STATE OF NEW YORK

8964

IN ASSEMBLY

January 6, 2020

Introduced by M. of A. ENGLEBRIGHT -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to postconsumer paint collection

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivisions 5, 8, and 9 of section 27-2001 of the environmental conservation law, as added by a chapter of the laws of 2019, amending the environmental conservation law relating to establishing a postconsumer paint collection program, as proposed in legislative bills numbers S.4351 and A.6373, are amended to read as follows:

5. "postconsumer paint" means architectural paint not used and no longer wanted by a [~~purchaser~~] **consumer**.

8. "recycling" means a process by which discarded products, components and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity. This term excludes thermal treatment or the use of [~~waste~~] **postconsumer paint** as a fuel substitute or for energy production.

9. "representative organization" means a not-for-profit organization established by [~~a producer~~] **producers** to implement the postconsumer paint collection program.

§ 2. Subdivisions 1, 3, 5, 12, and 13 of section 27-2003 of the environmental conservation law, as added by a chapter of the laws of 2019, amending the environmental conservation law relating to establishing a postconsumer paint collection program, as proposed in legislative bills numbers S.4351 and A.6373, are amended to read as follows:

1. No later than July first, two thousand twenty, a producer, either individually or cooperatively, or a representative organization shall submit to the [~~commissioner~~] **department** for the [~~commissioner's~~] **department's** approval a plan for the establishment of a postconsumer paint collection program. Such plan shall be accompanied by a fee of five thousand dollars for an individual producer or, in the case of a representative organization or producers acting collectively, a fee of ten thousand dollars. The program will minimize public sector involvement in

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

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the management of postconsumer paint by reducing its generation, promoting its reuse and recycling and negotiating and executing agreements to collect, transport, reuse, recycle and properly dispose of postconsumer paint using environmentally sound management practices.

3. The plan submitted by the producer or representative organization to the department under this section shall:

(a) provide a list of each participating producer and brands covered by the program.

(b) provide information on the architectural paint products covered under the program.

(c) describe how the producer or representative organization will collect, transport, recycle, and process postconsumer paint for end-of-life management, including recycling and disposal, using environmentally sound management practices.

(d) describe how it will provide for convenient and cost-effective statewide collection of postconsumer [~~architectural~~] paint in the state. The producer or representative organization may coordinate the program with existing municipal waste collection infrastructure as is mutually agreeable. A paint retailer may participate, on a voluntary basis, as a paint collection site if the paint retailer volunteers to act as such and complies with all applicable laws and regulations.

(e) provide geographic modeling to determine the number and distribution of sites for collection of postconsumer [~~architectural~~] paint based on the following criteria (i) at least ninety percent of New York residents shall have a collection site within a fifteen mile radius; and (ii) one additional **collection** site will be established for every fifty thousand residents of an urbanized area (as defined by the United States Census Bureau), unless the producer is a small business taxpayer as defined in paragraph (f) of subdivision one of section two hundred ten of the tax law or unless otherwise approved by the commissioner.

(f) describe the intended treatment, storage, transportation and disposal options and methods for the collection of postconsumer paint. The management of paint under the program shall promote reuse and recycling.

(g) describe in detail education and outreach efforts to inform consumers **and retailers** about the program. These materials should include (i) information about collection opportunities for postconsumer paint; (ii) information about the charge for the operation of the program that shall be included by the producer in the price charged to the retailer of all architectural paint sold in the state; and (iii) efforts to promote the source reduction, reuse, and recycling of architectural paint.

(h) set forth the process by which an independent **financial** auditor will be selected and identify the criteria used by the producer or representative organization in selecting an independent auditor.

(i) identify, in detail, the operational plans for interacting with retailers on the proper handling and management of [~~post-consumer~~] **postconsumer** paint.

(j) include the targeted annual collection rate.

(k) be reviewed by an independent financial auditor to assure that any added cost to paint sold in the state as a result of the postconsumer paint collection program does not exceed the costs of the program. The independent auditor shall verify that the amount added to each unit of paint will cover the costs of the postconsumer paint collection program.

5. The [~~commissioner~~] **department** shall approve or reject a plan submitted under this section within sixty days of submission and, if

rejected, inform the producer or representative organization in writing as to any deficiencies in said plan. A producer or representative organization shall amend and resubmit any rejected plans for reconsideration within sixty days of notification of the rejection of said plan. The [~~commissioner~~] **department** shall approve or reject said plan within thirty days of resubmission.

12. The operator of the [~~post-consumer~~] **postconsumer** paint collection program shall update the plan, as needed, when there are changes proposed to the current program. A new plan or amendment will be required to be submitted to the department for approval when:

(a) there is an addition to the products covered under the program; or

(b) there is a revision of the program's goals; or

(c) every four years **from the date of approval of a previous plan**.

The operator of the postconsumer paint collection program shall notify the department annually, in writing, if there are no changes proposed to the program and the producer or representative organization intends to continue implementation of the program as previously approved by the department.

13. Any person who becomes a producer [~~on or~~] after [~~January~~] **July** first, two thousand twenty shall submit a plan to the department prior to selling or offering for sale in the state any architectural paint, and must comply with the requirements of this title.

§ 3. Paragraph (a) of subdivision 2 of section 27-2005 of the environmental conservation law, as added by a chapter of the laws of 2019, amending the environmental conservation law relating to establishing a postconsumer paint collection program, as proposed in legislative bills numbers S.4351 and A.6373, is amended to read as follows:

(a) the architectural **and postconsumer** paint stream in the state;

§ 4. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2019, amending the environmental conservation law relating to establishing a postconsumer paint collection program, as proposed in legislative bills numbers S.4351 and A.6373, takes effect.