

## REQUEST FOR APPROVAL

**To:** Carol Mortensen  
Director

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

**Request Date:** January 21, 2014

**Decision Subject:** Consideration of Staff Recommendation Regarding Completeness of the California Paint Stewardship Program Year 1 Revised Annual Report

**Action By:** January 21, 2014

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**Summary of Request:**

PaintCare submitted the California Paint Stewardship Program Year 1 Annual report (“October report”) on October 1, 2013. CalRecycle requested revisions to the October report per a letter dated October 31, 2013, with further clarifications in a letter dated December 6, 2013. PaintCare submitted a revised report on January 5, 2014, with edits made in response to comments from CalRecycle. In addition to the revised report, PaintCare submitted a supplemental letter with additional information and responses to CalRecycle’s comments. Staff requests finding the California Paint Stewardship Program Year 1 Revised Annual Report incomplete, pursuant to the architectural paint stewardship law (Public Resources Code sections 48700 and 48705; and Title 14, Natural Resources- Division 7, Article 2, Sections 18952, 18954, 18955), because information about sales by paint type was not provided.

**Recommendation:**

Staff recommends finding the California Paint Stewardship Program Year 1 Revised Annual Report incomplete because information about sales by paint type was not provided, and that staff continue working with PaintCare to determine whether such information acceptable to both parties can be provided in future reports. (Note that upon determination of completeness, staff will commence the compliance review and will make a recommendation regarding the compliance of the revised report at a future public meeting.)

**Action:**

On the basis of the information, analysis, and findings in this Request for Approval, I hereby find the California Architectural Paint Stewardship Program Year 1 Revised Annual Report, submitted by PaintCare, dated January 5, 2014 to be incomplete. I also direct staff to continue working with PaintCare to determine whether information on sales by paint type that is acceptable to both PaintCare and CalRecycle can be feasibly obtained and provided in future Annual Reports.

Dated: 1/21/14

  
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Carol Mortensen, Director

**Attachments:**

1. Revised California Architectural Paint Stewardship Program Annual Report, dated January 5, 2014; available at: <http://calrecycle.ca.gov/Paint/AnnualReport/2013/PaintCareRev.pdf>.
  2. PaintCare January 5, 2014 Response Letter to CalRecycle; available at: <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1110&aiid=1015>.
  3. CalRecycle December 6, 2013 Letter to PaintCare; available at: <http://www.calrecycle.ca.gov/Paint/AnnualReport/2013/CalRecycleLtr.pdf>.
  4. PaintCare November 30, 2013 Response Letter to CalRecycle; available at: <http://www.calrecycle.ca.gov/Paint/AnnualReport/2013/PaintCare1130.pdf>.
  5. CalRecycle October 31, 2013 Completeness Letter to PaintCare; available at: <http://www.calrecycle.ca.gov/Paint/AnnualReport/2013/PaintCareLtr.pdf>.
  6. PaintCare California Paint Stewardship Program Year 1 Annual Report, dated October 1, 2013; available at: <http://www.calrecycle.ca.gov/Paint/AnnualReport/2013/PaintCare.pdf>.
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**Background Information:**

Assembly Bill 1343 (Chapter 420, Statutes of 2010) established the first permanent, mandatory architectural paint stewardship program in the country. CalRecycle has the responsibility to: approve or disapprove architectural paint stewardship plans submitted by architectural paint manufacturers or their designated product stewardship organization; review annual reports to verify that the objectives of the plan are being met; and provide oversight and enforcement to ensure a level playing field among architectural paint manufacturers.

The Architectural Paint Recovery Program Regulations require that CalRecycle make a determination on annual report completeness and notify the submitting manufacturer or stewardship organization within 30 days of receipt. If the report is incomplete, CalRecycle identifies what additional information must be submitted to make it complete and a revised report is required to be resubmitted within 30 days. AB 1343 then requires that CalRecycle review the annual report and within 90 days of receipt, adopt a finding of compliance or noncompliance.

**Year 1 Annual Report Submittal and Review History:**

- PaintCare first submitted the California Paint Stewardship Program Year 1 Annual Report (Attachment 6) on October 1, 2013 (“October report”).
- CalRecycle held a public workshop on October 14, 2013 to hear stakeholder comments regarding the report.

- CalRecycle staff reviewed the report, considered stakeholder comments, and notified PaintCare that the October 1, 2013 report was incomplete in a letter dated October 31, 2013 (Attachment 5). CalRecycle's letter identified specific information that needed to be added or explained in a revised report in order to find the report complete. The letter also included an attachment which requested additional information and clarity that would be needed for CalRecycle's subsequent compliance review of the revised report.
- PaintCare submitted a letter on November 30, 2013, providing information about the items CalRecycle noted as required for a determination of completeness, and acknowledged some data reporting errors (Attachment 4). PaintCare also asked for clarification on information required for the subsequent compliance review.
- On December 6, 2013, CalRecycle responded (Attachment 3) to PaintCare's November 30, 2013 letter by clarifying the information needed for completeness as well as specific information required for CalRecycle's compliance review.
- PaintCare submitted a revised report on January 5, 2014 (Attachment 1) with edits and amendments made in response to comments provided by CalRecycle. Along with the revised report, PaintCare also submitted a supplemental letter (Attachment 2) with additional information and responses to comments from CalRecycle.

**Analysis:**

CalRecycle requested the inclusion of 3 primary items in order for the Annual Report to be considered complete. After reviewing the revised report submitted by PaintCare on January 5, 2014 staff found some, but not all, of the requested items were included.

1. CalRecycle requested that PaintCare provide an explanation of the specific reporting period that will be used for determining the baseline and confirmation of when the baseline data will be provided. PaintCare included a statement that the collection volumes in reporting year 2, will be used as a baseline from which to measure collection changes in future years, but did not confirm that the baseline data will be provided in the year 2 Annual Report. CalRecycle staff considers this information acceptable for purposes of determining completeness of the Report, and will follow-up with PaintCare to ensure a baseline is provided in the year 2 Annual Report.
2. The volume of architectural paint sales for latex and oil-based paint is needed in order to accurately evaluate the recovery rates of oil-based and latex paints. CalRecycle requested that PaintCare provide the total volume of architectural paint sales for latex paint and the total volume of architectural paint sales for oil-based paint in the revised report because this type of information is important for evaluating the effectiveness of the program. Latex and oil-based paints have different characteristics and different costs associated with proper management. CalRecycle needs sales data for oil and latex paint to evaluate the amount of paint available for collection and the future costs associated with the end-of-life management of leftover paint. Furthermore, sales data by type can be useful in deducing trends relevant to estimating a recovery rate (amount of paint collected compared to the amount of paint available for collection), which will allow CalRecycle to ensure that Program funds are being

utilized appropriately to manage postconsumer architectural paint. While PaintCare included California paint sales information, by container size, in the revised report, it did not provide the total volume of architectural paint sales for latex paint and the total volume of architectural paint sales for oil-based paint. CalRecycle staff therefore considers that this issue has not been completed. However, CalRecycle staff recommends that it continue to work with PaintCare to explain why such information is needed and to determine whether it can be feasibly obtained and provided in future Annual Reports in a manner acceptable to both PaintCare and CalRecycle.

3. Information on the cost for each disposition method is necessary to ensure program funds are effectively utilized to properly manage collected products. Staff reviews cost data to ensure that PaintCare manages as much paint as possible through highest best use, while maintaining a cost-effective Program. This information is reasonably necessary to inform CalRecycle of how PaintCare is spending Program funds to manage the postconsumer architectural paint collected in the state. Staff acknowledges that actual costs and percentages broken down by disposition method are not available due to the format of the contracts with PaintCare's transportation and processing vendors. CalRecycle asked that PaintCare include the estimated cost and percentage of total program cost for each disposition method in the revised report, as well as an explanation of the disposition methods that were reported as "beneficial use." PaintCare clarified the disposition methods categorized as "beneficial use" in the revised report and included cost estimates and percentage of total program cost for fuel incineration, reuse, paint to paint recycling, beneficial use, and landfill in a supplemental letter. PaintCare explained how the estimates may be inaccurate or misleading and overstate the dollar amount spent on lower-value disposition methods (i.e., beneficial reuse and landfill), but has agreed to provide similar cost estimates to CalRecycle each year. CalRecycle staff considers this information acceptable for purposes of determining completeness of the Report.