

# STATE OF NEW YORK

3541

2019-2020 Regular Sessions

## IN SENATE

February 8, 2019

Introduced by Sens. KENNEDY, O'MARA -- read twice and ordered printed,  
and when printed to be committed to the Committee on Environmental  
Conservation

AN ACT to amend the environmental conservation law, in relation to  
establishing the paint stewardship program

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

1 Section 1. Article 27 of the environmental conservation law is amended  
2 by adding a new title 20 to read as follows:

3 TITLE 20

4 PAINT STEWARDSHIP PROGRAM

5 Section 27-2001. Definitions.

6 27-2003. Paint stewardship program.

7 27-2005. Regulations.

8 27-2007. Reporting.

9 § 27-2001. Definitions.

10 When used in this title:

11 1. "Architectural paint" means interior and exterior architectural  
12 coatings sold in containers of five gallons or less. Architectural paint  
13 does not include industrial, original equipment or specialty coatings.

14 2. "Distributor" means a person that has a contractual relationship  
15 with one or more producers to market and sell architectural paint to  
16 retailers or directly to consumers or end-users in the state.

17 3. "Environmentally sound management practices" means procedures for  
18 the collection, storage, transportation, reuse, recycling and disposal  
19 of architectural paint, to be implemented by the producer or represen-  
20 tative organization or such representative organization's contracted  
21 partners to ensure compliance with all applicable federal, state and  
22 local laws, regulations and ordinances and the protection of human  
23 health and the environment. Environmentally sound management practices  
24 include, but are not limited to, record keeping, the tracking and docu-

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

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1 menting of the fate of post-consumer paint in and outside of the state,  
2 and environmental liability coverage for professional services and for  
3 the operations of the contractors working on behalf of the producer or  
4 representative organization.

5 4. "Paint stewardship assessment" means the amount added to the  
6 purchase price of architectural paint sold in the state that is neces-  
7 sary to cover the cost of collecting, transporting and processing post-  
8 consumer paint by the producer or representative organization pursuant  
9 to the paint stewardship program.

10 5. "Paint stewardship program" or "program" means a program for the  
11 management of post-consumer paint operated by a producer or represen-  
12 tative organization.

13 6. "Post-consumer paint" means architectural paint that is not used  
14 and that is no longer wanted by a purchaser of architectural paint.

15 7. "Producer" means a manufacturer of architectural paint who sells,  
16 offers for sale, distributes or contracts to distribute architectural  
17 paint in the state.

18 8. "Recycling" means the series of activities by which recyclables are  
19 collected, sorted, processed and converted into raw materials or used in  
20 the production of new products. This term excludes thermal treatment or  
21 the use of waste as a fuel substitute or for energy production.

22 9. "Representative organization" means a nonprofit organization  
23 created by producers to implement the paint stewardship program  
24 described in section 27-2003 of this title.

25 10. "Retailer" means any person who offers architectural paint for  
26 sale at retail in the state.

27 11. "Reuse" means the return of a product into the economic stream for  
28 use in the same kind of application as the product was originally  
29 intended to be used, without a change in the product's identity.

30 12. "Sell" or "sale" means any transfer for consideration of title or  
31 the right to use, from a manufacturer or retailer to a person, includ-  
32 ing, but not limited to, transactions conducted through retail sales  
33 outlets, catalogs, mail, the telephone, the internet, or any electronic  
34 means; this does not include samples, donations, and reuse.

35 § 27-2003. Paint stewardship program.

36 1. On or before March first, two thousand twenty, a producer or a  
37 representative organization shall submit a plan for the establishment of  
38 a paint stewardship program to the department for approval. The program  
39 shall minimize the public sector involvement in the management of post-  
40 consumer paint by reducing the generation of post-consumer paint, nego-  
41 tiating agreements to collect, transport, reuse, recycle, and/or burn  
42 for energy recovery at an appropriately licensed facility post-consumer  
43 paint using environmentally sound management practices. The program  
44 shall minimize the public sector involvement in the management of post-  
45 consumer paint by reducing the generation of post-consumer paint, nego-  
46 tiating agreements to collect, transport, reuse, recycle, and/or combust  
47 for energy recovery at an appropriately authorized facility, including  
48 permittees, post-consumer paint using environmentally sound management  
49 practices.

50 2. The program shall provide for convenient and available state-wide  
51 collection of post-consumer paint that, at a minimum, provides at least  
52 one permanent collection site located within a fifteen mile radius of  
53 all "incorporated cities" and "census-designated places" in the state;  
54 and one additional permanent collection site for every thirty thousand  
55 people located in those areas, unless otherwise approved by the depart-  
56 ment. Where a permanent collection site cannot be located within a

1 fifteen mile radius of an incorporated city or census-designated place,  
2 the program shall provide for at least one collection event annually.  
3 The program shall not charge a fee to the consumer at the time of  
4 collection of post-consumer architectural paint.

5 3. The plan submitted to the department pursuant to this section  
6 shall:

7 (a) identify each producer participating in the paint stewardship  
8 program and the brands of architectural paint sold in the state covered  
9 by the program;

10 (b) identify how the producer or representative organization will  
11 provide convenient, statewide accessibility to the program;

12 (c) set forth the process by which an independent auditor will be  
13 selected and identify the criteria used by the producer or represen-  
14 tative organization in selecting an independent auditor;

15 (d) identify, in detail, the educational and outreach program that  
16 will be implemented to inform consumers and retailers of the program and  
17 how to participate;

18 (e) identify, in detail, the operational plans for interacting with  
19 retailers on the proper handling and management of post-consumer paint;

20 (f) include the proposed, audited paint assessment as identified in  
21 this section and the criteria upon which the assessment is based;

22 (g) include the targeted annual collection rate;

23 (h) include a description of the intended treatment, storage, trans-  
24 portation and disposal options and methods for the collected post-con-  
25 sumer paint; and

26 (i) be accompanied by a fee in the amount of five thousand dollars for  
27 each producer, or ten thousand dollars for each product stewardship  
28 organization to be deposited into the environmental regulatory account  
29 as established in section 72-1009 of this chapter, to cover the review  
30 of said plan by the department.

31 4. The commissioner shall approve or reject a plan submitted under  
32 this section within ninety days of submission and, if rejected, inform  
33 the producer or representative organization in writing as to any defi-  
34 ciencies in said plan. A producer or representative organization shall  
35 amend and resubmit any rejected plans for reconsideration within sixty  
36 days of notification of the rejection of said plan. The commissioner  
37 shall approve or reject said plan within thirty days of resubmission. A  
38 plan shall be approved by the commissioner if it meets the required  
39 elements under subdivision three of this section.

40 5. Not later than three months after the date the plan is approved,  
41 the representative organization shall implement the paint stewardship  
42 program.

43 6. On or before March first, two thousand twenty, the proposed uniform  
44 paint stewardship assessment for all architectural paint sold in the  
45 state shall be reviewed by an independent auditor to assure that the  
46 assessment is consistent with the budget of the paint stewardship  
47 program described in this section and the independent auditor shall  
48 recommend an amount for the paint stewardship assessment to the depart-  
49 ment. The department shall approve the paint stewardship assessment  
50 based upon the independent auditor's recommendation. The department  
51 shall be responsible for the approval of such paint stewardship assess-  
52 ment based upon the independent auditor's recommendation. If the paint  
53 stewardship assessment previously approved by the department pursuant to  
54 this section is proposed to be changed, the producer or representative  
55 organization shall submit the new, adjusted uniform paint stewardship  
56 assessment to an independent auditor for review. After such review has

1 been completed, the producer or representative organization shall submit  
2 the results of said auditor's review and a proposal to amend the paint  
3 stewardship assessment to the department for review. The department  
4 shall review and approve, in writing, the adjusted paint stewardship  
5 assessment before the new assessment can be implemented. Any proposed  
6 changes to the paint stewardship assessment shall be submitted to the  
7 department no later than sixty days prior to the date the producer or  
8 representative organization anticipates the adjusted assessment to take  
9 effect.

10 7. On and after the date of implementation of the paint stewardship  
11 program pursuant to this section, the paint stewardship assessment shall  
12 be added to the cost of all architectural paint sold to retailers and  
13 distributors in the state by each producer. On and after such implemen-  
14 tation date, each retailer or distributor, as applicable, shall add the  
15 amount of such paint stewardship assessment to the purchase price of all  
16 architectural paint sold in the state.

17 8. Any retailer may participate, on a voluntary basis, as a paint  
18 collection point pursuant to such paint stewardship program and in  
19 accordance with any applicable provision of law or regulation.

20 9. Each producer and the representative organization shall be immune  
21 from liability for any claim of a violation of antitrust law or unfair  
22 trade practice if such conduct is a violation of antitrust law, to the  
23 extent such producer or representative organization is exercising  
24 authority pursuant to the provisions of this section.

25 10. Not later than the implementation date of the paint stewardship  
26 program, the department shall list the names of participating producers  
27 and the brands of architectural paint covered by such paint stewardship  
28 program on its website.

29 11. (a) On and after the implementation date of the paint stewardship  
30 program, no producer, distributor or retailer shall sell or offer for  
31 sale architectural paint to any person in the state if the producer of  
32 such architectural paint is not a member of the representative organiza-  
33 tion.

34 (b) No retailer or distributor shall be found to be in violation of  
35 the provisions of this section if, on the date the architectural paint  
36 was ordered from the producer or its agent, the producer or the subject  
37 brand of architectural paint was listed on the department's website in  
38 accordance with the provisions of this section.

39 (c) Notwithstanding any other provision of law, a retailer carrying  
40 out duties or responsibilities imposed by this title shall incur no  
41 civil liability or penalty of any sort unless it is determined by a  
42 court of competent jurisdiction that such retailer has acted in a gross-  
43 ly negligent manner in the transport or storage of paint and/or altering  
44 the contents of a returned paint container.

45 12. Producers or the representative organization shall provide retail-  
46 ers with educational materials regarding the paint stewardship assess-  
47 ment and paint stewardship program to be distributed at the point of  
48 sale to the consumer. Such materials shall include, but not be limited  
49 to, information regarding available end-of-life management options for  
50 architectural paint offered through the paint stewardship program and  
51 information that notifies consumers that a charge for the operation of  
52 such paint stewardship program is included in the purchase price of all  
53 architectural paint sold in the state.

54 13. On or before October fifteenth, two thousand twenty-one, and annu-  
55 ally thereafter, each operator of a program shall submit a report to the  
56 commissioner that details the paint stewardship program for the prior

1 year's program from July first to June thirtieth. Said report shall  
2 include a copy of the independent audit detailed in paragraph (d) of  
3 this subdivision. Such annual report shall include:

4 (a) a detailed description of the methods used to collect, transport  
5 and process post-consumer paint in the state including detailing  
6 collection methods made available to consumers and an evaluation of the  
7 program's collection convenience;

8 (b) the overall volume of post-consumer paint collected in the state;

9 (c) the volume and type of post-consumer paint collected in the state  
10 by method of disposition, including reuse, recycling and other methods  
11 of processing or disposal;

12 (d) the total cost of implementing the program, as determined by an  
13 independent financial audit, as performed by an independent auditor;

14 (e) an evaluation of the adequacy of the program's funding mechanism;

15 (f) samples of all educational materials provided to consumers of  
16 architectural paint and retailers;

17 (g) a detailed list of efforts undertaken and an evaluation of the  
18 methods used to disseminate such materials including recommendations, if  
19 any, for how the educational component of the program can be improved;  
20 and

21 (h) the annual report shall be accompanied by a fee in the amount of  
22 three thousand dollars to be deposited into the environmental regulatory  
23 account, established pursuant to section 72-1009 of this chapter to  
24 cover the review of said plan by the department.

25 14. The representative organization shall update the plan, as needed,  
26 when there are changes proposed to the current program. A new plan or  
27 amendment will be required to be submitted to the department for  
28 approval when:

29 (a) there is a change to the amount of the assessment; or

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

31 (c) there is a revision of the product stewardship organization's  
32 goals; or

33 (d) every four years, if requested, in writing, by the department.

34 The operator of the paint stewardship program shall notify the depart-  
35 ment annually, in writing, if there are no changes proposed to the  
36 program and the producer or representative organization intends to  
37 continue implementation of the program as previously approved by the  
38 department.

#### 39 § 27-2005. Regulations.

40 The department is hereby authorized to promulgate rules and regu-  
41 lations as may be necessary to implement and carry out the provisions of  
42 this title.

#### 43 § 27-2007. Reporting.

44 Not later than January fifteenth, two thousand twenty-two, and bienni-  
45 ally thereafter, the commissioner shall submit a report to the legisla-  
46 ture and the governor that describes the results and activities of the  
47 paint stewardship program as enacted pursuant to this title including  
48 any recommendations to improve the functioning and efficiency of the  
49 paint stewardship program, as necessary.

50 § 2. The environmental conservation law is amended by adding a new  
51 section 71-2730 to read as follows:

#### 52 § 71-2730. Enforcement of title 20 of article 27 of this chapter.

53 1. Civil penalties under this section shall be assessed by the commis-  
54 sioner after a hearing or opportunity to be heard pursuant to the  
55 provisions of section 71-1709 of this article, or shall be assessed by  
56 the court in any action or proceeding pursuant to this section. In addi-

1 tion to any civil penalties, any retailer or producer, as those terms  
2 are defined in section 27-2001 of this chapter, may by similar process  
3 be enjoined from continuing such violation.

4 2. All penalties collected pursuant to this section shall be paid over  
5 to the commissioner for deposit to the environmental protection fund  
6 established pursuant to section ninety-two-s of the state finance law.

7 § 3. This act shall take effect immediately.