

[First Reprint]

ASSEMBLY, No. 4382

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED SEPTEMBER 13, 2018

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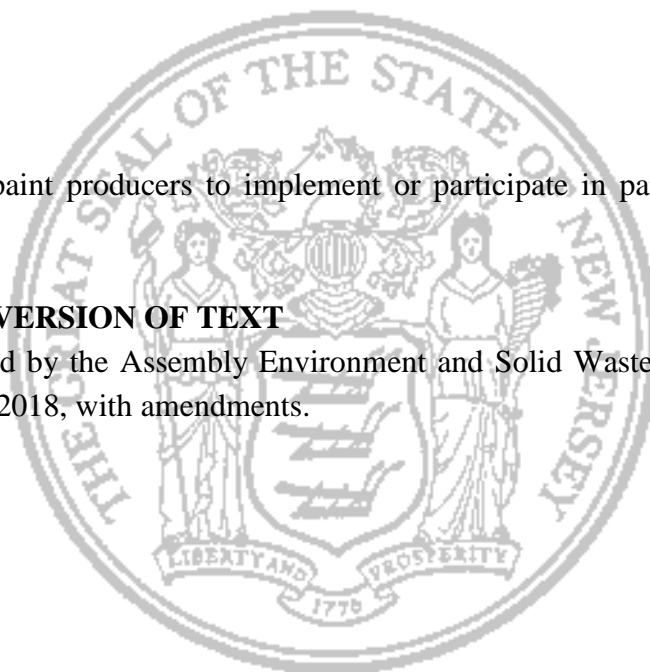
Assemblywoman Murphy, Assemblyman Holley, Assemblywomen Swain, McKnight, Assemblyman Verrelli, Senators Bateman, Diegnan, Greenstein and Madden

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: 1/14/2020)

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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AEN committee amendments adopted December 6, 2018.

1 the solid waste materials of architectural paint are processed to use
2 the heat content or other forms of energy from the solid waste
3 materials.

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

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

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

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

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

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

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

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

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

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, incineration, and disposal using environmentally
11 sound 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;

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; and

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

48 c. A producer of architectural paint, or a representative
49 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 ¹e. 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.¹

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
49 organization, as the case may be. If the department does not

1 provide notice of its determination within 90 days after its receipt of
2 the plan, the plan shall be deemed to have been approved, and the
3 producer or representative organization, as the case may be, shall
4 proceed to implement the plan.

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

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

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

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

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

40
41 7. In implementing a plan approved or revised pursuant to
42 section 6 of this act, the producer, or representative organization of
43 which the producer is a member, shall provide consumers with
44 educational materials related to the architectural paint stewardship
45 program and the paint stewardship assessment. These educational
46 materials shall include, but need not be limited to, information
47 identifying the end-of-life management options that are available
48 for post-consumer architectural paint through the architectural paint
49 stewardship program, and a notice provision stating that the costs of

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

12

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

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

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

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

42

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

1 the organized collection or processing of architectural paint
2 pursuant to this act.

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

9
10 10. a. One year after the department provides notification to a
11 producer or representative organization of its approval of a plan in
12 accordance with section 6 of this act, and annually thereafter, the
13 producer or representative organization, as the case may be, shall
14 submit a report to the department describing its architectural paint
15 stewardship program. The report shall include, at a minimum:

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

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

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

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

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

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

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

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

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

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

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

48 c. Each report submitted pursuant to subsection a. of this
49 section shall be posted on the department's Internet website. The

1 department shall not disclose financial, production, or sales data
2 reported by a producer or representative organization pursuant to
3 this section, except that the department may disclose such data in
4 aggregate or summary format, provided that individual producers,
5 distributors, or retailers and their financial, production, or sales data
6 are not specifically identified, and the summary omits any reference
7 to unique characteristics from which the identities of individual
8 producers, distributors, or retailers might be inferred or otherwise
9 ascertained.

10

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