

REQUEST FOR APPROVAL

To: Carol Mortensen
Director

From: Howard Levenson
Deputy Director, Materials Management and Local Assistance Division

Request Date: July 17, 2012

Decision Subject: Approval of California Architectural Paint Stewardship Program Plan

Action By: July 17, 2012

Summary of Request:

Staff requests approval of the California Architectural Paint Stewardship Program Plan (Plan), submitted by PaintCare, Inc. and dated June 4, 2012, as directed by the architectural paint stewardship law (Chapter 5, Statutes of 2010 [Huffman, AB 1343], Public Resources Code §§ 48700 - 48706).

Recommendation:

Staff recommends approval of the California Architectural Paint Stewardship Program Plan as meeting the statutory requirement of AB 1343.

Action:

On the basis of the information, analysis, and findings in this Request for Approval, I hereby approve the California Architectural Paint Stewardship Program Plan, submitted by PaintCare, Inc. dated June 4, 2012.

Dated: 7/19/2012



Carol Mortensen, Director

Attachments:

1. California Architectural Paint Stewardship Program Plan, dated June 4, 2012
 2. CalRecycle Comments on the California Paint Stewardship Plan
 3. PaintCare cover letter and responses to CalRecycle comments
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Background Information:

Assembly Bill 1343 (Chapter 5, Statutes of 2010) established the first permanent, mandatory architectural paint stewardship program in the country. Pursuant to AB 1343, the Department has responsibilities to approve or disapprove architectural paint stewardship plans submitted by architectural paint manufacturers or their designated product stewardship organization; review annual reports and adopt a finding of compliance or non-compliance; and provide oversight and enforcement to ensure a level playing field among architectural paint manufacturers. For manufacturers to be in compliance, they must have an approved architectural paint stewardship plan (or be part of a stewardship organization with an approved plan) and implement the program described in that plan. Enforcement is addressed through a combination of civil penalties for non-compliance and transparency that allows all stakeholders and the public to evaluate progress. Additionally, architectural paint manufacturers and/or stewardship organization(s) must pay CalRecycle an administrative fee to cover the Department's costs of its services related to oversight and enforcement.

The Department adopted regulations on May 14, 2012 to add clarity to statute and outline administrative procedures to carry out these responsibilities. The regulations were approved by the Office of Administrative Law on June 6, 2012.

Additionally, the Plan is defined as a project under the California Environmental Quality Act (CEQA). To conform to CEQA requirements, CalRecycle directed the preparation of an Initial Study/Negative Declaration entitled "California Architectural Paint Stewardship Program Plan Initial Study and Proposed Negative Declaration," which evaluates potential environmental impacts of the Architectural Paint Stewardship Program Plan submitted by PaintCare. The announcement is posted at this web address:

<http://calrecycle.ca.gov/EPR/PolicyLaw/Paint.htm#Paint>. The comment period for this Initial Study/Negative Declaration began on June 14, 2012 and ends on July 14, 2012. As of the date of this publication, no comments had been received. As part of the July 17, 2012 public meeting and prior to consideration of this item, CalRecycle must adopt the Initial Study/Negative Declaration for the California Architectural Paint Stewardship Program Plan, dated June 4, 2012. Although minor refinements of the Plan have occurred from the time it was first submitted on April 2, 2012, the edits reflected in the final version dated June 4, 2012 do not affect the environmental analysis.

Plan Submittal and Review Timeline:

AB 1343 requires that CalRecycle make a determination of approval or disapproval within 90 days of receiving the Plan. PaintCare, the architectural paint stewardship organization acting on behalf of participating architectural paint manufacturers, developed and submitted the Plan to the Department for approval:

- PaintCare first submitted the Plan on April 2, 2012, and has since resubmitted the Plan with a number of edits made in response to comments provided by CalRecycle.
- The initial Plan was posted on the Department's public meeting webpage and Paint Stewardship Program webpage: <http://calrecycle.ca.gov/EPR/PolicyLaw/Paint.htm> on April 4, 2012. CalRecycle encouraged interested stakeholders to review the Plan and

provide comments to the Department by April 23, 2012. This information was conveyed via a listserv message sent on April 2, 2012 to interested stakeholders and on the Department's website.

- CalRecycle reviewed the Plan with PaintCare on April 25, 2012, and PaintCare submitted a new version on June 4, 2012 (Attachment 1). CalRecycle staff reviewed that document and prepared formal comments (Attachment 2).

Analysis:

A complete list of all comments submitted by stakeholders about the Plan is located online at this web address: <http://calrecycle.ca.gov/EPR/PolicyLaw/Paint.htm#Paint>.

Significant stakeholder comments and brief responses to those comments are summarized below.

- **Convenience.** Several stakeholders suggested that in order to increase paint recycling and decrease the burden to local governments, the Plan should place more emphasis on building a significant number of retail collection locations and that this should occur early in the program. Staff acknowledges that, while AB 1343 does not contain specific, enforceable convenience goals, convenient collection locations are a critical component to a paint collection program. Staff believes that the Plan appears to propose a reasonable approach to building out a convenient network of collection locations, particularly given the size and geography of California. CalRecycle will review Annual Reports to assess progress in this area, although under existing statutory authority CalRecycle is unable to impose penalties for failure to make progress.
- **Service level goals.** Some stakeholders suggested that the service level goals described in the Plan are not convenient for densely-populated urban areas since 15 miles may be seen as too far to travel to be convenient, while others stated that the same goals are not suited for rural areas since there are counties that do not meet the 30,000 resident population criterion. The Plan states that 90% of California residents will have a collection site within 15 miles of their residence or one site for every 30,000 residents of a designated area. Closely related to the convenience topic, above, it is staff's belief that the Plan appears to propose a reasonable approach to providing adequate service statewide. It should be noted that the service level goals reflect permanent collection sites, and therefore do not include one-day events that PaintCare has stated it will provide for those areas that do not meet the service level goal criteria. Again, this is an area that CalRecycle will review in Annual Reports.
- **Collection goal.** It was suggested that a meaningful collection goal is necessary in order for the stewardship model to have credibility, and that CalRecycle should conduct an analysis to determine the amount of leftover paint that is available for collection. While staff acknowledges the importance of meaningful goals, AB 1343 allows architectural paint manufacturers to propose their own goals. Additionally, staff concur with the approach described within the Plan to estimate leftover paint volumes and note that CalRecycle staff participated in the Product Stewardship Institute's National Paint Product Stewardship Initiative dialogue under which some of the reference documents were created.

- **Regulations.** A general inconsistency of the Plan with CalRecycle's Architectural Paint Recovery Program Regulations was discussed (i.e., that the [then] proposed regulations require additional information than was presented in the Plan). Because the Architectural Paint Recovery Program Regulations were not finalized by the Office of Administrative Law until more than two months after PaintCare was required to submit its Plan, CalRecycle staff reviewed the Plan per statute and worked with PaintCare to address staff questions and comments accordingly. At the time that the regulations were approved, staff determined that, due to the high level of consistency with the regulations and high quality of the Plan, and in the interest of allowing PaintCare to implement this important program as expeditiously as possible, it was not prudent to require PaintCare to resubmit its Plan.

Below are the most significant topics covered in CalRecycle's comments.

- **Retail participation.** Staff requested additional description of the timing and process for retailers to participate in the PaintCare program, both when they are ready to work on the retail phase of their program and if a retailer contacts PaintCare for potential inclusion in PaintCare's program prior to that scheduled phase. The revised plan has incorporated a description of PaintCare's identification and recruitment of retail collection sites, as well as a description of how such sites can participate.
- **Budget Categories.** Staff indicated that the Department would need additional budget category breakouts and descriptions for purposes of approving the assessment (e.g., to clarify how California's administrative costs were derived and to describe at what point any surplus funds would be used to lower the assessment). The revised plan has provided additional budget subcategories and further clarified what types of activities will fall under each of the categories described in the budget. While additional budget category details may be preferred, staff believes that what has been provided by PaintCare is sufficient for Plan approval. In addition, further budget detail may be obtained through the annual report and independent audit processes.
- **Goals.** Staff noted that the Plan appears to have a very robust description of service level goals for statewide coverage by suggesting one site for every 30,000 residents in a designated area. However, staff requested that PaintCare explain how those consumers not in designated areas with populations over 30,000 would be provided service. The revised plan has clarified its GIS modeling system criteria and how it will impact rural areas, and noted that temporary events may help provide collection opportunities in areas where they are unable to site permanent locations. Additionally, CalRecycle noted that the statutory goals seemed to be woven throughout the Plan but were not explicitly stated in the Goal section; CalRecycle thus suggested that PaintCare also articulate its goals within the Goals section, similar to how service level goals were presented. The revised plan has indicated more clearly where specific statutory goals are addressed.
- **Large Quantity Generators (LQGs).** Staff requested a description of how LQGs that pay the assessment would be able to utilize the program. Initially, the Plan described

how LQGs of latex paint can coordinate directly with PaintCare to arrange for pick-ups, but said that existing laws and regulations prohibit PaintCare from allowing LQGs of oil-based paint from utilizing the program. In PaintCare's cover letter accompanying its submittal of the revised plan, PaintCare addressed this CalRecycle comment by further describing its rationale for not including LQGs of oil-based paint in the program.

Findings:

CalRecycle staff reviewed the Plan, compared it to the requirements found in statute and found that it conforms to the requirements in AB 1343, and therefore recommends approval of the Plan.

CalRecycle has adopted the Negative Declaration and Initial Study Evaluating Approval of the California Architectural Paint Stewardship Program Plan (SCH # 2012062015) and, prior to reaching its decision on this project, considered the Negative Declaration and any comments received during the public review period.

