



DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY

1001 I STREET, SACRAMENTO, CALIFORNIA 95814 • WWW.CALRECYCLE.CA.GOV • (916) 322-4027

P.O. BOX 4025, SACRAMENTO, CALIFORNIA 95812

October 31, 2013

Sent via e-mail and hard copy

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) received PaintCare's 2013 California Paint Stewardship Program Year 1 Annual Report ("report") on October 1, 2013. California Code of Regulations (Title 14, Division 7, Chapter 11, Article 2, § 18952(c)(2)) requires CalRecycle to determine if the report is complete and notify PaintCare within 30 days. Subsequent to receipt of a complete report, CalRecycle will commence to review the report for compliance.

Staff reviewed the report for completeness within the context of the requirements in statute (Chapter 420, Statutes of 2010, Huffman, AB 1343) and the California Code of Regulations (CCR), and found PaintCare's Annual Report to be incomplete.

The following information must be submitted to CalRecycle for the report to be considered complete:

- **Baseline for program goals and methodology for baseline.** CCR §18954(a)(4) requires reporting the baseline from which goals were measured. PaintCare did not provide a baseline, instead proposing to use the volume collected in its first year as the baseline. However, the report does not specify when PaintCare will provide the required baseline, once determined, to CalRecycle, and the report lacks clarity on the methodology (calculation, conversion factor, measurements, assumptions, time period of "first year," etc.) that will be used to determine the baseline.
- **Total volume of architectural paint sold, by type.** CCR §18954(a)(4)(A) requires reporting the total volume of architectural paint sold, by type, in the state during the preceding reporting period. However, the total volume of architectural paint sold was reported by container size.
- **End-of-life materials management line-item percentages of total program cost.** CCR §18954(a)(5)(G) requires reporting on the costs of end-of-life materials management (including the percentage of total program cost, with line items for reuse, transportation, recycling, fuel incineration, and proper disposal). PaintCare reported line items for transportation and processing only. PaintCare needs to provide a breakdown of costs by disposition method as required by regulations or if that data does not exist for the start-up year, then provide an explanation of how this issue will be corrected to ensure all required data is available in future years.



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In addition to this completeness review, upon receipt of a complete report CalRecycle has 90 days in which to review the report for compliance with Public Resources Code (PRC) Sections 48700-48706 and CCR Title 14, Division 7, Chapter 11, Article 2, Sections 18950-18957 and adopt a finding of compliance, non-compliance, or conditional approval. While reviewing the submitted report for completeness, CalRecycle also identified specific areas where more information or adjustments may be needed for the Annual Report, in order for CalRecycle to evaluate the effectiveness of the program and compliance with statute and the previously-approved Stewardship Plan.

As required by CCR §18952(c)(2), PaintCare must include the additional completeness information described above and resubmit the report within 30 days. If determined upon resubmittal that the report is complete, CalRecycle's 90-day compliance review period of the report will commence upon the date of receipt of the resubmittal.

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 Levenson".

Howard Levenson, Ph.D.
Deputy Director, Materials Management and Local Assistance Division

Cc: Carroll Mortensen, CalRecycle
Allyson Willsey, CalRecycle
Ty Moore, CalRecycle
Brenda Smyth, CalRecycle
Caitlin Sanders, PaintCare
Paul Fresina, PaintCare
Alison Keane, PaintCare





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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.

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.





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





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- 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.

