



# STATE AFFAIRS REPORT

# 2022

## **CONTENTS**

*If viewing electronically, click on a state below to be taken to that section of the report.*

Introduction	2
California	3
Colorado	5
Connecticut	6
Florida	7
Illinois	8
Kentucky	9
Maine	10
Maryland	12
Massachusetts	13
Minnesota	14
Missouri	15
New Jersey	16
New York	17
Rhode Island	18
Texas	19
Vermont	20
Washington	21



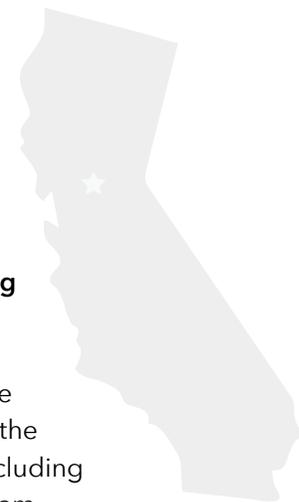


## INTRODUCTION

ACA has a robust State Affairs Network whereby it engages directly with state lawmakers to advocate for the paint and coatings industry through its state lobbyists. ACA's State Affairs Network operates where industry has a presence and interests, and where ACA has established or is seeking to establish a state PaintCare program. ACA works with state lobbyists to monitor and represent industry positions, where appropriate. This 2022 ACA State Affairs Report provides a recap of state legislative activities that ACA and its state lobbyists monitored last year.

A host of environmental issues, including Extended Producer Responsibility (EPR) proposals and measures relating to per- and polyfluoroalkyl substances (PFAS) will remain on legislative agendas in 2023. ACA and its network of state lobbyists will continue to engage with legislators and their staff to promote and protect the industry's stakes and welfare.

# CALIFORNIA



**In California ACA secured legislative victories on several state bills, preventing significant negative impacts on industry in addition to monitoring other bills and taking an active stance where appropriate.**

The 2022 California Legislative Session began in January, starting the second year of the two-year session. Democrats continued to hold a supermajority in both the Senate and the Assembly. Legislators introduced several bills that were of interest to ACA members, including bills related to PFAS reporting and reform to the state's Safer Consumer Products program.

ACA worked to pursue clean-up changes to the California PaintCare statute to include aerosol spray paints as a covered product under the state law. While those discussions resulted in positive dialogue with stakeholders, this action will continue in 2023. ACA also monitored several bills and continues to participate in industry coalitions in California. Below are a few priority bills of interest to ACA members from 2022.

## ***PFAS Reporting***

ACA actively opposed AB 2247, which would have required the California Department of Toxic Substances Control (DTSC) to develop a publicly accessible reporting platform to register products or product components containing PFAS sold or distributed in the state on an annual basis. ACA argued that this registry would be duplicative of the U.S. Environmental Protection Agency (EPA) work already underway, and not cost effective. Gov. Gavin Newsom (D) agreed with ACA and vetoed the bill.

## ***Household Hazardous Waste (HHW) Transport Clean Up - SIGNED INTO LAW***

ACA supported AB 2481, which makes non-controversial changes to the laws related to the transportation of HHW and the operation of HHW collection facilities, including changes that will specifically assist California's PaintCare program in collection activities. The governor signed the bill into law on Sept. 23, 2022.

## ***Single-Use Packaging - SIGNED INTO LAW***

SB 54, the Plastic Pollution Prevention and Packaging Producer Responsibility Act, imposes minimum recycled content requirements for all single-use packaging/foodservice ware and separately source reduction requirements for plastic single-use packaging/foodservice ware, to be achieved through Producer Responsibility Organizations (PROs). Specifically, the bill requires the California Department of Resources Recycling and Recovery (CalRecycle) to develop regulations to implement the law; and provides the agency with oversight authority of new PROs that must be established to comply with the law, requires all single-use packaging to meet specified recycling rates and dates; and specifically requires plastic packaging to meet source reduction goals. Regulatory fees to comply with the law are to be paid for by producers.

Notably, ACA was successful in working with the bill author to secure amendments that exempt packaging for products recycled through PaintCare's program in California, and for packaging used for the long-term protection or storage of a product that has a lifespan of not less than five years. Because the governor signed SB 54, proponents of a qualified ballot initiative that would have required more onerous standards was removed from the 2022 ballot. ACA will continue monitor implementation of this law in 2023.

## **California GHG Reporting**

In 2022, ACA worked with a coalition of industries to defeat California SB 260, which would have required some ACA members to provide extensive reports on certain greenhouse (GHG) gas emissions. The bill would have required the California Air Resources Board to adopt regulations requiring the reporting of greenhouse gas emission data throughout the entire supply chain to include activities such as business travel, employee commutes, procurement, waste, and water usage, regardless of location. These types of emissions, also known as “Scope 3” emissions, are the result of activities from assets not owned or controlled by the reporting entity and encompass activities both upstream and downstream of a company’s main operations.

ACA joined other affected business groups to oppose the bill, arguing that it is an unworkable and costly mandate that will do nothing to stop climate change while hurting California businesses and leading to increased costs of goods and services for Californians. Moreover, ACA underscored the conflict and inconsistencies with the federal effort on this issue through the U.S. Securities and Exchange Commission’s rulemaking in development. The bill did not pass.

## **Safer Consumer Products Program Changes - SIGNED INTO LAW**

SB 502 allows DTSC, in lieu of requiring an analysis of alternatives to a chemical of concern in a consumer product, to rely on publicly available studies or evaluations of alternatives to the chemical of concern and to proceed directly to a regulatory response. Additionally, the bill requires DTSC to provide a public comment period on the proposal and makes clarifying changes to DTSC’s authority to request data on a priority product. This bill was reintroduced from the 2019/2020 legislative session and at that time ACA, through an industry coalition, worked with the sponsors on language to make the bill more workable. While the bill did not pass that year, the author reintroduced the same negotiated language in SB 502 and the governor signed the bill. ACA remained neutral, given the previous negotiations.

## **Regulatory Activity**

California’s varied regulatory agencies were also active in 2022. ACA and its California lobbyist monitored those activities, including the following initiatives.

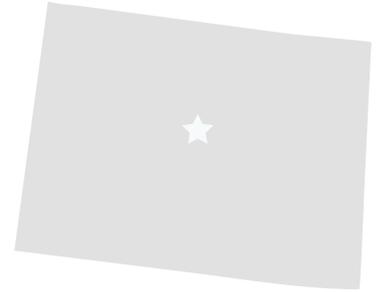
**California’s Statewide Commission on Recycling Markets and Curbside Recycling**, which works as an appointed public member Commission under CalRecycle, issued its second report with policy recommendations on ways to develop new markets for recycled materials, achieve waste reduction goals, and increase recycling both at curbside and non-curbside collection in California. Included in the list of recommendations, the commission recommended that the state require PaintCare to incorporate aerosol paint products as soon as feasibly possible in its existing program, and to develop a new household hazardous waste EPR framework for all other non-PaintCare products considered hazardous waste in California. PaintCare and others have presented to the commission and ACA will continue to monitor the commission’s activities.

**California’s Office of Environmental Health Hazard Assessment (OEHHA)** published a proposal in January of 2021 to restrict the use of short-form Proposition 65 warnings, with revised warning text. This proposal was opposed by several organizations, including ACA. After several revisions, some of which addressed the concerns of industry, OEHHA decided not to submit the proposed rulemaking. It is likely the agency will propose a new rulemaking in 2023.



# COLORADO

In Colorado, ACA worked on packaging legislation to ensure that it did not impact PaintCare operations and exempted containers of PaintCare program products.



## ***Producer Responsibility Program for Recycling - SIGNED INTO LAW***

HB22-1355, a monumental statewide producer-led recycling program passed on the last day of Colorado's legislative session and was signed into law by Gov. Jared Polis (D) on June 3, 2022. The law provides that on or before June 1, 2023, the Colorado Department of Public Health and Environment (CDPHE) must designate a nonprofit organization to implement and manage a statewide program that provides recycling services to covered entities in the state, which are defined as residences, public places, small businesses, schools, hospitality locations, and state and local government buildings. The program is funded by annual dues paid by producers of products that use covered materials - defined as packaging materials and paper products.

ACA was instrumental in developing language that exempts containers of architectural paint products collected by PaintCare from the definition of covered materials under the law.

CDPHE is in the process of setting up a statewide recycling advisory board with 13 members. The advisory board is tasked with reviewing the needs assessment put together by the PRO and reviewing the PRO. ACA and its state lobbyist are closely monitoring these developments.

Simultaneously, producers are working externally to set up the PRO. Based on the timeline, the PRO must be set up by June 1, 2023. The program structure that is set up by the PRO must get approval by the Joint Budget Committee of the legislature during the 2024 legislative session. The PRO will decide what the dues will be that each business will have to pay. Producers will have to sign up to participate in the PRO by June 2025 and will have to start paying dues by January 2026.

## ***PFAS Chemicals - SIGNED INTO LAW***

HB 22-1345, signed into law by the governor on June 3, 2022, is the Perfluoroalkyl and Polyfluoroalkyl Chemicals law, which prohibits the sale or distribution of certain consumer products in the state that contain intentionally added PFAS chemicals, passed after significant changes as well. The amendments removed cookware and removed all reporting requirements and further rulemaking authority from CDPHE.

## ***Post-election Political Landscape***

Following the November election, Colorado's 74th General Assembly will be under Democratic control, which will drive a push for more stringent environmental policy. The State Senate split is 23 Democrats to 12 Republicans, just one seat short of a super majority/veto override. The State House split is 46 Democrats to 19 Republicans, giving the Democrats a super majority in that chamber. ACA and its Colorado lobbyist will continue to monitor and engage on legislative activity for potential industry impact.

# CONNECTICUT

In Connecticut, ACA is working to obtain an exemption in any packaging legislation introduced as well as maintain the integrity of its PaintCare program.



## ***Extended Producer Responsibility***

SB 115, An Act Concerning EPR for Consumer Packaging, was introduced and received a public hearing, but was deemed to be too complicated and controversial to be taken up during the short legislative session. The bill died in the Environment Committee, but will likely resurface in the next legislative session, and proponents will point to Maine, Oregon and Colorado as having enacted such programs, and propose that Connecticut should follow suit.

## ***Solid Waste Management***

There were a few initiatives that concerned the issue of solid waste management and recycling in the 2022 Legislative Session.

SB 277 passed and creates a 20-member working group to review the state's short-and-long-term plan for the management and disposal of solid waste. This continues to be a significant issue with little in the way of a solution except for waste to be trucked to out-of-state landfills.

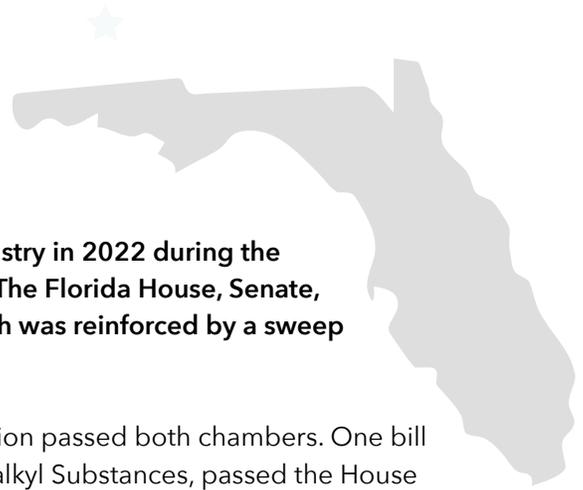
Legislation was passed (HB 5506, sections 164-168, Public Act 22-118) that creates a Sustainable Waste Management Grant Program within the Connecticut Department of Energy and Environmental Protection (DEEP) to fund innovative and promising local projects that address solid waste issues. Funding for the program is generated by assessments made against companies that fail to meet certain renewable portfolio standards. Grants are being issued to municipalities and regional entities. ACA is closely monitoring this program for any indication that any grants would involve or impact PaintCare or mirror an EPR program for unreturned paint cans.

Additionally, legislation to recognize an advanced form of recycling, SB 352, received a hearing before the Commerce Committee, but was not advanced to the floor. That recycling process converts post-use polymers and recovered feedstock into chemicals, liquid fuels, and other products. It is expected this initiative will be raised in the next legislative session.

## ***Post-election and 2023 Prospects***

The Nov. 8 election saw Democrats handily retain power in both legislative houses and the reelection of Gov. Ned Lamont (D). Connecticut's 2023 General Assembly will consider several issues of interest industry, including potential legislation for an EPR program for unreturned paint cans, which ACA will monitor, as well as any revival of a 2020 Senate proposal to modify the PaintCare program fee assessment.

# FLORIDA



**ACA's Florida lobbyist represented the paint and coatings industry in 2022 during the state's 60-day legislative session that adjourned on March 11. The Florida House, Senate, and governorship are controlled by the Republican party, which was reinforced by a sweep in the November election.**

While Florida lawmakers filed more than 3,735 bills, only a fraction passed both chambers. One bill in particular, HB 1475, Cleanup of Perfluoroalkyl and Polyfluoroalkyl Substances, passed the House and Senate on March 4, 2022. Gov. Ron DeSantis signed the bill into law on June 20, 2022.

The law requires the Florida Department of Environmental Protection (DEP) to adopt by rule statewide cleanup target levels for PFAS in drinking water, groundwater, and soil using specified statutory criteria, with priority given to PFOA and PFOS, if the U.S. EPA does not finalize its standards for PFAS in drinking water, groundwater, and soil by Jan. 1, 2025. Notably, the law requires the rules to be ratified by the legislature to take effect, and specifies that until DEP's rule has been ratified by the legislature, a governmental entity or private water supplier may not be subject to any administrative or judicial action brought by any state or local governmental entity to compel or enjoin site rehabilitation, to require payment for the cost of rehabilitation of environmental contamination, or to require payment of any fines or penalties regarding rehabilitation based on the presence of that particular PFAS constituent.

The 2023 Florida legislative session convenes on March 7, 2023, and ACA and its state lobbyist will remain engaged on any matters with potential industry impact.

# ILLINOIS

**In 2022, ACA focused on monitoring product-specific bills as well as advancing the association's model PaintCare bill.**



Over the last year, ACA and its Illinois state lobbyist continued to work toward a consensus bill to establish a state PaintCare program, collaborating with allies and potential opponents alike to craft a bill which tried to meet everyone's concerns. The finished product, which also garnered the support of the environmental community, was hindered in committee by political wrangling. But ACA will labor to see this proposal to fruition and begin the process of collecting and recycling post-consumer paint in Illinois.

On the state's regulatory front, ACA monitored the U.S. Army Corps of Engineers infrastructure plan along Illinois waterways that will present challenges to barge traffic transporting essential materials for the paint and coatings industry. Notably, numerous closures continue along the Illinois waterway due to a scheduled 2023 repair existing locks and rolling closures are being discussed in the preliminary engineering design phase for the construction of the Brandon Lock upgrades to prevent invasive species moving upbound to the Great Lakes. ACA's lobbyist is following the U.S. Army Corps of Engineers design meetings to ensure that there is as little disruption as possible to the movement of water-bound commerce.

Following the November election, Democrats maintained majorities in both legislative chambers and held the governor's office. The 2023 legislature will likely debate bills on Environmental Justice, EPR, product restrictions/bans, clean energy initiatives, as well as tax and fee increases. ACA and its state lobbyists will engage on behalf of industry where necessary, as well as continue to monitor for any impact from implementation of the Biden Administration's Environmental Justice policy in permitting of facilities in Illinois.

# KENTUCKY

**Following the 2022 election, Kentucky solidified its Republican political control, gaining seats in the House, Senate, and Louisville Metro Council, with Democrat Andy Beshear as governor. For the third year in a row, the Kentucky legislature was primarily focused on the State's budget, but ACA and its state lobbyist focused on several environmental bills and resolutions introduced in 2022.**



Among those measures were HB 189 and SB 41, which would have banned the release of 25+ plastic balloons, single-use plastic straws and bags, as well as Styrofoam containers; HR 85 recognized March 4, 2022, as Chemical Awareness Day to bring awareness to PFAS; and HB 717, which would have banned Trichloroethylene and placed restrictions on replacement chemicals. While none of these bills were passed, it is likely they will resurface during the next legislative session.

In the regulatory arena, U.S. EPA finalized its designation of Louisville to moderate nonattainment as of Sept. 15, 2022, and the Louisville Air Pollution Control District (APCD) has filed for redesignation and is awaiting a determination by U.S. EPA. While APCD waits, it will begin the process of drafting an implementation plan in the event U.S. EPA does not reverse its designation. U.S. EPA will also be finalizing a new rule regarding PM 2.5 soon, which the district fears will not be easily attained. While Louisville is currently compliant with the PM 2.5 standard, once U.S. EPA lowers the limit, there is concern that the city will have difficulty maintaining attainment.

The regulation of PFAS continues to be discussed at the state and local level. The Kentucky Energy and Environment Cabinet has made clear its intention to file legislation relating to PFAS, but none has been filed yet. It is unlikely that any restrictive PFAS legislation passes in the current Republican-controlled legislature. Additionally, bills relating to the ban of plastics are likely to return, but unlikely to pass.

# MAINE

**In Maine, where the Act to Stop Perfluoroalkyl and Polyfluoroalkyl Substances Pollution (LD 1503) became law in July 2021, ACA worked in 2022 with the Maine Department of Environmental Protection (DEP) as it structured regulatory initiatives around the law.**



LD 1503 bans the use of intentionally added PFAS in carpets, rugs, and fabric treatments by 2023; however, by 2030, **all** products that contain intentionally added PFAS will be banned unless a decision has been made by the environmental agency that the use of PFAS was unavoidable.

Maine's law also requires manufacturers of products with intentionally added PFAS to register with the agency by Jan. 1, 2023, if the manufacturer has not obtained an extension. Maine DEP will maintain information on a publicly available online database.

In 2022, ACA submitted several comments to Maine DEP on the agency's Concept Draft for Regulations Implementing LD 1503 (a framework for the ensuing regulations), seeking extensions of deadlines for submission of the required manufacturer information, clarity on certain criteria and methods of identifying chemicals and amounts, as well as DEP's methods for detecting PFAS in products. Notably, DEP heeded one of ACA's most salient comments allowing for situations where specific chemical identity is confidential. In a second concept draft, the agency referenced the Uniform Trade Secrets Act to provide a process to claim confidentiality of information. Maintaining confidentiality of specific chemical identity, including a CAS number, or several CAS numbers in a mixture, provides an important incentive supporting innovation of new products, including safer, "green" chemistries, which ACA had underscored to DEP in its comments.

In November 2022, submitted extensive comments to DEP on its second draft concept. In addition, ACA submitted a request for, and was granted, an extension of time to comply with the law's requirements for several ACA member companies. In 2023, ACA will remain engaged in Maine's regulatory process on PFAS on behalf of its members.

## ***Other 2022 Legislation, Election Results, and 2023 Outlook***

Following on the heels of the 2021 law to ban PFAS, and to address concerns over previously contaminated agricultural lands, Maine's legislature passed a bill prohibiting the land application of, or sale of sludge-derived compost that comes from an industrial, municipal or commercial waste-water treatment facility. Some exemptions were included that focused on food and agricultural items or processes.

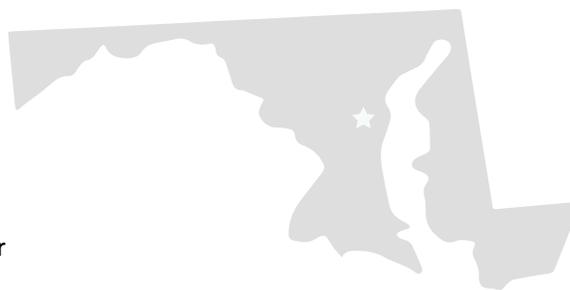
To battle climate change, in 2019, Maine passed laws that featured generous financial incentives meant to lure more renewable energy development. One element directed utilities to buy power from projects with under 5 megawatts of capacity at fixed rates. The provision proved particularly successful. Hundreds of projects with a combined capacity of more than 1,600 megawatts announced plans to build. These programs also created potential increased costs on the horizon. In 2022, Maine's legislature attempted to manage the prospect of higher costs for consumers by capping these rates. The legislature also developed a framework to pursue future incentive programs for renewable energy production with a report back to the legislature due in early 2023.

In November, Democrats maintained their majorities in both the House and the Senate with nearly identical margins to two years ago. Democratic Gov. Janet Mills handily won re-election with 56% of the vote.

One of Maine's biggest issues for 2023 is a citizen-initiated bill that would create state power authority - named "Pine Tree Power" - with the authority to take over Maine's two investor-owned electric utilities. Under the proposal, the state authority would be governed by a 13-member board, seven of whom would be elected, and the remainder appointed by the elected board. The authority would in turn hire a private company to operate the grid. Supporters claim that the plan will save consumers money, improve service, and keep the electric grid in "our" hands. Opponents say that the plan is unprecedented nationally, will cost Maine consumers \$13.5 billion, raise rates, and reduce service quality. This issue will be on the ballot in November 2023.



# MARYLAND



**Passage of legislation to implement a PaintCare program in Maryland remained the primary focus of ACA state advocacy for 2022. In 2022, there was a Republican sponsor of the legislation, Sen. Chris West, and for the first time the bill was cross-filed in both chambers. There was no opposition at the House hearing and both Committees (the bill was jointly referred to the Environment and Transportation Committee and Economic Matters Committee) easily moved the bill favorably without amendment. Despite the strong advocacy of Sen. West and a strong hearing, the Senate Committee did not take the bill up for a vote.**

The failure of the bill being moved forward in the Senate had nothing to do with the PaintCare program, but rather, the singular focus of the Committee Chair specifically, and the Senate generally, on the passage of the Climate Solutions Now Act. In preparation for passage of the bill in 2023, ACA and its state lobbyist are communicating with both House and Senate leadership with a commitment by both chambers to positively move the bill forward. Del. Regina Boyce (D) and Sen. Chris West will remain the bill sponsors.

Also, given the election shifting the gubernatorial seat to incoming Democrat Wes Moore (who will be sworn in on Jan. 18, 2023), ACA is also conducting outreach to the new Administration to gain support, as well as to the new Assembly and Senate leadership, which maintained Democratic control following the Nov. 8 election.

## ***Other Legislative Activity***

SB 273, legislation that prohibits the use of PFAS in firefighting foam, food packaging, rugs, and carpets, was enacted in 2022. The law contains several reporting requirements for the Maryland Department of the Environment (MDE) and the Maryland Department of Health (MDH), including a requirement for MDE to report on the work it is doing on PFAS generally, and specifically, as it relates to testing and remediation. It also requires MDE and MDH to develop an action plan to ensure that there is a plan moving forward to minimize exposure. PFAS is an issue that MDE has been committed to studying and future legislation and regulatory activity is anticipated.

Maryland also enacted HB 133, legislation that creates a prohibition on the use of a "High-PAH sealant product," which is defined as a sealant product containing more than 1% polycyclic aromatic hydrocarbons (PAH) by weight. The bill does not prohibit a county, municipality, or unit of local government from enacting and enforcing standards or requirements related to sealant products that are more stringent than the bill's requirements. Airports, federal facilities, and military facilities are exempt from the bill's provisions. This legislation had been under consideration for the last three years with growing support by the environmental community and less objection from the sealant manufacturers, thus leading to its passage in the 2022 legislative session.

# MASSACHUSETTS



**Massachusetts' 2021-2022 legislative session centered on the fact that the state is experiencing its strongest fiscal health in the state's history. The influx of federal dollars, as well as exceptionally high state revenue receipts, resulted in a robust state budget and many economic development initiatives over the past year. For its part, ACA remained focused on advancing a PaintCare bill in the state and averting any deleterious impacts on industry products and business.**

ACA's PaintCare legislation, HB 38, was placed prominently on the House Environmental, Natural Resources and Agriculture Committee's agenda and, in April 2022, the committee voted to advance the bill to the House Ways and Means Committee. While the Retailers Association of Massachusetts continued its opposition to bill passage, ACA had productive meetings with the organization's leadership to move it to a neutral or supportive position for the bill.

Massachusetts saw many bills filed that relate to product and chemical regulation or outright bans. To date, these onerous bills have not advanced due to ACA's active lobbying efforts.

PFAS contamination in groundwater received considerable attention in Massachusetts and legislators are examining how or whether to pass legislation to regulate current or past usage of these chemicals. In 2020, a legislatively established PFAS Interagency Task Force was convened to look at this issue in greater detail. However, the pandemic delayed much of the task force's work and a final report was issued in June 2022. A significant portion of the report was dedicated to ensuring that funding is made available, primarily from existing resources, for the purposes of detection and remediation in groundwater. But one element of the report indicated that the legislature should further examine regulating products with intentionally added PFAS and establish labeling requirements for certain products.

On the regulatory front, the Massachusetts Department of Environmental Protection (DEP) released its 2030 Solid Waste Master Plan, which seeks to reduce disposal rates by 30% (2030) and by 90% (2050). The focus of the plan is on recycling and diversion from landfills. ACA and its state lobbyist have worked with DEP to ensure their support for PaintCare legislation which is referenced in the Master Plan as a way to reduce waste.

## ***Post-election Outlook***

In November, Massachusetts elected the state's Attorney General, Maura Healey (D) and Salem Mayor Kim Driscoll (D) to be its next governor and lieutenant governor respectively—to create a trifecta of Democratic control of the state (both House and Senate have Democratic majorities). ACA will be vocal advocates within this new administration on behalf of PaintCare and all legislation and regulation of interest to the industry in 2023 and beyond.

# MINNESOTA



**In 2022, just as the Minnesota Legislature was set to work in the non-budget year of the biennium, state officials announced a sizable \$7.7 billion budget surplus as net general fund receipts swelled and additional federal stimulus money was anticipated.**

Because the biennium was already funded, no supplemental budget package was required to pass before the constitutional end of session in the third week of May. While the House and the Senate both passed their supplemental spending priorities in the form of tax cuts and new spending, the two bodies and the governor could not find agreement on the vast majority of large budget and spending bills before the gavel came down at the end of session.

As a result, policy provisions within those supplemental budget bills failed to become law. This included efforts by Democrats in the House to pursue legislation focused on the regulation of chemicals in products, particularly PFAS and perfluorochemicals. Efforts to regulate PFAS in a wide variety of consumer goods and commercial applications resulted in an entire article of the House Environment Omnibus bill being dedicated to their regulation, though none of those measures passed. Efforts around packaging and plastics, including standards for labeling bags, food and beverage products and packaging as biodegradable or compostable also failed to pass both chambers and become law.

## ***MPCA & PaintCare***

ACA and its state lobbyist continued to engage with the Minnesota Pollution Control Agency (MPCA) on reporting, rulemaking and other issues related to PaintCare. Minnesota's PaintCare program launched in 2014. In 2017, the program adopted a fee increase to address a program deficit and establish a reserve to navigate fluctuating program costs. PaintCare has proposed a continuance of fees at that level as a hedge to future economic uncertainties. As a result, MPCA and PaintCare have had robust discussions over the responsibility of the organization to mitigate the risks to its financial sustainability, the appropriate level of reserves and the fee structure to meet those legitimate operational costs.

## ***Post-election Outlook***

Following the November election, Democrats retained control of the Minnesota House of Representatives and took control of the Minnesota Senate with the narrowest of margin. Democrats now hold the House, Senate, and the Governor's office in the state.

With single-party control of the legislature and administration, provisions such as chemical regulations and plastics and packaging regulations will find an easier pathway than they did in divided government. Additionally, MPCA has already indicated it will turn to the legislature for statutory clarification around PaintCare's fee and reserve levels.

ACA will remain engaged with MPCA and state lawmakers to ensure PaintCare's proper control over fee assessment is retained.

# MISSOURI



**In 2022, ACA and its state lobbyist made significant progress on a PaintCare bill during the legislative session, which ended on May 13. Republican Rep. Jamie Burger sponsored the legislation, HB 2852, which is notable as he is a former presiding commissioner and spent more than 35 years working for the cement company in his district and is well positioned to be an industry champion.**

As this is ACA's first foray for PaintCare in the state, a lot of educational groundwork was necessary to explain all aspects of the program fee structure, and product stewardship principles in general. This campaign extended beyond lawmakers to the Missouri Retailers Association. Notably, ACA met individually with the members of the House Conservation and Natural Resources Committee, which heard the bill on April 11.

The hearing had an outpouring of supportive testimony from ACA; the Product Stewardship Institute, Southeast Missouri Solid Waste Management District; Solid Waste Advisory Board; Missouri Coalition for the Environment; Sierra Club Missouri Chapter; KC Dumpster Company; and GDB International.

While the bill did not advance out of committee in 2022, the groundwork for advancement in the next session has been laid and relationships fostered.

In the interim, ACA has continued working with the state Department of Natural Resources on agreed- upon language, as well as engaging additional sponsors for a productive legislative effort in 2023.



## NEW JERSEY

ACA doubled down on its efforts to get a PaintCare bill enacted in New Jersey after some major staff changes in the governor's office and following Gov. Phil Murphy's (D) pocket veto of the passed PaintCare bill on Jan. 18, 2022. ACA and its state lobbyist engaged with the governor's office to work toward enactment in 2023, and remained engaged on several other legislative measures and regulatory efforts with potential industry impact, including the following.

S-1005/A-659 is legislation that would authorize common law public nuisance suits regarding lead-based paint under State law, and exempts the state Attorney General from certain aspects of public nuisance claims when pursuing lead paint actions. SB 1005 was released by the Senate Environment and Energy Committee and second referenced to the Senate Budget and Appropriations Committee but did not progress further.

S-426/A1444 would require producers of packaging products sold in New Jersey to adopt and implement packaging product stewardship plans was posted "for hearing only." The Senate sponsor offered to hold stakeholder meetings and work with all interested parties to create an amended version of S-426, in which ACA participated.

And several bills related to PFAS were introduced, including A-4758/S-3177, which would establish requirements, prohibitions, and programs for regulation of PFAS substance. The bill was referred to the Assembly Environment and Solid Waste Committee.

### **Regulatory Efforts**

In 2022, ACA and its lobbyist engaged in the New Jersey Department of Environmental Protection's (NJDEP) stakeholder process to make significant regulatory amendments to the state's air, water, and site remediation programs.

Among those efforts, ACA submitted comments on NJDEP's rule proposal for the Control and Prohibition of Carbon Dioxide Emissions, which is expected to have significant impacts on small fossil fuel-fired boilers. ACA and its state lobbyist also advocated against the New Jersey Protecting Against Climate Threats (NJPACT) Land Use Inland Flood Protection emergency rulemaking that the NJDEP was pushing – a battle ultimately won.

Another air regulatory effort that NJPC has been committed to is an NJDEP rulemaking that was adopted on April 4, 2022, which targets fumigants and fumigation operations. This rule will have far-reaching impacts on businesses in New Jersey due to its requirements for Potential to Emit (PTE) numbers that exceed 0.1 pounds per hour (lbs/hr) of any fumigant or combination of fumigants during an event. ACA and its lobbyist continuously advocated to NJDEP for a transparent, interactive stakeholder process that includes workgroup meetings with the right people at the table to discuss appropriate alternatives; however, this was not achieved and now ACA is working to try to resolve all remaining concerns.

In the water quality arena, ACA was active on the state's New Jersey Pollutant Discharge Elimination System (NJPDES) industrial surface water permit fee structure, participating in stakeholder discussions with the NJDEP and submitting extensive comments with recommendations. ACA also remained involved in the NJDEP's survey and sampling outreach and demand efforts that target NJPDES Category B/L permittees as sources of per-fluorinated compounds. NJDEP recently started reissuing NJPDES permits with new monitoring requirements for these emerging contaminants, and ACA will help guide industry and keep advocating on its behalf.

# NEW YORK



In 2022, ACA worked alongside its state lobbyist to facilitate an on-time launch of the state's new PaintCare program. PaintCare operations authorized by the December 2019 enacted law, launched on May 1, 2022, establishing some 250 drop-off sites for households, businesses, and others with leftover paint in the first eight months of operation. ACA and its state lobbyist worked to facilitate the state's regulatory process and address implementation issues as they arose, especially how the program fee would or would not appear on the customer's receipt for a covered product.

ACA also monitored EPR bills related to packaging, mattresses, carpets, electronics, and other materials that could have unintended consequences on the PaintCare law's implementation and future. ACA secured amendments in pending Senate legislation on packaging EPR to exempt paint from its requirements. Packaging EPR promises to be a high visibility issue in New York in 2023, given enactment of packaging EPR programs in California, Maine, and Oregon.

Banning and restricting the use PFAS in the manufacturing process was also a hot issue in New York: Gov. Kathy Hochul (D) introduced a "toxic packaging" proposal in her Executive Budget; and though it didn't make it into the enacted budget, it is likely to be reintroduced in 2023, along with PFAS bills related to packaging, cosmetics, all products, apparel, and public water.

## ***Post-election Landscape***

In November, Gov. Hochul was elected for the first time after succeeding Gov. Andrew Cuomo following his August 2021 resignation. Both legislative houses retained their Democratic supermajorities (that is, each has the two-thirds majority which could override a veto).

## RHODE ISLAND

**In 2022, ACA worked to ensure PaintCare’s control of its Rhode Island program, which marked its eighth year of program operations in June. ACA succeeded in arresting a bill in Rhode Island that would have required the state environmental oversight agency to “put out for bid” the operation of the paint stewardship program in the state.**



Additionally, ACA monitored bills with potential impact on its state PaintCare program, including HB 7279. This legislation would create a producer responsibility program, requiring producers to make necessary changes to product design(s) to reduce packaging consumption and waste and assess fees based on the packaging. The bill was referred to House Environment and Natural Resources and the committee recommended that the measure be held for further study. A companion bill, SB 2296 was introduced and referred to Senate Environment and Agriculture Committee, which also recommended measure be held for further study.

# TEXAS



**The Texas Legislature convenes for 140 days in odd numbered years, so 2022 was a Legislative Interim year. Even so, ACA and its Texas lobbyist engaged in discussion of forthcoming legislation, as well as regulatory matters at the Texas Commission on Environmental Quality (TCEQ).**

ACA remained engaged in the state's Sunset Review process for several agencies, including TCEQ. Under the Texas Sunset Act, a state agency or agency program under review can be modified, abolished or have some of its functions transferred to another agency if the legislature deems that doing so will improve efficiency or effectiveness. Notably, ACA was successful in modifying several of the recommendations made for TCEQ changes that would impact regulated industries. However, two issues remain that ACA and its lobbyist will continue working on in 2023: 1) increasing the statutory cap on penalties from \$25,000 per day to \$40,000 per day; and 2) consideration of a separate compliance history formula for regulated entities with complex permits.

## ***Plastics and Microplastics***

Last year, TCEQ proposed a zero-discharge standard for pre-production plastics in the triennial review of the Texas Surface Water Quality Standards (SWQS) rule revision. The SWQS typically involves non-substantive rule updates, however, TCEQ attempted to insert a definition for "pre-production plastic." ACA submitted comments following the initial rule publication arguing that the proposed revisions for the definition of "pre-production" plastic and the zero-discharge standard were substantive and more than a mere clarification, and as such, required formal notice and comment as a separate rulemaking to make those substantive changes. In addition, ACA noted that the proposed zero-discharge standard is more stringent than U.S. EPA's standard and encouraged TCEQ to remove any reference to "pre-production plastic" and the zero-discharge of plastic pellets from the SWQS rule proposal; and to instead pursue a separate formal rulemaking for the discharge of plastic that is a science-based, numeric standard.

TCEQ heeded ACA's recommendation and removed the pre-production plastic provisions from the revisions to the Texas SWQS. ACA and its state lobbyist continue to work with TCEQ to pursue a science-based numeric standard to thwart any legislation that could be filed imposing a zero-discharge standard for pre-production plastics in the upcoming legislative session.

## ***Post-election Outlook***

Texas's 88th Legislature convened on Jan. 10, 2023, and post-election, the state remains a Republican trifecta, holding power in the House, Senate, and Governor's office. Prefiling of bills began on Nov. 14, 2022, and will continue through March 10, 2023. There have already been over 1,000 bills filed, and ACA and its state lobbyist will track any bills that may impact the paint and coatings industry. These will likely include proposals to impose a fee on the sale of all single-use containers for the purpose of incentivizing local governments to create recycling sorting facilities; prohibition of the manufacture, sale distribution, or use of PFAS in products sold in Texas; and a zero-discharge limit for plastic pellets.

# VERMONT



**In Vermont, extended producer responsibility proposals have been a consistent issue and ACA has worked diligently to foster relationships in order to influence the content of any packaging or household hazardous waste proposals.**

An EPR packaging bill, S.236 and Household Hazardous Waste bill, H.115, both failed to pass both chambers. Additionally, H.650, which would have prohibited intentional use of PFAS substances in products to be sold in Vermont, also proposed to prohibit the use and import of wastes that contain microplastics but did not advance.

Another bill, H.694, sought to ban PFAS ban in products and leachate, and was referred to the Committee on Natural Resources, Fish, and Wildlife, from where it did not move.

It is probable these bills will be reintroduced during the 2023 legislative session, which will be complicated by the veto-proof Democratic supermajorities in both chambers following the November election.

# WASHINGTON



**In 2022, ACA's multi-year engagement with the Washington Department of Ecology – via numerous meetings and rounds of detailed comments – culminated in the agency's decision to recommend no further regulatory action for inadvertent, trace levels of PCBs (polychlorinated biphenyls) in paints in the department's final report to the legislature, as required under the Safer Products for Washington Act. As a result, paints and coatings will not be regulated as a priority product under the first set of restrictions under the law – a major victory for industry.**

On the legislative side, the House and Senate passed HB 1694, concerning logistical processes for the regulation of priority chemicals in consumer products under the Safer Products for Washington law. While the original bill language would have made several changes to the enacting legislation that was passed in 2019 – including broadening the types of chemicals addressed by the Department of Ecology as well as loosening legislative oversight provisions – ACA worked with other stakeholders to improve the bill. In the end, the bill passed with language that only impacted certain chemicals in flame retardants, leaving in place what is already on the books. The law was enacted in the spring.

A plastic packaging producer responsibility bill, SB 5697, was introduced that would put in place a new plastic recycling program in Washington. The bill had several components including producers covering the cost of a new program. ACA worked with sponsors of the legislation to seek an exemption from the law for the containers that are managed by PaintCare, to no avail. However, the bill did not pass before the end of the legislative session.

It is likely this bill will be reintroduced in 2023 legislative session, where Democrats will maintain large majorities and hold the governor's seat. ACA will work to ensure any enacted measure includes the proper acknowledgement and necessary exemptions for PaintCare.