

**REQUEST FOR APPROVAL**

**To:** Caroll Mortensen  
Director

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

**Request Date:** January 27, 2015

**Decision Subject:** Consideration of Staff Recommendation Regarding Compliance of  
PaintCare's California Paint Stewardship Program Year 2 Annual Report

**Action By:** January 27, 2015

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**Summary of Request:**

PaintCare submitted the California Paint Stewardship Program Year 2 Annual Report on November 1, 2014. In year 2, PaintCare increased the number of paint drop-off sites, developed new partnerships with local government household hazardous waste (HHW) programs, increased the amount of postconsumer paint recovered, and reduced the cost per gallon of paint managed under the program. As of June 30, 2014, PaintCare established 673 paint drop-off sites providing access to a drop-off site within 15 miles of 97.8% of the California population, established 67 partnerships with local government HHW programs, and processed 2,050,122 gallons of leftover paint at a cost of \$8.62 per gallon. PaintCare made progress implementing the Paint Stewardship Program in California and is working to improve the program. CalRecycle staff reviewed the annual report and program implementation and found that the program is in compliance. Accordingly, staff requests finding PaintCare's Year 2 Annual Report compliant, pursuant to the architectural paint stewardship law (Public Resources Code sections 48700-48706; and Title 14, Natural Resources- Division 7, Article 2, Sections 18950-18958). Although the program has improved over the course of the last year, CalRecycle expects further increases in year 3 in the recovery rate, program convenience, and paint reuse, and a decrease in the cost per gallon.

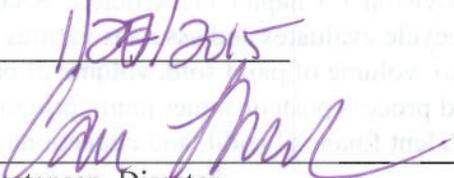
**Recommendation:**

Staff recommends finding PaintCare's California Paint Stewardship Program Year 2 Annual Report compliant.

**Action:**

On the basis of the information, analysis, and findings in this Request for Approval, I hereby find the California Paint Stewardship Program Year 2 Annual Report, submitted by PaintCare, dated November 1, 2014 compliant.

**Dated:** 1/27/2015

  
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Caroll Mortensen, Director

#### **Attachments:**

1. California Architectural Paint Stewardship Program Year 2 Annual Report, dated November 1, 2014; available at: <http://www.calrecycle.ca.gov/Paint/AnnualReport/2014/PaintCare.pdf>.
  2. CalRecycle November 25, 2014 Completeness Letter to PaintCare; available at: <http://www.calrecycle.ca.gov/Paint/AnnualReport/2014/ReviewAnRpt.pdf>.
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#### **Summary of Findings**

CalRecycle staff reviewed PaintCare's Year 2 Annual Report and program implementation and found the PaintCare program to be in compliance. PaintCare made progress in a number of important areas during the second year of program implementation. From July 1, 2013, to June 30, 2014, PaintCare collected and processed 2,050,122 gallons of paint, a substantial increase from year 1. By the end of the second reporting year PaintCare had established partnerships with 67 local government HHW programs which resulted in 110 permanent municipal collection sites, 4 seasonal sites, 141 municipal HHW events, and 11 door-to-door program partnerships. PaintCare also established 543 retail drop-off sites and performed 241 large volume pick-ups. Under the Program, 673 permanent collection sites have been established which provide 97.8% of California's population with access to a drop-off site within 15 miles of their residence.

In an effort to further improve program convenience, PaintCare sponsored AB 2748 to modify hazardous material business plan requirements for collection sites. AB 2748 went into effect on January 1, 2015 and is anticipated to result in increased retail participation in the program and associated improvements in program convenience. PaintCare also launched a new marketing campaign which increased the number of visits to the PaintCare website and illustrates a continued commitment to ongoing education and outreach. The cost effectiveness of the program improved from \$14.72 per gallon of paint managed in year 1 to \$8.62 per gallon in year 2. Looking ahead to the Year 3 Annual Report, CalRecycle staff expects PaintCare to make continuous improvements in a number of program areas including: 1) increasing the paint recovery rate, 2) improving program convenience, 3) increasing paint reuse, and 4) reducing the program cost/gallon of paint managed.

#### **Background Information**

Assembly Bill 1343 (Chapter 420, Statutes of 2010) established the second mandatory architectural paint stewardship program in the country. Under AB 1343, CalRecycle has the responsibility to: approve or disapprove 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 paint manufacturers.

AB 1343 requires CalRecycle to review annual reports and make a determination regarding compliance or noncompliance. The compliance review entails an overall assessment of program implementation during the last reporting period consistent with Public Resources Code sections 48700-48706 and Title 14, Natural Resources- Division 7, Chapter 11, Article 2, Sections 18950-18958. As part of the compliance review, CalRecycle evaluates and assesses various reporting requirements, which include but are not limited to: volume of paint sold, volume of paint recovered, methods used to collect, transport, and process postconsumer paint, program costs, an evaluation of the funding mechanism, an independent financial audit, and educational materials provided to consumers.

PaintCare is the stewardship organization that acts on behalf of participating paint manufacturers. PaintCare's Program Plan<sup>1</sup> provides the foundation of the program by establishing goals and setting in place the fundamental elements and processes under which the program will operate. PaintCare implements the program according to the Program Plan and provides annual reports each year with data on program progress.

### **Program Performance Overview**

With the submittal of the Year 2 Annual Report, CalRecycle's obligation is to make a determination regarding compliance of the report, as well as evaluate the overall program. This includes assessing several key elements of a stewardship program: postconsumer paint recovery; statewide program convenience; program costs; proper management of collected paint; education and outreach efforts; and stakeholder satisfaction with the program. These key elements are discussed below in the context of the overall California Paint Stewardship Program. As with all new programs, there will continue to be ongoing changes and opportunities for improvement.

### **Baseline and Recovery Rate**

Statute does not specify a recovery goal for the paint stewardship program, but instead requires the stewardship organization to establish goals in the Program Plan and report on progress in annual reports. Goals must include a baseline from which progress is measured and reported. CalRecycle agreed in April 2014 to accept PaintCare's year 2 collection volume as the baseline from which program progress is measured and reported. However, PaintCare's collection volume does not account for a large amount of paint collected in year 2 independent of the program, as several large local government household hazardous waste (HHW) programs were not contracted during the year 2 reporting period. In light of this situation, PaintCare is proposing to report annual collection volumes and measure progress against the target of a 7% recovery rate<sup>2</sup>. CalRecycle agrees with PaintCare's concerns about using the year 2 collection volume as the program baseline and that measuring progress against a target recovery rate is preferable until PaintCare has established contracts with more HHW programs.

The amount of paint recovered is one measure of program success, and continued improvement is critical. During the second reporting period, PaintCare processed a total of 2,050,122 gallons of paint. While the amount of paint processed increased from year 1, according to CalRecycle's Form 303 data<sup>3</sup> there was still 1,243,371 gallons of paint managed by local governments outside of the PaintCare program. PaintCare is continuing to establish contracts with local government programs and CalRecycle anticipates that the volume of paint managed outside the program by local governments will decrease.

PaintCare increased the paint recovery rate from 1.6% in year 1 to 3.0% in year 2. In its Plan, PaintCare assumed that paint sales in California would remain at approximately 59,000,000 gallons per year for three years. However, paint sales were reported at 68,578,315 gallons for year 2, almost 9,600,000 gallons more than assumed baseline sales. The increased sales volume

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<sup>1</sup> <http://www.calrecycle.ca.gov/Paint/Plans/PaintCare/June4.pdf>

<sup>2</sup> Per PaintCare's Plan and annual reports, approximately 10% of paint that is sold becomes leftover; and 70% of that leftover paint is available for collection, resulting in the target 7% recovery rate. Recovery rates are derived by dividing the volume of paint collected each year by the volume of paint sold in the same year.

<sup>3</sup> Form 303 and PaintCare's data are not directly comparable due to differences in tracking and reporting procedures. CalRecycle is actively working with HHW facilities in an effort to improve the accuracy of Form 303 data.

contributed to a lower than expected recovery rate in year 2. As stated in the Program Plan, PaintCare expects to attain a 7% recovery rate by the end of year 3. PaintCare has demonstrated the ability to meet and exceed a 7% recovery rate in other states. PaintCare's Oregon Stewardship Program achieved a 6.4% recovery rate in year 1, 7.5% in year 2, and 7.9% by the end of year 3. CalRecycle anticipates that the amount of paint recovered will increase and a greater recovery rate will be achieved in year 3.

### **Statewide Program Convenience**

Providing California residents with convenient access to paint collection points statewide is a critical component of the paint stewardship program. As such, PaintCare set two convenience goals in their plan: 1) a population distribution goal to establish collection locations within 15 miles of 90% of the California population; and 2) a population density goal to establish one additional paint drop-off site for every 30,000 residents in densely populated areas.

#### **Distribution Goal**

PaintCare successfully met its distribution goal in the first and second reporting period. In year 1, PaintCare established 495 collection locations resulting in a collection location within 15 miles of 97.3% of the California population. By the end of year 2, PaintCare had established an additional 178 drop-off sites, resulting in 673 permanent collection locations which provides a collection location within 15 miles of 97.8% of the California population.

#### **Density Goal**

In the first and second year of program implementation, PaintCare did not attain its goal of one additional drop-off site per 30,000 residents, but it did make progress toward this goal by establishing 673 drop-off sites. In addition, PaintCare contracted with Golder Associates to develop a new national GIS model for measuring progress in achieving the convenience goals; the Golder Associates memorandum is provided in Appendix D of the Year 2 Report. PaintCare has not proposed a new density goal using this model. For illustrative purposes only, applying this GIS model to California would result in an increase in the number of sites needed to meet the one site per 30,000 density goal. The year 1 report stated approximately 750 sites were needed to meet the density goal while Golder Associates' memorandum finds approximately 1,400 sites would be needed to meet the density goal because of a different methodology. Applying the new Golder GIS model to California, the average service level attained in year 1 would equate to one site for every 91,333 residents. At the end of year 2, the average service level reported would equate to one site for every 69,305 residents. The Golder Associates' memorandum contains a detailed discussion of the differences between the GIS modeling conducted for the year 1 and 2 reports. PaintCare intends to perform further research and analysis to determine the most appropriate GIS model for California and may consider revising the density goal (in the year 3 report, if deemed necessary). CalRecycle anticipates PaintCare will continue to make progress toward achieving the density goal in year 3 of program implementation.

#### **Rural Convenience**

Stakeholders have commented that some rural areas do not have adequate access to paint drop-off sites and that restrictions on the ability of local staff to pack collected paint can impose excess costs and remains an obstacle for at least three rural counties from contracting with PaintCare. By the end of the first reporting period, 5 of the 22 rural counties had contracts with PaintCare providing 29 permanent drop-off sites. By the end of the second reporting period, 13

rural counties had contracts with PaintCare providing 50 permanent drop-off sites. In November 2014, PaintCare also began holding one-day paint only collection events to further improve convenience in rural areas.

#### **Performance of Retail Drop-off Sites**

During the first year of the program, CalRecycle received several stakeholder comments about PaintCare retail drop-off sites having to turn away customers trying to drop off leftover paint because of full paint storage bins. CalRecycle staff discussed the performance of retail sites with PaintCare who responded by working with its transporters and retail drop-off sites to make program improvements such as transitioning some high volume retail sites to an automatic, online scheduled pick-up system in order to increase the efficiency and timeliness of bin pick-ups. CalRecycle conducted a survey in the first quarter of 2014 in order to assess the performance of retail drop off sites. CalRecycle contacted over 100 retail drop-off sites and confirmed that there were instances where customers were turned away due to full bins at the start of the program, but that program improvements had been effective and the frequency of consumers being turned away had declined. The majority of retailers also expressed general satisfaction with the program. At CalRecycle's January 6<sup>th</sup>, 2015 workshop to discuss the paint stewardship program, some stakeholders commented that increasing capacity at existing drop-off sites may be as or more important than increasing the total number of sites. CalRecycle plans to conduct another survey of PaintCare drop-off sites in 2015.

#### **Program Costs**

During the second reporting period, the total cost of the PaintCare program was \$17,667,538 and the corresponding cost per gallon of paint managed through the program was \$8.62. By the end of year 2, PaintCare accumulated a surplus of \$27,462,632 in California consumer assessment funds. The accumulated surplus exceeds the Program Plan's targeted balance of six months of budgeted annual operating expenses or approximately \$15,000,000 as stated in the Year 2 Annual Report. Several stakeholders at the January 6, 2015 workshop questioned how the amount of accumulated funds over this surplus level would be spent or whether the assessment paid by consumers should be lowered. PaintCare has indicated that overall program costs are likely to increase in year 3 as collection volumes increase, and that it prefers to wait another year before evaluating whether a change in the consumer assessment fee is warranted.

A number of stakeholders suggested at CalRecycle's January workshop that the program cost per gallon is too high and could be reduced through practices such as increased paint reuse. One of the primary intents of the program is to reduce the financial burden on local governments associated with the management of leftover paint. According to a survey conducted by the City of Elk Grove, the majority of local governments reported cost savings from the program through reduced spending on collection containers, labor, transportation, disposal, and other costs associated with paint management. However, the City of Elk Grove's survey was limited in scope (only 66 responses were received), and additional work is needed to assess the impact of the program on local government paint management costs.

#### **CalRecycle Audit**

CalRecycle's Office of Audits conducted an audit regarding PaintCare's compliance with AB 1343 and the Architectural Paint Recovery Program Regulations. The audit methodology included gaining an understanding of the business process and system of controls utilized by PaintCare and the validation of financial and nonfinancial data through tests of compliance. The

purpose was to determine whether financial assessments, expenditures, and nonfinancial data were California program related, eligible, adequately supported, and the financial data was properly recorded. The final audit report, issued to PaintCare on October 24, 2014, disclosed no material misstatements or instances of noncompliance. Through the audit process, PaintCare and CalRecycle also identified opportunities to further improve PaintCare's control processes. PaintCare has implemented measures to address the identified opportunities that do not adversely impact the audit results specified above.

### **Proper Management of Collected Paint**

A critical component of a successful program is that collected paint is managed according to its highest and best use. Of the 1,683,712 gallons of latex paint processed during the second reporting period, 70.5% went to paint-to-paint recycling, 21.7% was used to make alternative products or for other beneficial uses (e.g., interlocking retaining wall blocks, landscaping material, and fuel substitutes), 4.2% was landfilled, and 3.6% went to reuse. However, this represents a 9.5% decrease in latex paint-to-paint recycling in year 2 and a corresponding 7.7% increase in the volume of paint used to make alternative products or for other beneficial uses. PaintCare's report does not discuss or explain the factors that may have contributed to a decrease in latex paint-to-paint recycling. CalRecycle expects that decreasing rates of latex paint-to-paint recycling will not become a trend and that future annual reports will discuss factors that caused any changes in the amount of paint-to-paint recycling under the program. Of the 366,410 gallons of oil-based paint processed, 96.5% was managed through fuel incineration, while 3.5% was reused.

### **Paint Reuse**

In year 1, PaintCare reported a total of 10,103 gallons of reuse, representing 2% of the total paint processed. CalRecycle noted during the compliance review of the Year 1 Annual Report that reuse volumes were expected to increase as the program matures. During the second year of program implementation, PaintCare managed 73,691 gallons of paint through reuse, representing 3.6% of the total paint processed. However, a significant amount of paint reuse continues to take place outside of the PaintCare program. During year 2, local governments reported 129,753 gallons of paint reuse on CalRecycle's Form 303. PaintCare has an opportunity to increase the volume of paint reused in the Program by establishing more reuse contracts with local governments and increasing the reuse incentive of \$0.25 per container.

PaintCare reported that the derived cost of paint reuse was 0.22% of the total program cost during the year 2 reporting period. Stakeholders have commented that the incentive offered by PaintCare to local government reuse programs is not sufficient to cover the time and labor involved in tracking and reporting the volume of paint reused. PaintCare has stated that reuse rates start at \$0.25 per container, but are negotiable. Using PaintCare's derived disposition costs, CalRecycle calculated the processing cost per gallon for each disposition method. These calculations<sup>4</sup> suggest that PaintCare's average paint processing cost is approximately \$4.93/gallon, compared to \$0.54/gallon for paint reuse. Reuse programs distribute paint at the

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<sup>4</sup> The average disposition cost per gallon (\$4.93/gallon) estimate was calculated by dividing the total derived processing costs (\$10,112,069) by the total volume of paint processed (2,050,122 gallons) provided in PaintCare's year 2 annual report. The disposition cost per gallon for reuse (\$0.54/gallon) was calculated by dividing the derived reuse processing cost (\$39,639) by the volume of paint managed by reuse (73,691 gallons).

same location it is collected, offering the potential to realize reduced transportation costs in addition to savings in processing costs. Additional paint reuse is a potential way to decrease the cost per gallon of paint managed in the program. CalRecycle will continue to work with PaintCare and stakeholders to explore opportunities to continue to increase the amount of paint reuse taking place in the program, including whether an increase in the reuse incentive is warranted.

### **Bulking vs. Loose-Packing**

At the start of the program, stakeholders expressed concern about PaintCare's preference to loose-pack paint, rather than bulking in 55 gallon drums. The main concern was that more space is required to store all collected paint cans in large bins, rather than pouring the paint into drums. CalRecycle has since received comments that many programs have found loose-packing paint to be preferable to bulking, as less staff time and labor is required. However, PaintCare has demonstrated a willingness to work with jurisdictions and allow those that prefer to bulk paint to do so.

### **Conversion Factor**

Stakeholder comments have been received about the accuracy of utilizing a 10 pound per gallon conversion factor, which is commonly used by many HHW programs to convert paint weight to volume. Because HHW facilities use various methodologies to track and report the amount of paint collected, it has been an ongoing challenge to establish a conversion factor that can easily and accurately be applied by all programs for all types of paint. CalRecycle plans to further research this topic and work with stakeholders in an effort to better understand the current methodologies utilized by HHW collection programs and work toward determining an appropriate conversion factor.

### **Education and Outreach**

PaintCare spent 25% of its total program costs on education and outreach during the year 1 reporting period. Substantial education and outreach costs were needed in order to inform residents, retailers, and HHW program operators about the new law and program. In the second year, education and outreach costs decreased to 10.5% of total program costs. While education and outreach costs were expected to decrease in the second year, PaintCare's transition to a new marketing firm, AdEase, also contributed to the reduction in percent of total program cost. Prior to launching a new education and outreach campaign, AdEase spent time conducting initial studies and surveys to determine how to best reach the target audiences. While conducting the research and preparing the new marketing strategies, minimal new advertising buys were made which resulted in lower costs. The new advertising campaign was launched in April 2014 and PaintCare saw a number of positive results such as a spike in visits to its website. PaintCare's advertising campaign appears focused on providing information on how to recycle leftover paint. CalRecycle believes that the advertising campaign could also be used to increase source reduction by educating consumers and paint contractors about how to purchase the right amount of paint, and to further promote paint reuse. Several stakeholders also have commented on the need for increased education and outreach not only to consumers but also to large retailers that operate or could operate drop-off sites.

### **California Business Participation in the Program**

A separate issue not addressed in the Year 2 Report and not part of this overall compliance review, but which CalRecycle believes warrants acknowledgment, is the ability of California-based small businesses to participate in the Program either as direct contractors or subcontractors. Prior to the start of the Program in October 2012, PaintCare issued a request for proposals to select service providers to manage collection, transportation, and processing of postconsumer paint. Businesses selected were awarded two-year contracts, which PaintCare recently extended for an additional year.

Over the course of the last two years, two California-based small businesses have commented to CalRecycle that they had been unable to operate as a transportation or processing contractor or as a subcontractor to one of the contracted entities under PaintCare's stewardship program. In general and in concert with its efforts under AB 341 to establish and expand recycling businesses within the state, CalRecycle prefers that incentives for California-based business participation be considered in developing new stewardship and market development programs. However, the legislation establishing the paint stewardship program (AB 1343) does not require PaintCare to give preference to California-based businesses or small businesses, leaving little opportunity for CalRecycle to intervene on behalf of concerned businesses. Even so, CalRecycle has continued to discuss this general issue with PaintCare. PaintCare has stated that it anticipates issuing another request for proposals for transportation and processing contractors in October 2015. CalRecycle expects that PaintCare's upcoming request for proposals will be conducted in a transparent manner with clear objective evaluation criteria, and that it will provide an equitable opportunity for interested businesses to compete for the opportunity to contract with PaintCare.

### **Next Steps**

CalRecycle will continue to monitor program implementation to ensure that the paint stewardship program is convenient, cost effective, and fair. Staff will track progress and work with PaintCare and stakeholders to ensure that meaningful improvements continue to be made in increasing the amount of paint reuse in the program, increasing the paint recovery rate, reducing the cost per gallon of paint management, and improving program convenience. In 2015, CalRecycle will conduct a follow-up survey of PaintCare drop-off sites to further assess the convenience of the program, and work with stakeholders to better understand the financial impacts of the program on local government paint management costs.