

# 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 Assem-  
bly, do enact as follows:

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

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

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

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

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

21 1. No later than July first, two thousand twenty, a producer, either  
22 individually or cooperatively, or a representative organization shall  
23 submit to the [ ~~commissioner~~] department for the [ ~~commissioner's~~] depart-  
24 ment's approval a plan for the establishment of a postconsumer paint  
25 collection program. Such plan shall be accompanied by a fee of five  
26 thousand dollars for an individual producer or, in the case of a repre-  
27 sentative organization or producers acting collectively, a fee of ten  
28 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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1 the management of postconsumer paint by reducing its generation, promot-  
2 ing its reuse and recycling and negotiating and executing agreements to  
3 collect, transport, reuse, recycle and properly dispose of postconsumer  
4 paint using environmentally sound management practices.

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

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

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

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

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

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

31 (f) describe the intended treatment, storage, transportation and  
32 disposal options and methods for the collection of postconsumer paint.  
33 The management of paint under the program shall promote reuse and recy-  
34 cling.

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

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

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

49 (j) include the targeted annual collection rate.

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

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

1 rejected, inform the producer or representative organization in writing  
2 as to any deficiencies in said plan. A producer or representative organ-  
3 ization shall amend and resubmit any rejected plans for reconsideration  
4 within sixty days of notification of the rejection of said plan. The  
5 [~~commissioner~~] department shall approve or reject said plan within thir-  
6 ty days of resubmission.

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

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

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

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

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

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

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

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

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