

EXECUTIVE DEPARTMENT
OFFICE OF MANAGEMENT AND BUDGET
29 Delaware Code, Section 6303A(16) and 6913 (29 Del.C. §§6303A and 6913)

FINAL

ORDER

Environmentally Preferred Purchasing Policy

NATURE OF THE PROCEEDINGS:

The Office of Management and Budget (OMB) initiated proceedings to adopt the State of Delaware Environmentally Preferred Purchasing Policy. The OMB proceedings to adopt regulations were initiated pursuant to 29 Del.C. Chapter 101 and authority as prescribed by 29 Del.C. §§6303A(16) and 6913.

On January 1, 2013 (Volume 16, Issue 7), OMB published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 Del.C. §10115. It was requested that written materials and suggestions from the public concerning the proposed regulations be delivered to OMB by February 20, 2013 or be presented at a public hearing on February 5, 2013, after which time OMB would review information, factual evidence and public comment to the said proposed regulations.

Both written and verbal comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence." This is OMB's "conclusion" and "order" as required by 29 Del.C. §10118(b).

SUMMARY OF EVIDENCE

State of Delaware Environmentally Preferred Purchasing Policy

In accordance with Delaware Law, public notices regarding proposed State of Delaware Environmentally Preferred Purchasing Policy were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

Written and verbal comments were received on the proposed regulations during the public comment period (January 1, 2013 through February 20, 2013). Entities offering comments included:

- Mr. Chip Rankin, representing milliCare.
- Mr. Sean Moore, representing the Consumer Specialty Products Association
- Claire L. Barnett, representing the Healthy Schools Network
- Josh Jacobs, representing UL Environment
- Marcia Deegler, representing the Commonwealth of Massachusetts Operational Services Division
- Richard Bizzozero, and Rick Reibstein, representing the Commonwealth of Massachusetts, Executive Office of Energy and Environmental Affairs
- Mark Petruzzi, representing Green Seal, Inc.

Public comments and the OMB (Agency) responses are as follows:

Chip Rankin, representing milliCare

Comment: Green Seal certification should be listed along with the EPA DfE program as an acceptable 3rd party certification.

Agency response: Thank you for your comment. This comment refers to Section 4.1 of the proposed regulation that reads as follows:

4.1 To prevent unsubstantiated claims of environmental benefit or reduced impact, any product deemed to be approved or considered under this policy shall be certified by the U.S. EPA Design for the Environment (DfE) Formulator Program or recognized by the State, DNREC or DTI as consistent with environmental goals with claims verified through independent 3rd party certification.

An earlier version of the regulation advertised in 2012 included language citing examples of additional acceptable certifications. OMB received public comment at that time supporting the deletion of language explicitly listing these additional certifications because of lack of uniformity of methodologies used in establishing these certifications. Language has been included in this section allowing for recognition by the State as "...consistent with environmental goals with claims verified through independent 3rd party certification." In essence, this language gives the authority to the State, DNREC or DTI to recognize acceptable certifications, including Green Seal in addition to DfE. Accordingly, the proposed regulation will not be amended to include Green Seal.

Comment: There should be an approved list of standards that is the basis of qualification for purchasing products and services and the GSS should keep an updated list of the most stringent and others that meet a minimum standard.

Agency response: Thank you for your comment. Language in Section 4.1 would require a listing of recognized certifications.

Sean Moore, Director of State Affairs East Region, Consumer Specialty Products Association (CSPA)

Comment: Section 4.1 should include Green Seal and EcoLogo certifications.

Agency response: Thank you for your comment. Please see first response to Chip Rankin above.

Claire L. Barnett, Executive Director, Healthy Schools Network

Comment: Suggest Green Seal and UL-Environment (EcoLogo) be included in 3.0 Definitions and 4.0 Third Party Certification

Agency response. Thank you for your comment. Please see first response to Chip Rankin above.

Comment: Suggest that Integrated Pest Management be defined to eliminate the use of toxic chemicals.

Agency response. Thank you for your comment. The current definition of Integrated Pest Management was incorporated as a result of public comment from the previous version of this regulation and is consistent with industry standard definitions. Accordingly the proposed regulation will not be further amended.

Josh Jacobs, UL Environment

Comment: The proposed regulation should be amended in Sections 4.1, 8.1 and 8.5 to include GREENGUARD, and UL EcoLogo as acceptable third party environmental verification.

Agency response: Thank you for your comment. Please see first response to Chip Rankin above.

Marcia Deegler, Director of Environmental Purchasing, Commonwealth of Massachusetts Operational Services Division

Comment: Delaware should include Green Seal and EcoLogo as acceptable certifications.

Agency response: Thank you for your comment. Please see first response to Chip Rankin above.

Richard Bizzozero, Director and Rick Reibstein, Manager of Outreach and Policy, Commonwealth of Massachusetts, Executive Office of Energy and Environmental Affairs.

Comment: Delaware should include Green Seal and EcoLogo as acceptable certifications.

Agency response: Thank you for your comment. Please see first response to Chip Rankin above.

Mark Petruzzi, Senior Vice President of Outreach and Strategic Relations, Green Seal, Inc.

Comment: A broad EPP policy should reflect third party certifications with broad scope, such as Green Seal.

Agency Response: Thank you for your comment. Please see first response to Chip Rankin above.

Comment: The proposed EPP Policy should include an explicit definition for "Third Party Certification".

Agency Response: Thank you for your comment. The regulation allows flexibility in choosing third party certifications. As such, the regulation will not be amended to include such a definition.

FINDINGS OF FACT:

The Department finds that the proposed regulation as set forth in the January 2013 *Register of Regulations* should be adopted. While the Office of Management and Budget appreciates the suggestions that specific certifications be referenced in the proposed regulation, the requested references to certain certifications are rendered unnecessary by the State's regulatory power to accept these proposed certifications. Additionally, the more generic approach set forth in this regulation will allow the State to remain flexible and require fewer revisions to the regulation in the future as the name and variety of certifications change.

NOW THEREFORE, under the statutory authority and for the reasons set forth above, the Director of the Delaware Office of Management and Budget does hereby ORDER that the Regulation be, and that it hereby is, adopted and promulgated. The effective date of this Order is ten days from the date of its publication in the Delaware *Register of Regulations*, in accordance with 29 Del.C. §10118(g).

Ann Shepard Visalli, Director
Office of Management and Budget

Environmentally Preferred Purchasing Policy

1.0 Purpose

The purpose of this Regulation is to set forth the policy and procedures for establishing environmentally preferred

purchasing standards. This regulation is applicable to all Delaware state executive branch agencies, departments, and offices.

Delaware state government seeks to further reduce the environmental and human health impacts of its operations by integrating environmental consideration into its procurement process. Although Government Support Services - Contracting Unit is responsible for maintenance and oversight of the EPP regulation, implementing green procurement at the state agency level through delegated purchasing offices is necessary to achieve compliance. Therefore, it is vital that each delegated agency develop and maintain internal EPP procedures and practices reflecting goals, priorities and strategies provided within this policy

This regulation is adopted to strengthen environmental outcomes through purchasing decisions that reduce the amount of toxic substances used, consumed or disposed, improve air quality, conserve resources and minimize waste, conserve energy and water, minimize local and global climate impact, lessen the impact to employee and public health and contribute to sustainable economic growth within the State of Delaware.

This regulation is not intended to mandate the purchase of certain products or services but rather to provide a framework for those Executive branch agencies, departments and offices to procure environmentally preferred products and services at their discretion.

This regulation shall not, nor is intended to, create a legal cause of action or any legal or equitable right, privilege, or duty which is capable of judicial enforcement. This regulation is advisory only and does not bind or dictate procurement choices for any entity required to comply with Chapter 69 of Title 29 of the Delaware Code to accept or reject bids or proposals.

2.0 Enabling Legislation

Pursuant to 29 Del.C. §6301A, the Office was established. The Office has authority to make regulations pursuant to 29 Del.C. §6303A(16) and 6913. The Regulation is established in compliance with 29 Del.C. §6913 and Executive Order 18 (February 17, 2010).

3.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Biodegradable" means capable of being broken down by microorganisms into simple, stable compounds such as carbon dioxide and water.

"Composting" means the conversion of organic material to compost by microorganisms. Compost is organic material that can be used as a soil amendment or as a medium to grow plants. Composting reducing the organic portion of garbage include yard trimmings, leave and food scrapes.

"DfE" means the U.S EPA Design for the Environment Formulator/Labeling Program.

"Director" means the Director of the Delaware Office of Management and Budget.

"DNREC" means the State of Delaware Department of Natural Resources and Environmental Control.

"DTI" means the State of Delaware Department Technology and Information.

"Electronic Product Environmental Assessment Tool (EPEAT)" means a system that helps the purchaser evaluate, compare and select electronic products based on their environmental attributes. The system currently covers desktop and laptop computers, thin clients, workstations and computer monitors.

"Energy Star" means EPA's energy efficiency product labeling program.

"Energy Efficient" means a product that is in the upper 25 percent of energy efficiency for all similar products, or that is at least 10 percent more efficient than the minimum level that meets Federal standards.

"Environmental Performance" means considerations including the use of renewable resources, improved energy and water efficiency, the reduction of air contaminants and greenhouse gas emissions, increased reuse and recycling, and the reduction of hazardous waste and toxic pollutants.

"Environmentally Preferred" means products and services that perform effectively and have a less or reduced effect on human health and the environment over the life cycle of the products and services when compared with competing products or services that serve the same purpose.

"GSS" means the Delaware Office of Management and Budget, Government Support Services.

"Hardscape" means part of the building's grounds made with hard materials such as patios, retaining walls and walkways.

"Green Building Council/Leadership in Energy and Environmental Design (LEED)" means an internationally recognized green building certification system, providing third-party verification that a building or community was designed and built using strategies aimed at improving performance across all the metrics that matter most: energy savings, water efficiency, CO₂ emissions reduction, improved indoor environmental quality, and stewardship of resources and sensitivity to their impacts

"Heat-Island Effect" means warmer temperatures in urban areas compared to the adjacent rural areas as a result of solar energy retention on constructed surfaces such as streets, sidewalks, parking lots and buildings.

"Impervious" means the condition of surfaces that do not permit the passage of liquids.

"Integrated Pest Management (IPM)" includes (a) communication and educating customers about pests, pest management and the parties' responsibilities; (b) thorough inspections and monitoring to identify pest problems and conditions that might be contributing to pest problems; (c) preventive actions such as pest-proofing and trash management to keep pests from becoming a problem; (d) physical pest management tools and tactics such as trapping, vacuuming, and using heat or cold to control pests; (e) low impact use of pesticides; and (f) follow up and evaluation of pest management actions.

"Integrated Vegetation Management (IVM)" A system of managing plant communities in which compatible and incompatible vegetation is identified, action thresholds are considered, control methods are evaluated and selected control(s) are implemented to achieve a specific objective. Choice of control methods is based on effectiveness, environmental impact, site characteristics, safety, security and economics. Control options, which include biological, chemical, cultural, manual, and mechanical methods, are used to prevent or remedy unacceptable, unreliable, or unsafe conditions.

"Life-cycle Cost analysis" means the study of the costs associated with a product through its life cycle – from acquisition to its end-of-life management.

"Office" means the Delaware Office of Management and Budget.

"Permeable" means the condition of surfaces permitting the passage of liquids.

"Post-Consumer Material" means a finished material which would normally be disposed of as a solid waste, having reached its intended end-use and completed its life cycle as a consumer item, and does not include manufacturing or converting wastes.

"Recycled Content" means the percentage of recovered material, including pre-consumer and post-consumer materials, in a product that otherwise would have been discarded.

"Reused Product" means any product designed to be used many times for the same or other purposes without additional processing except for specific requirements such as cleaning, painting or minor repairs.

"Source Reduction" means products that result in a net reduction in the generation of waste compared to their previous or alternate version and includes durable, reusable, and remanufactured products.

"State" means the State of Delaware.

"Surfactant" means an agent that, when dissolved in water, breaks surface tension and allows cleaning agents a more effective removal of dirt from surfaces.

"Sustainable" means the needs of the present are met without compromising the ability of future generations to meet their own needs.

"Water-Saving Products" means products that are in the upper 25 percent of water conservation for all similar products, or at least 10 percent more water conserving than the minimum level that meets the Federal standards.

"WaterSense" means a partnership program sponsored by EPA, to help Americans save water and protect the environment.

4.0 Third Party Certification

4.1 To prevent unsubstantiated claims of environmental benefit or reduced impact, any product deemed to be approved or considered under this policy shall be certified by the U.S. EPA Design for the Environment (DfE) Formulator Program or recognized by the State, DNREC or DTI as consistent with environmental goals with claims verified through independent 3rd party certification. 4.2 The costs of any certification required under this Regulation shall be solely at the expense of the vendor/supplier and no costs above the product/services price shall be permitted.

4.2 Suppliers may still seek environmentally preferable recognition for products that are not so certified or recognized by the above certifications by submitting an affidavit from a certified laboratory or accredited third-party stating that the products meet or exceed the performance and health and environmental criteria as defined in 4.1 and demonstrating a cost benefit of these products over established certified products or a comparative life-cycle assessment (LCA) which demonstrates life cycle impact benefits associated with the environmentally preferable product when compared to traditional products.

4.3 Those agencies pursuing LEED certification shall comply with the appropriate rating system published by the US Green Building Council.

4.4 The costs of any certification required under this Regulation shall be solely at the expense of the vendor/supplier and no costs above the product/services price shall be permitted.

5.0 Source Reduction

- 5.1 Wherever feasible, transition to environmentally and health-friendly products and services shall occur in a manner that avoids wasting of existing inventories, accommodates establishment of supply chains for new products, enables the training of personnel in appropriate work practices, and allows the phase-out of products and practices inconsistent with this Regulation.
- 5.2 Purchase products that are durable, long lasting, reusable or refillable.
- 5.3 Purchase remanufactured products such as toner cartridges, tires, furniture, equipment and automotive parts, but without reducing safety, quality, effectiveness or the warranty that supports the original product.
- 5.4 Consider short-term and long-term costs in comparing product choices. This includes an evaluation of the total costs expected during the time the product is owned including, but not limited to, acquisition, extended warranties, operation, maintenance and end-of-life management.
- 5.5 Request vendors reduce packaging or use the minimum amount necessary for product protection.
- 5.6 Require that surplus or outdated electronic equipment, including but not limited to, computers, monitors, printers and copiers, be designated for reuse or recycled under the requirement of 29 Del.C. §7002(b).

6.0 Recycled-content Products

- 6.1 Apply, as a general rule, the 5 percent price preference for purchasing recycled-content products as specified in 29 Del.C. §6938. Specify and purchase products that contain the highest percentage of post-consumer recycled-content practicable.
- 6.2 Specify that all printed materials (e.g., reports, brochures, letters, forms, business cards) that are purchased or produced must be printed on recycled-content paper and contain a statement on the material that the paper contains recycled-content. The statement should also indicate the percentage of post-consumer recycled content it contains.
- 6.3 Specify and purchase recycled-content transportation products such as signs, traffic cones, barricades, parking stops and delineators.
- 6.4 Specify the use of recycled, reusable, or reground materials for paved constructions projects.

7.0 Energy And Water Savings

- 7.1 Purchase energy efficient equipment including, but not limited to, high-efficiency heating and cooling equipment, high-efficiency motors and equipment controls.
- 7.2 Purchase appliances and equipment that meets or exceeds the EPA's EnergyStar standards and have the EnergyStar label (www.energystar.gov) as specified in 29 Del.C. §6939.
- 7.3 Replace non-energy efficient lighting, including interior and exterior lightning, street lighting and traffic signal lights with energy-efficient equipment and bulbs.
- 7.4 Replace incandescent light bulbs with compact fluorescent or light emitting diode (LED) bulbs when the incandescent bulbs need to be replaced.
- 7.5 Purchase water-saving products, including but not limited to, high-performance fixtures like low-flow, waterless urinals, tankless water heaters, low-flow faucets and aerators as well as faucets with motion-activated sensors. When possible, purchase products receiving EPA's WaterSense designation (www.epa.gov/WaterSense).

8.0 Pollution Prevention And Toxics Reduction

- 8.1 When procuring or contracting for cleaning services, require such contracted services to use environmentally preferable cleaning products and services, wherever practical. All chemical cleaning products and services purchased should be recognized by the U.S. EPA Design for the Environment (DfE) Formulator Program or recognized by the State, DNREC or DTI as consistent with environmental goals with claims verified through independent 3rd party certification.
- 8.2 For purposes of this policy, "cleaning product" does not include any disinfectant, disinfecting cleaner, sanitizer or any other antimicrobial product regulated by the Federal Insecticide, Fungicide and Rodenticide Act, 7 USC 136 *et seq.*
- 8.3 Products shall not be toxic or highly toxic as defined by the OSHA Hazard Communication Standard, (29 CFR 1910.1200). Require that all surfactants and detergents be biodegradable and meet DfE criteria for surfactants.
- 8.4 Products should not have the potential to release substances that are recognized by US EPA as known carcinogens at points above US EPA risk levels.

- 8.5 Purchase building products such as paint, carpet, adhesives, furniture and casework with the highest recycled content and are consistent with federal volatile organic component limits.
- 8.6 Purchase paper products that are unbleached or that utilize elemental chlorine-free technologies or other technologies that achieve environmentally compatible benefits.
- 8.7 Purchase soy-based ink for printing. Include the use of soy-based ink in printing contracts.
- 8.8 Purchase rechargeable instead of single use batteries.
- 8.9 Specify that desktop computers, notebooks and monitors purchased or leased meet, at a minimum, the bronze standard of the Electronic Product Environmental Assessment Tool (EPEAT) criteria (www.epeat.net).
- 8.10 Employ Integrated Pest Management and Integrated Vegetation Management techniques for pest management.

9.0 Green Landscaping

- 9.1 Purchase environmentally friendly landscape services that includes design, construction, renovation and maintenance. These services may include grasscycling, composting and the reduction of hazardous products.
- 9.2 Purchase recycled-content materials when constructing hardscape and landscape structures.
- 9.3 Reduce water used for irrigation by purchasing plants that are native to the area and drought-tolerant that require minimal or no watering once established.
- 9.4 Reduce water pollution and heat-island effect by reducing the amount of impervious surfaces in the landscape. Permeable substitutes such as pervious concrete or pavers are preferred for walkways, patios, driveways and low-volume traffic areas.

10.0 End-of-life Management

- 10.1 Require that all surplus or outdated equipment/facilities/materials be identified as surplus, and, as required by 29 Del.C. §7002, be considered to have no remaining useful life and available for disposal.
- 10.2 Focus on in-state reuse by State agencies, towns, municipalities and other State supported agencies to avoid duplicate procurement and encourage reuse of resources throughout every level of State government.
- 10.3 Preplan projects with one-time contracting to remove items considered surplus property and deliver to other state agencies or sell to the general public.
- 10.4 Consider buying material that at the end-of-life can be reutilized as-is or recycled, such as aluminum signs, metal fencing and metal shelving.

11.0 Agricultural Products

- 11.1 Procurement of Agricultural Goods and Services shall consider the environmental impact as follows:
 - 11.1.1 Above threshold spend shall allow points of the total award that considers:
 - 11.1.1.1 Reduced fuel consumed to reach market/ Agency recipient.
 - 11.1.1.2 Products and/or Services that are provided by Agricultural Businesses which are certified for Best Management Practices (BMP), Good Food Handling Practices (GHP) and Good Agricultural Practices (GAP) through the Delaware Department of Agriculture or surrounding State's equivalent program.
 - 11.1.1.3 The consideration given for environmental impact shall not exceed 10% of the total points awarded or costs of the goods/ services.
 - 11.1.1.4 Fruit and vegetable consumption is an important component of a balanced diet consistent with the *Dietary Guidelines for Americans* and the Food Guide Pyramid. In order to maximize the nutritional value and reduce the use of carbon fuels, fresh produce to support the Farm to School Initiative should be required to be delivered within 2 days of harvest.
- 11.2 Under Threshold.
 - 11.2.1 State Agencies shall obtain 3 quotes from local distributors, one of which must be a supplier or farmer within 25 miles of need to reduce the impact of transportation to market and the consumption of fossil fuels.
- 11.3 If a product or service is available by an agricultural business that is certified by the Delaware Department of Agriculture for Best Management Practices (BMP), Good Food Handling Practices (GHP) and Good Agricultural Practices (GAP) or an equivalent surrounding states program, they shall receive consideration equal to 10% of the total decision criteria.

12.0 Implementation

- 12.1 GSS will oversee the statewide implementation of this Regulation.
- 12.2 GSS will establish an Environmentally Preferable Purchasing (EPP) Workgroup of no less than seven members to be selected from State agencies that will meet at least quarterly. The State GSS Director will chair the workgroup. The mission of the workgroup will be to enhance and facilitate the coordination and implementation of this Regulation as follows.
 - 12.2.1 Identify immediate priorities, establish a process for identifying additional priorities and set deadlines for implementation.
 - 12.2.2 Develop and implement an education and outreach program on this Regulation that may include workshops, conferences training, media events and electronic newsletters
 - 12.2.3 Research and recommend recycled-content products for consideration on State contracts.
 - 12.2.4 Develop, implement and assist State agencies in tracking their environmentally preferred purchasing progress.
 - 12.2.5 Review and revise, if necessary, the standards of this Regulation on at least an annual basis.
- 12.3 The procurement solicitations for goods and services shall afford prospective vendors with an opportunity to quote prices for environmentally preferred products and non-preferred products, leaving the opportunity to purchase the preferred products to the State agency's discretion.
- 12.4 New purchasing contracts for the purchase of such products or cleaning services shall include an appropriate requirement consistent with this Regulation and guidelines provided by the Office.
- 12.5 This Regulation will become effective 10 days after being published as a final regulation.

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