ASSEMBLY, No. 4382

STATE OF NEW JERSEY

218th LEGISLATURE

INTRODUCED SEPTEMBER 13, 2018

Sponsored by:
Assemblywoman  NANCY J. PINKIN
District 18 (Middlesex)
Assemblywoman  YVONNE LOPEZ
District 19 (Middlesex)
Assemblyman  JAMES J. KENNEDY
District 22 (Middlesex, Somerset and Union)

Co-Sponsored by:
Assemblywoman Murphy, Assemblyman Holley and Assemblywoman Swain

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

CURRENT VERSION OF TEXT
As reported by the Assembly Environment and Solid Waste Committee on December 6, 2018, with amendments.

(Sponsorship Updated As Of: 8/26/2019)
AN ACT requiring producers of architectural paint to implement or participate in a paint stewardship program, and supplementing Title 13 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

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

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

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

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

3. As used in this act:

“Architectural paint” means interior or exterior architectural coatings that are sold in containers of five gallons or less.

“Architectural paint” shall not mean industrial, original equipment, or specialty use coatings.

“Commissioner” means the Commissioner of Environmental Protection.

“Department” means the Department of Environmental Protection.

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

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

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

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

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

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

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

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

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

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

“Sell” or “sale” means any transfer of title for consideration, including, but not limited to, remote sales transactions conducted through sales outlets, catalogs, or the Internet, or through any other similar electronic means.
4. a. Within one year after the date of enactment of this act, every producer of architectural paint, or any representative organization established pursuant to this act, shall prepare and submit to the commissioner, for the commissioner’s approval, a plan for an architectural paint stewardship program. The plan shall minimize public sector involvement in the management of post-consumer architectural paint by reducing its generation, promoting its reuse and recycling, and negotiating and executing agreements for its collection, transportation, reuse, recycling, burning for energy recovery, incineration, and disposal using environmentally sound management practices.

b. The plan submitted pursuant to this section shall:
   (1) provide for convenient and available Statewide collection of post-consumer architectural paint from urban, suburban, and rural areas of the State in a manner that, at a minimum, ensures collection rates and a level of convenience equal to or greater than that provided by other collection programs available to consumers prior to the establishment of the architectural paint stewardship program;
   (2) provide collection site locations Statewide that will accept post-consumer architectural paint, through the use of geographic information modeling, such that at least 90 percent of State residents have a permanent collection site within 15 miles of their residence, that permanent collection sites be established for every 30,000 residents of a population center, and that collection sites be distributed to provide convenient and equitable access for residents within each population center, unless otherwise authorized by the department. For those persons who do not have a permanent collection site within 15 miles of their residence, the plan shall provide for annual collection events;
   (3) address, to the extent reasonably feasible and mutually agreeable, the coordination of the architectural paint stewardship program with the existing infrastructure of local governments and the existing household hazardous waste collection infrastructure in the State;
   (4) in accordance with the provisions of section 5 of this act, identify an appropriate amount for the paint stewardship assessment;
   (5) identify, in two separate lists: (a) each producer participating in the program; and (b) the brands of architectural paint that are included in the program; and
   (6) be reviewed by an independent financial auditor to verify that the paint stewardship assessment added to each unit of paint sold in the State will cover, but not exceed, the costs of the architectural paint stewardship program. The cost of any work performed by an independent financial auditor pursuant to this paragraph shall be funded by the architectural paint stewardship program.

c. A producer of architectural paint, or a representative organization established pursuant to this act, shall notify the
department, in writing, within 30 days of any of the following
changes to a plan approved pursuant to section 6 of this act:
(1) the location or number of collection sites identified in the
plan;
(2) the identity of the processors that manage the post-consumer
architectural paint collected; or
(3) the transporters of the post-consumer architectural paint
collected by the program.
d. A producer of architectural paint, or a representative
organization established pursuant to this act, shall submit an
amendment to the plan approved by the department within 120 days
after:
(1) any change to the amount of the paint stewardship
assessment imposed pursuant to section 5 of this act; or
(2) any change to the goals of the program as approved in the
plan.
The department shall review the amendments to the plan and
shall approve or disapprove them in accordance with the procedures
established pursuant to section 6 of this act.
5. a. The producer or representative organization submitting a
plan pursuant to section 4 of this act shall establish, as a funding
mechanism for the program, a paint stewardship assessment amount
to be uniformly applied to the sale price of all brands of
architectural paint covered under the architectural paint stewardship
program. The paint stewardship assessment shall not exceed the
costs of the architectural paint stewardship program.
b. A paint stewardship assessment, as established by subsection
a. of this section, shall be added to the cost of each container of
architectural paint sold by a producer to a retailer or distributor in
the State, and each retailer or distributor shall add the paint
stewardship assessment to the purchase price of the producer’s
architectural paint.
c. If a producer is a member of a representative organization,
the producer shall remit to the representative organization the paint
stewardship assessment received for each container of architectural
paint sold by the producer in the State.
6. a. Within 90 days after the department’s receipt of a plan
submitted in accordance with section 4 of this act, the commissioner
shall approve or disapprove the plan, including the paint
stewardship assessment identified therein, and provide written
notice of its determination to the producer or representative
organization, as the case may be. If the department does not
provide notice of its determination within 90 days after its receipt of
the plan, the plan shall be deemed to have been approved, and the
producer or representative organization, as the case may be, shall
proceed to implement the plan.

b. If the commissioner disapproves a plan submitted pursuant
to section 4 of this act, the written notice provided pursuant to
subsection a. of this section shall be accompanied by a detailed
statement, prepared by the department, describing the reasons for
the disapproval, and prescribing the changes required for approval.

No more than 45 days after receipt of the department’s written
notice and accompanying statement of the reasons for the
disapproval of a plan submitted pursuant to section 4 of this act, the
producer or representative organization, as appropriate, shall submit
the modified plan to the department for approval.

c. Within 45 days after receipt of a modified plan that has been
submitted in accordance with subsection b. of this section, the
department shall approve the plan or reject it, and shall certify the
approval or rejection to the producer or representative organization,
as the case may be. Upon the department’s disapproval of any
modified plan submitted pursuant to subsection b. of this section, or
upon the failure of the producer or representative organization to
submit a modified plan as required, the department shall propose
any revisions to the plan the department deems necessary, and shall
transmit the proposed plan revisions to the producer or
representative organization, as the case may be. Upon receipt of the
department’s proposed revisions to the plan, the producer or
representative organization, as appropriate, shall implement the
revised plan unless otherwise agreed to by the department.

d. Within 90 days after the department’s approval of, or
revisions to, a plan submitted in accordance with section 4 of this
act:

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

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

7. In implementing a plan approved or revised pursuant to
section 6 of this act, the producer, or representative organization of
which the producer is a member, shall provide consumers with
educational materials related to the architectural paint stewardship
program and the paint stewardship assessment. These educational
materials shall include, but need not be limited to, information
identifying the end-of-life management options that are available
for post-consumer architectural paint through the architectural paint
stewardship program, and a notice provision stating that the costs of
program operation will be included in the purchase price of all architectural paint sold in the State. The producer, or representative organization of which the producer is a member, may provide retailers and collection sites with educational and informational material describing collection opportunities and promoting waste prevention, reuse, and recycling of post-consumer architectural paint. The educational and promotional materials may include, but need not be limited to, signage, written materials, templates of materials for reproduction by retailers to be provided to consumers at the time of purchase, and advertising materials describing the architectural paint stewardship program.

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

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

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

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

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

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

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

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

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

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

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

   (5) a list of all processors of post-consumer architectural paint from the time of collection to final disposition that are used in the program and the disposition method used by each processor;

   (6) a list of all producers participating in the program;

   (7) the total volume of architectural paint sold in the State during the preceding year based upon the collection of the paint stewardship assessment;

   (8) the total cost of implementing the program, which shall include separate figures for the cost of collection, transportation, disposition, communication, and independent financial audit;

   (9) an evaluation of the effectiveness of the program and any steps necessary to improve the program; and

   (10) samples of the educational materials provided to consumers of architectural paint, together with an evaluation of the methods used to disseminate those materials, and an assessment of the educational and outreach effectiveness of those materials.

b. Within 90 days after receipt of an annual report, the department shall meet with interested stakeholders to review it. The department shall post minutes of the stakeholder meeting on its Internet website within 30 days after the date of the meeting.

c. Each report submitted pursuant to subsection a. of this section shall be posted on the department's Internet website. The
department shall not disclose financial, production, or sales data reported by a producer or representative organization pursuant to this section, except that the department may disclose such data in aggregate or summary format, provided that individual producers, distributors, or retailers and their financial, production, or sales data are not specifically identified, and the summary omits any reference to unique characteristics from which the identities of individual producers, distributors, or retailers might be inferred or otherwise ascertained.

11. This act shall take effect immediately, except that section 8 of this act shall take effect on the first day of the 18th month after the date of enactment of this act.