

ASSEMBLY, No. 1979

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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:

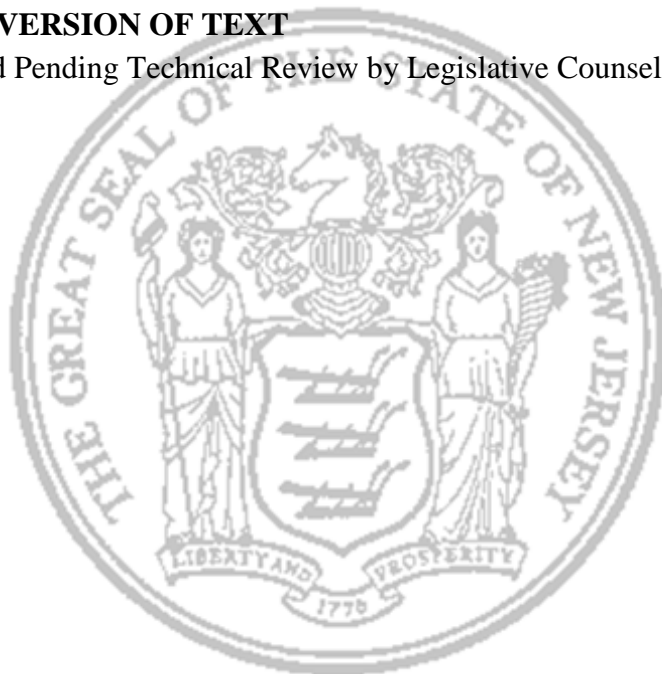
**Assemblywoman Murphy, Assemblyman Holley, Assemblywomen Swain,
McKnight and Assemblyman Verrelli**

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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,
16 inconvenient, and too infrequent to properly serve local businesses
17 and residents, resulting in missed opportunities to reduce, reuse, and
18 recycle paint.

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

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

31

32 3. As used in this act:

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

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

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

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

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

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

47 4. a. Within one year after the date of enactment of this act,
48 every producer of architectural paint, or any representative

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

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

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

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

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

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

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

39 (6) be reviewed by an independent financial auditor to verify
40 that the paint stewardship assessment added to each unit of paint
41 sold in the State will cover, but not exceed, the costs of the
42 architectural paint stewardship program. The cost of any work
43 performed by an independent financial auditor pursuant to this
44 paragraph shall be funded by the architectural paint stewardship
45 program.

46 c. A producer of architectural paint, or a representative
47 organization established pursuant to this act, shall notify the

1 department, in writing, within 30 days of any of the following
2 changes to a plan approved pursuant to section 6 of this act:

3 (1) the location or number of collection sites identified in the
4 plan;

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

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

9 d. A producer of architectural paint, or a representative
10 organization established pursuant to this act, shall submit an
11 amendment to the plan approved by the department within 120 days
12 after:

13 (1) any change to the amount of the paint stewardship
14 assessment imposed pursuant to section 5 of this act; or

15 (2) any change to the goals of the program as approved in the
16 plan.

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

20 e. The department shall charge and collect from each producer
21 or representative organization that submits a plan for an
22 architectural paint stewardship program pursuant to this section an
23 annual administrative fee, which shall not exceed the department's
24 costs in administering the provisions of this act.

25

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

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

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

43

44 6. a. Within 90 days after the department's receipt of a plan
45 submitted in accordance with section 4 of this act, the commissioner
46 shall approve or disapprove the plan, including the paint
47 stewardship assessment identified therein, and provide written
48 notice of its determination to the producer or representative

1 organization, as the case may be. If the department does not
2 provide notice of its determination within 90 days after its receipt of
3 the plan, the plan shall be deemed to have been approved, and the
4 producer or representative organization, as the case may be, shall
5 proceed to implement the plan.

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

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

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

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

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

41
42 7. In implementing a plan approved or revised pursuant to
43 section 6 of this act, the producer, or representative organization of
44 which the producer is a member, shall provide consumers with
45 educational materials related to the architectural paint stewardship
46 program and the paint stewardship assessment. These educational
47 materials shall include, but need not be limited to, information
48 identifying the end-of-life management options that are available

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

14

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

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

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

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

44

45 9. a. Except as provided in subsection b. of this section, an
46 action undertaken by a producer or representative organization,
47 which affects the types or quantities of paint being recycled, or the
48 cost or structure of any return or recycling program, shall not be

1 deemed to be a violation of any State law relating to antitrust,
2 restraint of trade, unfair trade practices, or the regulation of trade or
3 commerce, so long as the action is necessary to plan or implement
4 the organized collection or processing of architectural paint
5 pursuant to this act.

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

12
13 10. a. One year after the department provides notification to a
14 producer or representative organization of its approval of a plan in
15 accordance with section 6 of this act, and annually thereafter, the
16 producer or representative organization, as the case may be, shall
17 submit a report to the department describing its architectural paint
18 stewardship program. The report shall include, at a minimum:

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

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

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

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

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

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

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

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

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

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

47 b. Within 90 days after receipt of an annual report, the
48 department shall meet with interested stakeholders to review it. The

1 department shall post minutes of the stakeholder meeting on its
2 Internet website within 30 days after the date of the meeting.
3 c. Each report submitted pursuant to subsection a. of this
4 section shall be posted on the department's Internet website. The
5 department shall not disclose financial, production, or sales data
6 reported by a producer or representative organization pursuant to
7 this section, except that the department may disclose such data in
8 aggregate or summary format, provided that individual producers,
9 distributors, or retailers and their financial, production, or sales data
10 are not specifically identified, and the summary omits any reference
11 to unique characteristics from which the identities of individual
12 producers, distributors, or retailers might be inferred or otherwise
13 ascertained.

14
15 11. This act shall take effect immediately, except that section 8
16 of this act shall take effect on the first day of the 18th month after
17 the date of enactment of this act.

18
19
20 STATEMENT

21
22 This bill requires every producer of architectural paint sold in the
23 State to implement, or participate in, a Statewide architectural paint
24 stewardship program.

25 The bill requires every architectural paint producer, or a
26 representative organization established on behalf of two or more such
27 producers, to develop and implement a plan for an architectural paint
28 stewardship program designed to minimize public sector involvement
29 in the management of post-consumer architectural paint by reducing
30 its generation, promoting its reuse and recycling, and negotiating and
31 executing agreements for its collection, transportation, reuse,
32 recycling, burning for energy recovery, incineration, and disposal
33 using environmentally sound management practices.

34 The bill requires any such plan to:

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

41 (2) provide collection site locations Statewide that will accept
42 post-consumer architectural paint, through the use of geographic
43 information modeling, such that at least 90 percent of State residents
44 have a permanent collection site within 15 miles of their residence,
45 that permanent collection sites be established for every 30,000
46 residents of a population center, and that collection sites be distributed
47 to provide convenient and equitable access for residents within each
48 population center, unless otherwise authorized by the Department of

1 Environmental Protection (DEP). For those persons who do not have a
2 permanent collection site within 15 miles of their residence, the bill
3 requires the plan to provide for annual collection events;

4 (3) address, to the extent reasonably feasible and mutually
5 agreeable, the coordination of the architectural paint stewardship
6 program with the existing infrastructure of local governments and the
7 existing household hazardous waste collection infrastructure in the
8 State;

9 (4) identify an appropriate amount for the paint stewardship
10 assessment;

11 (5) provide two lists respectively identifying each producer
12 participating in the architectural paint stewardship program, and the
13 brands of architectural paint included under the program; and

14 (6) be reviewed by an independent financial auditor to verify that
15 the amount added to each unit of paint sold in the State will cover, but
16 not exceed, the costs of the architectural paint stewardship program.

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

32 The bill requires an architectural paint stewardship program plan to
33 be submitted to the DEP for approval prior to its implementation by a
34 paint producer or representative organization. The bill authorizes the
35 DEP to approve or disapprove of a proposed plan. If the DEP
36 disapproves of a plan, the bill provides a procedure for subsequent
37 plan revision by the producer or representative organization, and DEP
38 review of the revised plan. If the DEP is dissatisfied with a revised
39 plan, the bill authorizes the DEP, in the interests of expediency, to
40 propose any modifications or substitutions to the plan's provisions it
41 deems necessary. The bill requires notice to the DEP if there are any
42 changes to the location or number of collection sites, the identity of the
43 processors that manage the post-consumer architectural paint, or the
44 transporters of the post-consumer architectural paint collected by the
45 program. An amendment to the plan is required if there is any change
46 to the amount of the paint stewardship assessment or the goals of the
47 architectural paint stewardship program.

1 The bill requires a producer or representative organization to
2 implement the program described in a proposed plan within 90 days
3 after its approval or modification by the DEP. The producer or
4 representative organization is further required to submit an annual
5 report to the DEP, which describes or includes, among other things:
6 the pounds of post-architectural paint collected in the State; the
7 methods used to collect, transport, reduce, reuse, recycle, and process
8 post-consumer architectural paint; a list of all producers participating
9 in the program; the estimated volume collected at each collection site;
10 a list of the processors of post-consumer architectural paint and the
11 disposition method used by each processor; an evaluation of the
12 effectiveness of the program and any steps necessary to improve the
13 program; and samples of the educational materials provided to
14 consumers of architectural paint.

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

26 The bill provides that any producer, distributor, or retailer who
27 fails to comply with the bill's sales prohibition is subject to a written
28 warning for a first offense, and a penalty of \$500 to \$1,000 for each
29 subsequent offense. The bill authorizes the DEP to institute a civil
30 action for injunctive relief to prevent a continuing violation of this
31 sales prohibition. However, in order to allow time for the submission,
32 approval, or modification of the plans required by the bill, the sales
33 prohibition and penalty provision do not take effect until the first day
34 of the 18th month following enactment of the bill into law.

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