

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1603

STATE OF NEW JERSEY
216th LEGISLATURE

ADOPTED JUNE 15, 2015

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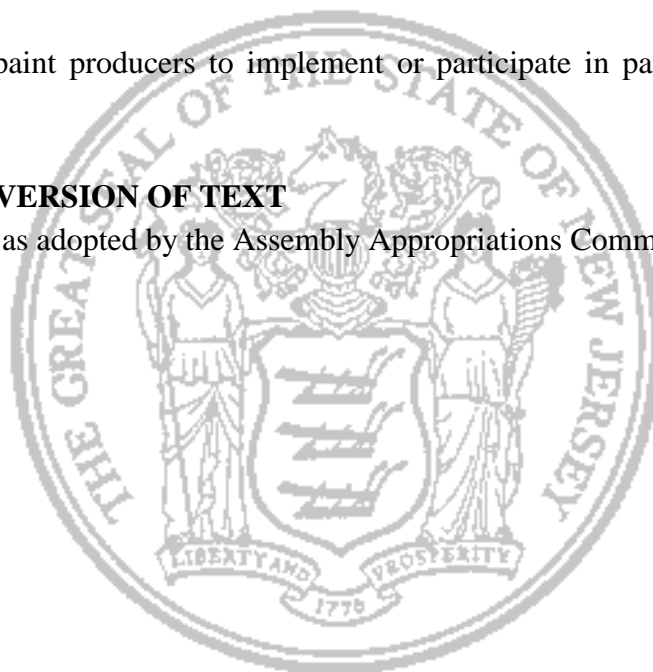
**Assemblymen Dancer, Fuentes, Cryan, Gusciora, Assemblywomen Riley,
Caride, Assemblymen Johnson, Singleton and Assemblywoman Lampitt**

SYNOPSIS

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

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Appropriations 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.

47 “Environmentally sound management practices” means the
48 policies or procedures for collection, storage, transportation, reuse,

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

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

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

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

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

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

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

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

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

44

45 4. a. Within one year after the date of enactment of this act,
46 every producer of architectural paint, or any representative
47 organization established pursuant to this act, shall prepare and
48 submit to the commissioner, for the commissioner’s approval, a

1 plan for an architectural paint stewardship program. The plan shall
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.

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

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

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

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

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

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

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

41 (1) the location or number of collection sites identified in the
42 plan;

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

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

47 d. A producer of architectural paint, or a representative
48 organization established pursuant to this act, shall submit an

1 amendment to the plan approved by the department within 120 days
2 after:

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

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

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

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

12 The department shall review the amendments to the plan and
13 shall approve, approve with conditions, or disapprove the
14 amendments to the plan in accordance with the procedures
15 established pursuant to section 6 of this act.

16

17 5. a. The producer or representative organization submitting an
18 architectural paint stewardship program plan pursuant to section 4
19 of this act shall establish, as a funding mechanism for the program,
20 a paint stewardship assessment amount to be uniformly applied to
21 the sale price of all brands of architectural paint covered under the
22 paint stewardship program. The assessment amount shall not
23 exceed the costs of the architectural paint stewardship program.

24 b. A paint stewardship assessment, as established by subsection
25 a. of this section, shall be added to the cost of each container of
26 architectural paint sold by a producer to a retailer or distributor in
27 the State, and each retailer or distributor shall add the paint
28 stewardship assessment to the purchase price of the producer's
29 architectural paint.

30 c. If a producer is a member of a representative organization,
31 the producer shall remit to the representative organization the paint
32 stewardship assessment received for each container of architectural
33 paint sold by the producer in the State.

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35 6. a. Within 90 days after the department's receipt of a plan
36 submitted in accordance with section 4 of this act, the commissioner
37 shall approve, approve with conditions, or disapprove the plan,
38 including the paint stewardship assessment identified therein, and
39 provide written notice of its determination to the producer or
40 representative organization, as the case may be. If the department
41 does not provide notice of its determination within 90 days after its
42 receipt of the plan, the plan shall be deemed to have been approved,
43 and the producer or representative organization, as the case may be,
44 shall proceed to implement the plan.

45 b. If the commissioner approves with conditions or disapproves
46 a plan submitted pursuant to section 4 of this act, the written notice
47 provided pursuant to subsection a. of this section shall be
48 accompanied by a detailed statement, prepared by the department,

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1 describing the reasons for the conditions or disapproval, and
2 prescribing the changes required for approval. No more than 45
3 days after receipt of the department's written notice and
4 accompanying statement of the reasons for the approval with
5 conditions or the disapproval of a plan submitted pursuant to
6 section 4 of this act, the producer or representative organization, as
7 appropriate, shall incorporate the conditions or changes to the plan
8 as required by the department and submit the modified or
9 replacement plan to the department for approval.

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

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

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

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

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

1 provide retailers and collection sites with educational and
2 informational material describing collection opportunities and
3 promoting waste prevention, reuse, and recycling of post-consumer
4 architectural paint. The educational and promotional materials may
5 include, but need not be limited to, signage, written materials,
6 templates of materials for reproduction by retailers to be provided
7 to consumers at the time of purchase, and advertising materials
8 describing the architectural paint stewardship program.

9
10 8. a. A producer, distributor, or retailer shall not sell
11 architectural paint or offer architectural paint for sale to any person
12 in the State unless the producer of the architectural paint, or a
13 representative organization of which the producer is a member, is
14 engaged in the implementation of, or has fully implemented, an
15 architectural paint stewardship program plan approved or revised by
16 the commissioner pursuant to section 6 of this act.

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

23 c. (1) Any producer, distributor, or retailer who violates the
24 provisions of subsection a. of this section shall be subject to: (a) a
25 written warning for a first offense, and (b) a penalty of between
26 \$500 and \$1,000 for each subsequent offense. Any applicable
27 penalty under this section shall be collected by the State in a civil
28 action by summary proceeding under the "Penalty Enforcement
29 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case
30 before a court of competent jurisdiction wherein injunctive relief
31 has been requested. The Superior Court and the municipal court
32 shall have jurisdiction to enforce the provisions of the "Penalty
33 Enforcement Law of 1999" in accordance with the provisions of
34 this act.

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

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40 9. An architectural paint retailer may participate, on a
41 voluntary basis, as a post-consumer architectural paint collection
42 point for the purposes of this act, so long as the retailer complies
43 with all laws, rules, regulations, and ordinances that are applicable
44 to the collection of post-consumer architectural paint. Any retailer
45 who elects to act as a post-consumer architectural paint collection
46 point, and who fails to so comply with any applicable law, rule,
47 regulation, or ordinance, shall be subject to a penalty as provided by
48 the law, rule, regulation, or ordinance that is the subject of the
49 violation.

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

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

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

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

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

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

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

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

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

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

43 (8) the total cost of implementing the program, which shall
44 include separate figures for the cost of collection, transportation,
45 disposition, and communication;

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

48 (10) samples of the educational materials provided to consumers
49

1 of architectural paint, together with an evaluation of the methods
2 used to disseminate those materials, and an assessment of the
3 educational and outreach effectiveness of those materials, including
4 associated levels of waste prevention and reuse.

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

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

20

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