

SECOND REGULAR SESSION

# HOUSE BILL NO. 2852

## 101ST GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE BURGER.

5612H.02I

DANA RADEMAN MILLER, Chief Clerk

---

### AN ACT

To amend chapter 701, RSMo, by adding thereto one new section relating to paint recycling.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 701, RSMo, is amended by adding thereto one new section, to be  
2 known as section 701.151, to read as follows:

**701.151. 1. As used in this section, the following terms mean:**

2 **(1) "Architectural paint", interior and exterior architectural coatings sold in**  
3 **containers of five gallons or less. "Architectural paint" shall not be construed to include**  
4 **industrial, original equipment, or specialty coatings;**

5 **(2) "Collection site", any location or event at which architectural paint is**  
6 **accepted into a post-consumer paint collection program under a post-consumer paint**  
7 **collection program plan;**

8 **(3) "Department", the department of natural resources;**

9 **(4) "Director", the director of the department of natural resources, or the**  
10 **director's designee;**

11 **(5) "Environmentally sound management practices", procedures for the**  
12 **collection, storage, transportation, reuse, recycling, and disposal of architectural paint**  
13 **that shall:**

14 **(a) Be implemented by producers or a representative organization or by**  
15 **contracted partners of the producers or a representative organization to ensure**  
16 **compliance with all applicable federal, state, and local laws and any regulations and**  
17 **ordinances for the protection of human health and the environment;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18           (b) Address adequate record keeping, tracking, and documenting of the final  
19 disposition of materials; and

20           (c) Address appropriate environmental liability coverage for the representative  
21 organization;

22           (6) "Household waste", the same definition as in 10 CSR 80.2-010;

23           (7) "Post-consumer paint", architectural paint not used and no longer wanted  
24 by a purchaser;

25           (8) "Producer", a manufacturer of architectural paint that sells, offers for sale,  
26 or distributes the architectural paint in this state under the producer's own name or  
27 brand;

28           (9) "Program", the post-consumer paint collection program established under  
29 this section;

30           (10) "Recycling", the separation and reuse or remanufacture of materials that  
31 might otherwise be disposed of as solid waste;

32           (11) "Representative organization", a nonprofit organization established by  
33 producers to implement the program;

34           (12) "Retailer", a person who offers architectural paint or other allied products  
35 for sale at retail in this state;

36           (13) "Very small quantity generator", the same definition as in 40 CFR 260.10.

37           2. (1) All producers of architectural paint sold at retail in this state or a  
38 representative organization shall submit to the director for the director's approval a  
39 plan for the establishment of a post-consumer paint collection program. The program  
40 shall be structured to:

41           (a) Reduce the generation of post-consumer paint;

42           (b) Promote the reuse and recycling of post-consumer paint; and

43           (c) Manage the post-consumer paint waste stream using environmentally sound  
44 management practices.

45           (2) The plan submitted under this section shall:

46           (a) Provide a list of participating producers and brands covered by the program;

47           (b) Provide information on the architectural paint products covered under the  
48 program, such as interior or exterior water- and oil-based coatings, primers, sealers, or  
49 wood coatings;

50           (c) Describe how the program will provide for convenient and cost-effective  
51 statewide collection of post-consumer paint in this state. The producers or  
52 representative organization may coordinate the program with existing household  
53 hazardous waste collection infrastructure as is mutually agreeable. A paint retailer  
54 shall be authorized by the producers or representative organization as a paint collection

55 site only if the paint retailer voluntarily agrees to act as such and complies with all  
56 applicable laws and regulations and the retail location is consistent with the  
57 maintenance of a cost-effective network of paint collection locations;

58 (d) Establish a goal for the number and geographic distribution of sites for  
59 collection of post-consumer paint based on the following criteria:

60 a. At least ninety percent of Missouri residents shall have a collection site within  
61 a fifteen-mile radius; and

62 b. One site will be established for every fifty thousand residents of an urbanized  
63 area, as defined by the United States Census Bureau, unless otherwise approved by the  
64 director;

65 (e) Describe how post-consumer paint will be managed in the most  
66 environmentally and economically sound manner using the following strategies in the  
67 following order: reuse, recycling, energy recovery, and disposal;

68 (f) Describe education and outreach efforts to inform consumers about the  
69 program. Such efforts should incorporate at least:

70 a. Information about collection opportunities for post-consumer paint;

71 b. Information about the charge for the operation of the program that shall be  
72 included in the purchase price of all architectural paint sold in this state; and

73 c. Efforts to promote the source reduction, reuse, and recycling of architectural  
74 paint; and

75 (g) Be reviewed by an independent financial auditor to assure that any added  
76 cost to paint sold in this state as a result of the program does not exceed the costs to  
77 operate and sustain the program in accordance with sound management practices.

78 (3) The independent financial auditor required under paragraph (g) of  
79 subdivision (2) of this subsection shall be selected by the representative organization  
80 after consultation with the department. The independent financial auditor shall verify  
81 that the cost added to each unit of paint will cover the costs of the program. The  
82 department shall review the work product of the independent financial auditor. The  
83 cost of any work performed by such independent financial auditor shall be funded by  
84 the program.

85 (4) No later than sixty days after the submission of a plan under this section, the  
86 director shall make a written determination of whether to approve the plan as  
87 submitted or disapprove the plan.

88 (5) The department shall enforce the plan and may, by regulation, establish  
89 enforcement procedures describing the circumstances under which a new plan or an  
90 amendment to the plan shall be filed by the producers or representative organization.

91           **(6) No later than the implementation date of the program, information**  
92 **regarding the approved plan, the names of participating producers, and the brands of**  
93 **architectural paint covered by the program shall be posted on the department's website**  
94 **and on the website of the representative organization.**

95           **(7) The plan required under this subsection shall be submitted to the department**  
96 **not later than twelve months after the effective date of this section. The department**  
97 **may, for good cause shown, grant an extension of the deadline for submission.**

98           **3. (1) Each producer or representative organization submitting a plan under**  
99 **this section shall pay an administrative fee to the department at the time the plan is**  
100 **submitted. The department may establish a variable fee based on relevant factors**  
101 **including, but not limited to, the portion of architectural paint sold in the state by the**  
102 **producer or the members of the representative organization compared to the total**  
103 **amount of architectural paint sold in the state by all producers or representative**  
104 **organizations submitting a plan.**

105           **(2) Each producer or representative organization implementing a plan under**  
106 **this section shall pay the administrative fee required in subdivision (1) of this subsection**  
107 **on or before July 1, 2023, and annually thereafter. Each year after the initial payment,**  
108 **the annual administrative fee shall not exceed five percent of the aggregate program fee**  
109 **added to the cost of all architectural paint sold by producers in the state for the**  
110 **preceding calendar year. The department may extend the time for payment upon good**  
111 **cause shown.**

112           **(3) Each producer or representative organization operating a program shall pay**  
113 **to the department the costs it incurs in overseeing the program. The department shall**  
114 **set the fee at an amount that, when paid by every producer or representative**  
115 **organization that submits a plan, is adequate to reimburse the department's full costs of**  
116 **administering this section. The total amount of annual fees collected under this**  
117 **subdivision shall not exceed the amount necessary to reimburse costs incurred by the**  
118 **department to administer this section.**

119           **4. Upon implementation of the program, each producer shall include in the price**  
120 **of any architectural paint sold to retailers and distributors in this state the per-container**  
121 **amount in the approved plan. No retailer or distributor shall deduct such amount from**  
122 **the purchase price.**

123           **5. (1) After the program is implemented, no producer or retailer shall sell or**  
124 **offer for sale architectural paint to any person in this state unless the producer of a**  
125 **paint brand or a representative organization is implementing or participating in the**  
126 **program as required by this section.**

127           **(2) A retailer shall be deemed to be in compliance with this section if, on the date**  
128 **the architectural paint was offered for sale, the producer is listed on the department's**  
129 **website as implementing or participating in the program or if the paint brand is listed**  
130 **on the department's website as being included in the program.**

131           **(3) A paint collection site authorized under this section shall not charge any**  
132 **additional amount for the disposal of paint when the paint is offered for disposal.**

133           **(4) A producer or the representative organization that organizes the collection,**  
134 **transport, and processing of post-consumer paint in accordance with the program shall**  
135 **not be liable for any claim of a violation of antitrust, restraint of trade, unfair trade**  
136 **practice, or other anticompetitive activity arising from conduct undertaken in**  
137 **accordance with the program under this section.**

138           **(5) Before March thirty-first of each year, the producers or representative**  
139 **organization shall submit an annual report for the previous year to the director that**  
140 **details the program. The first report shall be submitted after the first full year of**  
141 **implementation. The director may, for good cause shown, extend the deadline for filing**  
142 **the report. The report or information relating to the report shall be posted on the**  
143 **department's website and on the website of the representative organization. The report**  
144 **shall contain at least the following:**

145           **(a) A description of the methods used to collect, transport, and process post-**  
146 **consumer paint in this state;**

147           **(b) The volume and type of post-consumer paint collected by method of**  
148 **disposition, containing information about reuse, recycling, other methods of processing,**  
149 **and any other related and appropriate information;**

150           **(c) Samples of educational materials provided to consumers of architectural**  
151 **paint;**

152           **(d) The total cost of the program; and**

153           **(e) An independent financial audit completed by an individual financial auditor**  
154 **chosen by the producers or the representative organization.**

155           **(6) Financial, production, or sales data reported to the department by a**  
156 **producer or by the representative organization shall not be subject to disclosure, but the**  
157 **director may release a summary form of such data that does not disclose financial,**  
158 **production, or sales data of the producer, retailer, or representative organization.**

159           **(7) The producers or the representative organization shall implement the**  
160 **program required under this section on January 1, 2024, or six months after the**  
161 **approval of the plan under this section, whichever later occurs.**

162           **6. (1) Generators of household wastes and very small quantity generators may**  
163 **transport or send architectural paints to a paint collection site to the extent permitted by**  
164 **a program approved by the director.**

165           **(2) Paint collection sites may collect and temporarily store architectural paints**  
166 **generated by entities specified in subdivision (1) of this subsection in accordance with**  
167 **the requirements of the program in lieu of any otherwise applicable requirements of**  
168 **state laws or regulations.**

169           **(3) Nothing in this section shall be construed to restrict the collection of**  
170 **architectural paint by a program where such collection is authorized by any other state**  
171 **laws or regulations.**

172           **(4) Nothing in this section shall be construed to affect any requirements**  
173 **applicable to facilities that treat, dispose, or recycle architectural paint under any other**  
174 **state laws or regulations.**

175           **7. The director may promulgate all necessary rules and regulations for the**  
176 **administration of this section. Any rule or portion of a rule, as that term is defined in**  
177 **section 536.010, that is created under the authority delegated in this section shall**  
178 **become effective only if it complies with and is subject to all of the provisions of chapter**  
179 **536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable,**  
180 **and if any of the powers vested with the general assembly pursuant to chapter 536 to**  
181 **review, to delay the effective date, or to disapprove and annul a rule are subsequently**  
182 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**  
183 **adopted after August 28, 2022, shall be invalid and void.**

✓