

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1420

STATE OF NEW JERSEY
216th LEGISLATURE

ADOPTED JANUARY 13, 2015

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SYNOPSIS

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

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Environment and Energy Committee.

(Sponsorship Updated As Of: 1/12/2016)

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. The Legislature finds and declares that local governments,
12 businesses and residents of the State do not have ready access to an
13 efficient, environmentally-sound, and cost-effective disposal
14 method for architectural paint; and that hazardous waste collection
15 days are costly for local governments and insufficient, inconvenient
16 and too infrequent to properly serve local businesses and residents,
17 resulting in missed opportunities to reduce, reuse and recycle paint.

18 The Legislature further finds and declares that the producers of
19 architectural paint are best able to assume responsibility for the
20 development and implementation of a cost-effective paint
21 stewardship program that will provide fiscal relief to local
22 governments by reducing the volumes of leftover paint, promoting
23 its reuse, and providing for the collection, transportation, and
24 processing of such paint.

25 The Legislature therefore determines that it is in the best
26 interests of the State for the producers of architectural paint to
27 provide for the planning and implementation of a program to
28 collect, reuse, recycle, transport, and dispose of post-consumer
29 architectural paint.

30

31 3. As used in this act:

32 “Architectural paint” means interior or exterior architectural
33 coatings that are sold in containers of five gallons or less.
34 “Architectural paint” shall not mean industrial, original equipment,
35 or specialty use coatings.

36 “Commissioner” means the Commissioner of Environmental
37 Protection.

38 “Department” means the Department of Environmental
39 Protection.

40 “Distributor” means a person who has a contractual relationship
41 with one or more producers to market and sell architectural paint to
42 retailers.

43 “Energy recovery” means a procedure in which all or a part of
44 the solid waste materials of architectural paint are processed to use
45 the heat content or other forms of energy from the solid waste
46 materials.

1 “Environmentally sound management practices” means the
2 policies or procedures for collection, storage, transportation, reuse,
3 recycling, and disposal of architectural paint, which are
4 implemented by a producer, representative organization, or their
5 contracted partners to ensure compliance with all applicable federal,
6 State, and local laws, rules, regulations, and ordinances, and the
7 protection of human health and the environment, and which address
8 matters such as adequate recordkeeping, accurate tracking and
9 documentation of the use, reuse, recycling, or disposal of post-
10 consumer architectural paint within and outside of the State, and
11 adequate provision of environmental liability coverage for
12 professional services and for the operations of contractors working
13 on behalf of a producer or representative organization.

14 “Paint stewardship assessment” means the dollar amount,
15 established pursuant to section 5 of this act, which is added to the
16 purchase price of architectural paint sold in the State.

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

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

22 “Recycling” means any process used to transform discarded
23 products, components, or by-products into new usable or
24 marketable materials, and which process may cause those discarded
25 products, components, or by-products to lose their original
26 composition or identity. “Recycling” shall not include energy
27 recovery or energy generation by means of combustion or
28 incineration.

29 “Representative organization” means a nonprofit organization
30 that is established by, and for the benefit of, two or more
31 architectural paint producers in the State, and which is tasked with
32 the development of an architectural paint stewardship program plan,
33 in accordance with section 4 of this act, and implementation of the
34 plan on behalf of, and with the participation of, each member
35 producer.

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

38 “Reuse” means the return of a product into the economic stream
39 for use in the same kind of application originally intended for the
40 product, without a change in the product’s original composition or
41 identity.

42 “Sell” or “sale” means any transfer of title for consideration,
43 including, but not limited to, remote sales transactions conducted
44 through sales outlets, catalogs, or the Internet, or through any other
45 similar electronic means.

46

1 4. a. Within one year after the date of enactment of this act,
2 every producer of architectural paint, or any representative
3 organization established pursuant to this act, shall prepare and
4 submit to the commissioner, for the commissioner's approval, a
5 plan for an architectural paint stewardship program. The plan shall
6 minimize public sector involvement in the management of post-
7 consumer architectural paint by reducing its generation, promoting
8 its reuse and recycling, and negotiating and executing agreements
9 for its collection, transportation, reuse, recycling, burning for
10 energy recovery, and disposal using environmentally sound
11 management practices.

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

13 (1) provide for convenient and available Statewide collection of
14 post-consumer architectural paint from urban, suburban, and rural
15 areas of the State in a manner that, at a minimum, ensures collection
16 rates and a level of convenience equal to or greater than that
17 provided by other collection programs available to consumers prior
18 to the establishment of the architectural paint stewardship program;

19 (2) provide collection site locations Statewide that will accept
20 post-consumer architectural paint, through the use of geographic
21 information modeling, such that at least 90 percent of State
22 residents have a permanent collection site within 15 miles of their
23 residence, that permanent collection sites be established for every
24 30,000 residents of a population center, and that collection sites be
25 distributed to provide convenient and equitable access for residents
26 within each population center, unless otherwise authorized by the
27 department. For those persons who do not have a permanent
28 collection site within 15 miles of their residence, the plan shall
29 provide for annual collection events;

30 (3) address, to the extent reasonably feasible and mutually
31 agreeable, the coordination of the architectural paint stewardship
32 program with the existing infrastructure of local governments and
33 the existing household hazardous waste collection infrastructure in
34 the State;

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

38 (5) identify, in two separate lists: (a) each producer
39 participating in the program; and (b) the brands of architectural
40 paint that are included in the program.

41 c. A producer of architectural paint, or a representative
42 organization established pursuant to this act, shall notify the
43 department, in writing, within 30 days of any of the following
44 changes to a plan approved pursuant to section 6 of this act:

45 (1) the location or number of collection sites identified in the
46 plan;

1 (2) the identity of the processors that manage the post-consumer
2 architectural paint collected; or

3 (3) the transporters of the post-consumer architectural paint
4 collected by the program.

5 d. A producer of architectural paint, or a representative
6 organization established pursuant to this act, shall submit an
7 amendment to the plan approved by the department within 120 days
8 after:

9 (1) any change to the amount of the paint stewardship
10 assessment imposed pursuant to section 5 of this act;

11 (2) a change to the types or brands of architectural paint that are
12 included in the program;

13 (3) any change to the goals of the program as approved in the
14 plan; or

15 (4) a request by the department for a change to the plan based
16 upon the findings in the annual report submitted pursuant to section
17 11 of this act.

18 The department shall review the amendments to the plan and
19 shall approve, approve with conditions, or disapprove the
20 amendments to the plan in accordance with the procedures
21 established pursuant to section 6 of this act.

22

23 5. a. The producer or representative organization submitting an
24 architectural paint stewardship program plan pursuant to section 4
25 of this act shall establish, as a funding mechanism for the program,
26 a paint stewardship assessment amount to be uniformly applied to
27 the sale price of all brands of architectural paint covered under the
28 paint stewardship program. The assessment amount shall not
29 exceed the costs of the architectural paint stewardship program.

30 b. A paint stewardship assessment, as established by subsection
31 a. of this section, shall be added to the cost of each container of
32 architectural paint sold by a producer to a retailer or distributor in
33 the State, and each retailer or distributor shall add the paint
34 stewardship assessment to the purchase price of the producer's
35 architectural paint.

36 c. If a producer is a member of a representative organization,
37 the producer shall remit to the representative organization the paint
38 stewardship assessment received for each container of architectural
39 paint sold by the producer in the State.

40

41 6. a. Within 90 days after the department's receipt of a plan
42 submitted in accordance with section 4 of this act, the commissioner
43 shall approve, approve with conditions, or disapprove the plan,
44 including the paint stewardship assessment identified therein, and
45 provide written notice of its determination to the producer or
46 representative organization, as the case may be. If the department
47 does not provide notice of its determination within 90 days after its

1 receipt of the plan, the plan shall be deemed to have been approved,
2 and the producer or representative organization, as the case may be,
3 shall proceed to implement the plan.

4 b. If the commissioner approves with conditions or disapproves
5 a plan submitted pursuant to section 4 of this act, the written notice
6 provided pursuant to subsection a. of this section shall be
7 accompanied by a detailed statement, prepared by the department,
8 describing the reasons for the conditions or disapproval, and
9 prescribing the changes required for approval. No more than 45
10 days after receipt of the department's written notice and
11 accompanying statement of the reasons for the approval with
12 conditions or the disapproval of a plan submitted pursuant to
13 section 4 of this act, the producer or representative organization, as
14 appropriate, shall incorporate the conditions or changes to the plan
15 as required by the department and submit the modified or
16 replacement plan to the department for approval.

17 c. Within 45 days after receipt of a modified or replacement
18 plan that has been submitted in accordance with subsection b. of
19 this section, the department shall approve the plan or reject it, and
20 shall certify the approval or rejection to the producer or
21 representative organization, as the case may be. Upon the
22 department's disapproval of any modified or replacement plan
23 submitted pursuant to subsection b. of this section, or upon the
24 failure of the producer or representative organization to submit a
25 modified or replacement plan as required, the department shall
26 make any revisions to the plan the department deems necessary, and
27 shall transmit the plan revisions to the producer or representative
28 organization, as the case may be. Upon receipt of the department's
29 revisions to the plan, the producer or representative organization, as
30 appropriate, shall proceed to implement the revised plan.

31 d. Within 90 days after the department's approval of, or
32 revisions to, an architectural paint stewardship plan submitted in
33 accordance with section 4 of this act:

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

37 (2) the department shall post, at a publicly accessible location
38 on its Internet website, two separate lists respectively identifying
39 (a) each producer participating in the architectural paint stewardship
40 program, and (b) the brands of architectural paint included in the
41 program.

42
43 7. In implementing a paint stewardship program plan approved
44 or revised by the commissioner pursuant to section 6 of this act, the
45 producer, or representative organization of which the producer is a
46 member, shall provide consumers with educational materials related
47 to the architectural paint stewardship program and the paint

1 stewardship assessment. These educational materials shall include,
2 but need not be limited to, information identifying the end-of-life
3 management options that are available for post-consumer
4 architectural paint through the architectural paint stewardship
5 program, and a notice provision stating that the costs of program
6 operation will be included in the purchase price of all architectural
7 paint sold in the State. The producer, or representative organization
8 of which the producer of architectural paint is a member, may
9 provide retailers and collection sites with educational and
10 informational material describing collection opportunities and
11 promoting waste prevention, reuse, and recycling of post-consumer
12 architectural paint. The educational and promotional materials may
13 include, but need not be limited to, signage, written materials,
14 templates of materials for reproduction by retailers to be provided
15 to consumers at the time of purchase, and advertising materials
16 describing the architectural paint stewardship program.

17

18 8. a. A producer, distributor, or retailer shall not sell
19 architectural paint or offer architectural paint for sale to any person
20 in the State unless the producer of the architectural paint, or a
21 representative organization of which the producer is a member, is
22 engaged in the implementation of, or has fully implemented, an
23 architectural paint stewardship program plan approved or revised by
24 the commissioner pursuant to section 6 of this act.

25 b. A distributor or retailer shall be deemed to be in compliance
26 with subsection a. of this section if, on the date architectural paint is
27 ordered thereby, the producer of the paint and the brand name of the
28 paint are each identified on the respective lists maintained on the
29 department's Internet website pursuant to paragraph (2) of
30 subsection d. of section 6 of this act.

31 c. (1) Any producer, distributor, or retailer who violates the
32 provisions of subsection a. of this section shall be subject to: (a) a
33 written warning for a first offense, and (b) a penalty of between
34 \$500 and \$1,000 for each subsequent offense. Any applicable
35 penalty under this section shall be collected by the State in a civil
36 action by summary proceeding under the "Penalty Enforcement
37 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case
38 before a court of competent jurisdiction wherein injunctive relief
39 has been requested. The Superior Court and the municipal court
40 shall have jurisdiction to enforce the provisions of the "Penalty
41 Enforcement Law of 1999" in accordance with the provisions of
42 this act.

43 (2) The department may institute a civil action for injunctive
44 relief to enforce the provisions, or prevent a violation, of this
45 section, and the court may proceed in the action in a summary
46 manner.

47

1 9. An architectural paint retailer may participate, on a
2 voluntary basis, as a post-consumer architectural paint collection
3 point for the purposes of this act, so long as the retailer complies
4 with all laws, rules, regulations, and ordinances that are applicable
5 to the collection of post-consumer architectural paint. Any retailer
6 who elects to act as a post-consumer architectural paint collection
7 point, and who fails to so comply with any applicable law, rule,
8 regulation, or ordinance, shall be subject to a penalty as provided by
9 the law, rule, regulation, or ordinance that is the subject of the
10 violation.

11

12 10. a. Except as provided in subsection b. of this section, an
13 action undertaken by a producer or representative organization,
14 which affects the types or quantities of paint being recycled, or the
15 cost or structure of any return or recycling program, shall not be
16 deemed to be a violation of any State law relating to antitrust,
17 restraint of trade, unfair trade practices, or the regulation of trade or
18 commerce, so long as the action is necessary to plan or implement
19 the organized collection or recycling of architectural paint pursuant
20 to this act.

21 b. Subsection a. of this section shall not apply to: (1) any
22 agreement establishing or affecting the price of architectural paint,
23 except an agreement to establish a paint stewardship assessment, as
24 authorized by this act; or (2) any agreement restricting the output or
25 production of architectural paint or the geographic area or
26 customers to which paint will be sold.

27

28 11. a. One year after the department provides notification to a
29 producer or representative organization of its approval of, or
30 revisions to, a plan in accordance with section 6 of this act, and
31 annually thereafter, the producer or representative organization, as
32 the case may be, shall submit a report to the department describing
33 its architectural paint stewardship program. The report shall
34 include, at a minimum:

35 (1) a description of the methods used to reduce, reuse, collect,
36 transport, recycle, and process post-consumer architectural paint
37 under the program;

38 (2) the volume of latex and oil-based post-consumer
39 architectural paint collected under the program during the preceding
40 year;

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

45 (4) the volume of post-consumer architectural paint collected at
46 each collection site under the program;

- 1 (5) a list of all processors of post-consumer architectural paint
2 from the time of collection to final disposition that are used in the
3 program and the disposition method used by each processor;
- 4 (6) a list of all producers participating in the program;
- 5 (7) the total volume of architectural paint sold in the State
6 during the preceding year based upon the collection of the paint
7 stewardship assessment;
- 8 (8) the total cost of implementing the program, which shall
9 include separate figures for the cost of collection, transportation,
10 disposition, and communication;
- 11 (9) an evaluation of the effectiveness of the program and any
12 steps necessary to improve the program; and
- 13 (10) samples of the educational materials provided to consumers
14 of architectural paint, together with an evaluation of the methods
15 used to disseminate those materials, and an assessment of the
16 educational and outreach effectiveness of those materials, including
17 associated levels of waste prevention and reuse.
- 18 b. Within 90 days after receipt of an annual report, the
19 department shall meet with interested stakeholders to review it.
20 The department shall post minutes of the stakeholder meeting on its
21 Internet website within 30 days after the date of the meeting.
- 22 c. Each report submitted pursuant to subsection a. of this
23 section shall be posted on the department's Internet website. The
24 department shall not disclose financial, production, or sales data
25 reported by a producer or representative organization pursuant to
26 this section, except that the department may disclose such data in
27 aggregate or summary format, provided that individual producers,
28 distributors, or retailers and their financial, production, or sales data
29 are not specifically identified, and the summary omits any reference
30 to unique characteristics from which the identities of individual
31 producers, distributors, or retailers might be inferred or otherwise
32 ascertained.
- 33
- 34 12. This act shall take effect immediately, except that section 8
35 of this act shall take effect on the first day of the 18th month after
36 the date of enactment of this act.