S T A T E O F N E W Y O R K

9239--A

2009-2010 Regular Sessions

I N A S S E M B L Y

November 9, 2009

Introduced by M. of A. PEOPLES-STOKES -- read once and referred to the Committee on Environmental Conservation -- recommitted to the Committee on Environmental Conservation in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to establishing a paint stewardship pilot program and to amend the state finance law, in relation to establishing a product stewardship fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Declaration of legislative intent and findings. The legislature finds and declares that it is in the public interest of the state of New York for architectural paint producers to finance and manage an environmentally sound, cost-effective architectural paint stewardship pilot program, undertaking responsibility for the development and implementation of strategies to reduce the generation of post-consumer architectural paint, promote the reuse of post-consumer architectural paint and collect, transport and process post-consumer architectural paint for end-of-product-life management, including reuse and recycling.

S 2. Article 27 of the environmental conservation law is amended by adding a new title 20 to read as follows:

TITLE 20

PAINT STEWARDSHIP PILOT PROGRAM

SECTION 27-2001. SHORT TITLE.
27-2003. DECLARATION OF POLICY.
27-2005. DEFINITIONS.
27-2007. PRODUCER COLLECTION.
27-2009. PRODUCER REGISTRATION AND RESPONSIBILITIES.
27-2011. RETAILER REQUIREMENTS.
27-2013. DEPARTMENT RESPONSIBILITIES.
27-2015. REPORTING REQUIREMENTS.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD14800-02-0

S 27-2001. SHORT TITLE.
THIS TITLE SHALL BE KNOWN AS AND MAY BE CITED AS THE "NEW YORK STATE PAINT STEWARDSHIP PILOT PROGRAM".
S 27-2003. DECLARATION OF POLICY.
IT IS HEREBY DECLARED TO BE THE PUBLIC POLICY OF THE STATE OF NEW YORK TO PROMOTE THE DEVELOPMENT AND IMPLEMENTATION OF STRATEGIES TO REDUCE THE GENERATION OF POST-CONSUMER ARCHITECTURAL PAINT, TO ENCOURAGE THE REUSE OF POST-CONSUMER ARCHITECTURAL PAINT, AND TO MAXIMIZE THE COLLECTION, TRANSPORT, AND PROCESS OF POST-CONSUMER ARCHITECTURAL PAINT FOR END-OF-PRODUCT-LIFE MANAGEMENT.
S 27-2005. DEFINITIONS.
WHEN USED IN THIS TITLE:
1. "ARCHITECTURAL PAINT" MEANS INTERIOR AND EXTERIOR ARCHITECTURAL COATINGS SOLD IN CONTAINERS OF FIVE GALLONS OR LESS. ARCHITECTURAL PAINT DOES NOT MEAN INDUSTRIAL, ORIGINAL EQUIPMENT OR SPECIALTY COATINGS.
2. "CONSUMER" MEANS A PERSON LOCATED IN THE STATE WHO OWNS OR USES ARCHITECTURAL PAINT, INCLUDING BUT NOT LIMITED TO AN INDIVIDUAL, A BUSINESS, CORPORATION, LIMITED PARTNERSHIP, NOT-FOR-PROFIT ORGANIZATION, OR GOVERNMENTAL ENTITY, BUT DOES NOT INCLUDE AN ENTITY INVOLVED IN A WHOLESALE TRANSACTION BETWEEN A DISTRIBUTOR AND RETAILER.
3. "DISTRIBUTOR" MEANS A COMPANY THAT HAS A CONTRACTUAL RELATIONSHIP WITH ONE OR MORE PRODUCERS TO MARKET AND SELL ARCHITECTURAL PAINT TO RETAILERS IN THIS STATE.
4. "PERSON" MEANS ANY INDIVIDUAL, BUSINESS ENTITY, PARTNERSHIP, COMPANY, CORPORATION, NOT-FOR-PROFIT CORPORATION, ASSOCIATION, GOVERNMENTAL ENTITY, PUBLIC BENEFIT CORPORATION, PUBLIC AUTHORITY, FIRM, ORGANIZATION, OR ANY OTHER GROUP OF INDIVIDUALS, OR ANY OFFICER OR EMPLOYEE OR AGENT THEREOF.
5. "POST-CONSUMER ARCHITECTURAL PAINT" MEANS ARCHITECTURAL PAINT NOT USED AND NO LONGER WANTED BY ITS PURCHASER.
6. "PRODUCER" MEANS A PERSON THAT MANUFACTURES ARCHITECTURAL PAINT THAT IS SOLD OR OFFERED FOR SALE IN THIS STATE.
7. "RECYCLING" MEANS ANY PROCESS BY WHICH DISCARDED PRODUCTS, COMPONENTS AND BY-PRODUCTS ARE TRANSFORMED INTO NEW USABLE OR MARKETABLE MATERIALS IN A MANNER IN WHICH THE PRODUCTS MAY LOSE THEIR ORIGINAL COMPOSITION. RECYCLING DOES NOT INCLUDE ENERGY RECOVERY OR ENERGY GENERATION BY MEANS OF COMBUSTING DISCARDED PRODUCTS, COMPONENTS AND BY-PRODUCTS WITH OR WITHOUT OTHER WASTE PRODUCTS FROM POST-CONSUMER ARCHITECTURAL PAINT.
8. "RETAILER" MEANS ANY PERSON THAT SELLS OR OFFERS FOR SALE ARCHITECTURAL PAINT AT RETAIL IN THIS STATE.
9. "REUSE" MEANS THE RETURN OF A PRODUCT INTO THE ECONOMIC STREAM FOR USE IN THE SAME KIND OF APPLICATION INTENDED FOR THE USE OF THE PRODUCT, WITHOUT A CHANGE IN THE PRODUCT'S ORIGINAL COMPOSITION.
10. "SELL" OR "SALE" MEANS ANY TRANSFER OF TITLE FOR CONSIDERATION, INCLUDING REMOTE SALES CONDUCTED THROUGH SALES OUTLETS, CATALOGS OR THE INTERNET OR THROUGH ANY OTHER SIMILAR ELECTRONIC MEANS.
S 27-2007. PRODUCER COLLECTION.
1. BEGINNING JULY FIRST, TWO THOUSAND ELEVEN, A RETAILER/PRODUCER SHALL ACCEPT FOR DISPOSAL AND RECYCLING OR REUSE ARCHITECTURAL PAINT FOR WHICH IT IS THE PRODUCER WITH THE PURCHASE OF ARCHITECTURAL PAINT BY A CONSUMER.
2. BEGINNING JULY FIRST, TWO THOUSAND TWELVE, A RETAILER/PRODUCER SHALL ACCEPT FOR DISPOSAL AND RECYCLING OR REUSE ANY/ALL ARCHITECTURAL PAINT FOR WHICH IT IS THE PRODUCER.
S 27-2009. PRODUCER REGISTRATION AND RESPONSIBILITIES.

1. A PRODUCER SHALL SUBMIT A REGISTRATION TO THE DEPARTMENT BY JANUARY FIRST, TWO THOUSAND ELEVEN, ALONG WITH A REGISTRATION FEE OF FIVE THOUSAND DOLLARS. SUCH REGISTRATION SHALL INCLUDE:

(A) THE PRODUCER'S NAME, ADDRESS, AND TELEPHONE NUMBER;

(B) THE NAME AND TITLE OF AN OFFICER, DIRECTOR, OR OTHER INDIVIDUAL DESIGNATED AS THE PRODUCER'S CONTACT FOR PURPOSES OF THIS TITLE;

(C) A LIST IDENTIFYING THE PRODUCER'S BRANDS;

(D) A GENERAL DESCRIPTION OF THE MANNER IN WHICH THE PRODUCER WILL COMPLY WITH SECTION 27-2007 OF THIS TITLE, INCLUDING SPECIFIC INFORMATION ON THE PRODUCER'S ARCHITECTURAL PAINT ACCEPTANCE PROGRAM IN THE STATE, AND A CURRENT LIST OF LOCATIONS WITHIN THE STATE WHERE CONSUMERS MAY RETURN ARCHITECTURAL PAINT;

(E) SALES DATA FOR THE PRODUCER'S ARCHITECTURAL PAINT SOLD IN THIS STATE FOR THE PREVIOUS THREE CALENDAR YEARS, IF THE PRODUCER CANNOT PROVIDE ACCURATE STATE SALES DATA, IT SHALL EXPLAIN WHY SUCH DATA CANNOT BE PROVIDED, AND ESTIMATE STATE SALES DATA BY (I) DIVIDING ITS NATIONAL SALES DATA BY THE NATIONAL POPULATION ACCORDING TO THE MOST RECENT CENSUS AND MULTIPLYING THE RESULT BY THE POPULATION OF THE STATE, OR (II) ANOTHER METHOD APPROVED BY THE DEPARTMENT; AND

(F) ANY OTHER INFORMATION AS THE DEPARTMENT MAY REQUIRE.

2. A PRODUCER'S REGISTRATION SHALL BE UPDATED WITHIN THIRTY DAYS OF ANY MATERIAL CHANGE TO THE INFORMATION REQUIRED BY THE REGISTRATION.

3. ANY PERSON WHO BECOMES A PRODUCER ON OR AFTER JANUARY FIRST, TWO THOUSAND ELEVEN SHALL REGISTER WITH THE DEPARTMENT PRIOR TO SELLING OR OFFERING FOR SALE IN THE STATE ANY ARCHITECTURAL PAINT, AND MUST COMPLY WITH THE REQUIREMENTS OF THIS TITLE.

4. NO LATER THAN JULY FIRST, TWO THOUSAND ELEVEN, A PRODUCER SHALL NOT SELL OR OFFER FOR SALE ARCHITECTURAL PAINT IN THE STATE UNLESS THE PRODUCER HAS REGISTERED WITH THE DEPARTMENT AND MAINTAINS AN ARCHITECTURAL PAINT ACCEPTANCE PROGRAM THROUGH WHICH THE PRODUCER, EITHER DIRECTLY OR THROUGH AN AGENT OR DESIGNEE, ACCEPTS ARCHITECTURAL PAINT FROM CONSUMERS IN THE STATE FOR DISPOSAL, REUSE OR RECYCLING. THE PRODUCER SHALL ENSURE THAT RETAILERS ARE NOTIFIED OF SUCH REGISTRATION. THE PRODUCER SHALL NOT IMPOSE A FEE ON CONSUMERS FOR THE COLLECTION, HANDLING AND RECYCLING OR REUSE OF ARCHITECTURAL PAINT.

5. THE ARCHITECTURAL PAINT ACCEPTANCE PROGRAM SHALL INCLUDE, AT A MINIMUM:

(A) COLLECTION, DISPOSAL AND RECYCLING OR REUSE OF ARCHITECTURAL PAINT PRODUCED BY THE PRODUCER AND OFFERED FOR RETURN BY ANY CONSUMER IN THIS STATE, FREE OF COST AND IN A MANNER CONVENIENT TO CONSUMERS. THE FOLLOWING ACCEPTANCE METHODS SHALL BE CONSIDERED REASONABLY CONVENIENT: (I) MAIL OR SHIP BACK RETURN PROGRAMS; (II) COLLECTION OR ACCEPTANCE EVENTS CONDUCTED BY THE PRODUCER OR THE PRODUCER'S AGENT OR DESIGNEE, INCLUDING EVENTS CONDUCTED THROUGH LOCAL GOVERNMENTS OR PRIVATE PARTIES; (III) FIXED ACCEPTANCE LOCATIONS SUCH AS DEDICATED ACCEPTANCE SITES OPERATED BY THE PRODUCER OR ITS AGENT OR DESIGNEE; (IV) AGREEMENTS WITH LOCAL GOVERNMENTS, RETAIL STORES, SALES OUTLETS AND NOT-FOR-PROFIT ORGANIZATIONS WHICH HAVE AGREED TO PROVIDE FACILITIES FOR THE COLLECTION OF ARCHITECTURAL PAINT; (V) COMMUNITY COLLECTION EVENTS; AND (VI) ANY COMBINATION OF THESE OR OTHER ACCEPTANCE METHODS WHICH EFFECTIVELY PROVIDE FOR THE ACCEPTANCE OF ARCHITECTURAL PAINT FOR RECYCLING OR REUSE THROUGH MEANS THAT ARE AVAILABLE AND REASONABLY CONVENIENT TO CONSUMERS IN THE STATE. AT A MINIMUM, THE PRODUCER SHALL ENSURE THAT ALL COUNTIES OF THE STATE AND ALL MUNICIPALITIES WHICH HAVE A POPULATION OF TEN THOUSAND OR GREATER HAVE AT LEAST ONE METHOD OF ACCEPTANCE THAT IS AVAILABLE

WITHIN THAT MUNICIPALITY. THE DEPARTMENT MAY ESTABLISH ADDITIONAL REQUIREMENTS TO ENSURE CONVENIENT COLLECTION FROM CONSUMERS;

(B) A PUBLIC EDUCATION PROGRAM TO INFORM CONSUMERS ABOUT THE PRODUCER'S ARCHITECTURAL PAINT ACCEPTANCE PROGRAM, INCLUDING AT A MINIMUM AN INTERNET WEBSITE AND A TOLL-FREE TELEPHONE NUMBER AND WRITTEN INFORMATION INCLUDED IN THE PACKAGE FOR, OR AT THE TIME OF SALE OF, ARCHITECTURAL PAINT THAT PROVIDES SUFFICIENT INFORMATION TO ALLOW A CONSUMER OF ARCHITECTURAL PAINT TO LEARN HOW TO RETURN SUCH PAINT FOR DISPOSAL, RECYCLING OR REUSE; AND

(C) ANY OTHER INFORMATION AS REQUIRED BY THE DEPARTMENT IN ACCORDANCE WITH REGULATIONS PROMULGATED PURSUANT TO THIS ARTICLE.

6. A PRODUCER SHALL MAINTAIN RECORDS DEMONSTRATING COMPLIANCE WITH THE PROVISIONS OF THIS TITLE AND MAKE THEM AVAILABLE FOR AUDIT AND INSPECTION BY THE DEPARTMENT FOR A PERIOD OF THREE YEARS.

7. A PRODUCER MAY SATISFY THE ARCHITECTURAL PAINT COLLECTION REQUIREMENTS OF THIS SECTION BY AGREEING TO PARTICIPATE IN A COLLECTIVE ARCHITECTURAL PAINT ACCEPTANCE PROGRAM WITH OTHER PRODUCERS. ANY SUCH COLLECTIVE ARCHITECTURAL PAINT ACCEPTANCE PROGRAM SHALL MEET THE SAME REQUIREMENTS AS AN INDIVIDUAL PRODUCER. ANY ARCHITECTURAL ACCEPTANCE PROGRAM SHALL INCLUDE A LIST OF PRODUCERS THAT ARE PARTICIPATING IN SUCH PROGRAM ALONG WITH OTHER IDENTIFYING INFORMATION AS MAY BE REQUIRED BY THE DEPARTMENT. SUCH PROGRAM SHALL SUBMIT A REGISTRATION TO THE DEPARTMENT ALONG WITH A REGISTRATION FEE OF TEN THOUSAND DOLLARS.

8. A PRODUCER SHALL BE RESPONSIBLE FOR ALL COSTS ASSOCIATED WITH THE IMPLEMENTATION OF THE ARCHITECTURAL PAINT ACCEPTANCE PROGRAM.

S 27-2011. RETAILER REQUIREMENTS.

1. AT THE LOCATION OF SALE OF ARCHITECTURAL PAINT, A RETAILER SHALL PROVIDE PURCHASERS OF ARCHITECTURAL PAINT WITH INFORMATION, IF ANY, ABOUT OPPORTUNITIES FOR THE RETURN OF ARCHITECTURAL PAINT THAT HAS BEEN PROVIDED TO THE RETAILER BY A PRODUCER.

2. NO RETAILER SHALL SELL OR OFFER FOR SALE IN THE STATE ANY ARCHITECTURAL PAINT UNLESS THE PRODUCER AND THE PRODUCER'S BRANDS ARE REGISTERED WITH THE DEPARTMENT PURSUANT TO SECTION 27-2009 OF THIS TITLE.

S 27-2013. DEPARTMENT RESPONSIBILITIES.

1. THE DEPARTMENT SHALL PROMULGATE RULES AND REGULATIONS INCLUDING, BUT NOT LIMITED TO, STANDARDS FOR REUSE AND ACCEPTABLE ALTERNATIVE METHODS FOR THE DETERMINATION OF STATE SALES DATA.

2. THE DEPARTMENT SHALL (A) MAINTAIN A LIST OF PRODUCERS WHO ARE REGISTERED PURSUANT TO SECTION 27-2009 OF THIS TITLE, (B) MAINTAIN A LIST OF EACH SUCH PRODUCER'S BRANDS, AND (C) POST SUCH LISTS ON THE DEPARTMENT'S WEBSITE.

S 27-2015. REPORTING REQUIREMENTS.

1. BEGINNING MARCH FIRST, TWO THOUSAND ELEVEN, FOR THE PREVIOUS CALENDAR YEAR AND ANNUALLY THEREAFTER, A PRODUCER THAT OFFERS ARCHITECTURAL PAINT FOR SALE IN THIS STATE SHALL SUBMIT A REPORT TO THE DEPARTMENT ON A FORM PRESCRIBED BY THE DEPARTMENT THAT INCLUDES THE FOLLOWING:

(A) SALES DATA FOR THE PRODUCER'S ARCHITECTURAL PAINT SOLD IN THIS STATE FOR THE PREVIOUS THREE CALENDAR YEARS. IF THE PRODUCER CANNOT PROVIDE ACCURATE STATE SALES DATA, IT SHALL EXPLAIN WHY SUCH DATA CANNOT BE PROVIDED, AND ESTIMATE STATE SALES DATA BY (I) DIVIDING ITS NATIONAL SALES DATA BY WEIGHT BY THE NATIONAL POPULATION ACCORDING TO THE MOST RECENT CENSUS AND MULTIPLYING THE RESULT BY THE POPULATION OF THE STATE, OR (II) ANOTHER METHOD APPROVED BY THE DEPARTMENT;

(B) THE QUANTITY OF ARCHITECTURAL PAINT COLLECTED FOR DISPOSAL, RECYCLING OR REUSE IN THIS STATE DURING THE PRECEDING CALENDAR YEAR AND THE

METHODS USED TO ACCEPT SUCH PAINT AND THE APPROXIMATE WEIGHT OF ARCHITECTURAL PAINT ACCEPTED BY EACH METHOD USED TO THE EXTENT KNOWN;

(C) INFORMATION DETAILING THE ACCEPTANCE METHODS MADE AVAILABLE TO CONSUMERS IN MUNICIPALITIES WHICH HAVE A POPULATION OF GREATER THAN TEN THOUSAND AND IN EACH COUNTY OF THE STATE;

(D) A BRIEF DESCRIPTION OF ITS PUBLIC EDUCATION PROGRAM INCLUDING THE NUMBER OF VISITS TO THE INTERNET WEBSITE AND CALLS TO THE TOLL-FREE TELEPHONE NUMBER PROVIDED BY THE PRODUCER AS REQUIRED BY SECTION 27-2009 OF THIS TITLE;

(E) ANY OTHER INFORMATION AS REQUIRED BY THE DEPARTMENT; AND

(F) A SIGNATURE BY AN OFFICER, DIRECTOR, OR OTHER INDIVIDUAL AFFIRMING THE ACCURACY OF THE REPORT.

2. THE REPORT SHALL BE ACCOMPANIED BY AN ANNUAL REPORTING FEE OF THREE THOUSAND DOLLARS.

3. THE DEPARTMENT SHALL SUBMIT A REPORT REGARDING THE IMPLEMENTATION OF THIS TITLE IN THIS STATE TO THE GOVERNOR AND LEGISLATURE BY APRIL FIRST, TWO THOUSAND ELEVEN AND EVERY TWO YEARS THEREAFTER. THE REPORT MUST INCLUDE, AT A MINIMUM, AN EVALUATION OF:

(A) THE ARCHITECTURAL PAINT STREAM IN THE STATE;

(B) DISPOSAL, RECYCLING AND REUSE RATES IN THE STATE FOR ARCHITECTURAL PAINT;

(C) A DISCUSSION OF COMPLIANCE AND ENFORCEMENT RELATED TO THE REQUIREMENTS OF THIS TITLE; AND

(D) RECOMMENDATIONS FOR ANY CHANGES TO THIS TITLE.

S 3. This act shall take effect immediately.