

SENATE, No. 1420

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED FEBRUARY 27, 2014

Sponsored by:

Senator JAMES BEACH

District 6 (Burlington and Camden)

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District 2 (Atlantic)

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Senators A.R.Bucco, Oroho and Bateman

SYNOPSIS

Requires paint producers to implement or participate in a paint stewardship program.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/20/2014)

1 AN ACT requiring producers of architectural paint to implement or
2 participate in a paint stewardship program, and supplementing
3 Title 13 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. This act shall be known and may be cited as the
9 “Architectural Paint Stewardship Act.”

10
11 2. As used in this act:

12 “Architectural paint” means interior or exterior architectural
13 coatings that are sold in containers of five gallons or less.
14 “Architectural paint” shall not mean industrial, original equipment,
15 or specialty use coatings.

16 “Commissioner” means the Commissioner of Environmental
17 Protection.

18 “Department” means the Department of Environmental
19 Protection.

20 “Distributor” means a person who has a contractual relationship
21 with one or more producers to market and sell architectural paint to
22 retailers.

23 “Energy recovery” means a procedure in which all or a part of
24 the solid waste materials of architectural paint are processed to use
25 the heat content or other forms of energy from the solid waste
26 materials.

27 “Environmentally sound management practices” means the
28 policies or procedures for collection, storage, transportation, reuse,
29 recycling, and disposal of architectural paint, which are
30 implemented by a producer, representative organization, or their
31 contracted partners to ensure compliance with all applicable federal,
32 State, and local laws, rules, regulations, and ordinances, and the
33 protection of human health and the environment, and which address
34 matters such as adequate recordkeeping, accurate tracking and
35 documentation of the use, reuse, recycling, or disposal of post-
36 consumer architectural paint within and outside of the State, and
37 adequate provision of environmental liability coverage for
38 professional services and for the operations of contractors working
39 on behalf of a producer or representative organization.

40 “Paint stewardship assessment” means the dollar amount,
41 established pursuant to section 3 of this act, which is added to the
42 purchase price of architectural paint sold in the State, in order to
43 cover the paint stewardship program costs associated with the
44 collection, transportation, and processing of post-consumer
45 architectural paint.

46 “Post-consumer architectural paint” means architectural paint not
47 used and no longer wanted by a purchaser.

1 “Producer” means a manufacturer of architectural paint that is
2 sold, offered for sale, or distributed in the State, either under the
3 producer’s own name or under any other brand name.

4 “Recycling” means any process used to transform discarded
5 products, components, or by-products into new usable or
6 marketable materials, and which process may cause those discarded
7 products, components, or by-products to lose their original
8 composition or identity. “Recycling” shall not include energy
9 recovery or energy generation by means of combustion or
10 incineration.

11 “Representative organization” means a nonprofit organization
12 that is established by, and for the benefit of, two or more
13 architectural paint producers in the State, and which is tasked with
14 the development of an architectural paint stewardship program plan,
15 in accordance with section 2 of this act, and implementation of the
16 plan on behalf of, and with the participation of, each member
17 producer.

18 “Retailer” means any person who sells architectural paint or
19 offers architectural paint for sale at retail to consumers in the State.

20 “Reuse” means the return of a product into the economic stream
21 for use in the same kind of application originally intended for the
22 product, without a change in the product’s original composition or
23 identity.

24 “Sell” or “sale” means any transfer of title for consideration,
25 including, but not limited to, remote sales transactions conducted
26 through sales outlets, catalogs, or the Internet, or through any other
27 similar electronic means.

28

29 3. a. Within one year after the date of enactment of this act,
30 any producer of architectural paint, or any representative
31 organization established pursuant to this act, shall prepare and
32 submit to the commissioner, for the commissioner’s approval, a
33 plan for an architectural paint stewardship program. The plan shall
34 minimize public sector involvement in the management of post-
35 consumer architectural paint by reducing its generation, promoting
36 its reuse and recycling, and negotiating and executing agreements
37 for its collection, transportation, reuse, recycling, burning for
38 energy recovery, and disposal using environmentally sound
39 management practices.

40 b. The plan submitted pursuant to this section shall:

41 (1) provide for the convenient and available Statewide
42 collection of post-consumer architectural paint in a manner that, at a
43 minimum, ensures collection rates and a level of convenience equal
44 to or greater than that provided by other collection programs
45 available to consumers prior to the establishment of the
46 architectural paint stewardship program;

47 (2) address, to the extent reasonably feasible and mutually
48 agreeable, the coordination of the architectural paint stewardship

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1 program with the existing household hazardous waste collection
2 infrastructure in the State;

3 (3) in accordance with the provisions of section 3 of this act,
4 identify an appropriate amount for the paint stewardship
5 assessment; and

6 (4) identify, in two separate lists: (a) each producer
7 participating in the program; and (b) the brands of architectural
8 paint that are included in the program.

9
10 4. a. The producer or representative organization submitting an
11 architectural paint stewardship program plan pursuant to section 2
12 of this act shall establish, as a funding mechanism for the program,
13 a paint stewardship assessment amount to be uniformly applied to
14 the sale price of all brands of architectural paint covered under the
15 paint stewardship program. The assessment amount shall not
16 exceed the costs of the paint stewardship program.

17 b. A paint stewardship assessment, as established by subsection
18 a. of this section, shall be added to the cost of each container of
19 architectural paint sold by a producer to a retailer or distributor in
20 this State, and each retailer or distributor shall add the paint
21 stewardship assessment to the purchase price of the producer's
22 architectural paint.

23 c. If a producer is a member of a representative organization,
24 the producer shall remit to the representative organization, the paint
25 stewardship assessment received for each container of architectural
26 paint sold by the producer in the State.

27
28 5. a. No later than 90 days after the department's receipt of a
29 plan submitted in accordance with section 2 of this act, the
30 commissioner shall approve, approve with conditions, or disapprove
31 the plan, including the paint stewardship assessment identified
32 therein, and provide written notice of its determination to the
33 producer or representative organization, as the case may be. If the
34 department does not provide notice of its determination within 90
35 days after its receipt of the plan, the plan shall be deemed to have
36 been approved, and the producer or representative organization, as
37 the case may be, shall proceed to implement the plan.

38 b. If the commissioner approves with conditions or disapproves
39 a plan submitted pursuant to section 2 of this act, the written notice
40 provided pursuant to subsection a. of this section shall be
41 accompanied by a detailed statement, prepared by the department,
42 describing the reasons for the conditions or disapproval, and
43 prescribing the changes required for approval. No more than 45
44 days after receipt of the department's written notice and
45 accompanying statement of the reasons for the approval with
46 conditions or the disapproval of a plan submitted pursuant to
47 section 2 of this act, the producer or representative organization, as
48 appropriate, shall incorporate the conditions or changes to the plan

1 as required by the department and submit the modified or
2 replacement plan to the department for approval.

3
4 c. No more than 45 days after receipt of a modified or
5 replacement plan that has been submitted in accordance with
6 subsection b. of this section, the department shall approve the plan
7 or reject it, and shall certify the approval or rejection to the
8 producer or representative organization, as the case may be. Upon
9 the department's rejection of any modified or replacement plan
10 submitted pursuant to subsection b. of this section, or upon the
11 failure of the producer or representative organization to submit a
12 modified or replacement plan as required, the department shall
13 make any revisions to the plan the department deems necessary, and
14 shall transmit the plan revisions to the producer or representative
15 organization, as the case may be. Upon receipt of the department's
16 revisions to the plan, the producer or representative organization, as
17 appropriate, shall proceed to implement the revised plan.

18 d. Within 90 days after the department's approval of, or
19 revisions to, an architectural paint stewardship plan submitted in
20 accordance with section 2 of this act:

21 (1) the producer or representative organization, as appropriate,
22 shall proceed to implement the architectural paint stewardship
23 program described in the plan; and

24 (2) the department shall post, at a publicly accessible location
25 on its Internet website, two separate lists respectively identifying
26 (a) each producer participating in the architectural paint stewardship
27 program, and (b) the brands of architectural paint included in the
28 program.

29
30 6. In implementing a paint stewardship program plan approved
31 or revised by the commissioner pursuant to section 4 of this act, the
32 producer, or representative organization of which the producer is a
33 member, shall provide consumers with educational materials related
34 to the paint stewardship program and the paint stewardship
35 assessment. These educational materials shall include, but need not
36 be limited to, information identifying the end-of-life management
37 options that are available for post-consumer architectural paint
38 through the paint stewardship program, and a notice provision
39 stating that the costs of program operation will be included in the
40 purchase price of all architectural paint sold in the State.

41
42 7. a. A producer, distributor, or retailer shall not sell
43 architectural paint or offer architectural paint for sale to any person
44 in the State unless the producer of the architectural paint, or a
45 representative organization of which the producer is a member, is
46 engaged in the implementation of, or has fully implemented, a paint
47 stewardship program plan approved or revised by the commissioner
48 pursuant to section 4 of this act.

1 b. A distributor or retailer shall be deemed to be in compliance
2 with subsection a. of this section if, on the date architectural paint is
3 ordered thereby, the producer of the paint and the brand name of the
4 paint are each identified on the respective lists maintained on the
5 department's Internet website pursuant to subsection d. of section 4
6 of this act.

7 c. (1) Any producer, distributor, or retailer who violates the
8 provisions of subsection a. of this section shall be subject to: (a) a
9 written warning for a first offense, and (b) a penalty of not less than
10 \$500 nor more than \$1,000 for each subsequent offense. Any
11 applicable penalty under this section shall be collected in a civil
12 action by summary proceeding under the "Penalty Enforcement
13 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case
14 before a court of competent jurisdiction wherein injunctive relief
15 has been requested. The Superior Court and the municipal court
16 shall have jurisdiction to enforce the provisions of the "Penalty
17 Enforcement Law of 1999" in accordance with the provisions of
18 this act.

19 (2) The department may institute a civil action for injunctive
20 relief to enforce the provisions, or prevent a violation, of this
21 section, and the court may proceed in the action in a summary
22 manner.

23

24 8. An architectural paint retailer may participate, on a
25 voluntary basis, as a post-consumer paint collection point for the
26 purposes of this act, so long as the retailer complies with all laws,
27 rules, regulations, and ordinances that are applicable to the
28 collection of post-consumer paint. Any retailer who elects to act as
29 a post-consumer paint collection point, and who fails to so comply
30 with any applicable law, rule, regulation, or ordinance shall be
31 subject to a penalty as provided by the law, rule, regulation, or
32 ordinance that is the subject of the violation.

33

34 9. a. Except as provided in subsection b. of this section, an
35 action undertaken by a producer or representative organization,
36 which affects the types or quantities of paint being recycled, or the
37 cost or structure of any return or recycling program, shall not be
38 deemed to be a violation of any State law relating to antitrust,
39 restraint of trade, unfair trade practices, or the regulation of trade or
40 commerce, so long as the action is necessary to plan or implement
41 the organized collection or recycling of architectural paint pursuant
42 to this act.

43 b. Subsection a. of this section shall not apply to: (1) any
44 agreement establishing or affecting the price of paint, except an
45 agreement to establish an architectural paint stewardship
46 assessment, as authorized by this act; or (2) any agreement
47 restricting the output or production of paint or the geographic area
48 or customers to which paint will be sold.

1

2 10. a. One year after the department provides notification to a
3 producer or representative organization of its approval of or
4 revisions to a plan in accordance with section 3 of this act, and
5 annually thereafter, the producer or representative organization, as
6 the case may be, shall submit a report to the department describing
7 its architectural paint stewardship program. The report shall
8 include, at a minimum:

9 (1) a description of the methods used to collect, transport, reuse,
10 recycle, and process post-consumer architectural paint under the
11 program;

12 (2) the volume of post-consumer architectural paint collected
13 under the program;

14 (3) the volume of post-consumer architectural paint collected
15 under the program by method of disposition, including reuse,
16 recycling, energy recovery, and disposal in accordance with
17 environmentally sound management practices;

18 (4) the total cost of implementing the program, as determined by
19 an independent financial audit funded with proceeds from the paint
20 stewardship assessment; and

21 (5) samples of the educational materials provided to consumers
22 of architectural paint, together with an evaluation of the methods
23 used to disseminate those materials, and an assessment of the
24 educational and outreach effectiveness of those materials, including
25 associated levels of waste prevention and reuse.

26 b. The department shall not disclose financial, production, or
27 sales data reported by a producer or representative organization
28 pursuant to this section, except that the department may disclose
29 such data in aggregate or summary format, provided that individual
30 producers, distributors, or retailers and their financial, production,
31 or sales data are not specifically identified, and the summary omits
32 any reference to unique characteristics from which the identities of
33 individual producers, distributors, or retailers might be inferred or
34 otherwise ascertained.

35

36 11. This act shall take effect immediately, except that section 6
37 of this act shall take effect on the first day of the eighteenth month
38 after the date of enactment of this act.

39

40

41

STATEMENT

42

43 This bill would require each producer of architectural paint sold
44 in the State to implement, or participate in, a Statewide architectural
45 paint stewardship program.

46 The bill would require any such architectural paint producer, or a
47 representative organization established on behalf of two or more
48 such producers, to develop and implement a plan for an

1 architectural paint stewardship program that would be designed to
2 minimize public sector involvement in the management of post-
3 consumer architectural paint by reducing its generation, promoting
4 its reuse and recycling, and negotiating and executing agreements
5 for its collection, transportation, reuse, recycling, burning for
6 energy recovery, and disposal using environmentally sound
7 management practices. The bill would require any such plan to:

8 (1) provide for the convenient and available Statewide
9 collection of post-consumer architectural paint in a manner that
10 ensures collection rates and a level of convenience equal to or
11 greater than that provided by other collection programs available to
12 consumers prior to the establishment of the architectural paint
13 stewardship program;

14 (2) address, to the extent reasonably feasible and mutually
15 agreeable, the coordination of the architectural paint stewardship
16 program with the existing household hazardous waste collection
17 infrastructure in the State; and

18 (3) provide two lists respectively identifying each producer
19 participating in the architectural paint stewardship program, and the
20 brands of architectural paint sold under the program.

21 A producer or representative organization would also be required
22 to establish, as a funding mechanism for the program, and to
23 include in the program plan, a paint stewardship assessment amount
24 that would be uniformly applied to the sale price of all brands of
25 architectural paint covered under the paint stewardship program.
26 The bill would prohibit the assessment amount from exceeding the
27 costs of the program. Each producer would be required to add the
28 paint stewardship assessment to the cost of each container of
29 architectural paint sold thereby to a retailer or distributor in the
30 State, and each retailer or distributor would then be required to add
31 the paint stewardship assessment to the purchase price of the
32 producer's architectural paint. If a producer is a member of a
33 representative organization, the producer would be required to remit
34 to the representative organization, the paint stewardship assessment
35 received for each container of architectural paint sold by the
36 producer in the State.

37 The bill would require a paint stewardship program plan to be
38 submitted to the DEP for approval prior to its implementation by a
39 paint producer or representative organization. The bill authorizes
40 the department to approve, conditionally approve, or disapprove of
41 a proposed plan. If the department conditionally approves or
42 disapproves of a plan, the bill provides a procedure for subsequent
43 plan revision by the producer or representative organization, and the
44 departmental review of the revised plan. In the event that the
45 department is dissatisfied with a revised plan, the bill authorizes the
46 department, in the interests of expediency, to impose any
47 modifications or substitutions to the plan's provisions it deems

1 necessary, and to require implementation of the plan as so modified
2 by the department.

3 A producer or representative organization would be required to
4 implement the program described in a proposed plan within 90 days
5 after its approval or modification by the department. The producer
6 or representative organization would further be required to submit
7 annual reports to the DEP, which describe, among other things, the
8 volume of post-architectural paint collected in the State, and the
9 methods used to collect, transport, reuse, recycle, and process post-
10 consumer architectural paint.

11 The bill would prohibit a producer, distributor, or retailer of
12 architectural paint from selling architectural paint, or offering the
13 same for sale, in the State unless the producer of the paint, or a
14 representative organization of which the producer is a member, is
15 engaged in the implementation of, or has fully implemented, a paint
16 stewardship program plan approved or revised by the commissioner.
17 A distributor or retailer would be deemed in compliance with this
18 sales prohibition if, on the date architectural paint is ordered
19 thereby, the producer of the paint and the brand name of the paint
20 are each identified on the department's Internet website as being
21 included in a stewardship plan.

22 Any producer, distributor, or retailer who fails to comply with
23 the bill's sales prohibition would be subject to a written warning for
24 a first offense, and a penalty of \$500 to \$1,000 for each subsequent
25 offense. The department would also be authorized to institute a
26 civil action for injunctive relief to prevent a continuing violation of
27 this sales prohibition. In order to allow time for the submission,
28 approval, or modification of stewardship program plans, however,
29 the bill would delay the effective date of this sales prohibition and
30 penalty provision until the first day of the eighteenth month
31 following the bill's enactment.

32 Finally, the bill would specify that a producer or representative
33 organization who undertakes an action affecting the types or
34 quantities of paint being recycled, or the cost or structure of any
35 return or recycling program, will not be deemed to be in violation
36 of any State law relating to antitrust, restraint of trade, unfair trade
37 practices, or the regulation of trade or commerce, so long as the
38 action undertaken is necessary to plan or implement the organized
39 collection or recycling of architectural paint pursuant to the bill's
40 provisions. This protection against antitrust liability would,
41 however, not be applicable to: (1) any agreement establishing or
42 affecting the price of paint, except an agreement to establish the
43 architectural paint stewardship assessment, as authorized by the
44 bill; or (2) any agreement restricting the output or production of
45 paint or the geographic area or customers to which paint will be
46 sold.