

FINAL

Paint Product Stewardship Initiative 2nd Memorandum of Understanding

October 24, 2007

I. Agreement on this MOU

The undersigned parties have reached agreement on this voluntary Memorandum of Understanding (“MOU”) in order to address the challenge of reducing and managing unwanted leftover paint. This MOU supports the continuation of the Paint Product Stewardship Initiative (PPSI), first established in 2003,¹ for another three years in order to develop a new nationally-coordinated system for the management of leftover architectural paint. As part of this MOU, a state-wide “Demonstration Project” is to be undertaken in the State of Minnesota to work through critical issues and gather information that will be needed to develop a functional, fully funded, environmentally sound, and cost-effective nationally coordinated leftover paint management system. At the end of the Minnesota Demonstration Project, the nationally-coordinated system is to be implemented in the rest of the United States according to a phased implementation schedule.

II. Preamble

- A. Product stewardship is a principle that directs all participants involved in the life cycle of a product to take shared responsibility for the impacts to human health and the natural environment that result from the production, use, and end-of-life management of the product.
- B. Leftover paint management is a product stewardship priority based on its high volume in the waste stream. Oil-based paint has the potential to impact human health and the environment and, therefore, must be properly managed (including recycling, if appropriate). Latex paint has the potential for increased source reduction, recovery, reuse, and recycling.
- C. The PPSI Participants have explored a broad range of issues, options, and approaches to the challenge of leftover paint management in an attempt to develop collaborative solutions to specific issues, including the following: generation of leftover paint; collection, sorting, transportation, and recycling or disposal of leftover paint; management of empty containers; development of markets for recycled content paint and non-paint uses of leftover paint; and financing of strategies to reduce and manage leftover paint.

¹ See Paint Product Stewardship Initiative Memorandum of Understanding, dated October 6, 2004 (revised to reflect the new start date of April 1, 2005), at:

http://www.productstewardship.us/associations/6596/files/Final_Paint_MOU.doc

III. Key Project Findings/Results

From April 2005 through March 2007, PPSI participants engaged in several joint initiatives, studies, and pilot projects. On the basis of these efforts, the group reached the following conclusions. For detailed information on each of the initiatives, go to:

<http://www.productstewardship.us/PaintProjectsandInitiatives>.

Leftover Paint Generation/Source Reduction

- Approximately 10% of the 637 million gallons of paint sold annually becomes leftover paint, equal to about 64 million gallons per year.
- People have leftover paint for the following reasons:²
 - Paint is cheaper when purchased by the gallon than by the quart (77%).
 - It is better to overbuy than to not buy enough (56%).
 - Consumers want leftover paint for touch-ups (55%).
 - Consumers prefer having leftover to going back to store to buy more (50%).
- In order to address leftover paint generation, strategies for source reduction will need to allow consumers to accurately gauge the amount of paint needed for a project, while at the same time assuring them that there will be sufficient paint leftover for touch-ups.
- Consumers need to be provided with sufficient motivation to accurately estimate the amount of paint they need by using a paint calculator prior to their purchase. This can be accomplished through the development of a kiosk system at the point of retail that would allow consumers to determine the amount of paint they need to purchase independent of whether they have measured at home or receive assistance at the store.
- Strategies to reduce over-purchases of paint, such as the retail kiosk system, should be pilot tested to determine their effectiveness prior to being broadly implemented.

Paint Reuse

- Leftover paint presents unique opportunities in that it is a product that, when fully used, can be completely diverted from end-of-life management challenges.
- A safe and effective reuse program can achieve maximum diversion of reusable paint from disposal or otherwise costly end-of-life management options.
- A safe and effective reuse program can realize significant cost savings as compared to the traditional management of leftover paint. A carefully planned reuse program could reduce the quantity of leftover paint to be managed as waste and could potentially reduce the cost of some traditional state and local government waste management programs.

Leftover Paint Management Infrastructure

- To create a comprehensive nationally-coordinated leftover paint management system, there will need to be investments to increase the infrastructure from current levels. The additional infrastructure will need to increase the capacity for the collection, transportation, and processing of leftover paint.

² The percentages listed relate to the percentage of survey respondents who believed that leftover paint was at least partly attributable to that specific reason.

- While an estimated minimum of 2,000 permanent collection points are needed to collect leftover latex and oil-based paint nationally, the best estimates for a medium to high level of customer service is more likely to require 5,000 to 8,000 collection points nationally.
- There are three likely methods for collecting leftover latex and oil-based paint. Listed in order of increasing estimated costs, they are: (1) co-located drop-off sites, (2) curbside collection, and (3) dedicated collection facilities.³
- Based on experience in the United States and Canada, the amount of leftover paint that can reasonably be expected to be collected ranges from a low of 2.5 percent of paint volume sold per year to an extra-high of 10 percent.
- If a national system were to focus on maximizing the use of leftover latex paint to make recycled content paint, additional latex paint recycling capacity would be needed nationwide (about 12.2 million gallons), with the greatest need being in the south and southeast.

Recycled Paint Standard

- One of the greatest impediments to increasing the use of recycled paint is a concern over paint performance and environmental, health, and safety impacts.
- In order to address those concerns, PPSI participants assisted in the development of a Green Seal Standard (GS-43) for consolidated and reprocessed latex paint,⁴ which could assure potential buyers and others involved with paint procurement of the quality and safety of recycled paint that meets the standard.
- There are differing opinions as to whether a viable market exists for recycled paint. The new Green Seal Standard for recycled paint, however, has the potential to increase the use of recycled paint by federal, state, and local governments, as well as by commercial and residential users.
- In order to assess the market viability of recycled paint, Green Seal certified recycled paint purchases and procurement contracts need to be identified and tracked for customer satisfaction, product quality, cost, and availability.

IV. Goals and Objectives

The undersigned PPSI participants resolve to achieve the following goals and objectives under this MOU:

- A. Continue the Paint Product Stewardship Initiative (PPSI) with the expressed purpose of pursuing the development of a new nationally-coordinated system for the management of leftover paint.

³ Co-located facilities are sited at existing businesses or institutions, with drop-off points that could range from a simple cage into which users can set their leftover paint to a staffed counter where the paint is collected. Curbside collection consists of homeowners putting their paint out on the curb with other recyclables. A dedicated facility is one that has the primary goal of accepting leftover paint and/or other waste from the public, such as a household hazardous waste (HHW) collection facility.

⁴ Consolidated paints are those that contain a minimum of 95% by volume of post-consumer paint, with a maximum of 5% by volume of secondary industrial materials or virgin materials. Reprocessed paints are those that contain a minimum of 50% by volume of post-consumer paint, with a maximum of 50% by volume of secondary industrial materials or virgin materials.

- B. Undertake a “Demonstration Project” (see Appendix B) in the State of Minnesota, under the auspices of PPSI, to work through critical issues and gather information that will be needed to develop a fully-funded, functional, environmentally sound, and cost-effective nationally-coordinated leftover paint management system. The following timeline has been set for the Demonstration Project:

November 2007 to July 1, 2008 (no later than)	Design and develop a Paint Stewardship Organization (PSO) and Minnesota Demonstration Project using “up-front funding” from NPCA, prior to the implementation of a sustainable financing system using a consumer-based cost-recovery system. ⁵
January 1, 2008	Establish performance goals for education, source reduction, reuse, collection, and recycling markets for the Minnesota Demonstration Project.
July 1, 2008 (no later than)	Implement consumer-based cost-recovery financing system and Minnesota Demonstration Project. ⁶
April 2009-September 2009	Evaluate the Demonstration Project

- C. Begin implementation of systems in other states based on the Demonstration Project, according to the following timeline (assuming that the Demonstration Project is successful in informing dialogue participants on feasible and sustainable approaches for establishing a nationally-coordinated system):

July 2009	Oregon, Washington, and Vermont
January 2010	California
July 2010	Iowa, Florida, North Carolina, and Illinois

⁵ “Up-front Funding” will be provided by NPCA for an interim period starting November 1, 2007 in order to design and develop the Paint Stewardship Organization and the MN Demonstration Project, as well as cover a portion of agreed-to PPSI project tasks, so that a fully-functioning program is ready to be implemented when the sustainable consumer-based cost-recovery financing system is put in place.

⁶ The “consumer-based cost-recovery financing system” is to begin operation no later than July 1, 2008, and is to cover the costs of the Minnesota Demonstration Project, as well as the system roll-out to other states. The cost-recovery financing system is intended to be consumer-based (i.e., the cost of the program is to be passed on to the consumer through the purchase of architectural paint products and remitted back up the supply chain to the PSO to cover the costs of the program). The paint manufacturing industry does not agree to assume the cost and responsibility of implementing the MN project or a nationally-coordinated system for the management of leftover paint without a sustainable consumer-based cost-recovery financing system.

- D. Develop a schedule for extending the nationally-coordinated system to all other states based on experience from the Minnesota Demonstration Project and systems in states listed in IV. C., by no later than January 1, 2010.
- E. Undertake effective consumer education to reduce the volume of leftover paint and the cost of its management. Consumers are to be informed as to which paints, if any, should be dried out (e.g., nearly empty cans, spoiled or partially dried latex paint) and which should be collected.
- F. Give special consideration to how latex paint can be cost-effectively collected in rural areas.
- G. Advance the management of leftover latex paint according to the “reduce/reuse/recycle/resource recovery” hierarchy and to make it as cost-effective and environmentally responsible as possible.
- H. Create an arrangement where industry partners with state and local governments to share the full cost and responsibility of managing leftover paint. Existing collection programs in the private and public sectors are encouraged to participate with the development and implementation of the nationally-coordinated leftover paint management system. In most states, additional collection sites will be required to meet the needs of the community. The Paint Stewardship Organization will typically need to negotiate agreements with existing and additional collection sites to fairly compensate them for their efforts to participate in the nationally-coordinated system.
- I. Exclude mandatory “take back” at retail locations. Retailers and manufacturers may take back product voluntarily if they so choose.
- J. Seek new opportunities for waste elimination.
- K. Undertake strategies to determine the viability of recycled paint markets in order to assess the potential to increase the use of recycled paint by federal, state and local governments, as well as other consumers.

V. Work Agreements

- A. The Work Agreements below are intended to achieve the Goals and Objectives in Section IV, relative to completing the Demonstration Project and implementation of the nationally-coordinated system. This section outlines PPSI participant tasks, timelines, and deliverables, and also designates roles and responsibilities among PPSI participants.
- B. The undersigned PPSI participants agree to work collaboratively over the next three years to do the following:

1. Continue the PPSI dialogue by attending regular meetings of the full dialogue group and Steering Committee, and through workgroup conference calls comprising a subset of PPSI participants. The composition of the Steering Committee appears in Appendix A.
 2. Design, implement, and evaluate the Minnesota Demonstration Project (as described in Appendix B) and use this experience to develop a fully-funded, functional, environmentally sound, and cost-effective nationally-coordinated leftover paint management system. As determined by PPSI participants following the evaluation of the Minnesota Demonstration Project, the performance goals and financing system established for the Minnesota Demonstration Project are to inform the development of the post-consumer paint management program in other states during the national roll-out.
 3. Continue to pursue a voluntary multi-stakeholder approach for the Minnesota Demonstration Project but consider mechanisms to ensure potential anti-trust implications are addressed, a level playing field is achieved, costs are reimbursed, and free-ridership issues are dealt with, particularly as we move forward with a nationally-coordinated system. These mechanisms include, but are not limited to, legislation, regulation, and/or model rulemaking.
 4. Support and implement strategies that effectively change consumer behavior to reduce leftover paint generation, including, but not limited to, comprehensive and detailed education and outreach efforts to reduce over-purchases of paint and promote the reduce/reuse/recycle/resource recovery hierarchy for paint management.
 5. Pursue completion of the lifecycle assessment/cost benefit analysis (LCA/CBA), including developing the remaining required inputs for the pure and modified methods that offer an assessment of one or more versions of a national infrastructure for leftover paint management; resolving remaining issues identified in review of the first draft LCA and the CBA data/assumptions/methods report; and reviewing and commenting on revised drafts of LCA and CBA reports.⁷
 6. Collect baseline data on aerosol paints (e.g., how collected/recycled, costs, baseline volumes, manufacturers, etc.) and develop a White Paper for PPSI review.
- C. Based on lessons learned, PPSI participants agree to resolve the following items by January 1, 2010, as an addendum to the MOU:
1. Roles of PPSI dialogue participants after this MOU ends on November 1, 2010.
 2. Revisit governance structure of the Paint Stewardship Organization.

⁷ It should be noted that PPSI dialogue participants might find that the development of the final LCA/CBA report would benefit from data developed in the Minnesota Demonstration Project. As such, it is recognized that the final report may not be completed until the Demonstration Project is evaluated.

3. Performance goals for the nationally-coordinated, leftover paint management system (e.g., reduction, reuse, collection, and recycling).
4. Timeline for implementation of the nationally-coordinated leftover paint management system in all other states, as discussed in Section IV D.

VI. Limitations

- A. Since this MOU reflects a cooperative, voluntary approach to addressing leftover paint management issues, the MOU is not legally binding. Furthermore, this MOU does not convey or waive any rights or obligations on the part of any signatory and/or on behalf of any third party. U.S. EPA participation is subject to the limitations enumerated in Appendix C.
- B. This MOU, including the Appendices hereto, encompasses the entire understanding of all signatories with respect to the subject matter of this MOU and supersedes all prior drafts.

VII. Effective Date/Modification/Termination

This MOU is to take effect upon the signature of the PPSI participants and remain in effect until November 1, 2010. This MOU may be amended at any time by a written document duly executed by the PPSI participants or their successors. A signatory may terminate its participation in this MOU at any time by providing written notice to the Product Stewardship Institute.

APPENDIX A

Steering Committee

The PPSI Steering Committee will be comprised of individuals from the following:

- 5 paint manufacturers chosen by NPCA (NPCA staff count as 1 of the 5 manufacturers)
- 1 recycler
- 4 paint retailers
- 3 state government agencies
- 3 local government agencies, at least one of which is a paint recycler
- 1 federal government agency (U.S. EPA)

APPENDIX B

Minnesota Demonstration Project

PPSI participants intend to design and implement an effective, fully-funded, statewide post-consumer⁸ paint management system that is economical, flexible, replicable, and relevant to other states throughout the country. An industry-run Paint Stewardship Organization is a necessary component of this system. The Solid Waste Management Coordinating Board and the Minnesota Pollution Control Agency agree to provide a government project contact person to assist in coordinating this Demonstration Project. PPSI participants agree to implement the Demonstration Project by jointly conducting the following tasks:

1. Project Scope
 - a. Create a Project Work Plan, including products covered (e.g., latex and oil-based), stakeholder roles, performance goals (e.g., reduction, reuse, collection, and recycling), detailed tasks, a timeline, milestones, a communication plan, and a project budget.
 - b. Determine the effect that existing government paint management contracts and regulations will have on the design and operation of an effective post-consumer paint management system.
 - c. Establish partnerships with other interested stakeholders to aid in the communication about, and implementation of, the Demonstration Project. These partnerships should include, but not be limited to, representatives of municipal, county, and state agencies, retailers, recyclers, producers, associations, and environmental groups.
2. Paint Stewardship Organization
 - a. Create an industry-run Paint Stewardship Organization that incorporates government and industry perspectives, and is accountable and transparent to PPSI stakeholders.
 - b. Develop the Paint Stewardship Organization's role, budget, administrative and other tasks, timeline (including date of full implementation), milestones, governance structure, and education plan.
 - c. Establish an operable funding mechanism no later than July 1, 2008, to cover all post-consumer paint management costs. Establish a timeline to evaluate the funding mechanism.
3. Education/Outreach
 - a. Support and implement strategies that effectively change consumer behavior to reduce post-consumer paint generation, including, but not limited to,

⁸ "Post-consumer paint" is defined as interior and exterior architectural coatings, including paints and stains purchased for commercial and homeowner use, but not including coatings purchased for industrial and original equipment manufacturer use.

comprehensive efforts to reduce over-purchases of paint and promote the reduce/reuse/recycle/resource recovery hierarchy for paint management.

- b. Create an effective and nationally replicable post-consumer paint education program that informs consumers about paint waste elimination and reduction, proper management of post-consumer paint, the availability and performance of recycled paint, and the promotion of product stewardship.
 - c. Examine the effect of the education program on consumer behavior change, and report the findings to PPSI stakeholders.
 - d. Maintain a website for communication among PPSI stakeholders and with the public.
4. Collection and Management Infrastructure
- a. Inventory the existing Minnesota government and private collection infrastructure and identify service gaps.
 - b. Determine the target number of collection sites that need to be established based on data provided from the Infrastructure Report.
 - c. Track data on reuse quantities by collection site to determine levels of paint reuse diversion from recycling.
 - d. Track collection quantities from households versus painting contractors at sites that agree to accept post-consumer paint from both kinds of consumers.
 - e. Develop a costing structure for government and private collection sites that provides an incentive to collect through reimbursement payments or other mechanisms.
 - f. Determine the cost effectiveness of collecting in rural areas to “test drive” concepts and experience from the Infrastructure Report.
5. Recycling Markets
- a. Undertake strategies to determine the viability of recycled paint markets and, if viable, determine ways that government and industry can support recycled paint product markets.
 - b. Examine the effect of post-collection product reuse programs on paint recycling programs.
 - c. Develop baseline data on recycled-content latex paint sales in Minnesota, and track changes in sales volume through the life of the Demonstration Project and beyond. Information requests should protect proprietary data.
 - d. Seek the highest and best use for post-consumer paint that is collected.
 - e. Examine the economics of a successful recycled paint product market on lowering paint management costs.
6. Measurement/Evaluation
- a. Establish baseline data regarding the amount of post-consumer paint collected, reused, recycled, fuel blended and landfilled, and the amount of virgin and recycled paint sold; program costs; and participation rates.
 - b. Establish evaluation and measurement criteria prior to implementation of the Demonstration Project. These are to include program costs, participation rates, and amounts collected, reused, recycled, fuel blended, and disposed.

- c. Develop a Final Report that evaluates the effectiveness of the Demonstration Project and assists in determining the best options for rolling out a nationally-coordinated paint management system. The Report is to include recommendations on how the methods used in the Demonstration Project should be modified for successful implementation in other areas of the country.

APPENDIX C

EPA Limitations Statement

As a federal Agency, certain limitations must govern the U.S. Environmental Protection Agency's participation in the Paint Product Stewardship Initiative's 2nd MOU. While we believe that these limitations are fully consistent with the terms of the MOU, we would like to spell out these limitations explicitly and ensure that they are acknowledged by all MOU signatories. EPA's limitations are as follows:

- 1) All commitments made by EPA under the MOU are subject to the availability of appropriated funds and the Agency's budget priorities. Nothing in the MOU, in and of itself, obligates EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or to incur other financial obligations. The MOU does not exempt any signatory or participant from EPA policies relating to full and open competition for contracts, grants, and cooperative agreements. Any endeavor involving reimbursement or contribution of funds between EPA and any other party to the MOU will be handled in accordance with applicable laws, regulations, and procedures, and will be subject to a separate subsidiary agreement that will be effected in writing by representatives of both parties.
- 2) EPA will not participate in efforts to raise private funds for the activities described in Appendix B, or for any other activities undertaken under the MOU. Signatory organizations, or any entities acting on their behalf, should make clear, in any solicitation for funds for these activities, that they, not EPA, are asking for the funds. Signatory organizations, or any entities acting on their behalf, should not imply that EPA endorses any private fundraising activities in connection with the MOU. Signatory organizations, or any entities acting on their behalf, should make clear to donors that any funding will go solely toward defraying the expenses of the signatory organization(s), or entities acting on their behalf, not EPA's.
- 3) EPA cannot endorse any product, service or enterprise. MOU signatories should not make any statements, on the basis of this MOU, that imply that EPA endorses the purchase or use of their products or services.
- 4) All commitments made, and activities undertaken, by EPA under the MOU are subject to applicable laws, regulations and Federal policies and are not legally binding on EPA, and the MOU does not create or waive any EPA rights or obligations and is not intended to be enforceable in law or equity by any person.

APPENDIX D

Signers And Endorsers

Of Paint Product Stewardship Initiative

Memorandum Of Understanding

(to be added upon receipt of signatures)