

SENATE, No. 2433

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JANUARY 29, 2024

Sponsored by:

Senator BOB SMITH

District 17 (Middlesex and Somerset)

SYNOPSIS

Requires paint producers to implement or participate in paint stewardship program.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT requiring producers of architectural paint to implement or
2 participate in a paint stewardship program, and supplementing
3 Title 13 of the Revised 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. The Legislature finds and declares that local governments,
12 businesses, and residents of the State do not have ready access to an
13 efficient, environmentally sound, and cost-effective disposal
14 method for architectural paint; and that hazardous waste collection
15 days are costly for local governments and insufficient,
16 inconvenient, and too infrequent to properly serve local businesses
17 and residents, resulting in missed opportunities to reduce, reuse, and
18 recycle paint.

19 The Legislature further finds and declares that the producers of
20 architectural paint are best able to assume responsibility for the
21 development and implementation of a cost-effective paint
22 stewardship program that will provide fiscal relief to local
23 governments by reducing the volumes of leftover paint, promoting
24 its reuse, and providing for the collection, transportation, and
25 processing of such paint.

26 The Legislature therefore determines that it is in the best
27 interests of the State for the producers of architectural paint to
28 provide for the planning and implementation of a program to
29 collect, reuse, recycle, transport, and dispose of post-consumer
30 architectural paint.

31
32 3. As used in this act:

33 “Aerosol paint” means a pressurized coating product that
34 contains pigment or resin that dispenses product ingredients by
35 means of a propellant, and is packaged in a disposable aerosol
36 container for hand-held application.

37 “Architectural paint” means interior or exterior architectural
38 coatings that are sold in containers of five gallons or less.
39 “Architectural paint” shall not mean industrial, original equipment,
40 or specialty use coatings.

41 “Commissioner” means the Commissioner of Environmental
42 Protection.

43 “Department” means the Department of Environmental
44 Protection.

45 “Distributor” means a person who has a contractual relationship
46 with one or more producers to market and sell architectural paint to
47 retailers.

1 “Energy recovery” means a procedure in which all or a part of
2 the solid waste materials of architectural paint are processed to use
3 the heat content or other forms of energy from the solid waste
4 materials.

5 “Environmentally sound management practices” means the
6 policies or procedures for collection, storage, transportation, reuse,
7 recycling, and disposal of architectural paint, which are
8 implemented by a producer, representative organization, or their
9 contracted partners to ensure compliance with all applicable federal,
10 State, and local laws, rules, regulations, and ordinances, and the
11 protection of human health and the environment, and which address
12 matters such as adequate recordkeeping, accurate tracking and
13 documentation of the use, reuse, recycling, or disposal of post-
14 consumer architectural paint within and outside of the State, and
15 adequate provision of environmental liability coverage for
16 professional services and for the operations of contractors working
17 on behalf of a producer or representative organization.

18 “Federal waste management hierarchy” means the four-tiered
19 hierarchy, established by the United States Environmental
20 Protection Agency, that guides waste management determinations
21 through the promotion of source reduction, recycling, energy
22 recovery, and waste treatment and disposal, in that order, to the
23 extent feasible.

24 “Paint stewardship assessment” means the assessed amount,
25 established pursuant to section 5 of this act, which is included in the
26 purchase price of architectural paint sold in the State.

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

29 “Producer” means a manufacturer of architectural paint that is
30 sold, offered for sale, or distributed in the State, either under the
31 producer’s own name or under any other brand name.

32 “Recycling” means any process used to transform discarded
33 products, components, or by-products into new usable or
34 marketable materials, and which process may cause those discarded
35 products, components, or by-products to lose their original
36 composition or identity. “Recycling” shall not include energy
37 recovery or energy generation by means of combustion or
38 incineration.

39 “Representative organization” means a nonprofit organization
40 that is established by, and for the benefit of, two or more
41 architectural paint producers in the State, and which is tasked with
42 the development of an architectural paint stewardship program plan,
43 in accordance with section 4 of this act, and implementation of the
44 plan on behalf of, and with the participation of, each member
45 producer.

46 “Retailer” means any person who sells architectural paint or
47 offers architectural paint for sale at retail to consumers in the State.

1 “Reuse” means the return of a product into the economic stream
2 for use in the same kind of application originally intended for the
3 product, without a change in the product’s original composition or
4 identity.

5 “Sell” or “sale” means any transfer of title for consideration,
6 including, but not limited to, remote sales transactions conducted
7 through sales outlets, catalogs, or the Internet, or through any other
8 similar electronic means.

9
10 4. a. Within one year after the date of enactment of this act,
11 every producer of architectural paint, or any representative
12 organization established pursuant to this act, shall prepare and
13 submit to the commissioner, for the commissioner’s approval, a
14 plan for an architectural paint stewardship program. The plan shall
15 minimize the involvement of, and eliminate costs to, the public
16 sector in association with the collection, transportation, and
17 processing of post-consumer architectural paint by reducing its
18 generation, promoting its reuse and recycling, and negotiating and
19 executing agreements for its collection, transportation, reuse,
20 recycling, burning for energy recovery, incineration, and disposal
21 using environmentally sound management practices that are
22 consistent with the federal waste management hierarchy.

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

24 (1) provide for convenient and available Statewide collection of
25 post-consumer architectural paint from urban, suburban, and rural
26 areas of the State in a manner that, at a minimum, ensures collection
27 rates and a level of convenience equal to or greater than that
28 provided by other collection programs available to consumers prior
29 to the establishment of the architectural paint stewardship program;

30 (2) provide collection site locations Statewide that will accept
31 post-consumer architectural paint, through the use of geographic
32 information modeling, such that at least 90 percent of State
33 residents have a permanent collection site within 15 miles of their
34 residence, that permanent collection sites be established for every
35 30,000 residents of a population center, and that collection sites be
36 distributed to provide convenient and equitable access for residents
37 within each population center, unless otherwise authorized by the
38 department. For those persons who do not have a permanent
39 collection site within 15 miles of their residence, the plan shall
40 provide for annual collection events, unless more frequent
41 collection events are deemed to be necessary, and are required, in
42 writing, by the department;

43 (3) address, to the extent reasonably feasible and mutually
44 agreeable, the coordination of the architectural paint stewardship
45 program with the existing infrastructure of local governments and
46 the existing household hazardous waste collection infrastructure in
47 the State, to the extent that there are no additional costs to the local,

- 1 county, or State government for the collection, transportation, or
2 processing of post-consumer architectural paint;
- 3 (4) describe how the program will follow a hierarchy that is
4 consistent, to the extent feasible, with the federal waste
5 management hierarchy;
- 6 (5) describe the educational materials and outreach efforts that
7 will be used to inform consumers about the architectural paint
8 stewardship program and the paint stewardship assessment.
9 Educational materials shall include, but need not be limited to,
10 information identifying the end-of-life management options that are
11 available for post-consumer architectural paint through the
12 architectural paint stewardship program, as well as a notice
13 provision stating that the costs of program operation will be
14 included in the purchase price of all architectural paint sold in the
15 State;
- 16 (6) in accordance with the provisions of section 5 of this act,
17 identify an appropriate amount for the paint stewardship
18 assessment;
- 19 (7) identify, in two separate lists: (a) each producer
20 participating in the program; and (b) the brands of architectural
21 paint that are included in the program; and
- 22 (8) include a proposed budget that has been reviewed and
23 certified by an independent financial auditor, and which confirms
24 that the paint stewardship assessment included in the price of each
25 unit of paint sold in the State will cover and sustain, but not exceed,
26 the costs of the architectural paint stewardship program. The cost
27 of any work performed by an independent financial auditor pursuant
28 to this paragraph shall be funded by the architectural paint
29 stewardship program. The proposed budget shall also include a
30 description of surplus funds, if any, that are in reserve for future
31 use.
- 32 c. A producer of architectural paint, or a representative
33 organization established pursuant to this act, shall notify the
34 department, in writing, within 30 days of any of the following
35 changes to a plan approved pursuant to section 6 of this act:
- 36 (1) the location or number of collection sites identified in the
37 plan;
- 38 (2) the identity of the processors that manage the post-consumer
39 architectural paint collected; or
- 40 (3) the transporters of the post-consumer architectural paint
41 collected by the program.
- 42 d. A producer of architectural paint, or a representative
43 organization established pursuant to this act, shall submit an
44 amendment to the plan approved by the department within 120 days
45 after:
- 46 (1) any change to the amount of the paint stewardship
47 assessment imposed pursuant to section 5 of this act; or

1 (2) any change to the goals of the program as approved in the
2 plan.

3 The department shall review the amendments to the plan and
4 shall approve or disapprove them in accordance with the procedures
5 established pursuant to section 6 of this act.

6 e. The department shall charge and collect from each producer
7 or representative organization that submits a plan for an
8 architectural paint stewardship program pursuant to this section an
9 annual administrative fee, which shall not exceed the department's
10 costs in administering the provisions of this act.

11 f. No sooner than the fifth year, and no later than the sixth year,
12 following the effective date of this act, all architectural paint
13 stewardship plans shall be amended to provide for the
14 environmentally sound collection, transportation, reuse, recycling
15 and disposal of aerosol paint.

16
17 5. a. The producer or representative organization submitting a
18 plan pursuant to section 4 of this act shall establish, as a funding
19 mechanism for the program and the implementation of its plan, a
20 paint stewardship assessment amount to be uniformly applied to the
21 sale price of all brands of architectural paint covered under the
22 architectural paint stewardship program. The paint stewardship
23 assessment shall not exceed the costs of implementing and
24 sustaining the architectural paint stewardship plan and the
25 architectural paint stewardship program.

26 b. A paint stewardship assessment, as established by subsection
27 a. of this section, shall be included in the cost of each container of
28 architectural paint sold by a producer to a retailer or distributor in
29 the State, and each retailer or distributor shall include the paint
30 stewardship assessment in the purchase price of the producer's
31 architectural paint.

32 c. If a producer is a member of a representative organization,
33 the producer shall remit to the representative organization the paint
34 stewardship assessment received for each container of architectural
35 paint sold by the producer in the State.

36
37 6. a. Within 90 days after the department's receipt of a plan
38 submitted in accordance with section 4 of this act, the commissioner
39 shall approve or disapprove the plan, including the paint
40 stewardship assessment identified therein, and provide written
41 notice of its determination to the producer or representative
42 organization, as the case may be. If the department does not
43 provide notice of its determination within 90 days after its receipt of
44 the plan, the plan shall be deemed to have been approved, and the
45 producer or representative organization, as the case may be, shall
46 proceed to implement the plan.

47 b. If the commissioner disapproves a plan submitted pursuant to
48 section 4 of this act, the written notice provided pursuant to

1 subsection a. of this section shall be accompanied by a list, prepared
2 by the department, describing the plan requirements, established in
3 section 4 of this act, that have not been satisfied, and the changes
4 that are required for the plan to be approved. No more than 45 days
5 after receipt of the department's written notice and accompanying
6 statement of the reasons for the disapproval of a plan submitted
7 pursuant to section 4 of this act, the producer or representative
8 organization, as appropriate, shall submit a modified plan to the
9 department for approval.

10 c. Within 45 days after receipt of a modified plan that has been
11 submitted in accordance with subsection b. of this section, the
12 department shall approve the plan or reject it, and shall certify the
13 approval or rejection to the producer or representative organization,
14 as the case may be. Upon the department's disapproval of any
15 modified plan submitted pursuant to subsection b. of this section, or
16 upon the failure of the producer or representative organization to
17 submit a modified plan as required, the department shall propose
18 any revisions to the plan the department deems necessary, and shall
19 transmit the proposed plan revisions to the producer or
20 representative organization, as the case may be. Upon receipt of the
21 department's proposed revisions to the plan, the producer or
22 representative organization, as appropriate, shall implement the
23 revised plan unless otherwise agreed to by the department.

24 d. Within 90 days after the department's approval of, or
25 revisions to, a plan submitted in accordance with section 4 of this
26 act:

27 (1) the producer or representative organization, as appropriate,
28 shall implement the architectural paint stewardship program
29 described in the plan; and

30 (2) the department shall post, at a publicly accessible location
31 on its Internet website, two separate lists respectively identifying
32 (a) each producer participating in the architectural paint stewardship
33 program, and (b) the brands of architectural paint included in the
34 program.

35
36 7. a. A producer, distributor, or retailer shall not sell
37 architectural paint or offer architectural paint for sale to any person
38 in the State unless the producer of the architectural paint, or a
39 representative organization of which the producer is a member, is
40 engaged in the implementation of, or has fully implemented, a plan
41 approved or revised by the commissioner pursuant to section 6 of
42 this act.

43 b. A distributor or retailer shall be deemed to be in compliance
44 with subsection a. of this section if, on the date architectural paint is
45 ordered thereby, the producer of the paint and the brand name of the
46 paint are each identified on the producer and brand lists maintained
47 on the department's Internet website pursuant to paragraph (2) of
48 subsection d. of section 6 of this act.

1 c. (1) Any producer, distributor, or retailer who violates the
2 provisions of subsection a. of this section shall be subject to: (a) a
3 written warning for a first offense; and (b) a penalty of \$500 for
4 each subsequent offense. Any applicable penalty under this
5 subsection shall be collected by the State in a civil action by
6 summary proceeding under the "Penalty Enforcement Law of
7 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), or in any case before a
8 court of competent jurisdiction wherein injunctive relief has been
9 requested. The Superior Court and the municipal court shall have
10 jurisdiction to enforce the provisions of the "Penalty Enforcement
11 Law of 1999" in accordance with the provisions of this act.

12 (2) The department may institute a civil action for injunctive
13 relief to enforce the provisions, or prevent a violation, of this
14 section, and the court may proceed in the action in a summary
15 manner.

16 (3) Whenever the department determines that any producer,
17 distributor, or retailer is in violation of a provision of this act, the
18 department may assess a civil administrative penalty of not more
19 than \$500 for each violation, not to exceed a maximum penalty of
20 \$10,000 during a calendar year, and each day of violation shall
21 constitute an additional, separate, and distinct violation. A civil
22 administrative penalty shall not be levied until a violator has been
23 provided with written notice, by certified mail or personal service,
24 of the following:

- 25 (a) the statutory or regulatory basis of the violation;
26 (b) the specific act or omission that constituted the violation;
27 (c) the amount of the civil administrative penalty to be imposed;
28 (d) the right of the violator to contest, through a hearing, any
29 matter contained in the notice; and
30 (e) the procedures for requesting a hearing on any contested
31 matter.

32 (4) (a) A producer, distributor, or retailer who violates this act
33 may, within 20 calendar days following receipt of the notice of
34 violation, issued pursuant to paragraph (3) of this subsection,
35 request a hearing on any matter contained in the notice. Any person
36 requesting a hearing shall comply with all requisite procedures
37 therefor, as specified in the notice. Failure to submit a timely
38 request or to comply with all requisite procedures shall constitute
39 grounds for denial of a hearing request. After a hearing and upon a
40 finding that a violation has occurred, the department shall issue a
41 final order assessing the amount of the civil administrative penalty
42 specified in the notice. If a violator does not request a hearing or
43 fails to satisfy the statutory and administrative requirements for
44 requesting a hearing, the notice of assessment of a civil
45 administrative penalty, issued pursuant to paragraph (3) of this
46 subsection, shall become a final order on the 21st calendar day
47 following receipt of the notice by the violator. If the department
48 denies a hearing request made pursuant to this paragraph, the notice

1 of denial shall become a final order upon receipt of the notice by
2 the violator.

3 (b) A civil administrative penalty may be settled by the
4 department on such terms and conditions as the department may
5 determine.

6 (c) Payment of a civil administrative penalty shall not be
7 deemed to affect the availability of any other enforcement remedy
8 in connection with the violation for which the penalty was levied.

9 (5) If a civil administrative penalty imposed pursuant to this
10 section is not paid within 30 days of the date that the penalty is due
11 and owing, and the penalty is not contested by the producer,
12 distributor, or retailer against whom the penalty has been assessed,
13 or if the producer, distributor, or retailer fails to make a payment
14 pursuant to a payment schedule entered into with the department, an
15 interest charge shall accrue on the amount of the penalty from the
16 30th day that the amount was due and owing. In the case of an
17 appeal of a civil administrative penalty, if the amount of the penalty
18 is upheld, in whole or in part, the rate of interest shall be calculated
19 on that amount as of the 30th day from the date the amount was due
20 and owing under the administrative order. The rate of interest shall
21 be that established by the New Jersey Supreme Court for interest
22 rates on judgments, as set forth in the Rules of Court.

23 d. The department may post on its Internet website a list of
24 producers, distributors, and retailers that are in violation of this act.
25

26 8. a. Except as provided in subsection b. of this section, a
27 producer or the representative organization participating in an
28 architectural paint stewardship program shall not be liable for any
29 claim of a violation of antitrust, restraint of trade, unfair trade
30 practice, or other anticompetitive conduct arising from conduct
31 undertaken in accordance with the program, including, without
32 limitation, the types or quantities of paint being managed consistent
33 with the federal waste management hierarchy.

34 b. Subsection a. of this section shall not apply to: (1) any
35 agreement establishing or affecting the price of architectural paint,
36 except an agreement to establish a paint stewardship assessment, as
37 authorized by this act; or (2) any agreement restricting the output or
38 production of architectural paint or the geographic area or
39 customers to which paint will be sold.
40

41 9. a. One year after the department provides notification to a
42 producer or representative organization of its approval of a plan in
43 accordance with section 6 of this act, and annually thereafter, the
44 producer or representative organization, as the case may be, shall
45 submit a report to the department describing its architectural paint
46 stewardship program. The report shall include, at a minimum:

47 (1) a description of the methods used to reduce, reuse, collect,
48 transport, recycle, and process post-consumer architectural paint

- 1 under the program, consistent with the federal waste management
- 2 hierarchy;
- 3 (2) the pounds of latex and oil-based post-consumer
- 4 architectural paint collected under the program during the preceding
- 5 year;
- 6 (3) the volume of post-consumer architectural paint processed
- 7 under the program by method of disposition, including reuse,
- 8 recycling, energy recovery, incineration, and disposal in accordance
- 9 with environmentally sound management practices;
- 10 (4) the estimated volume of post-consumer architectural paint
- 11 collected at each collection site under the program;
- 12 (5) a list of all processors of post-consumer architectural paint
- 13 from the time of collection to final disposition that are used in the
- 14 program and the disposition method used by each processor;
- 15 (6) a list of all producers participating in the program;
- 16 (7) the total volume of architectural paint sold in the State
- 17 during the preceding year based upon the collection of the paint
- 18 stewardship assessment;
- 19 (8) the total cost of implementing the program, which shall
- 20 include, but need not be limited to, separate figures for the cost of
- 21 collection, transportation, disposition, communication, and
- 22 independent financial audit;
- 23 (9) an evaluation of the effectiveness of the program and any
- 24 steps necessary to improve the program;
- 25 (10) samples of the educational materials provided to consumers
- 26 of architectural paint, together with an evaluation of the methods
- 27 used to disseminate those materials and an assessment of the
- 28 educational and outreach effectiveness of those materials; and
- 29 (11) a certification to the validity of the information contained in
- 30 the report.
- 31 b. Within 90 days after receipt of an annual report, the
- 32 department may meet with interested stakeholders to review it. If
- 33 the department chooses to meet with interested stakeholders, the
- 34 department shall post the minutes of each stakeholder meeting, on
- 35 its Internet website, within 30 days after the date of the meeting.
- 36 c. Each report submitted pursuant to subsection a. of this
- 37 section shall be posted on the department's Internet website. The
- 38 department shall not disclose financial, production, or sales data
- 39 reported by a producer or representative organization pursuant to
- 40 this section, except that the department may disclose such data in
- 41 aggregate or summary format, provided that individual producers,
- 42 distributors, or retailers and their financial, production, or sales data
- 43 are not specifically identified, and the summary omits any reference
- 44 to unique characteristics from which the identities of individual
- 45 producers, distributors, or retailers might be inferred or otherwise
- 46 ascertained.

1 10. The department shall adopt, pursuant to the “Administrative
2 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
3 regulations as are necessary to effectuate the purposes of this act.
4

5 11. This act shall take effect immediately, except that section 7
6 of this act shall take effect on the first day of the 18th month after
7 the date of enactment of this act.
8
9

10 STATEMENT
11

12 This bill requires every producer of architectural paint sold in the
13 State to implement, or participate in, a Statewide architectural paint
14 stewardship program.

15 The bill requires every architectural paint producer, or a
16 representative organization established on behalf of two or more
17 such producers, to develop and implement a plan for an
18 architectural paint stewardship program designed to minimize the
19 involvement of, and eliminate costs to, the public sector in
20 association with the collection, transportation and processing of
21 post-consumer architectural paint by reducing its generation,
22 promoting its reuse and recycling, and negotiating and executing
23 agreements for its collection, transportation, reuse, recycling,
24 burning for energy recovery, incineration, and disposal using
25 environmentally sound management practices that are consistent
26 with the United States Environmental Protection Agency’s Waste
27 Management Hierarchy (federal waste management hierarchy), a
28 four-tiered hierarchy that guides waste management by promoting
29 source reduction, recycling, energy recovery, and waste treatment
30 and disposal, in that order.

31 The bill requires any such plan to:

32 (1) provide for convenient and available Statewide collection of
33 post-consumer architectural paint from urban, suburban, and rural
34 areas of the State in a manner that, at a minimum, ensures collection
35 rates and a level of convenience equal to or greater than that
36 provided by other collection programs available to consumers prior
37 to the establishment of the architectural paint stewardship program;

38 (2) provide collection site locations Statewide that will accept
39 post-consumer architectural paint;

40 (3) address, to the extent reasonably feasible and mutually
41 agreeable, the coordination of the architectural paint stewardship
42 program with the existing infrastructure of local governments and
43 the existing household hazardous waste collection infrastructure in
44 the State, to the extent that there are no additional costs to the local,
45 county, or State government, for the collection, transportation, or
46 processing of post-consumer architectural paint;

1 (4) describe how the program will follow a hierarchy that is
2 consistent, to the extent feasible, with the federal waste
3 management hierarchy;

4 (5) describe the educational materials and outreach efforts that
5 would be used to inform consumers about the architectural paint
6 stewardship program and the paint stewardship assessment
7 including a notice provision stating that the costs of program
8 operation will be included in the purchase price of all architectural
9 paint sold in the State;

10 (6) identify an appropriate amount for the paint stewardship
11 assessment;

12 (7) provide two lists respectively identifying each producer
13 participating in the architectural paint stewardship program, and the
14 brands of architectural paint included under the program; and

15 (8) include a proposed budget that has been reviewed and
16 certified by an independent financial auditor, and which confirms
17 that the paint stewardship assessment included in the price of each
18 unit of paint sold in the State will cover and sustain, but not exceed,
19 the costs of the architectural paint stewardship program.

20 No sooner than five years and no later than six years, after the
21 effective date of this act, all architectural paint stewardship plans
22 would be required to be amended to provide for the environmentally
23 sound collection, transportation, reuse, recycling and disposal of
24 aerosol paint.

25 Under the bill, a producer or representative organization is also
26 required to establish, as a funding mechanism for the program and
27 the implementation of its plan, and to include in the program plan, a
28 paint stewardship assessment amount that is uniformly included in
29 the sale price of all brands of architectural paint covered under the
30 architectural paint stewardship program. The bill prohibits the
31 assessment amount from exceeding the costs of implementing and
32 sustaining the architectural paint stewardship plan and the
33 architectural paint stewardship program. Each producer is required
34 to include the paint stewardship assessment in the cost of each
35 container of architectural paint sold thereby to a retailer or
36 distributor in the State, and each retailer or distributor is then
37 required to include the paint stewardship assessment in the purchase
38 price of the producer's architectural paint. If a producer is a
39 member of a representative organization, the producer is required to
40 remit to the representative organization the paint stewardship
41 assessment received for each container of architectural paint sold by
42 the producer in the State.

43 The bill requires an architectural paint stewardship program plan
44 to be submitted to the DEP for approval prior to its implementation
45 by a paint producer or representative organization. The bill
46 authorizes the DEP to approve or disapprove of a proposed plan. If
47 the DEP disapproves of a plan, the bill provides a procedure for
48 subsequent plan revision by the producer or representative

1 organization, and DEP review of the revised plan. If the DEP is
2 dissatisfied with a revised plan, the bill authorizes the DEP, in the
3 interests of expediency, to propose any modifications or
4 substitutions to the plan's provisions it deems necessary. The bill
5 requires notice to the DEP if there are any changes to the location
6 or number of collection sites, the identity of the processors that
7 manage the post-consumer architectural paint, or the transporters of
8 the post-consumer architectural paint collected by the program. An
9 amendment to the plan is required if there is any change to the
10 amount of the paint stewardship assessment or the goals of the
11 architectural paint stewardship program. The bill directs the DEP
12 to charge and collect from each producer or representative
13 organization that submits a plan pursuant to the bill an annual
14 administrative fee, not to exceed the DEP's costs in administering
15 the provisions of the bill.

16 The bill requires a producer or representative organization to
17 implement the program described in a proposed plan within 90 days
18 after its approval or modification by the DEP. The producer or
19 representative organization is further required to submit an annual
20 report to the DEP, which describes or includes, among other things:
21 the pounds of post-architectural paint collected in the State; the
22 methods used to collect, transport, reduce, reuse, recycle, and
23 process post-consumer architectural paint; a list of all producers
24 participating in the program; the estimated volume collected at each
25 collection site; a list of the processors of post-consumer
26 architectural paint and the disposition method used by each
27 processor; an evaluation of the effectiveness of the program and any
28 steps necessary to improve the program; samples of the educational
29 materials provided to consumers of architectural paint; and a
30 certification to the validity of the information contained in the
31 report.

32 The bill prohibits a producer, distributor, or retailer of
33 architectural paint from selling architectural paint, or offering it for
34 sale, in the State unless the producer of the paint, or a representative
35 organization of which the producer is a member, is engaged in the
36 implementation of, or has fully implemented, an architectural paint
37 stewardship program plan or revised plan approved by the DEP
38 commissioner. A distributor or retailer is deemed to be in
39 compliance with this sales prohibition if, on the date architectural
40 paint is ordered thereby, the producer of the paint and the brand
41 name of the paint are each identified on the DEP's Internet website
42 as being included in an architectural paint stewardship program
43 plan.

44 The bill provides that any producer, distributor, or retailer who
45 fails to comply with the bill's sales prohibition is subject to a
46 written warning for a first offense, and a penalty of \$500 for each
47 subsequent offense. The bill authorizes the DEP to institute a civil
48 action for injunctive relief to prevent a continuing violation of this

1 sales prohibition. However, in order to allow time for the
2 submission, approval, or modification of the plans required by the
3 bill, the sales prohibition and penalty provision do not take effect
4 until the first day of the 18th month following enactment of the bill
5 into law.

6 The bill also provides that when the DEP determines that any
7 producer, distributor, or retailer is in violation of the bill's
8 provisions, the DEP may assess a civil administrative penalty of not
9 more than \$500 for each violation, not to exceed a maximum
10 penalty of \$10,000 during a calendar year, and each day of violation
11 would constitute an additional, separate, and distinct violation. A
12 civil administrative penalty would not be levied until a violator has
13 been notified by certified mail or personal service of the following:
14 the statutory or regulatory basis of the violation; the specific act or
15 omission that constituted the violation; the amount of the civil
16 administrative penalty to be imposed; the right of the violator to
17 contest, through a hearing, any matter contained in the notice; and
18 the procedures for requesting a hearing on any contested matter.
19 The bill also provides that the DEP may post on its Internet website
20 a list of producers, distributors, and retailers that are in violation of
21 this act.

22 Finally, the bill specifies that a producer or the representative
23 organization participating in a post-consumer paint stewardship
24 program will not be liable for any claim of a violation of antitrust,
25 restraint of trade, unfair trade practice, or other anticompetitive
26 conduct arising from conduct undertaken in accordance with the
27 program, including, without limitation, the types or quantities of
28 paint being managed consistent with the federal waste management
29 hierarchy. This protection against antitrust liability is, however, not
30 applicable to: (1) any agreement establishing or affecting the price
31 of architectural paint, except an agreement to establish a paint
32 stewardship assessment, as authorized by the bill; or (2) any
33 agreement restricting the output or production of architectural paint
34 or the geographic area or customers to which paint will be sold.