90 days after completion of the first year of program implementation, and in no case  
35 later than 18 months from the date the plan was approved pursuant to RSA 149-M:67, II.  
36 Thereafter, annual reports shall be submitted within 90 days after the end of each operating year.  
37 Such reports shall include:

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1 (a) A description of the methods used to collect, transport, reduce, reuse, and process  
2 post-consumer paint in the state, including the location of each collection point;

3 (b) The volume and type of post-consumer paint collected in the state by method of  
4 disposition, including reuse, recycling, and other methods of processing; and whether the recycling  
5 rate has increased, decreased, or remained the same;

6 (c) The total costs of the paint stewardship program, as determined by an independent  
7 financial audit which may be funded from the paint stewardship assessment, that includes a  
8 breakdown of administration, collection, transportation, disposition, and communication costs; a  
9 summary of all outreach and educational activities undertaken and samples of educational materials  
10 provided to consumers of architectural paint;

11 (d) The total volume of post-consumer paint collected by the paint stewardship program  
12 and a breakdown of the volume collected at each collection site;

13 (e) Based on the paint stewardship assessment collected by the paint stewardship  
14 program, an estimate of the total volume of architectural paint sold in the state during the preceding  
15 year;

16 (f) An evaluation of the effectiveness of the paint stewardship program compared to  
17 prior years and anticipated steps the stewardship organization plans to take to improve performance  
18 throughout the state, if needed; and

19 (g) A report on how the stewardship organization has ensured environmental compliance  
20 at all collection points within the program.

21 II. Reports submitted to the department under this section shall be posted on the  
22 department's website, except that proprietary information submitted to the department in a plan, in  
23 an amendment to a plan, or pursuant to reporting requirements of this section that is identified by  
24 the submitter as proprietary information shall be subject to the exception for confidential  
25 information in RSA 91-A. As used in this paragraph, "proprietary information" means information  
26 that is a trade secret or production, commercial, or financial information, the disclosure of which  
27 would impair the competitive position of the submitter and would make available information not  
28 otherwise publicly available. Such an exclusion shall not be used to conceal information necessary to  
29 the understanding of the finances of the program or in opposition to any rules adopted by the  
30 department of environmental services or regulations enacted by the Environmental Protection  
31 Agency.

32 III. The department shall append to each annual report submitted under this section its own  
33 accounting of its activities and finances relative to this chapter, and shall provide the combined  
34 report to the chairs of the house and senate environmental and ways and means committees.

35 149-M:72 Retailers.

36 I. Beginning July 1, 2025 or 3 months after a plan is approved by the commissioner under  
37 RSA 149-M:67, whichever occurs later, no retailer shall sell architectural paint unless, on the date

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1 the retailer ordered the architectural paint from the producer or the producer's agent, the producer  
2 or the paint brand is listed by the department as provided under RSA 149-M:73 as implementing or  
3 participating in an approved paint stewardship program.

4 II. Any retailer may serve as a paint collection point under the paint stewardship program  
5 provided the retailer complies with all applicable requirements of the paint stewardship program,  
6 including using environmentally-sound management practices.

7 149-M:73 List of Producers and Brands. The department shall maintain a list of producers  
8 participating and the brands included in the paint stewardship program. Such list shall be made  
9 available to the public on the department's web site and by other means as the department deems  
10 appropriate.

11 149-M:74 Liability for Discharges.

12 I. Any person who causes or suffers a spill, leak, or other discharge of materials collected  
13 under this program shall be liable for all costs of containment and removal of the discharged paint  
14 and, if the spill, leak, or discharge was onto or into any land surface, sewer or storm water collection  
15 network, surface water, or wetland, or in any area where the paint could reach surface water or  
16 groundwater, also shall be liable for the costs of cleanup and restoration of the site and surrounding  
17 environment.

18 II. Any person who causes or suffers a spill, leak, or other discharge of materials collected  
19 under this program due to gross negligence or reckless disregard, or by intention, shall be subject to  
20 the applicable penalty provisions of RSA 149-M and RSA 147-A.

21 III. Any person who agrees to operate a collection point and who responsibly implements  
22 environmentally-sound management practices in good faith shall not be subject to penalties for the  
23 acceptance or storage of, or for any spill, leak, or discharge of collected paint, or other materials that  
24 are inadvertently accepted pursuant to the program, and which occurs despite the implementation of  
25 such practices.

26 149-M:75 Rulemaking. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

27 I. The content and structure of applications under RSA 149-M:66, including information and  
28 other materials to be submitted by an applicant.

29 II. The amount of the assessments for the stewardship organization.

30 III. The types of financial assurance that may be used to comply with RSA 149-M:70.

31 IV. The content and structure of annual reports under RSA 149-M:71, including information  
32 and other materials to be submitted by the stewardship organization.

33 V. Procedures for filing and review of requests to change the paint stewardship assessment.

34 VI. Environmentally-sound management practices at collection points.

35 VII. Definitions of terms not defined in this chapter.

36 VIII. Standards for granting any waivers from RSA 149-M:64-74.

37 2 Effective Date. This act shall take effect July 1, 2024.



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2024-1210h

AMENDED ANALYSIS

I. Establishes a paint stewardship program wherein a nonprofit organization approved by the department of environmental services organizes a program for the reception of discarded architectural paint.

II. Establishes an assessment to fund the paint stewardship program.

III. Requires the department of environmental services to propose changes to the assessment for approval by the joint legislative committee on administrative rules.