

SENATE, No. 3112

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED DECEMBER 7, 2009

Sponsored by:
Senator JAMES BEACH
District 6 (Camden)

SYNOPSIS

Requires paint manufacturers to implement pilot paint recycling program.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT requiring paint manufacturers to implement a pilot paint
2 recycling program, and supplementing Title 13 of the Revised
3 Statutes.

4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7

8 1. This act shall be known and may be cited as the
9 “Architectural Paint Stewardship Act.”

10

11 2. As used in this act:

12 “Architectural paint” means interior or exterior architectural
13 coatings sold for commercial or homeowner use, but shall not
14 include architectural coatings sold for industrial or original
15 equipment manufacturer use.

16 “Commissioner” means the Commissioner of Environmental
17 Protection.

18 “Department” means the Department of Environmental
19 Protection.

20 “Distributor” means a person who has a contractual relationship
21 with one or more producers to market and sell architectural paint to
22 retailers.

23 “Energy recovery” means a procedure in which all or a part of
24 the solid waste materials of architectural paint are processed to use
25 the heat content or other forms of energy from the solid waste
26 materials.

27 “Post-consumer architectural paint” means architectural paint not
28 used and no longer wanted by its purchaser.

29 “Producer” means a person who manufactures architectural paint
30 that is sold or offered for sale in New Jersey.

31 “Recycling” means any process by which materials which would
32 otherwise become solid waste are collected, separated or processed
33 and returned to the economic mainstream in the form of raw
34 materials or products. “Recycling” shall not include energy
35 recovery or energy generation by means of incineration.

36 “Retailer” means any person who sells or offers for sale
37 architectural paint at retail to consumers in New Jersey.

38 “Reuse” means the return of a product into the economic stream
39 for use in the same kind of application originally intended for the
40 product, without a change in the product’s original composition.

41 “Sell” or “sale” means any transfer of title for consideration,
42 including, but not limited to, transactions conducted through sales
43 outlets, catalogs, or the Internet, or through any other similar
44 electronic means.

45 “Sound management practices” means the policies implemented
46 by a stewardship organization to ensure compliance with all
47 applicable laws, rules, and regulations, and to assure adequate
48 recordkeeping, accurate tracking and documentation of the use,

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1 reuse, recycling, or disposal of post-consumer architectural paint
2 within and outside of the State, and adequate provision of
3 environmental liability coverage for professional services and for
4 the operations of contractors working for producers or a
5 stewardship organization.

6 “Stewardship organization” means a corporation, nonprofit
7 organization or other legal entity established by producers, as
8 provided in section 3 of this act, to implement a Statewide
9 architectural paint stewardship pilot program.

10

11 3. a. All producers shall establish a stewardship organization
12 within 90 days after the date of enactment of this act.

13 b. No more than 120 days after the date of enactment of this
14 act, the stewardship organization established pursuant to subsection
15 a. of this section shall submit to the Department of Environmental
16 Protection, a list of producers who are participating members of the
17 stewardship organization and the brands of paint sold by each
18 producer.

19 c. Within 30 days after the department’s receipt of a
20 membership list submitted by the stewardship organization in
21 accordance with subsection b. of this section, the department shall
22 publicize on its Internet website, as reported by the stewardship
23 organization, the names of the producers who are participating
24 members of the stewardship organization and the brands of paint
25 sold by each producer. This portion of the website shall be
26 thereafter maintained by the department, and shall be updated upon
27 the approval or revision of a plan by the department pursuant to
28 section 6 of this act, or upon a change in the membership of the
29 stewardship organization, as reported to the department.

30

31 4. a. A producer, distributor, or retailer shall not sell or offer
32 for sale architectural paint to any person in the State unless the
33 producer is a participating member of the stewardship organization
34 that is engaged in the implementation of a Statewide architectural
35 paint stewardship pilot program in accordance with the provisions
36 of this act. This sales prohibition shall take effect on the 180th day
37 after the date of enactment of this act.

38 b. A distributor or retailer shall be deemed to be in compliance
39 with this section if, on the date the architectural paint is ordered
40 from the producer or its agent, the Internet website maintained by
41 the department lists the producer, along with the producer’s product
42 brand, as a participating member of the stewardship organization.

43

44 5. a. Within one year after the date of enactment of this act,
45 the stewardship organization shall prepare and submit to the
46 department for its approval, a plan for a Statewide architectural
47 paint stewardship pilot program, which shall promote the reuse and
48 recycling of post-consumer architectural paint, decrease the amount

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1 of post-consumer architectural paint generated by consumers, and
2 provide for the collection, transportation, and processing of post-
3 consumer architectural paint for end-of-life management.

4 b. The plan submitted pursuant to this section shall:

5 (1) provide for convenient and available Statewide
6 collection of post-consumer architectural paint in all regions of the
7 State;

8 (2) identify each producer who is participating in the
9 pilot program as a member of the stewardship organization, and the
10 brands of architectural paint sold by each producer;

11 (3) based on all available information relating to current
12 architectural paint usage and disposal rates, identify goals
13 established by the stewardship organization to reduce the generation
14 of post-consumer architectural paint, promote the reuse of post-
15 consumer architectural paint, and ensure the proper end-of-life
16 management of post-consumer architectural paint, including energy
17 recovery, reuse, and recycling; and

18 (4) describe education and outreach programs to be
19 implemented by the stewardship organization to promote the
20 reduction, reuse, and recycling of post-consumer architectural paint,
21 and identify the educational and informational materials that will be
22 made available to retailers, which may include, but need not be
23 limited to, prominently displayed signage, and written materials, or
24 written material templates that may be reproduced by retailers, to be
25 provided to the consumer at the time of purchase or delivery.

26

27 6. a. No later than 60 days after the department's receipt of a
28 plan submitted in accordance with section 5 of this act, the
29 commissioner shall approve, approve with conditions, or disapprove
30 the plan, and shall notify the stewardship organization, in writing,
31 of the determination. If the department does not notify the
32 stewardship organization of its determination within 60 days of its
33 receipt of the plan, the plan shall be deemed to have been approved,
34 and the stewardship organization shall implement the plan in
35 accordance with section 7 of this act.

36 b. If the commissioner approves with conditions or disapproves
37 a plan submitted pursuant to section 5 of this act, the notification
38 shall be accompanied by a detailed statement prepared by the
39 department describing the reasons for the conditions or for the
40 disapproval, and prescribing the changes required for approval. No
41 more than 45 days after receipt of the department's notification and
42 accompanying statement describing the reasons for the approval
43 with conditions or disapproval of a plan submitted pursuant to
44 section 5 of this act, the stewardship organization shall incorporate
45 the conditions or changes to the plan as required by the department
46 and shall submit the modified or replacement plan to the department
47 for approval.

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1 c. No more than 45 days after receipt of a modified or
2 replacement plan that has been submitted in accordance with
3 subsection b. of this section, the department shall approve the plan
4 or reject it, and shall certify the approval or rejection to the
5 stewardship organization. Upon the department's rejection of any
6 modified or replacement plan submitted pursuant to subsection b. of
7 this section, or upon the failure of the stewardship organization to
8 submit a modified or replacement plan as required, the department
9 shall make any revisions to the plan the department deems
10 necessary, and shall transmit the plan to the stewardship
11 organization. Upon receipt of the department's revisions to its plan,
12 the stewardship organization shall implement the revised plan in
13 accordance with section 7 of this act.

14

15 7. Within 60 days after the department's approval of, or
16 revisions to, a Statewide architectural paint stewardship plan in
17 accordance with section 6 of this act, the stewardship organization
18 shall implement the architectural paint stewardship pilot program
19 described in the plan.

20

21 8. a. One year after the department provides notification to the
22 stewardship organization of its approval of or revisions to a plan in
23 accordance with section 6 of this act, and annually thereafter, the
24 stewardship organization shall submit a report to the department
25 describing the architectural paint stewardship pilot program and
26 including the following information:

27 (1) a description of the methods used to collect,
28 transport, reuse, recycle, and process post-consumer architectural
29 paint in the State;

30 (2) the volume and type of post-consumer architectural
31 paint collected in all regions of the State;

32 (3) the volume of post-consumer architectural paint
33 collected in the State by method of disposition, including reuse,
34 recycling, energy recovery, and disposal in accordance with sound
35 management practices;

36 (4) an independent financial audit of the program;

37 (5) a description of program costs;

38 (6) samples of the educational materials provided to
39 consumers of architectural paint, an evaluation of the methods used
40 to disseminate those materials, and an assessment of the
41 effectiveness of the education and outreach, including levels of
42 waste prevention and reuse; and

43 (7) an analysis of the environmental costs and benefits of
44 collecting and recycling latex paint.

45 b. The department shall not disclose data reported by the
46 stewardship organization in accordance with this section, except
47 that the department may disclose such data in aggregate or summary
48 format, so long as individual producers, distributors, or retailers are

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1 not specifically identified, and so long as the summary omits any
2 reference to unique characteristics, from which the identities of
3 individual producers, distributors, or retailers might be inferred or
4 otherwise ascertained.

5

6 9. a. Violations of this act include, but are not limited to:

7 (1) the sale of architectural paint by any person who is
8 not in full compliance with the provisions of this act;

9 (2) the use of a qualified collection program to recycle
10 architectural paint not discarded within the State;

11 (3) the knowing failure to report or accurately report any
12 data required to be reported to the department pursuant to this act;
13 and

14 (4) the nonpayment of any fee required by this act.

15 b. Whenever, on the basis of available information, the
16 commissioner finds that a person is in violation of any provision of
17 this act, or of any rule or regulation adopted, or order issued
18 pursuant thereto, the commissioner may:

19 (1) issue an order, in accordance with subsection c. of
20 this section, requiring any such person to comply; or

21 (2) bring a civil action in accordance with subsection d.
22 of this section; or

23 (3) levy a civil administrative penalty in accordance with
24 subsection e. of this section; or

25 (4) bring an action for civil penalty in accordance with
26 subsection f. of this section; or

27 (5) petition the Attorney General to bring a criminal
28 action in accordance with subsection g. of this section.

29 The exercise of any of the remedies provided in this section shall
30 not preclude recourse to any other remedy so provided.

31 c. Whenever, on the basis of available information, the
32 commissioner finds that a person is in violation of any provision of
33 this act, or of any rule or regulation adopted, or order issued
34 pursuant thereto, the commissioner may issue an order: (1)
35 specifying the provision or provisions of the act or the rule,
36 regulation, or order of which the person is in violation; (2) citing
37 the action which constituted the violation; (3) requiring compliance
38 with the provision or provisions violated; and (4) providing notice
39 to the person of the right to a hearing on the matters contained in
40 the order.

41 d. The commissioner is authorized to institute a civil action in
42 Superior Court for appropriate relief from any violation of this act
43 or any rule or regulation adopted, or order issued pursuant thereto.
44 Such relief may include, singly or in combination:

45 (1) a temporary or permanent injunction;

46 (2) assessment against the violator for the costs of any
47 investigation, inspection, or monitoring survey which led to the

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1 discovery of the violation, and for the reasonable costs of preparing
2 and bringing legal action under this subsection;

3 (3) assessment against the violator for any costs incurred
4 by the State in removing, correcting, or terminating the adverse
5 effects resulting from any violation of this act or any rule or
6 regulation adopted, or order issued pursuant thereto, for which legal
7 action under this subsection may have been brought; and

8 (4) assessment against the violator for compensatory
9 damages for any loss or destruction of public resources, including
10 but not limited to, wildlife, fish, aquatic life, habitat, plants, or
11 historic or archeological resources, and for any other actual
12 damages caused by an unauthorized regulated activity.
13 Compensatory damages to privately held resources shall be paid by
14 specific order of the court to any persons who have been aggrieved
15 by the unauthorized regulated activity.

16 e. The commissioner is authorized to assess a civil
17 administrative penalty of not more than \$50,000 for each violation
18 of the provisions of this act or any rule or regulation adopted, or
19 order issued pursuant thereto, and each day during which each
20 violation continues shall constitute an additional, separate, and
21 distinct offense. Any amount assessed under this subsection shall
22 fall within a range established by regulation by the commissioner
23 for violations of similar type, seriousness, and duration; provided
24 however, that prior to the adoption of the regulation, the
25 commissioner may, on a case-by-case basis, assess civil
26 administrative penalties up to a maximum of \$25,000 per day for
27 each violation, using the criteria set forth herein. In adopting rules
28 and regulations establishing the amount of any penalty to be
29 assessed, the commissioner may take into account the economic
30 benefits from the violation gained by the violator. Prior to
31 assessment of a penalty under this subsection, the person
32 committing the violation shall be notified by certified mail or
33 personal service that the penalty is being assessed. The notice
34 shall: (1) identify the section of the statute, regulation, or order
35 condition violated; (2) recite the facts alleged to constitute a
36 violation; (3) state the amount of the civil penalties to be imposed;
37 and (4) affirm the rights of the alleged violator to a hearing. The
38 ordered party shall have 20 days from receipt of the notice within
39 which to deliver to the commissioner a written request for a hearing
40 setting forth its factual and legal defenses, arguments and issues.
41 After the hearing and upon finding that a violation has occurred, the
42 commissioner may issue a final order after assessing the amount of
43 the fine specified in the notice. If no hearing is requested, the
44 notice shall become a final order after the expiration of the 20-day
45 period. Payment of the assessment is due when a final order is
46 issued or the notice becomes a final order. The authority to levy an
47 administrative order is in addition to all other enforcement
48 provisions in this act or in any rule or regulation adopted, or order

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1 issued pursuant thereto, and the payment of any assessment shall
2 not be deemed to affect the availability of any other enforcement
3 provisions in connection with the violation for which the
4 assessment is levied. The department may compromise any civil
5 administrative penalty assessed under this section in an amount and
6 with conditions the department determines appropriate. A civil
7 administrative penalty assessed, including any portion thereof
8 required to be paid pursuant to a payment schedule approved by the
9 department, which is not paid within 90 days of the date that
10 payment of the penalty is due, shall be subject to an interest charge
11 on the amount of the penalty, or portion thereof, which shall accrue
12 as of the date payment is due. If the penalty is contested, no
13 additional interest charge shall accrue on the amount of the penalty
14 until after the date on which a final order is issued. Interest charges
15 assessed and collectible pursuant to this subsection shall be based
16 on the rate of interest on judgments provided in the New Jersey
17 Rules of Court. For the purposes of this subsection, the date that a
18 penalty is due is the date that written notice of the penalty is
19 received by the person responsible for payment thereof, or such
20 later date as may be specified in the notice.

21 f. A person who violates any provision of this act, or any rule
22 or regulation adopted or order issued pursuant thereto, or any
23 administrative order issued pursuant to subsection c. of this section,
24 or a court order issued pursuant to subsection d. of this section, or
25 who fails to pay a civil administrative assessment in full pursuant to
26 subsection e. of this section, or who fails to make a payment
27 pursuant to a penalty payment schedule entered into with the
28 department, or who makes any false or misleading statement on any
29 application, record, report, or other document required to be
30 submitted to the department, shall be subject, upon order of a court,
31 to a civil penalty not to exceed \$50,000 per day of violation.

32 Any civil penalty imposed pursuant to this subsection may be
33 collected with costs in a summary proceeding pursuant to the
34 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
35 et seq.). In addition to any penalties, costs or interest charges, the
36 court may assess against the violator the amount of actual economic
37 benefit accruing to the violator from the violation. The Superior
38 Court shall have jurisdiction to enforce the "Penalty Enforcement
39 Law of 1999" in connection with this act.

40 g. A person who purposely, knowingly or recklessly violates
41 any provision of this act or any rule or regulation adopted, or order
42 issued pursuant thereto, shall be guilty, upon conviction, of a crime
43 of the third degree and shall, notwithstanding the provisions of
44 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than
45 \$5,000 nor more than \$50,000 per day of violation, or by
46 imprisonment, or both. A person who negligently violates any
47 provision of this act or any rule or regulation adopted, or order
48 issued pursuant thereto, shall be guilty, upon conviction, of a crime

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1 of the fourth degree and shall, notwithstanding the provisions of
2 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than
3 \$2,500 nor more than \$25,000 per day of violation, or by
4 imprisonment, or both. A person who knowingly makes a false
5 statement, representation, or certification in any application, record,
6 or other document filed or required to be maintained under any
7 provision of this act or any rule or regulation adopted, or order
8 issued pursuant thereto, or who falsifies, tampers with or knowingly
9 renders inaccurate, any monitoring device or method required to be
10 maintained pursuant to this act or any rule or regulation adopted, or
11 order issued pursuant thereto, shall be guilty, upon conviction, of a
12 crime of the third degree and shall, notwithstanding the provisions
13 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more
14 than \$50,000 per day of violation, or by imprisonment, or both.

15 h. A producer, distributor, or retailer shall provide, upon the
16 request of the department, any information the department requires
17 to determine compliance with the provisions of this act or any rule
18 or regulation adopted, or order issued pursuant thereto.

19

20 10. a. The department shall, in accordance with a fee schedule
21 adopted by rule and regulation pursuant to the provisions of the
22 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
23 seq.), establish and charge reasonable annual administrative fees to
24 be paid by the stewardship organization, which shall be sufficient to
25 cover the costs incurred by the department for the review of any
26 plan submitted in accordance with section 5 of this act and for other
27 costs incurred by the department for implementation of this act.

28 b. Fees collected by the department under this section shall be
29 deposited into the Paint Stewardship Fund established pursuant to
30 section 11 of this act.

31

32 11. The Paint Stewardship Fund is hereby established, separate
33 and distinct from the General Fund. Except as otherwise provided
34 by this act, moneys awarded by a court under section 9 of this act,
35 which are in excess of the department's enforcement expenses, and
36 administrative fees collected by the department under section 10 of
37 this act, shall be deposited in the State Treasury to the credit of the
38 Paint Stewardship Fund. Interest or other investment income
39 earned by the Paint Stewardship Fund shall also be credited to the
40 fund. Moneys in the fund shall be appropriated and used only for
41 the purpose of administering the provisions of this act and any rules
42 or regulations adopted pursuant thereto.

43

44 12. Within 90 days after completion of the architectural paint
45 stewardship pilot program's second full year in operation, the
46 department shall submit to the Legislature, pursuant to section 2 of
47 P.L.1991, c.164 (C.52:14-19.1), a report describing the results of
48 the pilot program, recommending whether the program should be

1 made permanent, and identifying any modifications necessary to
2 improve its functioning and efficiency. The report shall include an
3 accounting of the administrative fees paid to the department under
4 section 10 of this act, and shall also include an estimate of the
5 savings to State and local units of government compared with the
6 costs of the program.

7
8 13. This act shall take effect immediately, and shall expire on
9 January 1, 2015. Any moneys remaining in the Paint Stewardship
10 Fund upon expiration of this act shall be transferred to the General
11 Fund.

12
13
14 STATEMENT

15
16 This bill requires producers of architectural paint sold or offered
17 for sale to consumers in New Jersey to establish a stewardship
18 organization tasked with implementing a Statewide architectural
19 paint stewardship pilot program. This pilot program would be
20 designed to promote the reduction, reuse, and recycling of post-
21 consumer architectural paint, as well as to provide for the
22 collection, transportation, and processing of post-consumer
23 architectural paint for end-of-life management. Commencing on the
24 180th day after the date of the bill's enactment – once the
25 stewardship organization has been established and the Department
26 of Environmental Protection (DEP) has publicized on its Internet
27 website, the names of the participating producers and the brands of
28 paint sold by each producer – the bill would prohibit any producer,
29 distributor, or retailer of architectural paint from selling
30 architectural paint or offering it for sale to consumers in the State
31 unless the producer is a participating member of the stewardship
32 organization.

33 The bill would require the DEP to oversee the planning and
34 implementation of the architectural paint stewardship pilot program.
35 In particular, the bill would require the stewardship organization to
36 submit to the department, within one year after the date of the bill's
37 enactment, a proposed pilot program plan for the department's
38 approval, conditional approval, or rejection. In the event that the
39 department is dissatisfied with the proposed plan, the bill provides a
40 procedure for plan revision by the stewardship organization and for
41 departmental review of any revised plan. Moreover, in the interest
42 of expediting the institution of this pilot program, the bill allows the
43 department to make any necessary modifications or substitutions to
44 the proposed plan in the event that the stewardship organization's
45 suggested modifications are deemed to be unsatisfactory. Within 60
46 days after a plan is approved or modified by the DEP, the
47 stewardship organization would be required to implement the pilot
48 program as described in the plan. The stewardship organization

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1 would thereafter be required to submit annual reports to the DEP,
2 which describe, among other things, the volume of post-
3 architectural paint collected in the State, and the methods used to
4 collect, transport, reuse, recycle, and process post-consumer
5 architectural paint. The DEP would be additionally authorized to
6 take whatever enforcement action is deemed necessary in regard to
7 violations of the bill's provisions. In particular, the department
8 would have the authority to enforce the provisions of this bill
9 through administrative orders, administrative penalties, injunctive
10 proceedings, civil actions, and criminal actions.

11 The bill also establishes the Paint Stewardship Fund, separate
12 and distinct from the General Fund, for the benefit of the
13 department, and any moneys appropriated to the Paint Stewardship
14 Fund would be credited to the department for the sole purpose of
15 administering the provisions of this bill or any rules or regulations
16 adopted pursuant thereto. Any administrative fees, which are paid to
17 the department by the stewardship organization in accordance with
18 this bill, would be credited to the Paint Stewardship Fund, and any
19 moneys from court awards, which exceed the department's
20 enforcement costs, as well as any interest earned by the Paint
21 Stewardship Fund, would also be credited thereto.

22 Finally, the bill provides that, within 90 days after completion of
23 the architectural paint stewardship pilot program's second full year
24 in operation, the DEP must submit to the Legislature, a report
25 describing the results of the architectural paint stewardship pilot
26 program. The report would include an accounting of program costs
27 and an estimate of savings to the State, as well as a recommendation
28 as to whether the program should be terminated or continued, either
29 with or without modifications. If termination of the program is
30 deemed appropriate, the bill provides for its own repeal, which will
31 be effective on January 1, 2015 without any additional action by the
32 Legislature. At that time, the bill provides that all moneys in the
33 Paint Stewardship Fund would be transferred to the General Fund.