

**DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

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P.O. BOX 4025, SACRAMENTO, CALIFORNIA 95812

December 6, 2013

Sent via e-mail

Marjaneh Zarrehparvar
Executive Director, PaintCare
1500 Rhode Island Avenue, NW
Washington, DC 20005

Re: PaintCare 2013 California Paint Stewardship Program Year 1 Annual Report


Dear Ms. Zarrehparvar,

The Department of Resources Recycling and Recovery (CalRecycle) has received PaintCare's letter dated November 30, 2013 in response to CalRecycle's review comments regarding the 2013 California Paint Stewardship Program Year 1 Annual Report ("report"). We appreciate PaintCare's responsiveness to our request and look forward to receiving a revised report.

PaintCare must submit a revised report to CalRecycle 30 days from receipt of this letter (no later than January 5, 2013) that includes the additional information identified below. After receiving a revised report, CalRecycle will bring an action item to the January 21, 2014, public meeting regarding the completeness of the report. Within 90 days of receiving a complete report, CalRecycle will bring a separate action item to a public meeting regarding the compliance determination for the annual report.

The remainder of this letter, including the attachment, addresses: 1) the information needed for the completeness review; 2) CalRecycle's response regarding confidential business information procedures; and 3) information needed for the compliance review.

With respect to completeness, staff reviewed the information provided in PaintCare's letter regarding the three areas for which CalRecycle requested additional information and clarification. Based on our original request and PaintCare's response, the following information must be included in the revised annual report in order for staff to recommend that it be considered complete:

1. The baseline is necessary for the Department to evaluate program performance. Please include the following regarding the baseline for program goals and methodology for baseline.

A statement that PaintCare will use the collection data from the second year reporting period of July 1, 2013, through June 30, 2014, as the baseline for the California program. The baseline will be provided to CalRecycle in PaintCare's Year 2 Annual Report, due no later than September 1, 2014, regardless of the status of HHW programs contracting with PaintCare.

2. The volume of architectural paint sales for latex and oil-based paint is required for the Department to accurately evaluate the recovery rates of oil-based and latex paints. Reporting paint sales data by container size is welcome, but not required. Please include the following information regarding the total volume of architectural paint sold, by type:



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The total volume of architectural paint sales for latex paint;
The total volume of architectural paint sales for oil-based paint.

3. CalRecycle appreciates PaintCare's effort to provide estimated costs for each disposition method. Information on the cost for each disposition method is necessary to ensure program funds are effectively utilized to properly manage collected products. Staff reviewed the cost information that you provided and then calculated the percent of total program cost for each disposition method (based on the reported total expenses of \$9,314,296). Please include the percentage of total program cost for each disposition method.

As part of this, please confirm the percentages in the table below are accurate and include both the estimated costs and percent of total program cost in the revised report, as well as an explanation of the specific disposition methods that were reported as beneficial use.

Disposition Method:	Cost:	% Total Program Cost
Fuel Incineration (oil-based paint)	\$ 539,560	5.8%
Reuse (latex and oil-based paint)	\$ 3,369	0.04%
Paint to Paint Recycling (latex paint)	\$ 2,322,066	24.9%
Beneficial Use* (latex paint)	\$ 439,017	4.7%
Landfill (latex paint)	\$ 134,684	1.4%
Total	\$ 3,438,696	37%

Regarding PaintCare's request for CalRecycle's confidential business information procedures, California Code of Regulations (CCR) Title 14, Division 7, Chapter 11, Section 18957 states, "Records supplied to the department pursuant to this Article that are, at the time of submission, claimed to be proprietary, confidential, or trade secret shall be subject to the provisions in Title 14, California Code of Regulations, Division 7, Chapter 1, Article 4 (commencing with §17041), and in PRC §48704(b)" (CCR Section 18957).

If asked to release information claimed to be confidential, CalRecycle will contact the PaintCare point-of-contact prior to release of the information to provide them an opportunity to submit a justification as to why the information should remain confidential. After the prescribed waiting period, CalRecycle will evaluate the claim and any justification submitted, and make a determination regarding whether or not the information will be released. If you have additional questions regarding the confidential business information procedures utilized by CalRecycle, please refer to CCR Title 14, Division 7, Chapter 1, Article 4.

Regarding CalRecycle's compliance review of the report, CalRecycle acknowledges PaintCare's request for clarification on the information and adjustments requested. The items on the attachment that are highlighted in yellow are *required* for CalRecycle's compliance review. The items highlighted in green were addressed in PaintCare's letter and *must* also be included or corrected in the revised report. All



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other items included in the attachment that are not highlighted *should* be included in the revised report to provide additional clarity.

We look forward to receipt of the revised report. If you have any questions, please contact Allyson Willsey by email at Allyson.Willsey@CalRecycle.ca.gov or by phone at (916) 341-6219.

Sincerely,

A handwritten signature in blue ink that reads "Howard".

Howard Levenson, Ph.D.

Deputy Director, Materials Management and Local Assistance Division

Cc: Caitlin Sanders, PaintCare
Paul Fresina, PaintCare
Alison Keane, PaintCare
Valerie Bernardo, PaintCare
Caroll Mortensen, CalRecycle
Allyson Willsey, CalRecycle
Ty Moore, CalRecycle

1 Attachment



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ATTACHMENT - ADDITIONAL INFORMATION NEEDED TO SUBSTANTIATE PERFORMANCE FOR SUBSEQUENT COMPLIANCE REVIEW

Based on the completeness review, and in anticipation of the compliance review, we have identified additional items that would provide clarity relevant to CalRecycle's compliance review of the report including but not limited to:

Executive Summary:

- The report should include further discussion of challenges encountered during the reporting period and how they will be addressed. Specific challenges of interest include: contracting with municipal Household Hazardous Waste (HHW) facilities and the issue of indemnification; collection sites throughout California reporting that often they are unable to accept program products due to full storage spaces and frequency of pick-ups; barriers to getting big-box stores (Home Depot, Lowe's, etc.) to participate, and a description of efforts and progress to include big-box stores as collection sites.
- The report states that partnering with HHW Programs was a challenge. The report states that jurisdictions were not supportive of product stewardship, not concerned with reducing HHW program costs or having paint costs covered by PaintCare, and expressed significant concern about staff layoffs. The report lacks substantiation of these general statements because it does not state how many or which specific jurisdictions expressed these "concerns."

Program Outline:

- Per CCR §18954(a)(3)(B), the report should include the number and location of collection points, which includes "temporary events," held by PaintCare in the state during the reporting period.
- Please list the direct and indirect municipal contracts in-place (such as the list provided to CalRecycle each month in the CalRecycle/PaintCare Monthly Conference Call).
- The report states that "Sites in urban areas receive pick-ups within five business days of a request, and sites in rural areas receive pick-ups within ten business days." While this may be PaintCare's expectation, it has been reported to CalRecycle that this is not always the case. The report should provide empirical information on what actually transpired, for example modifications to procedures and/or training of collection site staff done as a result of lessons learned, as well as how PaintCare intends to monitor and address issues regarding insufficient collection schedules in the future.

Description of Goals and Activities Based on the Stewardship Plan:

- CCR §18954(a)(4)(B), requires PaintCare to provide quantitative information and discussion on the total volume of postconsumer architectural paint recovered, by type, in the state during the preceding reporting period.
 - Please describe the methodology used to determine the volumes reported (conversion factor, measurement methods, assumptions, etc.).
 - Please clarify the difference between the volume of paint *processed* that PaintCare reported (632,652 gallons) and the volume of paint *recovered* that PaintCare is required to report.



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- Please report the amount of paint collected at each PaintCare collection site, including retailers, recyclers, transfer stations, HHW facilities, temporary collection events, and "large volume pickups."
- Paintcare reported 632,652 gallons as the total volume of paint processed on Page 10, and 617,035 gallons was reported immediately following in Table 3. Please explain the discrepancy on Page 10 of the report in the total volume of paint processed. Define the term "processed," as used in the text under "B. Architectural Paint Recovered" and in Table 3.
- Please explain the discrepancy in the total volumes of latex and oil-based paint in "Table 3. Paint Processed" (542,611 gallons of latex paint and 74,424 of oil-based paint) and Table 4. Summary of Paint Disposition Method by Volume and Percentage (541,449 gallons of latex paint and 77,138 gallons of oil-based paint).
- Per CCR §18954(a)(4), the report is required to "State goals from the approved stewardship plan, the baseline from which goals were measured, and report on achievement during the reporting period. Describe any adjustments to goals stated in the approved stewardship plan that may be made for the upcoming reporting period and accompanying rationale for those changes."
 - Please report on achievement of goals from the approved PaintCare Stewardship Plan ("plan") during this reporting period. The plan states, "PaintCare will track the data points shown in Table 7B and report the results in its Annual Report." To provide context to the data provided, report on the baseline and projected collection volume from the plan compared with the actual collection volumes stated in the report. CalRecycle is aware of and will take into account the limitations in the currently available HHW collection data for the purposes of reporting for PaintCare's program.
- The various disposition methods of program products are not clearly defined in the report.
 - The term "beneficial use" is not adequately explained. What specific disposition methods were categorized as "beneficial use" in the report?
 - Page 12 of the report lists "Reprocessed back into paint or into another product," as a disposition category for latex paint. However, immediately following, Table 4 illustrates paint disposition where this category is absent (seemingly replaced with a "Paint to Paint" category) and a footnote explains that "the volume of paint processed into non-paint materials is combined with the category of beneficial use." It is unclear where the volume and percentage of latex paint recycled into alternative products was reported. Please clarify the difference between reprocessing into "another product" and processing into "non-paint materials," or correct this discrepancy and use consistent terms throughout the report.
- The report states that paint cans were recycled, when feasible. Per CCR §18954(a)(2), please describe these activities by providing a list of the processors and municipal programs that engaged in paint container management activities, explain how the weight was measured or calculated, and separately report the amounts of the metal containers and plastic containers that were recycled.



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Financing Mechanism:

- Per CCR §18954(a)(5), provide discussion on how the program's funding mechanism operated. Please include a comparison to the Budget that was provided in the plan, and provide an explanation of variations.
- Explain the error on Page 26 of the approved plan, where the projected expenses related to transportation and processing were reversed.
- The report states that during the reporting period, there were no capital costs. Please explain the term "capital costs" in relation to why PaintCare did not have capital costs this reporting period.
- PaintCare reported the cost per gallon processed during the reporting period as \$14.72. Please provide discussion on what factors may have contributed to the high cost, and whether and how costs are projected to decrease over time.
- PaintCare accumulated a surplus of \$9,892,568 in the reporting period, which well exceeded the targeted balance. Per CCR §18954 (a)(5)(I), please provide discussion on how surplus funding will be applied over the next reporting period to reduce program costs.
- CCR §18954(a)(5) requires PaintCare to provide documentation on how the collection and expenditure of assessment funds for the implementation and management of the California paint stewardship program are kept separate from other activities and the methodology for distribution of shared costs. Provide documentation that California assessment funds were used only for the California program.

Education and Outreach:

- PaintCare's education and outreach materials appear to primarily include general information on PaintCare, the assessment fee, and program products. Provide discussion specifically on how PaintCare's education and outreach activities, that cost \$2,374,681 and accounted for 25% of the total program cost, support the objectives of the paint stewardship law, including educating and assisting consumers in source reduction, purchasing appropriate amounts of paint, and reusing leftover paint. For instance, PaintCare's plan offered a tool to assist consumers in estimating the amount of paint necessary for a project, but mention of this is absent from the report.

Audits:

- Provide more detailed explanation of the various expense categories outlined in the report and the audit including "Legal fees," "Collection support," "Other program expenses," and "General and administrative,"
 - Discuss the services and activities that were included in the expenses of \$1,154,644 listed as "General and administrative."
 - Please provide a detailed statement of which expense categories are being paid in-full by the California assessment, and which expenses are being shared by PaintCare programs in other states.
- During PaintCare's October 17th Webinar, Ms. Keane indicated that the "Legal fees" reported in the independently audited financial statements cover all corporate legal fees, including expenses related to the Lawsuit filed against CalRecycle. Please provide the specific amount that was



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charged for the Lawsuit. Provide a breakdown of the services and activities that accounted for the \$333,852 in expenses listed under "Legal fees."

- Per the report, "total administrative fees charged by ACA to PaintCare were \$390,988, of this amount, \$316,518 related to the Program."
 - Describe the specific administrative support services provided by ACA to PaintCare that were charged to the California program.
 - Explain whether the consumer assessment on paint purchases in California was used by PaintCare to reimburse costs to the American Coatings Association (ACA) related to the Lawsuit filed against CalRecycle. If so, please provide the specific amount that was charged by ACA for the Lawsuit and explain where that amount was included in the Statement of Activities.
 - Describe the services and activities that account for ACA's administrative expenses of \$74,470 unrelated to the program that were charged to the program.
- Provide a statement explaining what is meant by "PaintCare owed the Program \$7,914,659 related to paint recovery fees that are being held on behalf of the Program..." Specifically, explain why program money is "being held," where it is "being held," and when it will be reimbursed.
- Per PRC §48703(b), retailers, distributors, and manufacturers are required to add an assessment fee to the purchase price of paint sold in CA and the fee must be remitted to the stewardship organization. Provide more information on the allowance for bad debts of \$18,409. How was the allowance determined? Please describe the steps that are in place and taken by PaintCare to ensure complete collection of the fees assessed. At what point will PaintCare consider its collection efforts "exhausted" and drop an entity as a registered manufacturer and/or provide a list of entities and the amounts uncollected to CalRecycle thereby enabling potential enforcement actions and timely imposition of applicable penalties.

