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BACKGROUND DOCUMENT IN SUPPORT OF THE LEAD POISONING PREVENTION FEE RULEMAKING

P.L. 2005
CHAPTER 403
AN ACT TO PREVENT
LEAD POISONING OF CHILDREN AND ADULTS

Environmental Health Division
Maine Center of Disease Control and Prevention
Department of Health and Human Services
March 22, 2006

I. Introduction

The Maine Legislature, during the recent 122nd Session, enacted Chapter 403 of the Laws of 2005 (L.D. 1034) establishing the Lead Poisoning Prevention Fund (the “Fund”) to financially support a variety of lead-related activities. Those activities include fostering community and worker educational outreach programs aimed at identifying lead hazards and preventing exposure to lead, encouraging the screening of children for lead poisoning, and funding an assessment of the current uses of lead and the availability, cost and efficacy of alternatives. The law requires creation of an advisory board to assist the Department of Health and Human Services (the “Department” or “DHHS”) in identifying priorities and otherwise discharging its responsibilities. A copy of the legislation is included as Appendix A of this report.

To provide revenue for the Fund, The legislature imposed a fee of 25 cents per gallon on the sale of paint in Maine beginning July 1, 2006. The fee must be imposed on manufacturers or wholesalers of paint (but not retailers), to be determined by DHHS through rulemaking. This rulemaking, required to be completed on or before the fee becomes effective, must also determine the method for estimating paint sales in the prior year, delineate the payment process, provide for fee waivers for paint sold in “low quantities”, and specify that the first payment of fees is due April 1, 2007. To complete the rulemaking by July 1, 2006, DHHS will propose rules for public comment in April 2006.

In anticipation of the rulemaking, the Department obtained consulting services to collect information on the paint industry generally, on relevant fee systems in place in other jurisdictions, and other information as related to the issues arising from this rulemaking. In addition, the Department distilled much of the information gathered to date, and sent letters to industry trade associations, public health groups and other stakeholders in early October 2005 seeking additional information relevant to this rulemaking and comments on the Department’s pre-proposal thinking on the various issues in the rulemaking. A copy of this pre-proposal letter is Appendix B to this report. The list of stakeholders receiving the letter is Appendix C to this report.

The Department received responses to its pre-proposal request for comments from the Maine Department of Environmental Protection (MDEP), the Environmental Health Strategy Center (EHSC), and the National Paint and Coatings Association (via local counsel Doyle & Nelson). The portions of the responses relevant to the substantive rulemaking issues will be addressed in this report in the appropriate locations. However, in the majority of its comments, the National Paint and Coatings Association (NPCA) argued the law requiring this rulemaking is unconstitutional. The Department has requested legal advice from the Attorney General’s office on this subject, thus a response to the constitutional issues raised by NPCA will be addressed under separate cover. Similarly, as a process matter, EHSC commented that the Department should continue “its

steady pace” toward adopting the final rules prior to the July 1, 2006 statutory deadline, and commended the Department for seeking input in advance of the proposal. No response to these EHSC comments is required.

II. Paint Manufacturing and Sales in the United States

The U.S. Census Bureau regularly collects data on the domestic paint industry. On the manufacturing side, the Bureau incorporates within industrial classification 325510, paint and coatings manufacturing,¹ the production of architectural coatings,² product finishes for original equipment manufacturers (OEMs),³ special purpose coatings,⁴ and miscellaneous allied paint products.⁵

Production data for the entire sector, for the four product segments within this sector, and for product categories within each segment, are collected and published annually. Table 1 of the 2004 annual report reproduced immediately below summarizes the quantities and value of product shipped annually from 1999-2004, in total and within each of the four product segments.⁶ As indicated in Table 1, in 2004, architectural coatings represented almost 52% of paint industry production volume and just above 44% of total production value.

¹ See Paint and Coating Manufacturing: 2002 Economic Census, U.S. Census Bureau EC02-311-325510 (RV), February 2005, Table 5.

² Interior and exterior paints, primers, stains, sealers, and other stock-type products formulated for normal environmental conditions and general application on new and existing residential, commercial, institutional, and industrial structures.

³ Coatings formulated specifically for OEMs to meet product requirements during the manufacturing process, such as finishes for vehicles, appliances, furniture, etc.

⁴ Stock-type of shelf goods formulated for special applications or environmental conditions such as extreme temperatures, including high-performance maintenance paints, machinery refinish paints, marine coatings, traffic marking paints, etc.

⁵ This category includes paint and varnish removers, thinners, non-pressure wood preservatives, putty and glazing compounds, etc. For more information on products within the various categories, see Linak & Kishi, Paint and Coatings Industry Overview, Chemical Economics Handbook, February 2002; U.S. Census Bureau Survey Form MQ325F – Paint, Varnish, and Lacquer.

⁶ Paint and Allied Products: 2004, U.S. Census Bureau MA325F(04)-1, September 2005.

Table 1. Summary of Estimated United States Total Quantity and Value of Shipments of Paint and Allied Products: 1999 to 2004
[Quantity in millions of gallons. Value in millions of dollars]

Year	Total		Architectural coatings		Product coatings OEM		Special-purpose coatings		Miscellaneous allied paint products	
	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value
2004.....	1,564.3	19,456.9	809.0	8,627.8	427.8	5,937.2	173.3	3,688.9	154.2	1,202.9
2003.....	1,473.5	18,092.0	762.0	8,006.2	398.5	5,541.4	r/ 165.1	3,369.0	148.0	1,175.3
2002.....	1,433.9	17,465.8	709.8	7,610.1	408.7	5,556.2	172.2	3,153.9	143.2	1,145.6
2001.....	1,392.9	17,274.7	667.0	7,038.3	406.5	5,566.6	161.2	3,408.1	158.2	1,261.7
2000.....	1,467.2	17,724.7	650.6	6,461.4	453.4	6,149.2	182.4	3,607.0	180.8	1,507.1
1999.....	1,466.2	17,813.4	660.2	6,617.9	439.7	6,146.3	174.4	3,532.3	191.9	1,516.9

r/Revised by 5 percent or more from previously published data.

Note: Data for 1999 through 2004 are estimates of the total U.S. value of shipments of paint, varnish, and lacquer. These estimates were developed by increasing the product class totals shown in Table 2 by adjustment factors. For 2002 through 2004 these factors are: 0.984 for "Architectural coatings," 1.007 for "Product coatings OEM," 1.001 for "Special-purpose coatings," and 1.024 for "Miscellaneous allied paint products." For example, the quantity and value of OEM coatings for 2003 shown in Table 2 amounted to 395,688 and \$5,502,922 respectively. Adjusting these data by the factor of 1.007 (multiplying 395,688 and 5,502,922 by 1.007) equals the adjusted and rounded quantity and value of 398.5 and \$5,541.4 shown in Table 1. For 1999 to 2001, the adjustment factors are: 1.002 for "Architectural coatings," 0.993 for "Product coatings OEM," 1.051 for "Special-purpose coatings," and 1.048 for "Miscellaneous allied paint products." These factors are used because the annual survey panel was selected to measure approximately 95 percent of the total shipments in the paint industry (NAICS 325510 formerly SIC 2851). The adjustment factors (based on the 2002 Economic Census, Manufacturing Sector's relationships) bring each product class value up to 100 percent. Quarterly data for 2004 and 2003 reflect the adjusted totals in Table 1 and are shown in Table 3 along with the quarterly data originally published in the Current Industrial Reports quarterly series MQ325F, "Paint, Varnish, and Lacquer."

Appendix D to this report reproduces Table 2 of the U.S. Census Bureau 2004 annual report, providing a more specific breakdown of shipment quantity and value by product type for 2003 and 2004. As these data indicate, while architectural coatings is the largest product segment, some product lines in the other three product segments are comparable to architectural coating product lines in terms of production quantity and value, and potentially involve significant Maine sales (i.e., wood furniture, cabinet, and fixture finishes; marine paints; traffic marking paints).

Experts forecast an overall increase of sales volume of 3% annually through 2008, resulting from higher growth in special purpose coatings (4% annually) and OEM product finishes (5% annually) than architectural coatings (1.7% annually).⁷

In addition to the annual reports, the Census Bureau publishes an Economic Census of the sector every five years. The most recent census, for 2002, was published in February 2005.⁸ This report contains data on the number and economic characteristics of the companies engaged in paint manufacturing. Appendix E to this report reproduces Table 1 of the 2002 Economic Census. As the table indicates, paint and coatings manufacturing consisted of 1,139 companies manufacturing at 1,409 locations in 2002. Only 505 of the 1,409

⁷ Rauch Guide to the Paint Industry: 2004-06, Impact Marketing Consultants, Inc. October 2004, Table 1-5.

⁸ Paint and Coating Manufacturing: 2002 Economic Census, U.S. Census Bureau EC02-311-325510 (RV), February 2005.

production locations employed 20 or more people that year, suggesting the majority of paint factories are relatively small.⁹

The paint manufacturing sector is becoming increasingly concentrated. In 2003, the top 50 manufacturers accounted for 94% of industry sales, compared to 77% of sales just five years earlier, and 64% of sales in 1972.¹⁰

III. The Paint Wholesale Sector

The U.S. Census Bureau also publishes an Economic Census every five years on wholesale trade in lumber and other construction materials. The last Economic Census was published in December 2004 covering calendar year 2002.¹¹ Paint, varnish, and supplies merchant wholesalers comprise NAICS Code 424950 within this broad wholesaler category. In addition, as discussed immediately below, other wholesalers sell paint along with their principal product lines.

According to the 2002 Census, there were 2,311 paint, varnish, and supplies wholesalers nationwide that year, 269 of which were manufacturer facilities.¹² Other types of wholesalers selling paint that year include 325 lumber, plywood, millwork, and wood panel merchant wholesalers; 31 brick, stone, and related construction material merchant wholesalers; 80 roofing, siding, and insulation material merchant wholesalers; and 116 other construction material merchant wholesalers.¹³

In addition to the larger number of establishments, the wholesale sector is also less concentrated than the manufacturing sector. Excluding manufacturer-related wholesale establishments, the 50 largest companies accounted for 457 of 2,311 locations, and 52% of national sales within NAICS Code 424950 in 2002.¹⁴

Significantly, wholesalers are not involved in some important paint distribution channels, since manufacturers can sell directly to their customers. Even in the case of architectural coatings, direct sales from manufacturers to entities such as contractors, governments, and building/maintenance firms

⁹ Paint and Coating Manufacturing: 2002 Economic Census, U.S. Census Bureau EC02-311-325510 (RV), February 2005, Table 2.

¹⁰ Rauch Guide to the Paint Industry: 2004-06, Impact Marketing Consultants, Inc. October 2004, Table 1-7.

¹¹ Lumber and Other Construction Materials: 2002, Wholesale Trade Economic Census, EC02-421-18, December 2004.

¹² *Id.*, Table 1.

¹³ *Id.*, Table 2. See also Rauch Guide to the Paint Industry: 2004-06, Impact Marketing Consultants, Inc. October 2004, Table 1-25, indicating almost 6,000 wholesalers of all kinds sold paint in 1997.

¹⁴ Lumber and Other Construction Materials: 2002, Wholesale Trade Economic Census, EC02-421-18, December 2004, Table 4.

account for approximately 18% of sales.¹⁵ While the actual data are not available, it is reasonable to assume the percentage of OEM product finish direct sales from manufacturers to customers is substantially greater since the prices and product specifications are negotiated between the paint manufacturer and the OEM.¹⁶

IV. Paint Fee Regimes in Other Jurisdictions

In support of this rulemaking, the Department identified relevant paint fee regimes in other jurisdictions. Specifically, the Department examined non-retail based paint fees in California, British Columbia, Quebec, and Nova Scotia. While the Canadian Provincial paint fees were established to finance waste management programs, they nevertheless provide useful guidance regarding the conceptual and practical elements of collecting fees from non-retail components of the paint industry.¹⁷

The California paint fee is one of three fees established to finance childhood lead poisoning prevention and case management activities in that state. Fees are imposed upon motor vehicle fee distributors, architectural coating distributors, and facilities reporting air releases of lead. The total amount assessed is \$16 million plus an annual adjustment. Paint fees account for approximately 14% of the revenue (\$2.26 million plus the annual adjustment), based upon an assessment of the relative historic contribution of this sector to lead contamination in that state.¹⁸

¹⁵ Rauch Guide to the Paint Industry: 2004-06, Impact Marketing Consultants, Inc. October 2004, p. 33.

¹⁶ Rauch Guide to the Paint Industry: 2004-06, Impact Marketing Consultants, Inc. October 2004, p. 19.

¹⁷ In its comments on DHHS' pre-proposal letter, the National Paint and Coatings Association argued the Department lacks the authority to "reference" other state or provincial fee regimes since the final version of the Maine statute did not contain language in earlier bills requiring the Department to consider such fee regimes. The Department expressly rejects this argument. While the Legislature did not adopt language requiring DHHS to consider other state/provincial fees, there is no language in the final law limiting the Department's discretion to do so. In the absence of such language, the Department should take into account the relevant experiences in other jurisdictions as part of its appropriate inquiry in support of this rulemaking. Moreover, LD 1034 as originally introduced, which had the mandatory language to which NPCA refers, also would have required DHHS to set the amount of the fee for a wider range of industries and parties, like the California fee system discussed below. In the Department's view, removal of the mandatory language simply reflects the shift of the final fee structure away from the California model.

¹⁸ In its comments on the Department's pre-proposal letter, NPCA argues without explanation that the department should not consider the California fee system simply because the petroleum industry pays most of the fees (85%), and the statute has a "totally different" focus. However, the fact that paint fees do not provide the majority of the revenue under California's law does not preclude the Department from examining the mechanics of who pays the paint fees and how they are collected. Even though the amount of the fees are based upon historic sales, the Department nevertheless believes the capability of manufacturers to self-report their historic sales in

Under the implementing fee regulations,¹⁹ “architectural coating distribution” is defined as any of the following:

- (a) The manufacturing, producing, blending, or compounding of architectural coating in this state, and the sale, donation, barter or use of the architectural coating in this state.
- (b) The importing of architectural coating into this state with respect to which there has been no prior distribution subject to the fee, and the sale, donation, barter or use of architectural coating in this state.
- (c) The receiving in this state by a distributor of architectural coating with respect to which there has been no prior distribution subject to the fee, or the receipt in this state by any business entity of architectural coating with respect to which there has not been a prior distribution on which fee a fee has been paid pursuant to this section, and the sale, donation, barter, or use of architectural coating this state.
- (d) The sale of architectural coatings by any business entity required to be registered pursuant to Revenue and Taxation Code 6001 et seq., when it is shipped into this state by the seller to a carrier, customs broker, or forwarding agent, whether hired by the order of the purchaser or not, for shipment into this state for subsequent sale, donation, barter, or use in this state.

The amount of the fee assessed against each entity is the proportion of architectural coatings that entity distributed in California during 1978 versus the total amount distributed in the state that year, multiplied by the total revenue sought (\$2.26 million plus the annual adjustment) from this sector. Thus, an entity responsible for 10% of 1978 architectural coating distribution in California would pay a fee of \$226,000 (plus their share of any annual adjustment). Based upon self-reporting from fee payers, California officials estimate that 49,154,774 gallons of architectural coating were distributed in California during 1978, and have calculated the relative contribution of approximately 400 paint fee payers. The identities of the fee payers and their relative contributions are considered confidential business information, and are thus unavailable to the Department.²⁰

In the Canadian Province of British Columbia (BC), a paint “producer” of architectural coatings is responsible for conducting product stewardship activities for its products, either by themselves or through an agent. To comply with these requirements, many of the paint “producers” joined together to form “Product Care”, which collects fees from the producers to perform the necessary

California indicates many of the same manufacturers should be able to report their current Maine sales, as discussed further below.

¹⁹ Title 17, California Code of Regulations, sec. 33001-33050.

²⁰ E-mail from Deborah Dubroff, California Department of Health Services to David Lennett, DHHS Consultant, dated August 22, 2005, and subsequent telephone conversation between Mr. Lennett and Ms. Dubroff.

activities.²¹ The fees for paint are on a sliding scale based on the size of the paint containers sold in BC, ranging from 10 cents per unit for aerosol and small containers, to \$1.00 per five gallon container.

Under the BC regulations, a paint producer is defined as –

- a. A person who manufactures the product and sells, offers for sale or distributes the product in BC under the manufacturer's own brand.
- b. If (a) does not apply, a person who is not the manufacturer of the product but is the owner or licensee of a trade mark under which the product is sold or distributed in BC, whether or not the trade mark is registered; or
- c. If (a) and (b) do not apply, a person who imports the product into BC for sale or distribution.²²

Over 100 members of Product Care pay the fee on a monthly basis. A copy of the monthly reporting form is attached as Appendix F. Again, the identities and amounts paid by individual paint producers are considered confidential information by Product Care, but most fee payers are manufacturers according to the head of the organization.²³

Product Care also administers a similar fee paying product stewardship program in Nova Scotia (NS). Under the NS Solid Waste Resource Management Regulations,²⁴ the product stewardship obligations apply to “brand owners” of “consumer paint products” (generally latex, oil or solvent-based architectural coatings). In Nova Scotia, a “brand owner” is defined as –

- (a) A person who is the owner or license of the intellectual property rights of a consumer paint product sold, offered for sale, or otherwise distributed in NS; or
- (b) A manufacturer or distributor of a consumer paint product sold, offered for sale, or otherwise distributed in the Province.

²¹ For more information on Product Care and the BC requirements, go to www.productcare.org. A smaller number of companies targeting aerosol paints used by forest companies formed the Tree Marking Paint Stewardship Association. See www.treepaint.ca.

²² In its comments on the DHHS pre-proposal letter, NPCA argues the BC fee is not relevant since “it does not fund any program having to do with old lead-based paint”. The Department fully agrees the BC fee is for paint collection and recovery as a waste management matter, though such recovery may include old lead-based paint. More importantly, the Department's principal interest in reviewing the elements of the fee system is in who pays the fee and how it is collected (i.e., the revenue aspects of the fee system), therefore the purpose for which the money is spent in BC or the other Canadian Provinces should not govern the relevance of these fees to the instant rulemaking.

²³ Telephone conversation with Mark Kurshner, President of Product Care. Product Care also administers fee systems for solvents/flammable liquids, and pesticides, under the BC product stewardship regulations.

²⁴ See www.gov.ns.ca/just/regulations/REGS/envsolid.htm.

As is the case in BC, the fees range from 10 cents to \$1.00 per unit, depending upon the size of the container, and the fees are paid monthly.

Finally, in Quebec, an organization called Eco-Peinture was formed by members of the paint industry to undertake the product stewardship activities required under Quebec law.²⁵ Under Quebec law, the product stewardship obligations apply to an entity which markets architectural coatings (except artist paints) in that province under a trademark they own or use, or is a first supplier of such paints in Quebec. The fee is 25 cents per container, regardless of container size, plus applicable taxes. A copy of the monthly form to accompany the fee is attached as Appendix G.

There are typically 43-44 Eco-Peinture fee payers in recent years. A list of participating companies can be found on the organization website, and is reproduced as Appendix H. This list indicates membership is dominated by manufacturers and large retailers selling their own brand of paint.

To ensure the monthly submissions are accurate, Eco-Peinture requires that its members submit an annual audit opinion signed by an external auditor certifying that the number of paint containers indicated on the monthly reports in the previous year do represent the true number of containers marketed in Quebec the previous year. In addition, the organization audits five of its members annually.

V. Defining Paint for Purpose of Fee Imposition

To implement the fee system anticipated by the Legislature, the Department must define “paint”. For the five reasons discussed immediately below, the Department proposes to define “paint” to include architectural coatings, product finishes for OEMs, and special purpose coatings.

In defining paint, the Department first looks to the law itself and notes the Legislature did not limit the scope of the fee to any particular segment of the paint industry, such as architectural coatings. The Legislature was certainly aware of the different segments of the paint industry during its deliberations, since on several occasions relevant information was provided to the Joint Committee on Health and Human Services, including the Committee’s May 3 and May 18, 2005 work sessions on the bill. At the May 3 session, the Maine Department of Environmental Protection presented information on several paint fee systems, including a fee on architectural coatings it had previously proposed to support household hazardous waste collection activities in the state. The materials provided to the Committee expressly described the various categories of paint products and noted architectural coatings were more closely associated with household purchases. At the May 18 work session, both MDEP and the

²⁵ For more information on Eco-Peinture, go to www.ecopeinture.ca.

Department presented a proposal for a fee on paint limited to architectural coatings only, noting the prior DEP work on fees was limited to this category of paint products. Accordingly, the absence of such limiting language in the final bill as reported out by the Committee and enacted into law is significant in the Department's judgment.²⁶

Second, the Department looks to the common scope of the term "paint" in the industry. As noted above, the Census Bureau includes the production of architectural coatings, product finishes for original equipment manufacturers (OEMs), special purpose coatings, and miscellaneous allied paint products as falling within the paint manufacturing sector. Other industry-related websites apply the term "paint" broadly to include all the segments in the industry ("A mixture or dispersion of opaque pigments or powders in a liquid or vehicle. Now used in the general sense, which includes all organic and inorganic coatings such as enamels, varnishes, emulsions, bituminous coatings, etc.").²⁷ NPCA includes within the paint and coatings industry "manufacturers of architectural coatings (i.e., house paint), a diverse collection of product coatings applied as part of the manufacturing process..., and special purpose coatings, such as those for ships, auto refinish, and highway and traffic markings."²⁸ The Rauch Guide to the Paint Industry, a well known industry publication cited in this report, covers all paint products within the Census Bureau classification except miscellaneous allied paint products.

Third, the lead exposure risks to homeowners, contractors, and workers the legislation requiring this rulemaking is intended to minimize very often arises from the application of new paint to old surfaces, such as the act of preparing the old surfaces for receipt of the new paint. Therefore, while it is often the lead content of the old paint which presents the exposure risk, the purchase and application of the new paint can be a principal risk triggering event, irrespective of the new paint's lead content. Given the variety of lead exposure scenarios of concern, a broad meaning of the term "paint" for fee imposition purposes is consistent with this realization that the purchase of paint is an important element of relevant and significant lead exposure scenarios.²⁹

²⁶ In its comments on the Department's pre-proposal letter, NPCA argues there is no evidence in the legislative record that the Legislature either rejected limiting the fee to architectural coatings or intended to apply the fee broadly. However, in its comments, EHSC noted the Joint Standing Committee on Health and Human Services rejected a proposal to limit the fee to architectural coatings only. As discussed in the text, DHHS finds that the absence of limiting language in the law is significant, particularly since the Department had proposed limiting the fee to architectural coatings at a legislative work session.

²⁷ Master Painters Institute Online Painter's Glossary, at www.paintinfo.com/mpi/store/glossary/gloss-p.htm.

²⁸ www.paint.org/ind_info/facts.cfm.

²⁹ The recent agreement between manufacturers and the State Attorneys General requiring labels on new paint warning about the hazards of removing old paint demonstrates the importance of this exposure scenario.

Fourth, beyond excluding miscellaneous allied paint products for the reasons discussed below, it is unclear how the Department would narrow the scope of “paint” for the purpose of fee imposition within the Census Bureau classification even if it chose to do so. Certainly, historic use of lead in paint extends beyond architectural coatings or any one particular product segment, to the extent that is a potentially relevant basis for differentiation.

Fifth and finally, by defining paint broadly, DHHS will also avoid the need to identify products as falling within one particular industry segment, and the resulting confusion and complexity presented by various special purpose coatings that can also be considered architectural coatings or OEM products in some instances.³⁰

In its pre-proposal letter, the Department had included miscellaneous allied paint products within the definition of paint it was contemplating at the time. However, the Department is not proposing to impose the fee on miscellaneous allied paint products because products such as brush cleaners and paint removers are not generally regarded as paint under the common understanding of the term, the exclusion of these products should not cause confusion due to potential product cross-over categorization, and their exclusion is consistent with the Department’s anticipated use of the Rauch Guide to monitor rule compliance, as explained further below.

VI. Who Should Pay the Fee

The law expressly requires DHHS to determine in the rulemaking who should pay the fee (manufacturer or wholesaler), while prohibiting imposition of the fee at the retail level.³¹ To address this issue, the Department reviewed the data it gathered regarding the characteristics of the paint manufacturing and wholesale sectors, and how non-retailer based paint sales fees are administered in other jurisdictions. For the reasons discussed below, the Department proposes to impose the fee on the following sequence of entities:

1. The manufacturer of the paint which offers for sale, sells, or distributes the product under its own brand label in Maine;
2. The brand label owner of the paint which is sold or distributed in Maine, if the manufacturer does not sell or distribute the paint under its own brand label in Maine;

³⁰ Rauch Guide to the Paint Industry, Fourth Edition 2004-06, Impact Marketing Consultants, 2004, p. 156.

³¹ The Department does not construe the use of the word “or” in the statute as precluding a fee paying structural sequence in which the fee may be imposed under either a manufacturer or wholesaler, depending upon how the paint is distributed in Maine, as long as the fee is not collected twice for the same paint sale. The Department notes related language in the statute referring to the “low quantity” waiver discussed below applies to manufacturers “and” wholesalers, which indicates a sequential fee imposition structure is permissible.

3. The importer of the paint into Maine, if neither of the above applies.

This proposal reflects the Department's preference for an approach that minimizes the administrative burdens for both fee payers and the Department, while still effective in collecting the revenues sought by the Legislature. We note the imposition of the fee principally at the manufacturing level is consistent with the other fee systems identified, thus the proposal builds on approaches already in place. Second, this approach is necessary for revenue collection because some paint is distributed directly from manufacturing facilities to retail locations or OEMs, thus there will be no wholesalers involved in the transactions. Third, as discussed above, the manufacturing sector is more concentrated than the wholesale sector, thus the fee will be easier to collect and enforce. Fourth and finally, the Department notes that manufacturers of architectural coatings, the largest product segment, are already required by Maine Department of Environmental Protection (MDEP) air quality regulations to provide, upon request, the number of gallons of paint sold in Maine.³² Accordingly, many paint manufacturers are already required to, and are presumably capable of, tracking their Maine paint sales.

The proposal would apply the fee secondarily to "brand owners" to cover the situations where manufacturers simply supply paint to other companies who then market the paint as their own, and thus the manufacturers may not know where the paint is ultimately sold. The proposal would apply the fee to importers secondarily to cover atypical situations where the first two entities may be outside of our jurisdiction, such as where paint is imported from another country.

This proposal is consistent with the approach outlined in the Department's pre-proposal letter. The one commenter who addressed this issue, EHSC, supported that approach as consistent with legislative intent and the policy principle of Extended Producer Responsibility, and as responsive to the need for collecting revenue as efficiently as possible.

VII. Computation of the Fee

To facilitate the reporting of annual paint sales, and the computation of the fee, the proposal allows the fee payer to either provide the actual volume of Maine paint sales (converted to gallons) for the prior calendar year,³³ or to utilize a pro rata percentage of national paint sales volume (0.45% or 0.0045 of national volume sold based upon the percentage of Maine population to the national

³² MDEP Rules Chapter 151, Section 5.B(5) and (6).

³³ The Department recognizes that paints are sold in a variety of containers and sizes, hence it is requiring the conversion to gallons to ensure the fee is equitably imposed consistent with the legislation. Such containers can range from aerosol cans, to quart or smaller metal cans, to 5 gallon containers, 55 gallon drums, and even tank wagons in some cases. See Rauch Guide to the Paint Industry, Fourth Edition 2004-06, Impact Marketing Consultants, 2004, p. 21.

total).³⁴ The Department proposes the national sales option to cover those situations where a manufacturer is unable to track Maine-only sales without incurring substantial additional administrative expense.

These alternatives were presented in our pre-proposal letter. Only one commenter, EHSC, addressed the issue, and it indicated the approach was a reasonable accommodation to minimize the fee paying administrative burden.

Under the proposal, the fee payment will be accompanied by submission of a short reporting form indicating how the fee amount was derived. To ensure accuracy and accountability, the Department proposes that the form be signed by a “responsible corporate official”. The Department based its definition of “responsible corporate official” upon the Maine Department of Environmental Protection’s regulations,³⁵ and has adapted it to this context principally by deleting irrelevant language such as references to permitting programs. The MDEP definition in Chapter 100, in pertinent part, is as follows:

Responsible official. “Responsible official” means one of the following:

- A.** For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation;
- B.** For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
- C.** For a municipality, State, Federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA).

In its pre-proposal letter, the Department sought comment on whether the form should be signed by a senior official or an outside auditor. DHHS received two responses on this issue. MDEP recommended using an adapted version of its definition of “responsible corporate official”, which DHHS has proposed, to ensure the signatory can represent the company in the legal sense. EHSC recommended the reporting form be signed by a senior company official, which is consistent with the Department’s proposal.

The Department is fully aware that some companies may regard their Maine sales data as confidential business information. As noted above, most

³⁴ According to the U.S Census Bureau, Maine’s population in 2003 was estimated to be 1,305,278, as compared to the estimated nationwide population of 290,809,777. See <http://www.infoplease.com/us/census/data/maine/>.

³⁵ MDEP Rules, Chapter 100, Section 138, and Chapter 521, Section 5(a).

other paint fee regimes do not allow public access to information regarding the identity and amounts of fees paid by individual companies. Therefore, in the proposal the Department instructs fee payers how to request that the Department not release the materials of concern. The Department already manages information such as medical records that cannot be released to the public under state law.

VIII. The “Low Quantities” Fee Exclusion

The statute requires that this rulemaking “provide for waivers of payment for manufacturers and wholesalers of paint that is sold in low quantities in the state”. The Departments construes this “low quantity” exemption provision as a legislative mechanism to simplify the administration and enforcement of the fee regime by reducing the number of fee payers involved without foregoing substantial revenue.

In this regard, the Department is aware of the consolidation that has taken place in this industry over the last several decades, and the very high percentage of paint sales attributable to the largest companies, as discussed above. Accordingly, the Department considered several options for a low quantity threshold which would greatly reduce the number of fee payers.

According to the Rauch Guide, there are 304 companies with estimated United States paint sales exceeding \$5 million dollars annually, based upon 2003 data. Above this sales threshold, information on the companies is easier to obtain and more complete for industry experts who routinely publishing market data, and thus easier for the Department to access for fee administration purposes.³⁶ This national sales threshold can be converted into a volume threshold of 404,203 gallons, by applying an average price of \$12.37/gallon for paint shipped from manufacturers in 2003.³⁷ Using Maine’s share of the U.S. population, this volume threshold would translate into approximately 1,800 gallons of paint sold in Maine in a calendar year.

The Department also considered an option to further simply the fee collection regime by selecting a \$25 million national sales threshold, and thus targeting the fee to the largest 50-60 companies in the United States.³⁸ As noted above, due to the consolidation of the industry, this threshold is still expected to capture substantially more than 90% of Maine paint sales. The \$25 million

³⁶ Rauch Guide to the Paint Industry, Fourth Edition 2004-06, Impact Marketing Consultants, 2004, p. 174.

³⁷ According to the U.S. Census Bureau, the total value of paint shipments in 2003 was \$18,080,700,000, and the total gallon volume shipped that year was 1,461,400,000. See Paint and Allied Products: 2003, U.S. Census Bureau MA 325F, November 2004, Table 1. The Department used 2003 data in this context to be consistent with the Rauch Guide.

³⁸ Rauch Guide to the Paint Industry, Fourth Edition 2004-06, Impact Marketing Consultants, 2004, Table 1-8.

national sales threshold would correspond to a 9,000 gallon yearly “low quantity” Maine sales threshold, using the same methodology as described immediately above.

In its pre-proposal letter, the Department sought comment on these two “low quantity” threshold options, and received one substantive response. EHSC preferred the 1,800 gallon threshold because slightly more paint sales would be captured and thus greater revenue collected. According to EHSC, the larger potential pool of revenue could compensate to some extent for possible reductions in actual fee collections resulting from lower than expected (based on the population proportionate estimate) Maine paint sales and/or practical difficulties arising in collecting revenues from some companies who distribute their product in unique ways.

The Department is proposing the 1,800 gallon low quantity threshold for the reasons advanced by EHSC, and the likelihood that significantly fewer than 304 entities will exceed this threshold in Maine due to regional market conditions.³⁹ However, the Department continues to believe both options have merit, and thus seeks comment on both options so that the Department can consider both options in its deliberations on the final rules.

³⁹ As discussed above, there are 43-44 fee payers in the Quebec Eco-Peinture program. While this Quebec fee applies to architectural coatings only and excludes artist paints, the relatively small number of fee payers indicates it is reasonable to assume only some of the 304 paint manufacturers sell their products in Maine.

APPENDIX A
P.L. 2005
CHAPTER 403

AN ACT TO PREVENT
LEAD POISONING OF CHILDREN AND ADULTS

CHAPTER 403

H.P. 719 - L.D. 1034

An Act To Prevent Lead Poisoning of Children and Adults

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §§1322-E and 1322-F are enacted to read:

§1322-E. Lead Poisoning Prevention Fund

1. Fund established. The Lead Poisoning Prevention Fund, referred to in this section as "the fund," is established within the department as a nonlapsing fund for the purposes specified in this section.

2. Sources of fund. The fund is funded from all fees collected under section 1322-F and from other funds accepted by the commissioner or allocated or appropriated by the Legislature.

3. Prevention purposes. Allocations from the fund must be made for the following purposes:

A. Contracts for funding community and worker educational outreach programs to enable the public to identify lead hazards and take precautionary actions to prevent exposure to lead;

B. An ongoing major media campaign to fulfill the purposes of the educational and publicity program required by section 1317-B;

C. Measures to prevent children's exposure to lead, including targeted educational mailings to families with children that occupy dwellings built prior to 1978 with

culturally appropriate information on the health hazards of lead, the identification of lead sources, actions to take to prevent lead exposure and the importance of screening children for lead poisoning;

D. Measures to prevent occupational exposures to lead for private and public employees, including improvements in the effectiveness of the occupational disease reporting system required in chapter 259-A in identifying and educating health care providers, employers and lead-exposed adults about occupational lead poisoning prevention strategies;

E. Funding an assessment of current uses of lead and the availability, effectiveness and affordability of lead-free alternatives; and

F. Funding for educational programs and information for owners of rental property used for residential purposes.

4. **Administration.** The Bureau of Health shall administer the fund allocations with the review and advice of an advisory board established by the department pursuant to section 1323. Preference must be given to programs that reach high-risk or underserved populations. The bureau may contract for professional services to carry out the purposes of this section.

§1322-F. Lead poisoning prevention fee

1. **Fee imposed.** Beginning July 1, 2006, a fee is imposed on manufacturers or wholesalers of paint sold in the State to support the Lead Poisoning Prevention Fund under section 1322-E. The fee must be imposed at the manufacturer or wholesaler level, in the amount of 25¢ per gallon of paint estimated to have been sold in the State during the prior year, as determined by rule adopted by the department.

2. **Rules.** By July 1, 2006, the department shall adopt rules to implement this section, including rules to determine which manufacturers or wholesalers of paint sold in the State are responsible for the fees imposed under subsection 1 and rules establishing the estimated number of gallons of paint sold in the State in the prior year for each manufacturer and rules determining the manner of payment. The rules must provide for waivers of payment for manufacturers and wholesalers of paint that is sold in low quantities in the State. The costs for development of these rules and for administration of the Lead Poisoning Prevention Fund must be reimbursed from the fees collected. The rules must specify that the first payment of fees is due by April 1, 2007. Rules adopted pursuant to this

subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

3. Enforcement. The Attorney General shall enforce payment of fees under this section through an action in Superior Court in Kennebec County and may collect costs and attorney's fees.

4. Repeal. This section is repealed July 1, 2011.

Sec. 2. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Lead Poisoning Prevention Fund

Initiative: Provides a base allocation of \$500 beginning in fiscal year 2006-07 for the costs of the development of rules, the administration of the fund and allocations from the fund to be funded by fees authorized to be imposed for the purposes of the fund.

OTHER SPECIAL REVENUE FUNDS	2005-06	2006-07
Unallocated	\$0	\$500
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$500

APPENDIX B

DHHS PRE-PROPOSAL LETTER TO STAKEHOLDERS



Maine Health and Human Services

Public Health
Environmental & Occupational Health Program
11 State House Station
Augusta, Maine 04333-0011

John Elias Baldacci, Governor
John R. Nicholas, Commissioner

Tel: (207) 287-5189
Fax : (207) 287-3981
TTY: (207) 287-8066

{Date}

{Name}

{Address}

Re: Maine Paint Fee Rulemaking

Dear _____:

As you may know, the Maine Legislature recently passed a law requiring a 25 cent per gallon fee on the sale of paint in Maine. The fees collected will be dedicated to the Lead Poisoning Prevention Fund, and used for supporting education and outreach activities related to identifying lead hazards and taking appropriate precautionary actions. Attached is a copy of the new law for your information.

This law obligates the Maine Department of Health and Human Services (Maine HHS) to conduct a rulemaking which addresses certain issues associated with collecting the fee. The rulemaking must be completed by July 1, 2006, and the first fees will be collected by April 1, 2007, based on 2006 sales. To complete the rulemaking by July 1, 2006, we intend to propose rules for comment in the January-February 2006 timeframe.

The purposes of this letter are to inform you of our preliminary thinking on the anticipated principal issues in advance of the rulemaking, obtain comments from you on these preliminary thoughts, and solicit from you information that would be relevant to our deliberations.

The first of the principal rulemaking issues is defining the scope of “paint” subject to the fee. Since the Legislature rejected limiting the fee to architectural coatings, we believe the Legislature intended to apply the fee broadly, covering all products falling within any of the industry segments identified by the US Census Bureau as paint and coating manufacturing.¹ Such product segments include architectural coatings,² product finishes for original equipment

¹ See Paint and Coating Manufacturing: 2002 Economic Census, U.S. Census Bureau, February 2005, Table 5.

² Interior and exterior paints, primers, stains, sealers, and other stock-type products formulated for normal environmental conditions and general application on new and existing residential, commercial, institutional, and industrial structures.

manufacturers (OEMs),³ special purpose coatings,⁴ and miscellaneous allied paint products.⁵ By defining paint broadly, we will also avoid the need to identify products as falling within one of these industry segments, and the resulting confusion and complexity presented by some special purpose coatings that can also be considered architectural coatings or OEM products in some instances.⁶

Second, the law requires us to determine in the rulemaking who should pay the fee (manufacturer or wholesaler), while prohibiting imposition of the fee at the retail level. To address this issue, the Department reviewed information describing the characteristics of the paint manufacturing and wholesale sectors, and how non-retailer based paint sales fees are administered in other jurisdictions. Our research thus far indicates there are relevant non-retail fees on paint in California, and in the Canadian Provinces of British Columbia, Quebec, and Nova Scotia. The Provincial fees are collected to facilitate waste management, but the revenue raising aspects are nevertheless instructive.

Our thinking at this juncture is to impose the fee on the following sequence of entities:

1. The manufacturer of the paint which offers for sale, sells, or distributes the product under its own brand label in Maine;
2. The brand label owner of the paint which is sold or distributed in Maine, if the manufacturer does not sell or distribute the paint under its own brand label in Maine;
3. The importer of the paint into Maine, if neither of the above applies.

The imposition of the fee principally at the manufacturing level is consistent with the other fee systems identified and necessary because some paint is distributed directly from manufacturing facilities to retail locations or OEMs, thus there will be no wholesalers involved in the transactions. Moreover, the manufacturing sector is more concentrated than the wholesale sector,⁷ particularly after establishing the “low quantity” exclusion (see discussion below), thus the fee will be easier to collect and enforce. We also note that manufacturers of architectural coatings, the largest product segment, are already required by Maine Department of Environmental Protection (MDEP) air quality regulations to provide, upon request, the number

³ Coatings formulated specifically for OEMs to meet product requirements during the manufacturing process, such as finishes for vehicles, appliances, furniture, etc.

⁴ Stock-type of shelf goods formulated for special applications or environmental conditions such as extreme temperatures, including high-performance maintenance paints, machinery refinish paints, marine coatings, traffic marking paints, etc.

⁵ This category includes paint and varnish removers, thinners, non-pressure wood preservatives, putty and glazing compounds, etc. For more information on products within the various categories, see Linak & Kishi, Paint and Coatings Industry Overview, Chemical Economics Handbook, February 2002.

⁶ Rauch Guide to the Paint Industry, Fourth Edition 2004-06, Impact Marketing Consultants, 2004, p. 156.

⁷ There are 2311 establishments within the paint, varnish and supplies merchant wholesale sector (NAICS 424950), not counting establishments within other wholesaler business classifications that also sell paint, such as lumber wholesalers, brick wholesalers, automotive parts wholesalers, etc. See Lumber and Other Materials: 2002, 2002 Economic Census Wholesale Trade, U.S. Census Bureau, December 2004, Tables 1-3.

of gallons of paint sold in Maine.⁸ Accordingly, many paint manufacturers are already required to, and are presumably capable of, tracking their Maine paint sales.

We contemplate applying the fee secondarily to “brand owners” to cover the situations where manufacturers simply supply paint to other companies who then market the paint as their own, and thus the manufacturers may not know where the paint is ultimately sold. We contemplate applying the fee to importers secondarily to cover atypical situations where the first two entities may be outside of our jurisdiction, such as where paint is imported from another country.

To facilitate the reporting of annual paint sales, and the computation of the fee, we would allow the fee payer to either provide the actual volume of Maine paint sales (converted to gallons) for the prior calendar year, or to utilize a pro rata percentage of national paint sales volume (0.45% or 0.0045 of national volume sold based upon the percentage of Maine population to the national total). We anticipate the fee payment will be accompanied by submission of a short reporting form indicating how the fee amount was derived. The Department seeks your input on whether the form should be signed by a senior official or an outside auditor to ensure accuracy and accountability.

The Department is fully aware that some companies may regard these sales data as confidential business information. In the rulemaking, the Department will refer fee payers to applicable state law regarding public access to information, and instruct fee payers how to request that the Department not release the materials of concern. The Department already manages information such as medical records that cannot be released to the public under state law.

A third issue expressly raised in the law is defining “low quantities” of paint sales for which the fee will not be collected. Through this “low quantity” provision, the Legislature intended to simplify the administration and enforcement of the fee regime by reducing the number of fee payers involved without foregoing substantial revenue. In this regard, the Department is aware of the consolidation that has taken place in this industry over the last several decades, and the very high percentage of paint sales attributable to the largest companies.⁹ Accordingly, we are considering several options for a low quantity threshold at this juncture which would greatly reduce the number of fee payers.

According to the Rauch Guide, there are 304 companies with estimated United States paint sales exceeding \$5 million dollars annually, based upon 2003 data. Above this sales

⁸ MDEP Rules Chapter 151, Section 5.B(5) and (6).

⁹ In 1982, the 50 largest manufacturers accounted for 67% of national paint sales, while in 2002 the 50 largest accounted for 94% of national paint sales. Rauch Guide to the Paint Industry, Fourth Edition 2004-06, Impact Marketing Consultants, 2004, Table 1-7. Since the US Census Bureau found 1,139 companies manufacturing paint in 2002, the remaining 6% of national sales is spread among almost 1,100 companies. Paint and Coating Manufacturing: 2002 Economic Census, U.S. Census Bureau, February 2005, Table 1.

threshold, information on the companies is easier to obtain and more complete for industry experts who routinely publishing market data, and thus easier for the Department to access for fee administration purposes.¹⁰ This national sales threshold can be converted into a volume threshold of 404,203 gallons, by applying an average price of \$12.37/gallon for paint shipped from manufacturers in 2003.¹¹ Using Maine's share of the U.S. population, this volume threshold would translate into approximately 1,800 gallons of paint sold in Maine in a calendar year.

The Department is also considering an option to further simplify the fee collection regime by selecting a \$25 million national sales threshold, and thus targeting the fee to the largest 50-60 companies in the United States.¹² As noted above, due to the consolidation of the industry, this threshold is still expected to capture substantially more than 90% of Maine paint sales. The \$25 million national sales threshold would correspond to a 9,000 gallon yearly "low quantity" Maine sales threshold, using the same methodology as described immediately above.

As indicated above, we seek your input on each of these issues in the rulemaking, including comments on our preliminary thinking, alternative approaches you believe we should consider (with supporting data and references as appropriate), and any other information the Department should consider in preparing the proposed rules. So that we can conduct the rulemaking in a timely manner, we ask that you respond to this letter by November 4, 2005.

I look forward to hearing from you.

Sincerely,

Andrew E. Smith, S.M., Sc.D.
State Toxicologist & Director,
Environmental & Occupational Health Program
Maine Center for Disease Control & Prevention
Maine Department of Health & Human Services

¹⁰ Rauch Guide to the Paint Industry, Fourth Edition 2004-06, Impact Marketing Consultants, 2004, p. 174.

¹¹ According to the U.S. Census Bureau, the total value of paint shipments in 2003 was \$18,080,700,000, and the total gallon volume shipped that year was 1,461,400,000. See Paint and Allied Products: 2003, U.S. Census Bureau MA 325F, November 2004, Table 1.

¹² Rauch Guide to the Paint Industry, Fourth Edition 2004-06, Impact Marketing Consultants, 2004, Table 1-8.

APPENDIX C

RECIPIENT LIST OF DHHS PRE-PROPOSAL LETTER TO STAKEHOLDERS

Recipients of Paint Fee Rulemaking Letter

1. Maine interested parties,

Jon R. Doyle, Esq.
Brian H. Mahany, Esq.
Dolye & Nelson
150 Capitol Street
Augusta, ME 04330

Michael Belliveau
Environmental health Strategy Center
27 State St., Suite 44
P.O. Box 2217
Bangor, ME 04402

Paul Gauvreau, Esq.
Attorney General's Office
6 State House Station
Augusta, ME 04333

Barbara Shaw, Esq.
29 Bowdoin St.,
Portland, Maine 04102

Ginger Jordan-Hillier
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

David Littell, Deputy Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Ann Pistell
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Senator Arthur F. Mayo, III, Chair
Representative Hannah Pingree, Chair
Health and Human Services Committee
100 State House Station
Augusta, ME 04333

Robert Dodd
Coalition for Environmentally Safe Communities
6 Locksley Road
Cape Elizabeth, ME 04107

2. The following paint trade associations:

David Lloyd
National Paint and Coatings Association
1500 Rhode Island Ave., NW
Washington, DC 20005

Alison Keane
National Paint and Coatings Association
1500 Rhode Island Ave., NW
Washington, DC 20005

Anne Goyer, President
Chemical Coaters Association International
P.O. Box 54316
Cincinnati, OH 45230

Christopher Cathcart, President
Consumer Specialty Products Association
900 17th Street, NW
Washington, DC 20006

Colored Pigment Manufacturers Association
300 N. Washington Street
Alexandria, VA 22314

Gregory Bocchi, Executive Director
Powder Coatings Institute
2121 Eisenhower Avenue
Alexandria, VA 22314

National Coil Coaters Association
1300 Summer Avenue
Cleveland, OH 44115

3. The following persons associated with fee systems elsewhere:

Georges Portelance, Executive Director
Eco-Peinture
CP 23
Succ Beaconsfield
Quebec H9W 5T6
Canada

Mark Kurshner, President
Product Care Association
12337 – 82A Avenue
Surrey, British Columbia
Canada V3W 0L5

4. Internal persons

Clough Toppan, Director
Division of Environmental Health
Maine HHS / Public Health
11 State House Station
Augusta, ME 04333

Paul Kuehnert
Deputy Director
Maine HHS / Public Health
11 State House Station
Augusta, ME 04333

Dora Anne Mills, M.D., M.P.H.
Maine HHS / Public Health
11 State House Station
Augusta, ME 04333

Lucky Hollander
Maine Health and Human Services
11 State House Station
Augusta, ME 04333

APPENDIX D

TABLE 2 OF U.S. CENSUS BUREAU 2004 ANNUAL REPORT PAINT AND ALLIED PRODUCTS

Table 2. Quantity and Value of Shipments of Paint and Allied Products: 2004 and 2003
[Quantity in thousand of gallons. Value in thousand of dollars]

Product code	Product description	2004		2003	
		Quantity	Value	Quantity	Value
325510	Paint and allied products 1/.....	1,570,689	19,524,029	1,479,504	18,152,769
3255101	Architectural coatings.....	822,186	8,768,106	774,364	8,136,396
	Exterior solvent-type.....	81,554	965,299	74,979	892,875
3255101111	Solvent thinned paints and tinting bases, including barn and roof paints.....	22,359	242,002	19,867	215,109
3255101115	Solvent thinned enamels and tinting bases, including exterior-interior floor enamels.....	16,774	248,554	16,186	241,535
3255101119	Solvent thinned undercoaters and primers.....	10,331	117,248	8,528	100,539
3255101121	Solvent thinned clear finishes and sealers.....	5,894	76,248	5,590	71,125
3255101125	Solvent thinned stains, including shingle and shake.....	15,992	199,979	15,134	187,009
3255101129	Other exterior solvent thinned coatings, including bituminous paints.....	10,204	81,268	9,674	77,558
	Exterior water-type.....	202,668	2,248,599	186,403	2,037,304
3255101131	Water thinned paints and tinting bases, including barn and roof paints.....	121,800	1,414,222	107,434	1,245,124
3255101135	Water thinned exterior-interior deck and floor enamels.....	3,741	39,236	3,616	37,235
3255101139	Water thinned undercoaters and primers.....	27,720	294,460	24,749	265,081
3255101141	Water thinned stains and sealers.....	22,337	266,971	21,961	255,813
3255101145	Other exterior water thinned coatings.....	27,070	233,710	28,643	234,051
	Interior solvent-type.....	65,778	747,328	60,369	660,705
3255101211	Flat solvent thinned wall paint and tinting bases, including mill white paints.....	2,848	71,775 r/	2,423	61,974
3255101215	Gloss and quick drying enamels and other gloss solvent thinned paints and enamels.....	3,312	47,245	3,333	46,443
3255101219	Semigloss, eggshell, satin solvent thinned paints, and tinting bases.....	13,874	181,452	11,403	153,248
3255101221	Solvent thinned undercoaters and primers.....	27,746	263,136 r/	26,314	229,490
3255101225	Solvent thinned clear finishes and sealers.....	(D)	(D)	(D)	(D)
3255101229	Solvent thinned stains.....	1,820	19,131	1,839	19,026
3255101231	Other interior solvent thinned coatings.....	(D)	(D)	(D)	(D)
	Interior water-type.....	463,459	4,715,546	443,884	4,455,464
3255101235	Flat water thinned paints and tinting bases.....	181,230	1,550,792	177,437	1,471,464
3255101239	Semigloss, eggshell, satin, and other water thinned paints and tinting bases.....	197,333	2,270,731	188,003	2,178,169
3255101241	Water thinned undercoaters and primers.....	46,008	387,705	40,912	334,883
3255101245	Other interior water thinned coatings, stains, and sealers.....	38,888	506,318	37,532	470,948
3255101249	Architectural lacquers.....	6,286	63,012	6,360	62,491
3255101YVW	Architectural coatings, n.s.k.	2,441	28,322	2,369	27,557
3255104	Product finishes for original equipment manufacturers (OEM), excluding marine coatings.....	424,812	5,895,952	395,688	5,502,922
3255104111	Automobile, light truck, van, and sport utility vehicle finishes.....	49,789	987,604	45,625	978,714
3255104121	Automobile parts finishes.....	4,953	148,451	4,855	148,952
3255104131	Heavy duty truck, bus, and recreational vehicle finishes.....	15,652	375,266	12,055	290,232
3255104141	Other transportation equipment finishes, including aircraft and railroad.....	8,676	130,839	8,995	126,938
3255104211	Appliance, heating equipment, and air-conditioner finishes.....	8,881	95,158	7,995	87,472
3255104215	Wood furniture, cabinet, and fixture finishes.....	44,649	507,612	42,468	461,370
3255104219	Wood and composition board flat stock finishes.....	11,830	124,369	9,932	116,141
3255104221	Metal building product finishes, including coatings for aluminum extrusions and siding.....	38,575	689,254	35,909	547,649
3255104225	Container and closure finishes.....	38,643	416,571	34,195	442,759
3255104229	Machinery and equipment finishes, including road building equipment and farm implements.....	22,611	533,037	18,217	507,956
3255104231	Nonwood furniture and fixture finishes, including business equipment finishes.....	44,261	463,767	41,859	402,160
3255104235	Paper, paper board, film, and foil finishes, excluding pigment binders.....	15,995	130,806	14,007	124,203
3255104239	Electrical insulating coatings.....	920	16,295	4,015	25,840
	Powder coatings.....	73,946	829,176	72,404	798,264
3255104241	Appliance powder coatings 2/.....	9,763	173,818	10,837	182,976
3255104245	Automotive powder coatings 2/.....	5,714	97,479	9,024	106,886
3255104249	Architectural powder coatings (such as aluminum extrusions) 2/.....	1,808	20,053 r/	1,827	20,684
3255104251	Lawn and garden powder coatings 2/.....	1,799	33,129	1,544	28,624
3255104255	General metal finishing powder coatings 2/.....	21,491	349,893	19,417	307,334
3255104259	Thermoset functional powder coatings (for pipe, rebar, electrical insulation, etc.) 2/.....	(D)	(D)	(D)	(D)

Table 2. Quantity and Value of Shipments of Paint and Allied Products: 2004 and 2003
[Quantity in thousand of gallons. Value in thousand of dollars]

Product code	Product description	2004		2003	
		Quantity	Value	Quantity	Value
3255104261	Thermoplastic powder coatings (all) 2/.....	(D)	(D)	(D)	(D)
3255104265	Other industrial product finishes.....	40,318	415,354	38,117	410,439
3255104YWV	Product finishes for original equipment manufacturers (OEM), excluding marine coatings, n.s.k.	3,109	32,393	3,037	33,833
3255107	Special-purpose coatings, including all marine coatings.....	173,087	3,685,255 r/	164,930	3,365,680
	Industrial new construction and maintenance paints (especially formulated coatings for special conditions of industrial plants and/or facilities requiring protection against extreme temperatures, fungi, chemicals, fumes, etc.):				
3255107111	Interior.....	22,492	271,264 r/	24,510 r/	258,786
3255107115	Exterior.....	35,167	640,447 r/	34,999	596,030
3255107121	Traffic marking paints (all types; shelf goods and highway department).....	35,907	245,730 r/	32,217	226,367
3255107131	Automotive, other transportation and machinery refinish paints and enamels, including primers.....	54,473	2,114,375	50,763	1,880,518
3255107141	Marine paints, ship and off-shore facilities and shelf goods for both new construction and marine refinish and maintenance, excludes spar varnish.....	12,342	246,723	11,557	242,582
3255107151	Marine paints for yacht and pleasure craft, new construction, refinish, and maintenance.....	100	2,238	91	2,214
3255107161	Aerosol-paint concentrates produced for packaging in aerosol containers.....	11,728	144,250	9,608	133,521
3255107YWV	Special-purpose coatings, n.s.k.	878	20,228 r/	1,185 r/	25,662
3255108	Miscellaneous allied paint products.....	150,604	1,174,716	144,522	1,147,771
3255108111	Paint and varnish removers.....	5,329	58,193	5,067	53,756
3255108121	Thinners for lacquers and other solvent based paint products.....	32,586	170,739	26,929	144,942
3255108131	Pigment dispersions.....	31,748	464,943 r/	30,185 r/	439,689
3255108141	Other miscellaneous allied paint products, including brush cleaners, ink vehicles, putty and glazing compounds, etc.	80,521	456,833	81,970	484,674
3255108YWV	Miscellaneous allied paint products, n.s.k.	420	24,008 r/	371 r/	24,710

D Withheld to avoid disclosing data for individual companies; data are included in higher level totals. n.s.k. Not specified by kind.
r/ Revised by 5 percent or more from previously published data.

1/Represents total shipments for those establishments producing paint and allied products that have 20 or more employees. These establishments represent approximately 95 percent of the total value of shipments for NAICS industry 325510, Paint, varnishes, lacquers, enamels, and allied products, based on relationships observed in the 2002 Economic Census, Manufacturing sector's final report.

2/Data for powder coatings are collected in pounds and converted to gallons by using a conversion factor of 5 (5 lbs. = 1 gallon). Data collected in pounds amounted to 369,730 thousand pounds in 2004 and 362,020 thousand pounds in 2003.

APPENDIX E

TABLE 1 OF U.S. CENSUS BUREAU 2002 ECONOMIC CENSUS PAINT AND COATING MANUFACTURING

Table 1. Historical Statistics for the Industry: 2002 and Earlier Years

[Data based on the 2002 Economic Census and the 2002 Annual Survey of Manufactures (ASM). For information on confidentiality protocols, sampling error, nonsampling error, and explanation of terms, see note at end of table. For meaning of abbreviations and symbols, see introductory text.]

Industry and year ¹	Com- panies ²	All estab- lish- ments ³	All employees		Production workers			Value added ⁴ (\$1,000)	Total cost of materials (\$1,000)	Total value of shipments (\$1,000)	Total capital expendi- tures ⁵ (\$1,000)
			Number ⁶	Payroll (\$1,000)	Number ⁶	Hours (1,000)	Wages (\$1,000)				
325515, Paint and coating manufacturing . . . 2000 . . .	1 139	1 408	46 086	2 037 856	25 178	46 307	873 393	\$ 076 815	10 115 142	19 257 278	454 770
2001 . . .	N	N	51 084	2 186 657	26 724	52 941	881 199	\$ 747 029	\$ 242 450	12 705 651	537 880
2002 . . .	N	N	52 991	2 212 816	23 241	57 474	941 229	\$ 151 684	10 633 026	12 705 651	426 558
1999 . . .	N	N	51 115	2 139 169	27 840	58 240	908 037	\$ 016 974	10 431 594	18 490 736	446 180
1996 . . .	N	N	53 876	2 095 770	28 458	65 765	883 152	\$ 194 966	10 287 637	18 672 486	460 338
1997 . . .	1 205	1 466	52 772	2 071 651	28 231	65 378	876 073	\$ 234 712	\$ 860 724	19 057 194	411 043

¹Statistics presented for years ending in 2 and 7 are census data. Interim census years are derived in a representative sample of manufacturing establishments canvassed in the Annual Survey of Manufactures (ASM).

²At the census, a company is defined as a business organization consisting of one establishment or more under common ownership or control.

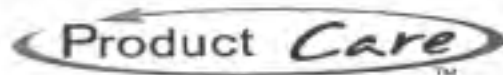
³Includes establishments with payroll at any time during the year.

⁴Number of employees; figures represent average number of production workers for pay period that includes the 12th of March, May, August, and November plus other employees for payroll period that includes the 12th of March.

⁵Note: The data in this table are based on the 2002 Economic Census and the 2002 Annual Survey of Manufactures (ASM). To maintain confidentiality, the Census Bureau suppresses data if reported the identity of any business or individual. The census results in this table contain sampling errors and nonsampling errors. Data users who create their own estimates using data from American FactFinder tables should cite the Census Bureau as the source of the original data only. For explanation of terms, see Appendix A. For full technical documentation, see Appendix C.

APPENDIX F

PRODUCT CARE MONTHLY REPORTING FORM BRITISH COLUMBIA



Monthly Eco Fee Report (BC) Paint, Flammables, Pesticides

(British Columbia Only)

effective July 1, 2005

Member Name: _____

Remittance for Month of _____, 200_____

Membership # _____

Paint / Coatings

	Container Size	Typical Size	Quantity (Units)	Eco Fee/Unit	Total
A	100 ml to 250 ml			\$0.10	
B	251 ml to 1 Litre	1 US Quart / 945 ml		\$0.25	
C	1.01 Litre to 5 Litre	1 US Gallon / 3.78 L		\$0.40	
D	5.01 Litres to 23 Litres	5 US Gallon / 18.9 L		\$1.00	
E	Aerosol paint containers (any size)			\$0.10	
F				Sub-Totals	

Solvent and Flammable Liquids

	Container Size	Typical Size	Quantity (Units)	Eco Fee/Unit	Total
G	750 ml or less			\$0.05	
H	751 ml to 1 litre	1 US Quart / 945 ml		\$0.10	
I	1.01 litres to 2 litres	1/2 US Gal./1.89 L		\$0.20	
J	2.01 litres to 4 litres	1 US Gallon / 3.78 L		\$0.40	
K	4.01 litres to 10 litres			\$1.00	
L	Aerosol solvent and flamm. liquids (1 to 75 ml)			\$0.01	
M	Aerosol solvent and flamm. liquids (75 to 200 ml)			\$0.05	
N	Aerosol solvent and flamm. liquids (201 ml and over)			\$0.10	
O				Sub-Totals	

Pesticides

	Container Size	Typical Size	Quantity (Units)	Eco Fee/Unit	Total
P	Less than 0.01 L or kg			\$0.01	
Q	0.01 litres or kg to 0.99 L or kg			\$0.60	
R	0.90 L or kg to 1.79 L or kg	1 US Quart / 945 ml		\$1.20	
S	1.8 litres or kg or more			\$2.40	
T				Sub-Totals	
U	Total of sector Sub-Totals (line F + line O + line T)			Total before GST	
V	Add 7% Goods and Services Tax (our GST # 876260613)			GST - 7%	
W				Total Payable	

Prepared By: _____

Authorized Signature: _____

Phone: _____

Email: _____

Date: _____

[Link to BC Recycling Regulation](#)

Report and payment must be received at the PCA office no later than 30 days after month-end.

Make cheques payable to Product Care Association, 12337 - 82A Avenue, Surrey, B.C., Canada V3W 6L6

Phone: 604 592-2972 Fax: 604 592-2982

Email: controller@productcare.org

Contact PCA office to arrange payment by Electronic Fund Transfer

All BC sales must be reported. PCA must be notified of fee payment arrangement for sales between members.

All reports are subject to audit by PCA. Any claim by a member for overpayment must be made within 6 months of the sales month in question.

Interest is charged at the rate of 1% per month (12% per annum) on late payments. Administrative fees may also be applied to overdue fees or reports.

There are separate remittance forms for Gasoline sales in BC and for Paint sales in Nova Scotia.

A report is required even when no sales occurred in the month.

See www.productcare.org for additional forms or information

APPENDIX G

ECO-PEINTURE MONTHLY REPORTING FORM QUEBEC

A non-profit organization certified by the Ministère de l'Environnement du Québec

Monthly Remittance form

Confidential Document

In accordance with the Service Agreement signed with Éco-peinture, any company (distributor, paint producer or brand owner) that markets containers of paint, varnish, lacquer, stain or other similar products in Québec is required by the Ministère de l'ENVIRONNEMENT to remit, on a monthly basis, service charges of 25 cents for every container of paint marketed in Québec.

Identification of the distributor, producer or brand holder:

declares having marketed a total of: _____ containers of paint (including spray),
 the details for which are outlined on the *Declaration Form* on page 2.

Remittance for the month of : _____ 2005

Monthly remittance calculation

Number of containers sold: _____ at 0.25 \$ per containers : _____

GST (7%): _____

PST (7.5%): _____

TOTAL: _____

Adjustments: _____ *

TOTAL: _____ **

* Adjustment details: _____

** Please make cheque payable to **Éco-peinture**

Éco-peinture must receive monthly remittances within thirty days following the end of the month identified in the declaration.
 Please be advised that a penalty fee will be charged as follows: 0% per month for late report & payment; 1% per month for late payment.

All information contained in these Declaration forms are confidential under the terms of Section 1.1.5 of the
 Service Agreement signed by the company and the authorized *Éco-peinture* representative.

Signature of the representative authorized to produce the Declaration: _____

Date : _____

Please mail both these forms with your cheque to: **Éco-peinture, CP 23, succ Beaconsfield, Québec H8W 5T6**

A non-profit organization certified by the Ministère de l'Environnement du Québec

Monthly Declaration form

Confidential Document

Paint containers		Paint		Varnish		Stain		Other	
		Latex	Alkyde	Latex	Alkyde	Latex	Alkyde	Latex	Alkyde
100 - 499 ml	metal								
	plastic								
1/8 U.S. gal. 500 ml	metal								
	plastic								
1/4 U.S. gal. 945 ml	metal								
	plastic								
1 U.S. gal. 3.78 litres	metal								
	plastic								
2 U.S. gal. 7.5 litres	metal								
	plastic								
5 U.S. gal. 18.9 litres	metal								
	plastic								
45 U.S. gal. 170 litres	metal								
	plastic								

Spray paint containers :

Total metal: _____
 Total plastic: _____
 Total spray: _____
Total containers _____

Trademarks:

The company must provide Éco-peinture with any information it deems relevant with regard to its company or operations, and notify Éco-peinture within a reasonable timeframe of any error or omission in the information transmitted, or of any changes in operations that could impact this information.

Signature of the representative authorized to produce the Declaration: _____

Date : _____

Please mail both these forms with your cheque to: Éco-peinture, CP 23, succ Beaconsfield, Québec H9W 5T6

APPENDIX H

ECO-PEINTURE PAINT FEE PAYERS
JUNE 2004

Liste des entreprises membres d'Éco-peinture au 30 juin 2004.

- 1- Behr Process Corporation
- 2- Benjamin Moore & Cie Ltée
- 3- Bétonel Limitée
- 4- Canadian Tire Corporation Ltée
- 5- Celadon (Farrow & Ball)
- 6- Centre du plancher PM
- 7- Coopérative fédérée de Québec
- 8- Dural, Une Division de Multibond Inc.
- 9- Dynamic Paint Products
- 10- Ferox Inc.
- 11- The Flood Company of Canada
- 12- Gelco-Lorain
- 13- Home Hardware Stores Limited
- 14- Hudson's Bay Company
- 15- ICI Canada Inc.
- 16- Industries Pépin Ltée
- 17- Les Produits Thiroco Inc.
- 18- Marchands Unis inc.
- 19- Matériaux à Bas Prix
- 20- Osmose Pentox
- 21- Para Inc.
- 22- Peinture Denalt Paints
- 23- Peintures Elite Inc.
- 24- Peinture Micca Inc.
- 25- Peintures MF Inc.
- 26- Peintures Récupérées du Québec Inc
- 27- Peinture Style Ltée
- 28- PPG Canada Inc.
- 29- Recochem Inc
- 30- Réno-Dépôt Inc
- 31- RONA Inc.
- 32- Samuel Cabot Inc
- 33- Sears Canada Inc.
- 34- Sherwin Williams
- 35- Sico Inc.
- 36- Sika Canada Inc.
- 37- Société Laurentide Inc
- 38- Soprema
- 39- Swing Paint
- 40- TechniSeal
- 41- Tremco Canada
- 42- TruServ Canada Cooperative Inc.
- 43- UCP Paint Inc.
- 44- Wal-Mart Canada Corp.