STATE OF NEW YORK

4351

2019-2020 Regular Sessions

IN SENATE

March 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 a postconsumer paint collection program

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

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

TITLE 20

POSTCONSUMER PAINT COLLECTION PROGRAM

Section 27-2001. Definitions.
27-2003. Postconsumer paint collection program.
27-2005. Reporting requirements.
27-2007. Department responsibilities.

§ 27-2001. Definitions.

As used in this title, the following terms shall have the following meanings:

1. "architectural paint" means interior and exterior architectural coatings sold in containers of five gallons or less; provided, however, that "architectural paint" shall not include industrial, original equipment or specialty coatings.

2. "commissioner" means the commissioner of environmental conservation.

3. "department" means the department of environmental conservation.

4. "environmentally sound management practices" means procedures for the collection, storage, transportation, reuse, recycling and disposal of architectural paint, to be implemented by the producer or representative organization or by the producers or representative organization's contracted partners to ensure compliance with all applicable federal, state and local laws and any regulations and ordinances for the

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

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protection of human health and the environment and these procedures shall address adequate record keeping, tracking and documenting of the final disposition of materials.

5. "postconsumer paint" means architectural paint not used and no longer wanted by a purchaser.

6. "producer" means a manufacturer of architectural paint who sells, offers for sale or distributes the architectural paint in the state.

7. "program" means the postconsumer paint collection program established pursuant to section 27-2003 of this title.

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 as a fuel substitute or for energy production.

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

10. "retailer" means a person that offers architectural paint for sale at retail in the state.

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

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

§ 27-2003. Postconsumer paint collection program.

1. No later than July first, two thousand twenty, a producer, either individually or cooperatively, or a representative organization shall submit to the commissioner for the commissioner'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 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.

2. A producer may satisfy the postconsumer paint collection program requirement of this section by agreeing to participate collectively with other producers. Any such collective postconsumer paint collection program shall meet the same requirements as an individual producer. Such program shall submit a registration to the department along with a registration fee of ten thousand dollars.

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 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 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 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 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.

4. The independent financial auditor may be selected by the department and the department shall review the work product of any such independent auditor. The department may terminate the services of any such independent auditor. The cost of any work performed by such independent auditor shall be funded by the program.

5. The commissioner 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 shall approve or reject said plan within thirty days of resubmission.

6. Beginning not later than January first, two thousand twenty-one or six months after the plan is approved under subdivision five of this section, whichever occurs later, the producer or representative organization shall implement the postconsumer paint collection program utilizing collection sites established pursuant to paragraph (e) of subdivision three of this section.

7. Not later than the implementation date of the program, information regarding the approved plan, the names of participating producers, and the brands of architectural paint covered by the program shall be posted on the department's website and on the website of the producer and representative organization.

8. Upon implementation of the program, each producer shall include in the price of any architectural paint sold to retailers and distributors in the state the per container amount in the approved program plan. A retailer or distributor shall not deduct this amount from the purchase price.

9. A producer or retailer shall not sell, or offer for sale, architectural paint to any person in the state unless the producer and the producer's brands are registered with the department pursuant to section 27-2003 of this title on and after the date of implementation of the postconsumer paint collection program.

10. (a) A retailer shall be in compliance with this section if, on the date the architectural paint was offered for sale, the producer is listed on the department's website as implementing or participating in an approved program or if the paint brand is listed on the department's website as being included in the program.

(b) A paint collection site authorized under the provisions of this section shall not charge any additional amount for the disposal of paint when it is offered for disposal.

11. (a) A producer or the representative organization that organizes the collection, transport and processing of postconsumer paint, in an action solely to increase the recycling of architectural paint by a producer, representative organization, or retailer that affects the types and quantities being recycled or the cost and structure of any return program shall not be liable for any claim of a violation of antitrust, restraint of trade or unfair trade practice arising from conduct undertaken in accordance with the program pursuant to this section.

(b) Provided however, paragraph (a) of this subdivision shall not apply to any agreement establishing or affecting the price of paint except for the postconsumer paint collection assessment or the output or production of paint or any agreement restricting the geographic area or customers to which paint will be sold.

12. The operator of the post consumer 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.

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 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.

§ 27-2005. Reporting requirements.

1. On or before October fifteenth, two thousand twenty-one, and annually thereafter, each operator of a program shall submit a report to the commissioner that details the postconsumer paint collection program for

the prior year's program from July first to June thirtieth. The report shall be posted on the department's website. The report shall be posted on the website of the producer and representative organization. Said report shall include a copy of the independent audit detailed in paragraph (d) of this subdivision. Such annual report shall include:

(a) a detailed description of the methods used to collect, transport and process postconsumer paint in the state including detailing collection methods made available to consumers and an evaluation of the program's collection convenience;

(b) the overall volume of postconsumer paint collected in the state;

(c) the volume and type of postconsumer paint collected in the state by method of disposition, including reuse, recycling and other methods of processing or disposal;

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

(e) samples of all educational materials provided to consumers of architectural paint and retailers; and

(f) a detailed list of efforts undertaken and an evaluation of the methods used to disseminate such materials including recommendations, if any, for how the educational component of the program can be improved.

2. 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 twenty-two 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.

§ 27-2007. Department responsibilities.

1. The department shall promulgate all necessary rules and regulations including, but not limited to, standards for reuse.

2. The department shall (a) maintain a list of producers who are implementing or participating pursuant to section 27-2003 of this title, (b) maintain a list of each such producer's brands, and (c) post such lists on the department's website.

§ 2. This act shall take effect immediately.