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:

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	POSTCONSUMER PAINT COLLECTION PROGRAM
5	Section 27-2001. Definitions.
б	27-2003. Postconsumer paint collection program.
7	27-2005. Reporting requirements.
8	27-2007. Department responsibilities.
9	<u>§ 27-2001. Definitions.</u>
10	As used in this title, the following terms shall have the following
11	<u>meanings:</u>
12	1. "architectural paint" means interior and exterior architectural
13	coatings sold in containers of five gallons or less; provided, however,
14	that "architectural paint" shall not include industrial, original equip-
15	ment or specialty coatings.
16	2. "commissioner" means the commissioner of environmental conserva-
17	tion.
18	3. "department" means the department of environmental conservation.
19	4. "environmentally sound management practices" means procedures for
20	the collection, storage, transportation, reuse, recycling and disposal
21	of architectural paint, to be implemented by the producer or represen-
22	tative organization or by the producers or representative organization's
23	contracted partners to ensure compliance with all applicable federal,
24	state and local laws and any regulations and ordinances for the

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

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 3 final disposition of materials. 5. "postconsumer paint" means architectural paint not used and not longer wanted by a purchaser. 6. "producer" means a manufacturer of 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 pursuant to section 27.2003 of this title. 8. "recycling" means a process by which discarded products, components and pursuant to section 27.2003 of this title. 9. "representative organization" means a not-for-profit organization established by a producer to implement the postconsumer paint collection program. 10. "representative organization" means a not-for-profit organization established by a producer to implement the postconsumer paint collection program. 11. "Reuse" means a person that offers architectural paint for sale a tretail in the state. 11. "Reuse" means the return of a product into the scononic stream for use in the same kind of application as the product was originally intended to be used, without a chance in the product's identity. 12. "Sell" or "sale" means andicaturer or retailer to a person, including, intended to be used, without a representative organization of title or means: this does not include samples, donations, and reuse. § 27-2003. Postconsumer paint collection program. 1. No later than July first, two chousand thy, a producer, either individual producer may asisfy the postconsumer paint collection program. 2. A producer or, in the case of a representative organization or producers satisfy the postconsumer paint collection program. 3. The classifier involvement in the management of postconsumer paint sollection program. 2. A producer or mains on trenduced dollars. The program with the state collectively with the extense of a setting consumer paint collect	1	protection of human health and the environment and these procedures
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1	(d) describe how it will provide for convenient and cost-effective
2	statewide collection of postconsumer architectural paint in the state.
3	The producer or representative organization may coordinate the program
4	with existing municipal waste collection infrastructure as is mutually
5	agreeable. A paint retailer may participate, on a voluntary basis, as a
6	paint collection site if the paint retailer volunteers to act as such
7	and complies with all applicable laws and regulations.
8	(e) provide geographic modeling to determine the number and distrib-
9	ution of sites for collection of postconsumer architectural paint based
10	on the following criteria (i) at least ninety percent of New York resi-
11	dents shall have a collection site within a fifteen mile radius; and
12	(ii) one additional site will be established for every fifty thousand
13	residents of an urbanized area (as defined by the United States Census
14	Bureau), unless the producer is a small business taxpayer as defined in
15	paragraph (f) of subdivision one of section two hundred ten of the tax
16	law or unless otherwise approved by the commissioner.
17	(f) describe the intended treatment, storage, transportation and
18	disposal options and methods for the collection of postconsumer paint.
19	The management of paint under the program shall promote reuse and recy-
20	cling.
21	(g) describe in detail education and outreach efforts to inform
22	consumers about the program. These materials should include (i) informa-
23	tion about collection opportunities for postconsumer paint; (ii) infor-
24	mation about the charge for the operation of the program that shall be
25	included by the producer in the price charged to the retailer of all
26	architectural paint sold in the state; and (iii) efforts to promote the
27	source reduction, reuse, and recycling of architectural paint.
28	(h) set forth the process by which an independent auditor will be
29	selected and identify the criteria used by the producer or represen-
30	tative organization in selecting an independent auditor.
31	(i) identify, in detail, the operational plans for interacting with
32	retailers on the proper handling and management of post-consumer paint.
33	(j) include the targeted annual collection rate.
34	(k) be reviewed by an independent financial auditor to assure that any
35	added cost to paint sold in the state as a result of the postconsumer
36	paint collection program does not exceed the costs of the program. The
37	independent auditor shall verify that the amount added to each unit of
38	paint will cover the costs of the postconsumer paint collection program.
39	4. The independent financial auditor may be selected by the department
40	and the department shall review the work product of any such independent
41	auditor. The department may terminate the services of any such independ-
42	ent auditor. The cost of any work performed by such independent auditor
43	shall be funded by the program.
44	5. The commissioner shall approve or reject a plan submitted under
45	this section within sixty days of submission and, if rejected, inform
46	the producer or representative organization in writing as to any defi-
47	ciencies in said plan. A producer or representative organization shall
48	amend and resubmit any rejected plans for reconsideration within sixty
49	days of notification of the rejection of said plan. The commissioner
50	shall approve or reject said plan within thirty days of resubmission.
51	6. Beginning not later than January first, two thousand twenty-one or
52	six months after the plan is approved under subdivision five of this
53	section, whichever occurs later, the producer or representative organ-
54	ization shall implement the postconsumer paint collection program
55	utilizing collection sites established pursuant to paragraph (e) of
56	subdivision three of this section.

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1	7. Not later than the implementation date of the program, information
2	regarding the approved plan, the names of participating producers, and
3	the brands of architectural paint covered by the program shall be posted
4	on the department's website and on the website of the producer and
5	
	representative organization.
6	8. Upon implementation of the program, each producer shall include in
7	the price of any architectural paint sold to retailers and distributors
8	in the state the per container amount in the approved program plan. A
9	retailer or distributor shall not deduct this amount from the purchase
10	price.
11	9. A producer or retailer shall not sell, or offer for sale, architec-
12	tural paint to any person in the state unless the producer and the
13	producer's brands are registered with the department pursuant to section
14	27-2003 of this title on and after the date of implementation of the
15	postconsumer paint collection program.
16	10. (a) A retailer shall be in compliance with this section if, on the
17	date the architectural paint was offered for sale, the producer is list-
18	ed on the department's website as implementing or participating in an
19	approved program or if the paint brand is listed on the department's
20	website as being included in the program.
21	(b) A paint collection site authorized under the provisions of this
22	section shall not charge any additional amount for the disposal of paint
23	when it is offered for disposal.
24	11. (a) A producer or the representative organization that organizes
25	the collection, transport and processing of postconsumer paint, in an
26	action solely to increase the recycling of architectural paint by a
27	producer, representative organization, or retailer that affects the
28	types and quantities being recycled or the cost and structure of any
29	return program shall not be liable for any claim of a violation of anti-
30	trust, restraint of trade or unfair trade practice arising from conduct
30 31	undertaken in accordance with the program pursuant to this section.
32	(b) Provided however, paragraph (a) of this subdivision shall not
33	apply to any agreement establishing or affecting the price of paint
34	except for the postconsumer paint collection assessment or the output or
35	production of paint or any agreement restricting the geographic area or
36	customers to which paint will be sold.
37	12. The operator of the post consumer paint collection program shall
38	update the plan, as needed, when there are changes proposed to the
39	current program. A new plan or amendment will be required to be submit-
40	ted to the department for approval when:
41	(a) there is an addition to the products covered under the program; or
42	(b) there is a revision of the program's goals; or
43	<u>(c) every four years.</u>
44	The operator of the postconsumer paint collection program shall notify
45	the department annually, in writing, if there are no changes proposed to
46	the program and the producer or representative organization intends to
47	continue implementation of the program as previously approved by the
48	department.
49	13. Any person who becomes a producer on or after January first, two
50	thousand twenty shall submit a plan to the department prior to selling
51	or offering for sale in the state any architectural paint, and must
52	comply with the requirements of this title.
53	§ 27-2005. Reporting requirements.
54	1. 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 postconsumer paint collection program for

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1	the prior year's program from July first to June thirtieth. The report
2	shall be posted on the department's website. The report shall be posted
3	on the website of the producer and representative organization. Said
4	report shall include a copy of the independent audit detailed in para-
5	graph (d) of this subdivision. Such annual report shall include:
б	(a) a detailed description of the methods used to collect, transport
7	and process postconsumer paint in the state including detailing
8	collection methods made available to consumers and an evaluation of the
9	program's collection convenience;
10	(b) the overall volume of postconsumer paint collected in the state;
11	(c) the volume and type of postconsumer paint collected in the state
12	by method of disposition, including reuse, recycling and other methods
13	of processing or disposal;
14	(d) the total cost of implementing the program, as determined by an
15	independent financial audit, as performed by an independent auditor;
16	(e) samples of all educational materials provided to consumers of
17	architectural paint and retailers; and
18	(f) a detailed list of efforts undertaken and an evaluation of the
19	methods used to disseminate such materials including recommendations, if
20	any, for how the educational component of the program can be improved.
21	2. The department shall submit a report regarding the implementation
22	of this title in this state to the governor and legislature by April
23	first, two thousand twenty-two and every two years thereafter. The
24	report must include, at a minimum, an evaluation of:
25	(a) the architectural paint stream in the state;
26	(b) disposal, recycling and reuse rates in the state for architectural
27	paint;
28	(c) a discussion of compliance and enforcement related to the require-
29	ments of this title; and
30	(d) recommendations for any changes to this title.
31	<u>§ 27-2007. Department responsibilities.</u>
32	1. The department shall promulgate all necessary rules and regulations
33	including, but not limited to, standards for reuse.
34	2. The department shall (a) maintain a list of producers who are
35	implementing or participating pursuant to section 27-2003 of this title,
36	(b) maintain a list of each such producer's brands, and (c) post such
37	lists on the department's website.

37 <u>11515 On the department 5 website.</u> 38 § 2. This act shall take effect immediately.