

REQUEST FOR APPROVAL

To: Carol Mortensen
Director

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

Request Date: September 17, 2013

Decision Subject: Approval of Annual CalRecycle Architectural Paint Stewardship
Administrative Fees, July 1, 2012 – June 30, 2013

Action By: September 17, 2013

Summary of Request:

Staff requests approval of the Annual CalRecycle Architectural Paint Stewardship Administrative Fees for the period of July 1, 2012 – June 30, 2013, as directed by the architectural paint stewardship law (Chapter 5, Statutes of 2010 [Huffman, AB 1343], Public Resources Code §§ 48700 - 48706) and § 18958 of Title 14 of the California Code of Regulations.

Recommendation:

Staff recommends approval of the Annual CalRecycle Architectural Paint Stewardship Administrative Fees as meeting the statutory and regulatory requirements of AB 1343.

Action:

On the basis of the information, analysis, and findings in this Request for Approval, I hereby approve the Annual CalRecycle Architectural Paint Stewardship Administrative Fees of \$130,832.66¹ for the period of July 1, 2012 – June 30, 2013.

Dated:



Carol Mortensen, Director

9/17/2013

¹ The Department and Attorney General charges related to the lawsuit PaintCare/ACA filed against CalRecycle totaling \$53,465.38 must not be paid using assessment funds collected through the Architectural Paint Recovery Program.

Background Information:

Assembly Bill 1343 (Chapter 5, Statutes of 2010) established the first permanent, mandatory, industry-led 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 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. Additionally, architectural paint manufacturers and/or stewardship organizations must pay CalRecycle an administrative fee to cover the Department's costs of services related to oversight and enforcement.

Public Resource Code § 18958 (a) states that the Department director, or his/her delegated authority, shall approve the annual administrative fee described in AB 1343 for the full administration and enforcement costs, at a public meeting that will occur no later than September 30 of each year. The fee shall reflect the Department's actual costs to administer and enforce this chapter for the period from July 1 of the prior year through June 30 of the current year. The Department's costs shall include the cost of staff, overhead expenses applicable to staff, contract services, and any other expenses incurred in administering or enforcing the program and in developing the program.

In October 2012, The American Coatings Association (ACA) and PaintCare jointly filed a lawsuit against CalRecycle to cease implementation and enforcement of the Architectural Paint Recovery Program regulations. For payments due in 2013, the fee also reflects the State's actual costs incurred in resolving the lawsuit for the period from July 1, 2012 through June 30, 2013. This includes actual costs incurred by the Department and the Office of the Attorney General. The legal expenses for the Department and the Attorney General totaling \$53,465.38 must not be reimbursed by PaintCare and/or ACA using assessment funds collected through the Architectural Paint Recovery Program.

Analysis:

Administrative Fee Totals

July 1, 2012 – June 30, 2013: \$130,832.66

Summary of CalRecycle Activities

CalRecycle tracked the hours each staff person spent on activities related to the implementation of the Department's responsibilities per AB 1343. These activities include:

- Coordination with PaintCare to effectively implement the Architectural Paint Recovery Program, including regularly-scheduled coordination meetings and phone and e-mail communications;
- Development of compliance and enforcement procedures to effectively enforce the Architectural Paint Recovery Program law;
- Communication with stakeholders via meetings, phone calls and e-mail inquiries, etc.;

- Tracking of lawsuit activities, coordination with the State Attorney General's Office, review and comment on lawsuit-related documents, etc.;
- Tracking PaintCare program implementation; and
- Administration (e.g., tracking and documentation of staff hours).

CalRecycle costs are comprised of various percentages of various staff time from the Department's Audits and Data Analysis, Administration, Waste Evaluation and Enforcement, Audits, Legal, and Materials Management and Local Assistance programs. The Department and the Office of the Attorney General legal costs are comprised of actual charges from various staff time for case evaluation, research and analysis, client communication, supervisory review, petition and brief preparation, hearing preparation, and litigation. CalRecycle staff have reviewed the proposed administrative fees per the requirements found in statute and regulation, and found that they conform to those requirements. Staff therefore recommends approval of the administrative fees summarized above.

