

1 **Proposed Regulation for Architectural Paint Recovery Program**

2
3 **PROPOSED REGULATION**

4 **ARCHITECTURAL PAINT RECOVERY PROGRAM**

5 **TITLE 14: NATURAL RESOURCES**
6 **DIVISION 7. DEPARTMENT OF RESOURCES, RECYCLING AND RECOVERY**
7 **CHAPTER 11. PRODUCT STEWARDSHIP**
8 **ARTICLE 2. ARCHITECTURAL PAINT RECOVERY PROGRAM**

9
10 **§18950. Purpose.**

11 The purpose of this Article is to clarify existing statute and establish administrative
12 procedures to efficiently and effectively implement the department’s responsibilities
13 under the law and to provide a uniform competitive business environment to all
14 architectural paint manufacturers pursuant to §48700 of the Public Resources Code
15 (PRC).

16 Authority cited: Sections 40502 and ~~4870042970~~, Public Resources Code, Reference:
17 Section ~~4870042970~~, Public Resources Code.

18 **§18951. Definitions.**

19 (a) Except as otherwise noted, the definitions of this Article supplement and are
20 governed by the definitions set forth in Chapter 5 (commencing with §48700), Part 7,
21 Division 30 of the Public Resources Code:

22 (1) "Must" or "shall" means a provision is mandatory.

23 (2) "May" means a provision is permissive.

24 (b) "Administrative fee" means the fee imposed by the department on the architectural
25 paint manufacturer or stewardship organization in order to cover the costs of
26 administering and enforcing the statute.

 (c) "Assessment" means the amount added to the purchase price of architectural paint
 sold in this state necessary to cover the cost of implementing a manufacturer or
 stewardship organization's paint stewardship program.

- 1 (d) "Brand" means a name, sign, symbol, slogan, or anything that is used to identify
2 and distinguish a specific architectural paint product.
- 3 (e) "Collection" means any method by which a service provider receives postconsumer
4 architectural paint from a consumer.
- 5 (f) "Operational costs" means costs to operate a paint stewardship program,
6 including, but not limited to, collection, transportation, processing, disposal, and
7 education and outreach costs.
- 8 (g) "Reporting period" means a consecutive 12-month period as specified in statute.
- 9 (h) "Service provider" means an entity, including, but not limited to, local household
10 hazardous waste collection programs and retailers, that contracts with a manufacturer
11 or stewardship organization to provide services including, but not limited to, collection,
12 consolidation, transportation, ~~or~~ processing, or proper disposal of postconsumer
13 architectural paint.
- 14 (i) "Significant or material change" means any modification of the architectural paint
15 stewardship assessment previously approved by the department.

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17 Authority cited: Sections 40502 and ~~42970~~48700, Public Resources Code, Reference:
18 Section ~~42970~~48700, Public Resources Code.

19

20 **§18952. Submittals.**

21 (a) A corporate officer, acting on behalf of an architectural paint manufacturer or
22 stewardship organization, shall register with the department according to instructions
23 provided by the department. The registration process shall include, but not be limited
24 to, the following information:

- 25 (1) Contact information of the corporate officer responsible for submitting
26 stewardship plan and annual report documents to the department and for
27 overseeing paint stewardship program activities, including, but not limited to:
- 28 (A) Contact Name
 - 29 (B) Title
 - 30 (C) Name and Company or Stewardship Organization
 - 31 (D) Mailing address

- 1 (E) Phone number
2 (F) E-mail address
3 (G) Web address, if applicable
4 ~~(H) Location and custodian of records~~
- 5 (2) List and contact information for each architectural paint manufacturer
6 participating in the stewardship organization, including, but not limited to:
7 (A) Name of Company
8 (B) Mailing address ~~and physical address~~
9 ~~(C) Web address, if applicable~~
10 ~~(D) Location and custodian of records~~
11 ~~(E)~~ (C) Physical address, web address (if applicable), Contact Name, Title,
12 Phone Number, and e-mail address of participating architectural paint
13 manufacturers shall be provided to the department in a reasonable and timely
14 manner, as determined by the department, upon request. The department
15 shall include a reason for any request of this information.
- 16 (3) List of brands covered under the stewardship plan.
- 17 (b) The stewardship plan should be submitted electronically according to instructions
18 provided by the department. A hard copy, signed by a corporate officer of a
19 manufacturer or stewardship organization under the penalty of perjury, must also be
20 submitted to the department.
- 21 (1) The stewardship plan must be submitted for re-approval upon any significant
22 or material change, as defined. The department shall review the revised
23 stewardship plan within 90 days of receipt and make a determination whether
24 or not to approve the plan.
- 25 (2) The information submitted in a stewardship plan shall address the criteria for
26 approval in §18953 and be organized according to this standard outline:
27 (A) Contact Information
28 (B) Scope
29 (C) Program Goals and Activities
30 (D) Solid Waste Management Hierarchy
31 (E) Collection Systems

- 1 (F) Market Development
- 2 (G) Financing Mechanism
- 3 (H) Education and Outreach
- 4 (I) Program Performance Measurement
- 5 (J) Stakeholder Consultation
- 6 (K) Audits
- 7 (3) The approved stewardship plan shall be a public record, except that financial,
8 production, or sales data reported to the department by a manufacturer or
9 stewardship organization is not a public record under the California Public
10 Records Act, as described in Chapter 3.5 (commencing with § 6250) of
11 Division 7 of Title 1 of the Government Code and shall not be open to public
12 inspection. The department may release financial, production, or sales data
13 in summary form only that cannot be attributable to a specific manufacturer.
- 14 (c) The annual report shall be submitted by a corporate officer acting on behalf of a
15 manufacturer or stewardship organization that is operating an architectural paint
16 stewardship program under a department-approved stewardship plan.
 - 17 (1) The annual report should be submitted electronically to the department
18 according to directions provided by the department. A hard copy, signed by a
19 corporate officer of a manufacturer or stewardship organization under the
20 penalty of perjury, must also be submitted.
 - 21 (2) The information submitted in an annual report shall address the criteria for a
22 finding of compliance per §18954 and be organized according to this standard
23 outline:
 - 24 (A) Contact Information
 - 25 (B) Executive Summary
 - 26 (C) Scope
 - 27 (D) Program Outline
 - 28 (E) Description of Goals and Activities Based on the Stewardship Plan
 - 29 (F) Market Development
 - 30 (G) Financing Mechanism
 - 31 (H) Education and Outreach

1 (l) Audits
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3 Authority cited: Sections 40502, ~~4297048700~~, ~~4297248703~~, ~~4297348704~~, and
4 ~~4297448705~~, and 48706, Public Resources Code, Reference: Section 40502,
5 ~~4297048700~~, ~~4297248703~~, ~~4297348704~~, and ~~4297448705~~, and 48706, Public
6 Resources Code.
7

8 **§18953. Stewardship Plan Approval Criteria.**

9 (a) Paint stewardship plans must follow the standard outline per ~~§1894218952~~ and
10 contain the following:

- 11 (1) Contact information. Identify the manufacturer or designated stewardship
12 organization responsible for the stewardship plan submittal.
- 13 (2) Scope. Describe how the stewardship program is designed to accept and
14 manage all applicable architectural paint products, including paint containers.
15 A manufacturer or stewardship organization shall provide updates to the an
16 ~~updated~~-list of manufacturers and brands to the department at least every six
17 months.
- 18 (3) Program Goals and Activities. Include program goals that are specific to and
19 appropriate for California and describe how the goals were derived. Factors
20 to consider when determining program goals may include, recognizing the
21 current and future recycling infrastructure and capacity, ~~estimating and~~
22 changes in market conditions, ~~and anticipating recycling infrastructure and~~
23 ~~capacity~~ in California. ~~Discussion on~~ Description of goals must include a
24 baseline, to be provided by the manufacturer or stewardship organization,
25 from which the goals will be measured and reported in the manufacturer or
26 stewardship organization's annual reports. The baseline should indicate the
27 status of household hazardous waste architectural paint management in
28 California the state at the time of plan submission. A description of the
29 methodology used for estimating the amount of leftover paint available for

- 1 collection in California must be provided by the manufacturer or stewardship
2 organization. Describe how the program goals will be achieved to:
- 3 (A) Reduce the generation of postconsumer paint;
 - 4 (B) Promote the reuse of postconsumer paint; and
 - 5 (C) Properly manage postconsumer paint at end-of-life in an environmentally
6 sound fashion, including recovery and recycling of postconsumer paint.
- 7 ~~(4) Solid Waste Management Hierarchy. Describe proposed measures that will~~
8 ~~enable the management of postconsumer architectural paint in a manner~~
9 ~~consistent with the state's solid waste management hierarchy pursuant to~~
10 ~~PRC §40051:~~
- 11 ~~(A) Source reduction~~
 - 12 ~~(B) Recycling~~
 - 13 ~~(C) Environmentally safe transformation and safe land disposal~~
- 14 ~~(5)~~ (4) Collection Systems. Describe the system that will be used to collect and
15 properly manage postconsumer architectural paint. This description must
16 include the following:
- 17 (A) Collection methods used for architectural paint, by type.
 - 18 (B) Destination for reuse activities, processing (including recycling) and/or
19 disposal for architectural paint by type.
 - 20 (C) Description of best management practices to be followed by the service
21 providers, including any training that the manufacturer or stewardship
22 organization intends to provide to or require of service providers to
23 ensure proper collection and management of postconsumer architectural
24 paint.
 - 25 (D) Description of ~~convenient collection for California residents to~~ how each
26 consumer of architectural paint in California will have an opportunity to
27 recycle and properly manage their unwanted architectural paint on a state
28 wide basis, including the proposed number, location, and type of
29 collection sites ~~points~~ located in each county.
 - 30 (E) Any retailer may participate, on a voluntary basis, as a paint collection
31 point site pursuant to the paint stewardship program. A manufacturer or

1 stewardship organization must negotiate with any retailer wanting to
2 participate in their paint stewardship program as a collection point site to
3 attempt to establish a mutually agreeable and reasonably feasible
4 agreement with the retailer that addresses all operational costs.

5 ~~(6)~~(5) Market Development. Describe incentives or methods used by the
6 manufacturer or stewardship organization pursuant to PRC §48702(a) to
7 promote the reuse of postconsumer architectural paint in an environmentally
8 sound fashion and to increase recycling of and develop markets for collected
9 materials, as if applicable. A manufacturer or stewardship organization that
10 does not participate in or report on the activities in this section will not be
11 subject to penalties for this section.

12 ~~(7)~~(6) Financing Mechanism. Include a funding mechanism that provides sufficient
13 funding to recover, but not exceed, the cost of the architectural paint
14 stewardship program, including the administrative, operational, and capital
15 costs of the program. The funding mechanism includes the following:

16 (A) The amount of the assessment per unit of architectural paint sold in the
17 state.

18 (B) A budget for the program that includes revenue estimates from the
19 assessment, operational costs~~full program costs~~, and administrative
20 costs (including those pursuant to §~~19858~~18958 re: service payment to
21 the department).

22 (C) A statement that any surplus funds will be put back into the program to
23 reduce the costs of the program, including the assessment amount.

24 (D) A statement that the manufacturer or stewardship organization has
25 established a mutually agreeable and reasonably feasible agreement(s)
26 with a service provider(s) that addresses all operational costs as relevant
27 to each particular service provider.

28 (E) Stewardship organization and manufacturers shall allocate revenues and
29 expenditures applicable to this program in accordance with Generally
30 Acceptable Accounting Principles.

1 (F) If a manufacturer or stewardship organization conducts activities that are
2 separate from the implementation and management of the California
3 paint stewardship program, then the The stewardship plan shall include
4 documentation on how the collection and expenditure of assessment
5 funds shall be kept separate from other activities of the manufacturer or
6 stewardship organization.

7 ~~(8)~~ (7) Education and Outreach. Include a description of education and outreach
8 efforts to consumers, contractors, and retailers to promote source reduction
9 and recycling of architectural paint. The description shall include how the
10 outreach and education methods will be used and distributed, and how
11 effectiveness of these activities will be measured. Educational information
12 may include, but is not limited to, signage, written materials, advertising or
13 other promotional materials pursuant to PRC §48703(e). A manufacturer or
14 stewardship organization may not advertise a collection point(s) that is not a
15 contracted service provider under the manufacturer or stewardship
16 organization's stewardship program without the consent of the collection
17 point(s).

18 ~~(9)~~ (8) Program Performance Measurement. Describe how attainment of the goals
19 will be measured per §18953(a)(3). Program data shall be collected for purposes
20 of annual report submittal (see §18954. Annual Report Compliance Criteria).
21 Information to be provided includes, but is not limited to specific information on the
22 measurement methodology, assumptions, conversion factors, if used, and data
23 sources.

24 ~~(10)~~ (9) Stakeholder Consultations. A manufacturer or stewardship organization
25 that submits a stewardship plan shall include a process of consultation with
26 existing local household hazardous waste collection programs ~~and other~~
27 ~~affected stakeholders,~~ and consider the existing infrastructure in the
28 development of the plan. Other §stakeholders that may be consulted include,
29 but are not limited to, consumers, retailers, architectural paint recyclers,
30 architectural paint contractors, and haulers.

31 ~~(11)~~ (10) Audits.

1 (A) Financial Information. Describe the process by which the financial
2 activities of the stewardship organization or individual manufacturer that
3 are related to implementation of the stewardship plan will be subject to an
4 independent financial audit, results of which will be submitted in the
5 manufacturer or stewardship organization's annual report and reviewed
6 by the department.

7 (B) Non-Financial Information (optional). A manufacturer or stewardship
8 organization that does not participate in or report on the activities in this
9 section will not be subject to penalties for this section. Describe the
10 process by which the following non-financial activities of the organization
11 or individual manufacturer that are related to implementation of the
12 stewardship plan will be subject to an independent non-financial audit,
13 which will be submitted in the manufacturer or stewardship organization's
14 annual report and reviewed by the department:

- 15 1. A description of how the postconsumer architectural paint was
16 managed in accordance with the stewardship plan.
- 17 2. The total amount of architectural paint sold and collected, and, if
18 applicable, the recovery rate.

19
20 Authority cited: Sections 40502, 4297048700, 4297248703, and 4297348704, Public
21 Resources Code, Reference: Section 4297048700, 4297248703, and 4297348704,
22 Public Resources Code.

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24 **§18954. Annual Report Compliance Criteria.**

25 (a) The annual report must contain the following:

- 26 (1) Contact information. Identify the manufacturer or stewardship organization
27 responsible for the annual report submittal.
- 28 (2) Executive Summary. Provide ~~an evaluation of the effectiveness~~ a description
29 of the manufacturer or stewardship organization's architectural paint recovery
30 efforts of the paint stewardship plan during the reporting period pursuant to
31 PRC §48705(a). This may include ~~and~~ anticipated steps, if needed, to

- 1 improve performance and a description of ~~Describe~~ challenges encountered
2 during the reporting period and how they will be addressed.
- 3 (3) Scope. The program described in the stewardship plan accepts and manage
4 all applicable architectural paint products. Include an updated list of
5 participating manufacturers and their respective contact information per
6 §18952(a)(2).
- 7 (4) Program Outline. Describe the paint stewardship program, including
8 information on the following topics:
- 9 (A) A description of the methods used to collect, transport, and process
10 postconsumer architectural paint, by type, in this state.
- 11 (B) Description of how each consumer of architectural paint in California had
12 an opportunity convenient collection for California residents to recycle and
13 properly manage their unwanted architectural postconsumer paint on a
14 state wide basis, including the number, location, and type of collection
15 points sites located in each county.
- 16 (C) Description of best management practices followed by service providers,
17 including any training that the manufacturer or stewardship organization
18 provided or required of service providers to ensure proper collection and
19 management of postconsumer paint.
- 20 ~~(D) Description of how each consumer of architectural paint had an~~
21 ~~opportunity to properly manage their postconsumer paint.~~
- 22 ~~(E)~~ (D) A statement that the manufacturer or stewardship organization
23 negotiated with any ~~retailer~~ service provider that contacted the
24 manufacturer or stewardship organization for inclusion in the stewardship
25 program as a collection point in an attempt to establish a mutually
26 agreeable and reasonably feasible agreement that addresses all
27 operational costs.
- 28 (5) Description of goals and activities based on the stewardship plan. State goals
29 from the approved stewardship plan, the baseline from which goals were
30 measured, and report on achievement during the reporting period. Describe
31 any adjustments to goals stated in the approved stewardship plan for the

- 1 upcoming reporting period and accompanying rationale for those changes.
2 The annual report must include, but not be limited to, quantitative information
3 and discussion on the following categories pursuant to PRC §48705(a) and
4 PRC §48703(d):
- 5 (A) The total volume of architectural paint sold, by type, in the state during the
6 preceding reporting period.
- 7 (B) The total volume of postconsumer architectural paint recovered, by type,
8 in the state during the preceding reporting period.
- 9 (C) Disposition of postconsumer paint collected, by type and by estimated
10 volume, including facility name(s) and address(es) for each disposition
11 method.
- 12 ~~(D) The total cost of implementing the architectural paint stewardship~~
13 ~~program.~~
- 14 ~~(E) An evaluation of how the architectural paint stewardship program's funding~~
15 ~~mechanism operated.~~
- 16 ~~(F) (D)~~ A description of efforts to increase reuse of postconsumer paint.
17 ~~(G) (E)~~ A description of efforts to increase recyclability of postconsumer paint.
- 18 (6) Market Development. Include a description of possible market development
19 activities to incentivize the market growth of collected materials, if applicable.
20 A manufacturer or stewardship organization that does not participate in or
21 report on the activities in this section will not be subject to penalties for this
22 section.
- 23 (7) Financing Mechanism. The annual report shall include a description of the
24 total cost of implementing the architectural paint stewardship program and an
25 evaluation of the program's financing mechanism, including whether or not the
26 funding was sufficient to recover, but not exceed, the full cost of the paint
27 stewardship program. Any proposed change in the amount of the architectural
28 paint stewardship assessment must be submitted to the department for re-
29 approval (see §18952. Submittals). The annual report shall include, but not
30 be limited to, the following, and include any necessary supporting documents:
31 (A) Assessment amount per container

- 1 (B) Total program cost
- 2 (C) Capital costs
- 3 (D) Cost(\$)/capita
- 4 (E) Cost (\$)/gallon collected
- 5 (F) Education/Outreach (% of total program cost)
- 6 (G) End-of-life materials management (% of total program cost, with line
- 7 items for reuse, recycling, fuel incineration, and landfilling)
- 8 (H) Program administration (% of total program cost, including annual
- 9 administrative fee for service payments to the department)
- 10 (I) An evaluation of how the assessment operated
- 11 (J) Surplus funding, if any, and how it will be applied to reduce program costs
- 12 (K) Governance (program oversight) (% of total program cost)
- 13 (8) Education and Outreach. Describe educational and outreach activities in
- 14 context of those identified in the stewardship plan. Provide a description of
- 15 educational materials that were provided to retailers, consumers, and
- 16 contractors during the reporting period and provide electronic samples.
- 17 Identify ~~the~~ any method(s) used to determine the effectiveness of educational
- 18 and outreach surveys (e.g., surveys, hits on specific web pages, number of
- 19 participants at events, etc.), if applicable. These education and outreach
- 20 materials may include, but are not limited to, any of the following per PRC
- 21 §48703(b)(4)(e):
- 22 (A) Signage that is prominently displayed and easily visible to the consumer.
- 23 (B) Written materials and templates of materials for reproduction by retailers
- 24 to be provided to contractors and consumers at the time of purchase or
- 25 delivery or both.
- 26 (C) Promotional materials or activities, or both, that explains the purpose of
- 27 paint stewardship and the means by which it is being carried out.
- 28 (D) Links to website(s) created and maintained by the stewardship
- 29 organization.
- 30 (9) Audits.

1 (A) Financial Information. The annual report shall include an independent
2 financial audit, related to the implementation of the stewardship plan,
3 funded from the paint stewardship assessment. The audit shall be
4 conducted in accordance with the most current auditing standards
5 generally accepted in the United States of America, and standards set
6 forth in Government Auditing Standards issued ~~in July 2007~~ by the
7 Comptroller General of the United States.

- 8 1. The department may investigate further. If the department decides
9 to further review the findings of the independent auditor, the review
10 will be conducted based on same information the individual
11 manufacturer or stewardship organization provided to the
12 independent auditor.
- 13 2. Financial audits must be prepared by a Certified Public Accountant.
- 14 3. The department may request supplemental information from the
15 individual manufacturer or stewardship organization during the
16 course of review of a manufacturer- or stewardship organization-
17 submitted financial audit, if necessary.
- 18 4. The department will inform the individual manufacturer or the
19 stewardship organization within 60 days of the results of its review.

20 ~~(A)~~ (B) Non-Financial Information (optional). A manufacturer or stewardship
21 organization that does not participate in or report on the activities in this
22 section will not be subject to penalties for this section. The annual report
23 may include an independent audit on the following information:

- 24 1. A description of how the postconsumer architectural paint was
25 managed in accordance with the stewardship plan.
- 26 2. The total amount of architectural paint sold and collected, and, if
27 applicable, the recovery rate.

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29 Authority cited: Sections 40502, ~~4297048700~~, ~~4297248703~~, ~~4297548704~~, ~~48705~~, and
30 ~~4297648706~~, Public Resources Code, Reference: Section ~~4297048700~~, ~~4297248703~~,
31 ~~4297548704~~, ~~48705~~, and ~~4297648706~~, Public Resources Code.

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§18955. Civil Penalties.

A civil penalty may be administratively imposed by the department on any person who is in violation of any provision of this Article. The responsible party or parties shall be determined by the department based on the totality of the circumstances.

(a) Any manufacturer offering architectural paint for sale in California or a manufacturer or stewardship organization submitting a stewardship plan or annual report to the department is subject to enforcement under this Article. Architectural paint manufacturers are subject to penalties as a result of the failure of their designated stewardship organization to comply with this Article on their behalf.

(b) Notwithstanding paragraph (a), an architectural paint manufacturer is not subject to any penalty for failing to comply if that manufacturer can demonstrate that it provided true and accurate information to the stewardship organization and the stewardship organization failed to properly report this on behalf of the manufacturer.

(c) A stewardship organization is not subject to a penalty for failure to comply as a result of submitting false or misleading information if it can demonstrate that it received false or misleading information from an architectural paint manufacturer that was the direct cause of its failure to comply with this Article.

(d) Any manufacturer or retailer that offers architectural paint for sale in the state is subject to enforcement under this Article.

Authority cited: Sections 40502, ~~42970, 42972, 42972.5, 42973, 42974, 42975,~~ and 48704 Public Resources Code, Reference: Section ~~42970, 42972, 42972.5, 42973, 42974, 42975,~~ and ~~42978~~48704, Public Resources Code.

§18955.1. Amount of Civil Penalties and Administrative Penalty Schedule.

(a) Civil penalties may be imposed administratively in accordance with the following penalty tables:

- 1 (1) Base Penalty Table I is to be used for stewardship organizations and
 2 architectural paint manufacturers.
 3 (A) Identify what violations have occurred.
 4 (B) Identify the severity of the violations.
 5 (C) Establish the possible range of the base penalty per violation based on the
 6 severity levels described in paragraph (b).
 7

Base Penalty Table I: For Stewardship Organizations and Architectural Paint Manufacturers		
Violation	Description of Violation	Severity
PRC 48702(b)(1)	Selling or offering for sale in this state, to any person in this state, architectural paint that is not covered under a department-approved stewardship plan or listed as a compliant product on the department's website.	Level 3
PRC 48702(a) and 48703(a)	Failure to submit, individually or through a stewardship organization, an architectural paint stewardship plan to the department	Level 3
PRC 48703	Stewardship plan does not contain required elements	Level 3
PRC 48704(c)	Failure to implement an architectural paint stewardship program described in a department-approved stewardship plan	Level 3
PRC 48704(e)	Failure to pay an annual administration fee to the department	Level 3
PRC 48705(a)	Failure to submit, individually or through a stewardship organization, an annual report to the department	Level 3
PRC 48705(a)	Annual report does not contain required elements	Level 2
14 CCR 18956	Failure to meet record keeping requirements	Level 2

- 1 (2) Base Penalty Table II is to be used for retailers.
- 2 (A) Identify what violations have occurred.
- 3 (B) Identify the severity of the violations.
- 4 (C) Establish the possible range of the base penalty per violation based on the
- 5 severity levels described in paragraph (b).
- 6

Base Penalty Table II: For Retailers		
Violation	Description of Violation	Severity
PRC 48702(b)(1)	Selling or offering for sale in this state, to any person in this state, architectural paint that is not covered under a department-approved stewardship plan or listed as a compliant product on the department's website.	Level 3
14 CCR 18956	Failure to meet record keeping requirements.	Level 2

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8 (b) For the purpose of implementing this ~~[Section/Article]~~, penalty severity levels are

9 described as follows:

- 10 (1) For a violation classified as Level 1, the amount of the base penalty may be
- 11 up to \$1,000 per day.
- 12 (2) For a violation classified as Level 2, the amount of the base penalty may be
- 13 up to \$5,000 per day.
- 14 (3) For a violation classified as Level 3, the amount of the base penalty may be
- 15 up to \$10,000 per day.

16 (c) A penalty amount may exceed \$1,000 per day only if a person intentionally,

17 knowingly, or negligently violates this Article.

18 ~~(e)-(d)~~ The department will set the final penalty amount after considering the criteria set

19 forth in §18955.2. The department may increase the final penalty beyond the penalty

20 range established pursuant to paragraphs (a) and (b), if it determines, after considering

21 the criteria set forth in §18955.2, that such an increase is warranted and appropriate.

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1 Note: Authority cited: Sections 40502 and ~~42970~~ and 4297848704, Public
2 Resources Code. Reference: Sections ~~4297048704~~ and 4297848705, Public
3 Resources Code; and Section 11506, Government Code.
4

5 **§18955.2. Criteria to Impose a Civil Penalty.**

6 In assessing or reviewing the amount of civil penalty imposed for a violation of this
7 chapter, the department or the court shall consider all the following:

- 8 (a) The nature, circumstances, extent, and gravity of the violation(s).
9 (b) The number and severity of the violation(s).
10 (c) Evidence that the violation was intentional, knowing or negligent.
11 (d) The size of the violator.
12 (e) History of violation(s) of the same or similar nature.
13 (f) The willfulness of the violator's misconduct.
14 (g) Whether the violator took good faith measures to comply with this chapter and
15 the period of time over which these measures were taken.
16 (h) Evidence of any financial gain resulting from the violation(s).
17 (i) The economic effect of the penalty on the violator.
18 (j) The deterrent effect that the imposition of the penalty would have on both the
19 violator and the regulated community.
20 (k) Any other factor that justice may require.

21
22 Note: Authority cited: Sections 40502 and ~~42978~~48704, Public Resources Code.
23 Reference: Section ~~42978~~48704, Public Resources Code.
24

25 **§18955.3 Procedure for Imposing Civil Penalties.**

26 (a) Civil penalties may be administratively imposed in accordance with the procedures
27 outlined in the Administrative Procedure Act at Chapter 5 (commencing with §11500) of
28 Part 1 of Division 3 of Title 2 of the Government Code with the exception of Government
29 Code §11505(c).

1 (b) The accusation or complaint and all accompanying documents may be served on
2 the respondent by the following means:

3 (1) Personal service.

4 (2) Substitute service by using the same service procedures as described in
5 §415.20 of the Code of Civil Procedure.

6 (3) Certified Mail: For respondents who have submitted a stewardship plan,
7 certified mail or registered mail if the letter containing the accusation or
8 complaint and accompanying material is mailed, addressed to the respondent
9 at the latest facility or mailing address(es) provided in the stewardship plan on
10 file with the department. Any address provided in the stewardship plan may
11 be used for service of process. Proof of service of the accusation or complaint
12 shall be the certified mail receipts or registered mail receipts proving the
13 accusation or complaint and accompanying materials were sent to respondent
14 by certified mail or registered mail. For respondents who have not submitted
15 or are not required to submit a stewardship plan to the department, certified
16 mail or registered mail pursuant to the procedures indicated in the
17 Administrative Procedure Act at §11505(c) of the Government Code applies.

18 (c) Civil penalties may be imposed pursuant to the Public Resources Code §48704(f)
19 in the discretion of the trier of fact in the civil proceeding.

20
21 Note: Authority cited: Sections 40502, 48700 and ~~42970~~48704, Public Resources
22 Code. Reference: Section 11500, Government Code; and Section 48700 and
23 ~~42970~~48704, Public Resources Code.

24 25 **§18956. Record Keeping Requirements**

26 Each stewardship organization, manufacturer, or retailer required to comply with
27 Chapter 5 (commencing with §48700, Part 7, Division 30 of the Public Resources Code)
28 shall:

29 (a) Maintain records to support the requirements in this Article. Stewardship
30 organizations and manufacturers must maintain records to support §18953 and §18954.

1 Retailers must ~~maintain~~ provide access to existing records on all architectural paint sold
2 or offered for sale in the state including:

3 (1) The manufacturer of the paint.

4 (2) The date(s) the retailer purchased the paint from the manufacturer.

5 (3) The date(s) the retailer sold the paint.

6 (4) Certification letter(s) from the department, if provided by a manufacturer, to
7 demonstrate that paint from the manufacturer is or was subject to a
8 department-approved stewardship plan. A retailer must provide access to a
9 certification letter only if it is being used as proof of compliance, pursuant to
10 PRC §48702(c)(2), that a manufacturer not listed on the department's internet
11 website is in compliance and may sell or offer for sale paint in California.

12 (b) Provide the department with ~~immediate~~ reasonable and timely access, as
13 determined by the department, to its facilities, operations, and any relevant records
14 necessary to determine compliance with this Article, upon request. The records
15 required by this Article shall be accessible for three years;

16 (c) Make all records required by this Article available for inspection or audit by the
17 department, or its agent and other duly authorized regulatory agencies during normal
18 working hours;

19 (d) Submit copies of specified records to the department upon request or at a
20 frequency approved by the department.

21 (e) The department may take disciplinary action against any stewardship organization
22 or manufacturer who fails to provide the department with access pursuant to this
23 subdivision including, but not limited to, imposing penalties and the immediate removal
24 from the department's list of manufacturers that are in compliance with Chapter 5
25 (commencing with §48700), Part 7, Division 30 of the Public Resource Code.

26

27 Note: Authority cited: Sections 40502 and ~~42970~~48700, Public Resources Code.

28 Reference: Sections ~~42970, 42972, 42972.5, 42975~~48700, 48703, 48705, and
29 48706~~42976~~, Public Resources Code.

30 **§18957. Proprietary, Confidential, or Trade Secret Information.**

1 The public disclosure of records supplied to the department pursuant to this Article that
2 are, at the time of submission, claimed to be proprietary, confidential, or trade secret
3 shall be subject to the disclosure provisions in Title 14, California Code of Regulations,
4 Division 7, Chapter 1, Article 4 (commencing with §17041), and in PRC §48704(b).

5 Authority cited: Section 6253, Government Code. Sections 40502 and ~~42970~~48700,
6 Public Resources Code. Reference: Sections 6250 et seq., Government Code. Section
7 ~~42970~~48700, Public Resources Code.

8 **§18958. Service Payments to Department of Resources Recycling and Recovery.**

9 (a) The department, using information provided in annual reports, its actual program
10 costs for previous years, plans submitted in prior years, information from other sources,
11 and assessing program needs; shall estimate the costs to be incurred by the
12 department in connection with the administration and enforcement of the requirements
13 of this chapter for the next fiscal year.

14 (b) The department director, or his/her delegated authority, shall approve the
15 administrative fee charged for each stewardship plan for the full administration and
16 enforcement costs by April 30 each year starting 2012.

17 (c) Any department fee shall be prorated, if there is more than one stewardship plan,
18 by the number of plans submitted.

19 (d) The department will issue invoices for each stewardship plan by May 31 each year.
20 Payment is due annually on July 1. The department's approval of a plan shall be
21 revoked if payment is not received. Stewardship plans revoked for lack of payment may
22 be reinstated upon payment.

23

24 Authority cited: Sections 40502, ~~42970, 42972, 42977,~~48700, 48703, and
25 ~~42977.~~148704, Public Resources Code, Reference: Section ~~42970, 42972,~~
26 ~~42977,~~48700, 48703, and ~~42977.~~148704, Public Resources Code.

27