SENATE DOCKET, NO. 1482 FILED ON: 1/19/2023

SENATE . . . . . No. 551

The Commonwealth of Massachusetts

PRESENTED BY:

Patrick M. O'Connor

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to paint recycling.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Patrick M. O'Connor	*First Plymouth and Norfolk*	
Mathew J. Muratore	*1st Plymouth*	*2/13/2023*
Paul W. Mark	*Berkshire, Hampden, Franklin and Hampshire*	*3/13/2023*
David F. DeCoste	*5th Plymouth*	*3/16/2023*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*5/1/2023*
Joan B. Lovely	*Second Essex*	*5/25/2023*
Bruce E. Tarr	*First Essex and Middlesex*	*6/6/2023*
Brendan P. Crighton	*Third Essex*	*6/20/2023*
James B. Eldridge	*Middlesex and Worcester*	*6/21/2023*
Jason M. Lewis	*Fifth Middlesex*	*9/8/2023*
Jacob R. Oliveira	*Hampden, Hampshire and Worcester*	*10/2/2023*
Brian M. Ashe	*2nd Hampden*	*12/27/2023*
John C. Velis	*Hampden and Hampshire*	*1/5/2024*

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SENATE . . . . . No. 551

By Mr. O'Connor, a petition (accompanied by bill, Senate, No. 551) of Patrick M. O'Connor and Mathew J. Muratore for legislation relative to paint recycling. Environment and Natural Resources.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to paint recycling.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 21H of the General Laws is hereby amended by adding the following section:-

Section 9. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:

"Architectural paint", interior and exterior architectural coatings sold in containers of 5 gallons or less; provided, however, that "architectural paint" shall not include industrial, original equipment or specialty coatings.

"Collection site", any location or event at which architectural paint is accepted into a postconsumer paint collection program pursuant to a postconsumer paint collection program plan.

"Commissioner", the commissioner of environmental protection.

"Department", the department of environmental protection.

"Environmentally sound management practices", procedures for the collection, storage, transportation, reuse, recycling, and disposal of architectural paint, to be implemented by the manufacturer or representative organization or by the manufacturers or representative organization's contracted partners to comply with all applicable federal, state and local laws and any regulations and ordinances for the protection of human health and the environment. These procedures shall address adequate record keeping, tracking and documenting of the final disposition of materials and appropriate environmental liability coverage for the representative organization.

"Household waste", household waste as defined in 40 CFR § 261.4(b)(1).

"Postconsumer paint", architectural paint not used and no longer wanted by a purchaser.

"Manufacturer", manufacturer of architectural paint who sells, offers for sale or distributes the architectural paint in the State under the manufacturer's own name or brand.

"Program", the postconsumer paint stewardship program established pursuant to section (b).

"Recycling", a process by which discarded products, components and by-products are transformed into new usable or marketable materials in a manner in which the original products may lose their identity.

"Representative organization", a nonprofit organization established by a manufacturer to implement the postconsumer paint stewardship program.

"Retailer", a company that offers architectural paint or other allied products for retail sale in the commonwealth.

"Very small quantity generator", very small quantity generators as defined in 40 CFR § 260.10.

(b)(1) A manufacturer of architectural paint sold at retail in the State or a representative organization shall submit to the commissioner a plan for the establishment of a postconsumer paint stewardship program. The program will seek to reduce the generation of postconsumer paint, promote its reuse and recycling, and manage this waste stream using environmentally sound management practices.

(2) The plan submitted by the manufacturer or representative organization to the department under this section shall:

(i) Provide a list of participating manufacturers and brands covered by the program.

(ii) Provide information on the architectural paint products covered under the program, such as interior or exterior water- and oil-based coatings, primers, sealers, or wood coatings.

(iii) Describe how it will provide for convenient and cost-effective statewide collection of postconsumer architectural paint in the commonwealth. The manufacturer or representative organization may coordinate the program with existing household hazardous waste collection infrastructure as is mutually agreeable. A paint retailer may be authorized by the manufacturer or representative organization as a paint collection site if the paint retailer volunteers to act as such, complies with all applicable laws and regulations, and the retail location is consistent with the maintenance of a cost-effective network of paint collection locations.

(iv) Establish a goal for the number and geographic distribution of collection sites for postconsumer architectural paint, using geographic modeling and the following criteria: (A) at least 90 percent of Massachusetts residents shall have a collection site within a 15-mile radius; and (B) one site will be available for every 50,000 residents of an Urbanized Area (as defined by the U.S. Census Bureau), unless otherwise approved by the commissioner.

(v) Describe how postconsumer paint will be managed in an environmentally and economically sound manner using the following strategies, in this order: reuse, recycling, energy recovery, and disposal.

(vi) Describe education and outreach efforts to inform consumers about the program. These materials should include (A) information about collection opportunities for postconsumer paint; (B) information about the fee for the operation of the program that shall be included in the purchase price of all architectural paint sold in the commonwealth; and (C) efforts to promote the source reduction, reuse, and recycling of architectural paint.

(vii) Be reviewed by an independent auditor to assure that any added fee to paint sold in the commonwealth as a result of the postconsumer paint stewardship program does not exceed the costs to operate and sustain the program in accordance with sound management practices. The independent auditor shall verify that the amount added to each unit of paint will cover the aforementioned costs of the postconsumer paint stewardship program.

(3) The stewardship organization shall select the independent auditor in consultation with the department. The department shall review the work product of the independent auditor. The cost of any work performed by such independent auditor shall be funded by the program.

(4) Not later than 60 days after submission of the plan under this section, the commissioner shall make a determination in writing, whether to approve the plan as submitted or disapprove the plan.

(5) The department shall enforce the plan and may, by regulation, establish enforcement procedures including the circumstances under which a new plan or an amendment to the plan must be filed by the manufacturer or representative organization.

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

(7) Upon implementation of the program, each manufacturer shall include in the price of any architectural paint sold to retailers and distributors in the commonwealth the per container amount in the approved program plan. A retailer or distributor shall not deduct this amount from the purchase price.

(c)(1) A manufacturer or retailer shall not sell, or offer for sale, architectural paint to any person in the commonwealth unless the manufacturer of a paint brand or manufacturer's representative organization is implementing an approved paint stewardship plan as required by section (b).

(2) A retailer shall be in compliance with this section if, on the date the architectural paint was offered for sale, the manufacturer is listed on the department's website as implementing or participating in an approved program or if the paint brand is listed on the department's website as being included in the program.

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

(4) A manufacturer or the representative organization participating in a postconsumer paint stewardship program shall not be liable for any claim of a violation of antitrust, restraint of trade, unfair trade practice, or other anticompetitive conduct arising from conduct undertaken in accordance with the program.

(5) Annually, the manufacturer or representative organization shall submit a report to the commissioner that details the program. The report shall include: (i) a description of the methods used to collect and transport postconsumer paint collected in the State; (ii) the volume and type of postconsumer paint collected, and a description of the methods used to process the paint, including reuse, recycling and other methods; (iii) samples of educational materials provided to consumers of architectural paint; and (iv) the total cost of the program and an independent financial audit. An independent financial auditor shall be chosen by the producer or representative organization. The report or information relating to the report shall be posted on the department's website and on the website of the representative organization.

(6) Financial, production or sales data reported to the department by a manufacturer or by the representative organization shall not be subject to disclosure but the commissioner may release a summary form of such data that does not disclose financial, production or sales data of the manufacturer, retailer or representative organization.

(d)(1) Generators of household wastes and very small quantity generators are authorized to transport or send their architectural paints to a paint collection site to the extent permitted by a postconsumer paint stewardship program approved by the commissioner.

(2) Notwithstanding any general or special law to the contrary, paint collection sites are authorized to collect and temporarily store architectural paints generated by persons specified in this section in accordance with the requirements of the paint stewardship program in lieu of any otherwise applicable law, rule or regulation.

(3) Nothing in this section shall be construed as restricting the collection of architectural paint by a postconsumer paint stewardship program where such collection is authorized under any other laws or regulations.

(4) Nothing in this section shall be construed to affect any requirements applicable to facilities that treat, dispose, or recycle architectural paint under an otherwise application law, rule or regulation.

SECTION 2. The plan required by subsection (b) of section 9 of chapter 21H of the General Laws shall be submitted not later than July 1, 2024. The manufacturer or representative organization shall implement the plan within 6 months of the date that the program plan is approved by the commissioner. The department may extend the date of the plan submission or the date of the implementation of the program for good cause shown.

SECTION 3. The manufacturer or representative organization shall submit the first annual report detailing the postconsumer paint collection program as required by paragraph (5) of subsection (c) of section 9 of chapter 21H of the General Laws to the commissioner of environmental protection not later than September 1, 2025 and annually thereafter. The department may extend the time for submission of the annual report for cause shown.