

REQUEST FOR APPROVAL

To: Carroll Mortensen
Director

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

Request Date: September 16, 2014

Decision Subject: Approval of Annual CalRecycle Architectural Paint Stewardship
Administrative Fees, July 1, 2013 – June 30, 2014

Action By: September 16, 2014

Summary of Request:

Staff requests approval of the Annual CalRecycle Architectural Paint Stewardship Administrative Fees for the period of July 1, 2013 – June 30, 2014, 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 \$199,513.41 for the period of July 1, 2013 – June 30, 2014.

Dated: 9/16/2014



Carroll Mortensen, Director

Background Information:

Assembly Bill 1343 (Chapter 5, Statutes of 2010) established the second 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. Architectural paint manufacturers and/or stewardship organizations must pay CalRecycle an administrative fee to cover the Department's costs related to oversight and enforcement.

AB 1343 specified that administrative fees were to be paid annually. Senate Bill 96 (Chapter 356, Statutes of 2013) subsequently modified this payment structure to require a stewardship organization to pay these fees to CalRecycle quarterly. However, Public Resources 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. In order to comply with the regulations requiring annual approval of administrative fees at a public meeting, the Department has totaled the fees that were billed to PaintCare for quarters one through four of CalRecycle's fiscal year 2013-14. Accordingly, the total fee reflects the Department's actual costs to administer and enforce the Architectural Paint Recovery Program for the period from July 1, 2013, through June 30, 2014. The Department's administrative fee includes the cost of staff, overhead expenses applicable to staff, contract services, and other expenses incurred in administering or enforcing the program.

In October 2012, PaintCare and the American Coatings Association (ACA) jointly filed a lawsuit against CalRecycle to cease implementation and enforcement of the Architectural Paint Recovery Program regulations. The Los Angeles Superior Court found that the regulations are reasonably necessary and consistent with the statutory scheme. However, PaintCare and ACA appealed the judgment. The administrative fee includes the remainder of the actual costs (totaling \$12,335) incurred in resolving the lawsuit. PaintCare and ACA have been informed that the legal expenses for the Department and the Attorney General must not be reimbursed by PaintCare and/or ACA using assessment funds collected through the Architectural Paint Recovery Program. The State has incurred additional legal costs related to the appeal that are not included in this Fiscal Year's annual administrative fee total since the appeal is still pending.

Analysis:

Administrative Fee Total

The total administrative fee for the period of July 1, 2013 – June 30, 2014 is \$199,513.41.

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 percentages of various staff time from the Department's Materials Management and Local Assistance, Information Technology, Administration, Waste Evaluation and Enforcement, Audits, and Legal programs. Legal costs for CalRecycle and the Office of the Attorney General reflect 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 administrative fees per the requirements found in statute and regulation, and found that they conform to those requirements. Staff therefore recommends approval of the annual administrative fees summarized above.