

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **865**

02/25/2013 Authored by Sundin, Fischer and Hortman

The bill was read for the first time and referred to the Committee on Environment and Natural Resources Policy

03/06/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Commerce and Consumer Protection Finance and Policy

03/13/2013 Adoption of Report: Pass as Amended and Read Second Time

By motion, re-referred to the Committee on Civil Law

1.1 A bill for an act
1.2 relating to environment; providing for product stewardship programs; requiring
1.3 a report; amending Minnesota Statutes 2012, section 13.7411, subdivision 4;
1.4 proposing coding for new law in Minnesota Statutes, chapter 115A.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2012, section 13.7411, subdivision 4, is amended to read:

1.7 Subd. 4. **Waste management.** (a) Product stewardship programs. Trade secret
1.8 information submitted to the Pollution Control Agency under product stewardship
1.9 programs are classified under sections 115A.141 to 115A.142.

1.10 (b) Transfer station data. Data received by a county or district from a transfer
1.11 station under section 115A.84, subdivision 5, are classified under that section.

1.12 ~~(b)~~ (c) Solid waste records. Records of solid waste facilities received, inspected,
1.13 or copied by a county pursuant to section 115A.882 are classified pursuant to section
1.14 115A.882, subdivision 3.

1.15 ~~(c)~~ (d) Customer lists. Customer lists provided to counties or cities by solid waste
1.16 collectors are classified under section 115A.93, subdivision 5.

1.17 Sec. 2. [115A.141] CARPET PRODUCT STEWARDSHIP PROGRAM;
1.18 STEWARDSHIP PLAN.

1.19 Subdivision 1. **Definitions.** For purposes of this section, the following terms have
1.20 the meanings given:

1.21 (1) "brand" means a name, symbol, word, or mark that identifies carpet, rather than its
1.22 components, and attributes the carpet to the owner or licensee of the brand as the producer;

(2) "carpet" means a manufactured article that is used in commercial or single or multifamily residential buildings, is affixed or placed on the floor or building walking surface as a decorative or functional building interior or exterior feature, and is primarily constructed of a top visible surface of synthetic face fibers or yarns or tufts attached to a backing system derived from synthetic or natural materials. Carpet includes, but is not limited to, a commercial or residential broadloom carpet or modular carpet tiles. Carpet includes a pad or underlayment used in conjunction with a carpet. Carpet does not include handmade rugs, area rugs, or mats;

(3) "discarded carpet" means carpet that is no longer used for its manufactured purpose;

(4) "producer" means a person that:

(i) has legal ownership of the brand, brand name, or cobrand of carpet sold in the state;

(ii) imports carpet branded by a producer that meets subclause (i) when the producer has no physical presence in the United States;

(iii) if subclauses (i) and (ii) do not apply, makes unbranded carpet that is sold in the state; or

(iv) sells carpet at wholesale or retail, does not have legal ownership of the brand, and elects to fulfill the responsibilities of the producer for the carpet;

(5) "recycling" means the process of collecting and preparing recyclable materials and reusing the materials in their original form or using them in manufacturing processes that do not cause the destruction of recyclable materials in a manner that precludes further use;

(6) "retailer" means any person who offers carpet for sale at retail in the state;

(7) "reuse" means donating or selling a collected carpet back into the market for its original intended use, when the carpet retains its original purpose and performance characteristics;

(8) "sale" or "sell" means transfer of title of carpet for consideration, including a remote sale conducted through a sales outlet, catalog, Web site, or similar electronic means. Sale or sell includes a lease through which carpet is provided to a consumer by a producer, wholesaler, or retailer;

(9) "stewardship assessment" means the amount added to the purchase price of carpet sold in the state that is necessary to cover the cost of collecting, transporting, and processing postconsumer carpets by the producer or stewardship organization pursuant to a product stewardship program;

(10) "stewardship organization" means an organization appointed by one or more producers to act as an agent on behalf of the producer to design, submit, and administer a product stewardship program under this section; and

(11) "stewardship plan" means a detailed plan describing the manner in which a product stewardship program under subdivision 2 will be implemented.

Subd. 2. Product stewardship program. For all carpet sold in the state, producers must, individually or through a stewardship organization, implement and finance a statewide product stewardship program that manages carpet by reducing carpet's waste generation, promoting its reuse and recycling, and providing for negotiation and execution of agreements to collect, transport, and process carpet for end-of-life recycling and reuse.

Subd. 3. Requirement for sale. (a) On and after July 1, 2015, no producer, wholesaler, or retailer may sell carpet or offer carpet for sale in the state unless the carpet's producer participates in an approved stewardship plan, either individually or through a stewardship organization.

(b) Each producer must operate a product stewardship program approved by the agency or enter into an agreement with a stewardship organization to operate, on the producer's behalf, a product stewardship program approved by the agency.

Subd. 4. Requirement to submit plan. (a) On or before March 1, 2015, and before offering carpet for sale in the state, a producer must submit a stewardship plan to the agency and receive approval of the plan or must submit documentation to the agency that demonstrates the producer has entered into an agreement with a stewardship organization to be an active participant in an approved product stewardship program as described in subdivision 2. A stewardship plan must include all elements required under subdivision 5.

(b) At least every three years, a producer or stewardship organization operating a product stewardship program must update the stewardship plan and submit the updated plan to the agency for review and approval.

(c) It is the responsibility of the entities responsible for each stewardship plan to notify the agency within 30 days of any significant changes or modifications to the plan or its implementation. Within 30 days of the notification, a written plan revision must be submitted to the agency for review and approval.

Subd. 5. Stewardship plan content. A stewardship plan must contain:

(1) certification that the product stewardship program will accept all discarded carpet regardless of which producer produced the carpet and its individual components;

(2) contact information for the individual and the entity submitting the plan and for all producers participating in the product stewardship program;

(3) a description of the methods by which discarded carpet will be collected in all areas in the state without relying on end-of-life fees, including an explanation of how the collection system will be convenient and adequate to serve the needs of small businesses

and residents in the seven-county metropolitan area initially and expanding to areas outside of the seven-county metropolitan area starting July 1, 2016;

(4) a description of how the adequacy of the collection program will be monitored and maintained;

(5) the names and locations of collectors, transporters, and recycling facilities that will manage discarded carpet;

(6) a description of how the discarded carpet and the carpet's components will be safely and securely transported, tracked, and handled from collection through final recycling and processing;

(7) a description of the method that will be used to reuse, deconstruct, or recycle the discarded carpet to ensure that the product's components, to the extent feasible, are transformed or remanufactured into finished products for use;

(8) a description of the promotion and outreach activities that will be used to encourage participation in the collection and recycling programs and how the activities' effectiveness will be evaluated and the program modified, if necessary;

(9) the proposed stewardship assessment. The producer or stewardship organization shall propose a stewardship assessment for any carpet sold in the state. The proposed stewardship assessment shall be reviewed by an independent auditor to ensure that the assessment does not exceed the costs of the product stewardship program and the independent auditor shall recommend an amount for the stewardship assessment;

(10) evidence of adequate insurance and financial assurance that may be required for collection, handling, and disposal operations;

(11) five-year performance goals, including an estimate of the percentage of discarded carpet that will be collected, reused, and recycled during each of the first five years of the stewardship plan. The performance goals must include a specific escalating goal for the amount of discarded carpet that will be collected and recycled and reused during each year of the plan. The performance goals must be based on:

(i) the most recent collection data available for the state;

(ii) the amount of carpet disposed of annually;

(iii) the weight of the carpet that is expected to be available for collection annually;

and

(iv) actual collection data from other existing stewardship programs.

The stewardship plan must state the methodology used to determine these goals;

(12) carpet design changes that will be considered to reduce toxicity, water use, or energy use or to increase recycled content, recyclability, or carpet longevity; and

5.1 (13) a discussion of market development opportunities to expand use of recovered
5.2 carpet, with consideration of expanding processing activity proximate to areas of collection.

5.3 Subd. 6. **Consultation required.** (a) Each stewardship organization or individual
5.4 producer submitting a stewardship plan must consult with stakeholders including retailers,
5.5 installers, collectors, recyclers, local government, customers, and citizens during the
5.6 development of the plan, solicit stakeholder comments, and attempt to address any
5.7 stakeholder concerns regarding the plan before submitting the plan to the agency for review.

5.8 (b) The producer or stewardship organization must invite comments from local
5.9 governments, communities, and citizens to report their satisfaction with services, including
5.10 education and outreach, provided by the product stewardship program. The information
5.11 must be submitted to the agency and used by the agency in reviewing proposed updates or
5.12 changes to the stewardship plan.

5.13 Subd. 7. **Agency review and approval.** (a) Within 90 days after receipt of a proposed
5.14 stewardship plan, the agency shall determine whether the plan complies with subdivision
5.15 5. If the agency approves a plan, the agency shall notify the applicant of the plan approval
5.16 in writing. If the agency rejects a plan, the agency shall notify the applicant in writing of
5.17 the reasons for rejecting the plan. An applicant whose plan is rejected by the agency must
5.18 submit a revised plan to the agency within 60 days after receiving notice of rejection.

5.19 (b) Any proposed changes to a stewardship plan must be approved by the agency
5.20 in writing.

5.21 Subd. 8. **Plan availability.** All draft and approved stewardship plans shall be
5.22 placed on the agency's Web site for at least 30 days and made available at the agency's
5.23 headquarters for public review and comment.

5.24 Subd. 9. **Conduct authorized.** A producer or stewardship organization that
5.25 organizes collection, transport, and processing of carpet under this section is immune
5.26 from liability for the conduct under state laws relating to antitrust, restraint of trade,
5.27 unfair trade practices, and other regulation of trade or commerce only to the extent that
5.28 the conduct is necessary to plan and implement the producer's or organization's chosen
5.29 organized collection or recycling system.

5.30 Subd. 10. **Responsibility of producers.** (a) On and after the date of implementation
5.31 of a product stewardship program under this section, a producer of carpet must add the
5.32 stewardship assessment, as established according to subdivision 5, clause (9), to the cost
5.33 of the carpet sold to retailers and distributors in the state by the producer.

5.34 (b) Producers of carpet or the stewardship organization shall provide consumers
5.35 with educational materials regarding the stewardship assessment and product stewardship
5.36 program. The materials must include, but are not limited to, information regarding available

end-of-life management options for carpet offered through the product stewardship program and information that notifies consumers that a charge for the operation of the product stewardship program is included in the purchase price of carpet sold in the state.

Subd. 11. **Responsibility of retailers.** (a) On and after July 1, 2015, no carpet may be sold in the state unless the carpet's producer is participating in an approved stewardship plan.

(b) On and after the implementation date of a product stewardship program under this section, each retailer or distributor, as applicable, must add the amount of the stewardship assessment to the purchase price of all carpet sold in the state.

(c) Any retailer may participate, on a voluntary basis, as a designated collection point pursuant to a product stewardship program under this section and in accordance with applicable law.

(d) No retailer or distributor shall be found to be in violation of this subdivision if, on the date the carpet was ordered from the producer or its agent, the producer was listed as compliant on the agency's Web site according to subdivision 14.

Subd. 12. **Stewardship reports.** Beginning October 1, 2016, producers of carpet sold in the state must individually or through a stewardship organization submit an annual report to the agency describing the product stewardship program. At a minimum, the report must contain:

(1) a description of the methods used to collect, transport, and process carpet in all regions of the state;

(2) the weight of all carpet collected in all regions of the state and a comparison to the performance goals and recycling rates established in the stewardship plan;

(3) the amount of unwanted carpet collected in the state by method of disposition, including reuse, recycling, and other methods of processing;

(4) identification of the facilities processing carpet and the number and weight processed at each facility;

(5) an evaluation of the program's funding mechanism;

(6) samples of educational materials provided to consumers and an evaluation of the effectiveness of the materials and the methods used to disseminate the materials; and

(7) a description of progress made toward achieving carpet design changes according to subdivision 5, clause (12).

Subd. 13. **Data classification.** Trade secret information, as defined under section 13.37, submitted to the agency under this section is nonpublic data under section 13.37, subdivision 2.

7.1 Subd. 14. **Agency responsibilities.** The agency shall provide, on its Web site, a
7.2 list of all compliant producers and brands participating in stewardship plans that the
7.3 agency has approved and a list of all producers and brands the agency has identified as
7.4 noncompliant with this section.

7.5 Subd. 15. **Local government responsibilities.** (a) A city, county, or other public
7.6 agency may choose to participate voluntarily in a carpet product stewardship program.

7.7 (b) Cities, counties, and other public agencies are encouraged to work with producers
7.8 and stewardship organizations to assist in meeting product stewardship program recycling
7.9 obligations, by providing education and outreach or using other strategies.

7.10 (c) A city, county, or other public agency that participates in a product stewardship
7.11 program must report for the first year of the program to the agency using the reporting
7.12 form provided by the agency on the cost savings as a result of participation and describe
7.13 how the savings were used.

7.14 Subd. 16. **Administrative fee.** (a) The stewardship organization or individual
7.15 producer submitting a stewardship plan shall pay the agency an annual administrative
7.16 fee. The agency shall set the fee at an amount that, when paid by every stewardship
7.17 organization or individual producer that submits a stewardship plan, is adequate to cover
7.18 the agency's full costs of administering and enforcing this section. The agency may
7.19 establish a variable fee based on relevant factors, including, but not limited to, the portion
7.20 of carpet sold in the state by members of the organization compared to the total amount of
7.21 carpet sold in the state by all organizations submitting a stewardship plan.

7.22 (b) The total amount of annual fees collected under this subdivision must not
7.23 exceed the amount necessary to cover costs incurred by the agency in connection with the
7.24 administration and enforcement of this section.

7.25 (c) The agency shall identify the direct program development or regulatory costs
7.26 it incurs under this section before stewardship plans are submitted and shall establish a
7.27 fee in an amount adequate to cover those costs, which shall be paid by a stewardship
7.28 organization or individual producer that submits a stewardship plan.

7.29 (d) A stewardship organization or individual producer subject to this subdivision
7.30 must pay the agency's administrative fee under paragraph (a) on or before July 1, 2015,
7.31 and annually thereafter and the agency's onetime development fee under paragraph (c) on
7.32 or before July 1 the year following submission of a stewardship plan. Each year after the
7.33 initial payment, the annual administrative fee may not exceed five percent of the aggregate
7.34 stewardship assessment collected for the preceding calendar year.

7.35 (e) The agency shall deposit the fees collected under this section into a product
7.36 stewardship account.

8.1 Sec. 3. **[115A.1415] ARCHITECTURAL PAINT; PRODUCT STEWARDSHIP**
8.2 **PROGRAM; STEWARDSHIP PLAN.**

8.3 Subdivision 1. Definitions. For purposes of this section, the following terms have
8.4 the meanings given:

8.5 (1) "architectural paint" means interior and exterior architectural coatings sold in
8.6 containers of five gallons or less. Architectural paint does not include industrial coatings,
8.7 original equipment coatings, or specialty coatings;

8.8 (2) "brand" means a name, symbol, word, or mark that identifies architectural paint,
8.9 rather than its components, and attributes the paint to the owner or licensee of the brand as
8.10 the producer;

8.11 (3) "discarded paint" means architectural paint that is no longer used for its
8.12 manufactured purpose;

8.13 (4) "producer" means a person that:

8.14 (i) has legal ownership of the brand, brand name, or cobrand of architectural paint
8.15 sold in the state;

8.16 (ii) imports architectural paint branded by a producer that meets subclause (i) when
8.17 the producer has no physical presence in the United States;

8.18 (iii) if subclauses (i) and (ii) do not apply, makes unbranded architectural paint
8.19 that is sold in the state; or

8.20 (iv) sells architectural paint at wholesale or retail, does not have legal ownership of
8.21 the brand, and elects to fulfill the responsibilities of the producer for the architectural paint;

8.22 (5) "recycling" means the process of collecting and preparing recyclable materials and
8.23 reusing the materials in their original form or using them in manufacturing processes that
8.24 do not cause the destruction of recyclable materials in a manner that precludes further use;

8.25 (6) "retailer" means any person who offers architectural paint for sale at retail in
8.26 the state;

8.27 (7) "reuse" means donating or selling collected architectural paint back into the
8.28 market for its original intended use, when the architectural paint retains its original
8.29 purpose and performance characteristics;

8.30 (8) "sale" or "sell" means transfer of title of architectural paint for consideration,
8.31 including a remote sale conducted through a sales outlet, catalog, Web site, or similar
8.32 electronic means. Sale or sell includes a lease through which architectural paint is
8.33 provided to a consumer by a producer, wholesaler, or retailer;

8.34 (9) "stewardship assessment" means the amount added to the purchase price of
8.35 architectural paint sold in the state that is necessary to cover the cost of collecting,

transporting, and processing postconsumer architectural paint by the producer or stewardship organization pursuant to a product stewardship program;

(10) "stewardship organization" means an organization appointed by one or more producers to act as an agent on behalf of the producer to design, submit, and administer a product stewardship program under this section; and

(11) "stewardship plan" means a detailed plan describing the manner in which a product stewardship program under subdivision 2 will be implemented.

Subd. 2. Product stewardship program. For architectural paint sold in the state, producers must, individually or through a stewardship organization, implement and finance a statewide product stewardship program that manages the architectural paint by reducing the paint's waste generation, promoting its reuse and recycling, and providing for negotiation and execution of agreements to collect, transport, and process the architectural paint for end-of-life recycling and reuse.

Subd. 3. Requirement for sale. (a) On and after July 1, 2014, or three months after program plan approval, whichever is sooner, no producer, wholesaler, or retailer may sell or offer for sale in the state architectural paint unless the paint's producer participates in an approved stewardship plan, either individually or through a stewardship organization.

(b) Each producer must operate a product stewardship program approved by the agency or enter into an agreement with a stewardship organization to operate, on the producer's behalf, a product stewardship program approved by the agency.

Subd. 4. Requirement to submit plan. (a) On or before March 1, 2014, and before offering architectural paint for sale in the state, a producer must submit a stewardship plan to the agency and receive approval of the plan or must submit documentation to the agency that demonstrates the producer has entered into an agreement with a stewardship organization to be an active participant in an approved product stewardship program as described in subdivision 2. A stewardship plan must include all elements required under subdivision 5.

(b) An amendment to the plan, if determined necessary by the commissioner, must be submitted every five years.

(c) It is the responsibility of the entities responsible for each stewardship plan to notify the agency within 30 days of any significant changes or modifications to the plan or its implementation. Within 30 days of the notification, a written plan revision must be submitted to the agency for review and approval.

Subd. 5. Stewardship plan content. A stewardship plan must contain:

10.1 (1) certification that the product stewardship program will accept all discarded
10.2 paint regardless of which producer produced the architectural paint and its individual
10.3 components;

10.4 (2) contact information for the individual and the entity submitting the plan, a list of
10.5 all producers participating in the product stewardship program, and the brands covered by
10.6 the product stewardship program;

10.7 (3) a description of the methods by which the discarded paint will be collected in all
10.8 areas in the state without relying on end-of-life fees, including an explanation of how the
10.9 collection system will be convenient and adequate to serve the needs of small businesses
10.10 and residents in both urban and rural areas on an ongoing basis and a discussion of how
10.11 the existing household hazardous waste infrastructure will be considered when selecting
10.12 collection sites;

10.13 (4) a description of how the adequacy of the collection program will be monitored
10.14 and maintained;

10.15 (5) the names and locations of collectors, transporters, and recyclers that will
10.16 manage discarded paint;

10.17 (6) a description of how the discarded paint and the paint's components will be
10.18 safely and securely transported, tracked, and handled from collection through final
10.19 recycling and processing;

10.20 (7) a description of the method that will be used to reuse, deconstruct, or recycle
10.21 the discarded paint to ensure that the paint's components, to the extent feasible, are
10.22 transformed or remanufactured into finished products for use;

10.23 (8) a description of the promotion and outreach activities that will be used to
10.24 encourage participation in the collection and recycling programs and how the activities'
10.25 effectiveness will be evaluated and the program modified, if necessary;

10.26 (9) the proposed stewardship assessment. The producer or stewardship organization
10.27 shall propose a uniform stewardship assessment for any architectural paint sold in the
10.28 state. The proposed stewardship assessment shall be reviewed by an independent auditor
10.29 to ensure that the assessment does not exceed the costs of the product stewardship program
10.30 and the independent auditor shall recommend an amount for the stewardship assessment.
10.31 The agency must approve the stewardship assessment;

10.32 (10) evidence of adequate insurance and financial assurance that may be required for
10.33 collection, handling, and disposal operations;

10.34 (11) five-year performance goals, including an estimate of the percentage of
10.35 discarded paint that will be collected, reused, and recycled during each of the first five
10.36 years of the stewardship plan. The performance goals must include a specific goal for the

11.1 amount of discarded paint that will be collected and recycled and reused during each year
11.2 of the plan. The performance goals must be based on:

- 11.3 (i) the most recent collection data available for the state;
11.4 (ii) the estimated amount of architectural paint disposed of annually;
11.5 (iii) the weight of the architectural paint that is expected to be available for collection
11.6 annually; and
11.7 (iv) actual collection data from other existing stewardship programs.

11.8 The stewardship plan must state the methodology used to determine these goals; and
11.9 (12) a discussion of the status of end markets for collected architectural paint and
11.10 what, if any, additional end markets are needed to improve the functioning of the program.

11.11 Subd. 6. **Consultation required.** Each stewardship organization or individual
11.12 producer submitting a stewardship plan must consult with stakeholders including
11.13 retailers, contractors, collectors, recyclers, local government, and customers during the
11.14 development of the plan.

11.15 Subd. 7. **Agency review and approval.** (a) Within 90 days after receipt of a proposed
11.16 stewardship plan, the agency shall determine whether the plan complies with subdivision
11.17 4. If the agency approves a plan, the agency shall notify the applicant of the plan approval
11.18 in writing. If the agency rejects a plan, the agency shall notify the applicant in writing of
11.19 the reasons for rejecting the plan. An applicant whose plan is rejected by the agency must
11.20 submit a revised plan to the agency within 60 days after receiving notice of rejection.

11.21 (b) Any proposed changes to a stewardship plan must be approved by the agency
11.22 in writing.

11.23 Subd. 8. **Plan availability.** All draft and approved stewardship plans shall be
11.24 placed on the agency's Web site for at least 30 days and made available at the agency's
11.25 headquarters for public review and comment.

11.26 Subd. 9. **Conduct authorized.** A producer or stewardship organization that
11.27 organizes collection, transport, and processing of architectural paint under this section
11.28 is immune from liability for the conduct under state laws relating to antitrust, restraint
11.29 of trade, unfair trade practices, and other regulation of trade or commerce only to the
11.30 extent that the conduct is necessary to plan and implement the producer's or organization's
11.31 chosen organized collection or recycling system.

11.32 Subd. 10. **Responsibility of producers.** (a) On and after the date of implementation
11.33 of a product stewardship program according to this section, a producer of architectural
11.34 paint must add the stewardship assessment, as established under subdivision 5, clause (9),
11.35 to the cost of architectural paint sold to retailers and distributors in the state by the producer.

12.1 (b) Producers of architectural paint or the stewardship organization shall provide
12.2 consumers with educational materials regarding the stewardship assessment and product
12.3 stewardship program. The materials must include, but are not limited to, information
12.4 regarding available end-of-life management options for architectural paint offered through
12.5 the product stewardship program and information that notifies consumers that a charge
12.6 for the operation of the product stewardship program is included in the purchase price of
12.7 architectural paint sold in the state.

12.8 Subd. 11. **Responsibility of retailers.** (a) On and after July 1, 2014, or three months
12.9 after program plan approval, whichever is sooner, no architectural paint may be sold in the
12.10 state unless the paint's producer is participating in an approved stewardship plan.

12.11 (b) On and after the implementation date of a product stewardship program
12.12 according to this section, each retailer or distributor, as applicable, must add the amount of
12.13 the stewardship assessment to the purchase price of all architectural paint sold in the state.

12.14 (c) Any retailer may participate, on a voluntary basis, as a designated collection
12.15 point pursuant to a product stewardship program under this section and in accordance
12.16 with applicable law.

12.17 (d) No retailer or distributor shall be found to be in violation of this subdivision if,
12.18 on the date the architectural paint was ordered from the producer or its agent, the producer
12.19 was listed as compliant on the agency's Web site according to subdivision 14.

12.20 Subd. 12. **Stewardship reports.** Beginning October 1, 2015, producers of
12.21 architectural paint sold in the state must individually or through a stewardship organization
12.22 submit an annual report to the agency describing the product stewardship program. At a
12.23 minimum, the report must contain:

12.24 (1) a description of the methods used to collect, transport, and process architectural
12.25 paint in all regions of the state;

12.26 (2) the weight of all architectural paint collected in all regions of the state and a
12.27 comparison to the performance goals and recycling rates established in the stewardship
12.28 plan;

12.29 (3) the amount of unwanted architectural paint collected in the state by method of
12.30 disposition, including reuse, recycling, and other methods of processing;

12.31 (4) samples of educational materials provided to consumers and an evaluation of the
12.32 effectiveness of the materials and the methods used to disseminate the materials; and

12.33 (5) an independent financial audit.

12.34 Subd. 13. **Data classification.** Trade secret information, as defined under section
12.35 13.37, submitted to the agency under this section is nonpublic data under section 13.37,
12.36 subdivision 2.

Subd. 14. **Agency responsibilities.** The agency shall provide, on its Web site, a list of all compliant producers and brands participating in stewardship plans that the agency has approved and a list of all producers and brands the agency has identified as noncompliant with this section.

Subd. 15. **Local government responsibilities.** (a) A city, county, or other public agency may choose to participate voluntarily in a product stewardship program.

(b) Cities, counties, and other public agencies are encouraged to work with producers and stewardship organizations to assist in meeting product stewardship program reuse and recycling obligations, by providing education and outreach or using other strategies.

(c) A city, county, or other public agency that participates in a product stewardship program must report for the first year of the program to the agency using the reporting form provided by the agency on the cost savings as a result of participation and describe how the savings were used.

Subd. 16. **Administrative fee.** (a) The stewardship organization or individual producer submitting a stewardship plan shall pay the agency an annual administrative fee. The agency shall set the fee at an amount that, when paid by every stewardship organization or individual producer that submits a stewardship plan, is adequate to cover the agency's full costs of administering and enforcing this section. The agency may establish a variable fee based on relevant factors, including, but not limited to, the portion of architectural paint sold in the state by members of the organization compared to the total amount of architectural paint sold in the state by all organizations submitting a stewardship plan.

(b) The total amount of annual fees collected under this subdivision must not exceed the amount necessary to recover costs incurred by the agency in connection with the administration and enforcement of this section.

(c) The agency shall identify the direct program development or regulatory costs it incurs under this section before stewardship plans are submitted and shall establish a fee in an amount adequate to cover those costs, which shall be paid by a stewardship organization or individual producer that submits a stewardship plan. The commissioner must make the proposed fee available for public review and comment for at least 30 days.

(d) A stewardship organization or individual producer subject to this section must pay the agency's administrative fee under paragraph (a) on or before July 1, 2014, and annually thereafter and the agency's onetime development fee under paragraph (c) on or before July 1 the year following submission of a stewardship plan. Each year after the initial payment, the annual administrative fee may not exceed five percent of the aggregate stewardship assessment collected for the preceding calendar year.

14.1 (e) The agency shall deposit the fees collected under this section into a product
14.2 stewardship account.

14.3 Sec. 4. **[115A.142] PRIMARY BATTERIES; PRODUCT STEWARDSHIP**
14.4 **PROGRAM; STEWARDSHIP PLAN.**

14.5 Subdivision 1. Definitions. For purposes of this section, the following terms have
14.6 the meaning given:

14.7 (1) "brand" means a name, symbol, word, or mark that identifies a primary battery,
14.8 rather than its components, and attributes the battery to the owner or licensee of the brand
14.9 as the producer;

14.10 (2) "discarded battery" means a primary battery that is no longer used for its
14.11 manufactured purpose;

14.12 (3) "primary battery" means an electric cell that generates an electromotive force by
14.13 the direct and usually irreversible conversion of chemical energy into electrical energy.
14.14 It cannot be recharged efficiently by an electric current;

14.15 (4) "producer" means a person that:

14.16 (i) has legal ownership of the brand, brand name, or cobrand of a primary battery
14.17 sold in the state;

14.18 (ii) imports a primary battery branded by a producer that meets subclause (i) when
14.19 the producer has no physical presence in the United States;

14.20 (iii) if subclauses (i) and (ii) do not apply, makes an unbranded primary battery
14.21 that is sold in the state; or

14.22 (iv) sells a primary battery at wholesale or retail, does not have legal ownership of
14.23 the brand, and elects to fulfill the responsibilities of the producer for the battery;

14.24 (5) "recycling" means the process of collecting and preparing recyclable materials and
14.25 reusing the materials in their original form or using them in manufacturing processes that
14.26 do not cause the destruction of recyclable materials in a manner that precludes further use;

14.27 (6) "retailer" means any person who offers primary batteries for sale at retail in
14.28 the state;

14.29 (7) "reuse" means donating or selling a collected primary battery back into the
14.30 market for its original intended use, when the primary battery retains its original purpose
14.31 and performance characteristics;

14.32 (8) "sale" or "sell" means transfer of title of a primary battery for consideration,
14.33 including a remote sale conducted through a sales outlet, catalog, Web site, or similar
14.34 electronic means. Sale or sell includes a lease through which a primary battery is provided
14.35 to a consumer by a producer, wholesaler, or retailer;

(9) "stewardship organization" means an organization appointed by one or more producers to act as an agent on behalf of the producer to design, submit, and administer a product stewardship program under this section; and

(10) "stewardship plan" means a detailed plan describing the manner in which a product stewardship program under subdivision 2 will be implemented.

Subd. 2. Product stewardship program. For each primary battery sold in the state, producers must, individually or through a stewardship organization, implement and finance a statewide product stewardship program that manages primary batteries by reducing primary battery waste generation, promoting primary battery reuse and recycling, and providing for negotiation and execution of agreements to collect, transport, and process primary batteries for end-of-life recycling and reuse.

Subd. 3. Requirement for sale. (a) On and after December 1, 2014, or three months after program plan approval, whichever is sooner, no producer, wholesaler, or retailer may sell or offer for sale in the state a primary battery unless the battery's producer participates in an approved stewardship plan, either individually or through a stewardship organization.

(b) Each producer must operate a product stewardship program approved by the agency or enter into an agreement with a stewardship organization to operate, on the producer's behalf, a product stewardship program approved by the agency.

Subd. 4. Requirement to submit plan. (a) On or before August 1, 2014, and before offering a primary battery for sale in the state, a producer must submit a stewardship plan to the agency and receive approval of the plan or must submit documentation to the agency that demonstrates the producer has entered into an agreement with a stewardship organization to be an active participant in an approved product stewardship program as described in subdivision 2. A stewardship plan must include all elements required under subdivision 5.

(b) An amendment to the plan, if determined necessary by the commissioner, must be submitted every five years.

(c) It is the responsibility of the entities responsible for each stewardship plan to notify the agency within 30 days of any significant changes or modifications to the plan or its implementation. Within 30 days of the notification, a written plan revision must be submitted to the agency for review and approval.

Subd. 5. Stewardship plan content. A stewardship plan must contain:

(1) certification that the product stewardship program will accept all discarded batteries regardless of which producer produced the batteries and their individual components;

16.1 (2) contact information for the individual and the entity submitting the plan, a list of
16.2 all producers participating in the product stewardship program, and the brands covered by
16.3 the product stewardship program;

16.4 (3) a description of the methods by which the discarded batteries will be collected
16.5 in all areas in the state without relying on end-of-life fees, including an explanation of
16.6 how the collection system will be convenient and adequate to serve the needs of small
16.7 businesses and residents in both urban and rural areas on an ongoing basis;

16.8 (4) a description of how the adequacy of the collection program will be monitored
16.9 and maintained;

16.10 (5) the names and locations of collectors, transporters, and recyclers that will
16.11 manage discarded batteries;

16.12 (6) a description of how the discarded batteries and the batteries' components will
16.13 be safely and securely transported, tracked, and handled from collection through final
16.14 recycling and processing;

16.15 (7) a description of the method that will be used to reuse, deconstruct, or recycle
16.16 the discarded batteries to ensure that the batteries' components, to the extent feasible, are
16.17 transformed or remanufactured into finished batteries for use;

16.18 (8) a description of the promotion and outreach activities that will be used to
16.19 encourage participation in the collection and recycling programs and how the activities'
16.20 effectiveness will be evaluated and the program modified, if necessary;

16.21 (9) evidence of adequate insurance and financial assurance that may be required for
16.22 collection, handling, and disposal operations;

16.23 (10) five-year performance goals, including an estimate of the percentage of
16.24 discarded batteries that will be collected, reused, and recycled during each of the first five
16.25 years of the stewardship plan. The performance goals must include a specific escalating
16.26 goal for the amount of discarded batteries that will be collected and recycled and reused
16.27 during each year of the plan. The performance goals must be based on:

16.28 (i) the most recent collection data available for the state;

16.29 (ii) the estimated amount of primary batteries disposed of annually;

16.30 (iii) the weight of primary batteries that is expected to be available for collection
16.31 annually; and

16.32 (iv) actual collection data from other existing stewardship programs.

16.33 The stewardship plan must state the methodology used to determine these goals; and

16.34 (11) a discussion of the status of end markets for discarded batteries and what, if any,
16.35 additional end markets are needed to improve the functioning of the program.

17.1 Subd. 6. **Consultation required.** Each stewardship organization or individual
17.2 producer submitting a stewardship plan must consult with stakeholders including retailers,
17.3 collectors, recyclers, local government, and customers during the development of the plan.

17.4 Subd. 7. **Agency review and approval.** (a) Within 90 days after receipt of a proposed
17.5 stewardship plan, the agency shall determine whether the plan complies with subdivision
17.6 5. If the agency approves a plan, the agency shall notify the applicant of the plan approval
17.7 in writing. If the agency rejects a plan, the agency shall notify the applicant in writing of
17.8 the reasons for rejecting the plan. An applicant whose plan is rejected by the agency must
17.9 submit a revised plan to the agency within 60 days after receiving notice of rejection.

17.10 (b) Any proposed changes to a stewardship plan must be approved by the agency
17.11 in writing.

17.12 Subd. 8. **Plan availability.** All draft and approved stewardship plans shall be
17.13 placed on the agency's Web site for at least 30 days and made available at the agency's
17.14 headquarters for public review and comment.

17.15 Subd. 9. **Conduct authorized.** A producer or stewardship organization that
17.16 organizes collection, transport, and processing of primary batteries under this section
17.17 is immune from liability for the conduct under state laws relating to antitrust, restraint
17.18 of trade, unfair trade practices, and other regulation of trade or commerce only to the
17.19 extent that the conduct is necessary to plan and implement the producer's or organization's
17.20 chosen organized collection or recycling system.

17.21 Subd. 10. **Responsibility of retailers.** (a) On and after December 1, 2014, or three
17.22 months after program plan approval, whichever is sooner, no primary battery may be sold
17.23 in the state unless the battery's producer is participating in an approved stewardship plan.

17.24 (b) Any retailer may participate, on a voluntary basis, as a designated collection
17.25 point pursuant to a product stewardship program under this section and in accordance
17.26 with applicable law.

17.27 (c) No retailer or distributor shall be found to be in violation of this subdivision if,
17.28 on the date the primary battery was ordered from the producer or its agent, the producer
17.29 was listed as compliant on the agency's Web site according to subdivision 12.

17.30 Subd. 11. **Stewardship reports.** Beginning March 1, 2016, producers of primary
17.31 batteries sold in the state must individually or through a stewardship organization
17.32 submit an annual report to the agency describing the product stewardship program. At a
17.33 minimum, the report must contain:

17.34 (1) a description of the methods used to collect, transport, and process primary
17.35 batteries in all regions of the state;

(2) the weight of all primary batteries collected in all regions of the state and a comparison to the performance goals and recycling rates established in the stewardship plan;

(3) the amount of unwanted primary batteries collected in the state by method of disposition, including reuse, recycling, and other methods of processing;

(4) samples of educational materials provided to consumers and an evaluation of the effectiveness of the materials and the methods used to disseminate the materials; and

(5) an independent financial audit.

Subd. 12. **Data classification.** Trade secret information, as defined under section 13.37, submitted to the agency under this section is nonpublic data under section 13.37, subdivision 2.

Subd. 13. **Agency responsibilities.** The agency shall provide, on its Web site, a list of all compliant producers and brands participating in stewardship plans that the agency has approved and a list of all producers and brands the agency has identified as noncompliant with this section.

Subd. 14. **Local government responsibilities.** (a) A city, county, or other public agency may choose to participate voluntarily in a product stewardship program.

(b) Cities, counties, and other public agencies are encouraged to work with producers and stewardship organizations to assist in meeting product stewardship program recycling obligations, by providing education and outreach or using other strategies.

(c) A city, county, or other public agency that participates in a product stewardship program must report for the first year of the program to the agency using the reporting form provided by the agency on the cost savings as a result of participation and describe how the savings were used.

Subd. 15. **Administrative fee.** (a) The stewardship organization or individual producer submitting a stewardship plan shall pay the agency an annual administrative fee. The agency shall set the fee at an amount that, when paid by every stewardship organization or individual producer that submits a stewardship plan, is adequate to cover the agency's full costs of administering and enforcing this section. The agency may establish a variable fee based on relevant factors, including, but not limited to, the portion of primary batteries sold in the state by members of the organization compared to the total amount of primary batteries sold in the state by all organizations submitting a stewardship plan.

(b) The total amount of annual fees collected under this section must not exceed the amount necessary to recover costs incurred by the agency in connection with the administration and enforcement of this section.

19.1 (c) The agency shall identify the direct program development or regulatory costs
19.2 it incurs under this section before stewardship plans are submitted and shall establish a
19.3 fee in an amount adequate to cover those costs, which shall be paid by a stewardship
19.4 organization or individual producer that submits a stewardship plan. The commissioner
19.5 must make the proposed fee available for public review and comment for at least 30 days.

19.6 (d) A stewardship organization or individual producer subject to this section must
19.7 pay the agency's administrative fee under paragraph (a) on or before July 1, 2015, and
19.8 annually thereafter and the agency's onetime development fee under paragraph (c) on or
19.9 before July 1 the year following submission of a stewardship plan.

19.10 (e) The agency shall deposit the fees collected under this section into a product
19.11 stewardship account.

19.12 Sec. 5. **[115A.1425] REPORT TO LEGISLATURE AND GOVERNOR.**

19.13 As part of the report required under section 115A.121, the commissioner of the
19.14 Pollution Control Agency shall provide a report to the governor and the legislature on the
19.15 implementation of sections 115A.141, 115A.1415, and 115A.142.

19.16 Sec. 6. **EFFECTIVE DATE.**

19.17 Sections 1 to 5 are effective July 1, 2013.