



June 4, 2012

Ms. Caroll Mortensen, Director
Department of Resources Recycling and Recovery
1001 I Street
Sacramento, CA 95814

RE: California Paint Stewardship Plan - Revised

Dear Carroll,

On April 2, 2012, on behalf of the architectural paint manufacturers we represent, PaintCare submitted a Paint Stewardship Program Plan in compliance with the 2010 California Paint Stewardship Law (Public Resource Code, Sections 48700-48706).

On April 30, 2012, PaintCare received a letter from CalRecycle requesting some clarification and additional information within the PaintCare Program Plan. PaintCare is pleased to submit a revised Paint Stewardship Program Plan addressing CalRecycle's comments. Some additional minor amendments have been made to the Plan beyond addressing CalRecycle's comments, and all appendices except A, B, J, L and M have been updated.

For ease of comparison, we are also providing a red line version of the narrative portion of the revised Plan. The changes in the appendices are either discussed within the narrative or easily identified when comparing the two plans.

Finally, for your convenience, the attached pages provide PaintCare's response and/or highlight where changes in the Plan were made in response to CalRecycle's comment and questions.

We hope that the revised Plan meets your expectations. If you need any further clarification or information, please let us know.

Thank you,

A handwritten signature in blue ink, appearing to read "m. zarrehparvar".

Marjaneh Zarrehparvar
Executive Director

cc: Alison Keane, ACA

CalRecycle Comment #1: Retail participation. Clarify when retail site recruitment will begin. Additionally, describe how PaintCare will address a retailer(s) that contacts PaintCare for inclusion in PaintCare’s program even if this occurs prior to the scheduled retail site recruitment phase [per PRC 48703 (f)].

Recommendation: Based on discussions with PaintCare, staff understands that retail coordination will be occurring during Phase 1. PaintCare will conduct a similar process for retail site recruitment as is currently being undertaken for household hazardous waste program site recruitment (e.g., retailers will be invited to participate, PaintCare will track names and locations of interested retailers to evaluate program needs and determine subsequent negotiations). Additionally, PaintCare indicated that the 750 collection sites actually refers to fixed locations (does not include one-day events). Staff suggests describing these activities in the revised Plan.

***PaintCare Response:** Additional information addressing this comment and recommendation has been added to Section 6d (Collection Infrastructure, Identification and Recruitment). In addition, Section 6e (Service Level Goals) now indicates that the 750 collection sites are “permanent” collection sites.*

CalRecycle Comment #2: Provide definitions or references for the program types (e.g., “Temporary” and “Recycle-Only”) that are mentioned in the Plan (i.e., Table 6A. Existing Infrastructure, pg. 12). E.g., Health and Safety Code Section 25218.1, or other reference.

***PaintCare Response:** Citations have been added to Table 6A (Existing Infrastructure) to define the various program types.*

CalRecycle Comment #3: Draft collection site guidelines (Appendix K). Supply a final version of these guidelines when they are available.

***PaintCare Response:** An updated Draft Collection Site Guidelines is included with Appendix N (Municipal Contract Template) of the revised Program Plan. PaintCare is waiting for feedback from CalRecycle, DTSC and CUPA representatives and will provide CalRecycle with the final version of the Guidelines once it is completed.*

CalRecycle Comment #4: Goals:

The Plan appears to have a very robust description of service level goals for statewide coverage by suggesting one site for every 30,000 residents in a designated area. However, please clarify what opportunities will exist for those residents that are in a designated area with less than 30,000 residents.

Recommendation: Staff understands that, in such cases, PaintCare will be working to establish collection opportunities which could include retail during Program Year 1. Staff suggests PaintCare add language describing its intent in the revised Plan. Staff also recommends further discussion of the GIS analysis in the report, highlighting its premises and explaining how it will be integrated with other information and work that PaintCare has done with regards to infrastructure assessment (e.g., letters of interest). In addition, CalRecycle staff understands that PaintCare’s service level goal of 750 collection locations is for permanent collection

locations, and that one-day or temporary events would be in addition to this. These points should be clarified in the Plan.

PaintCare Response: *Additional information addressing this comment and recommendation has been added to Section 6d (Collection Infrastructure, Identification and Recruitment) and Section 6e (Service Level Goals).*

While activities related to the goals per PRC 48703(d) (see below) are described in various locations within the Plan, staff suggests articulating goals for those efforts in the same section as the service level goals (Section 6).

- reduce the generation of postconsumer paint
- promote the reuse of postconsumer paint
- proper end-of-life management of postconsumer paint

PaintCare Response: *A statement has been added to Section 6b (Section Overview) to indicate that reduction and reuse goals are addressed in Section 9 (Outreach and Education Goals). In addition, the word “Goal” has been added title of Section 9, and the statutory citation related to reuse and reduction has been added to Section 9a (Statutory Requirement).*

CalRecycle Comment #5: Budget categories. Additional budget category breakouts and descriptions are required for purposes of approving the assessment.

Recommendation: Staff has attached a sample budget that may be used as a model to illustrate the level of detail in the budget that is desired. However, PaintCare is the most qualified to identify the categories and subcategories for their budget. Whatever categories or format PaintCare ultimately uses should enable auditors and CalRecycle staff to compare the budget with the actual expenditures, must be GAAP compliant, and must provide a framework so that all of its income and expenditures trace back to verifiable authentic financial documents. Additionally, since PaintCare runs similar programs in states other than California, we note that assessments collected in California must be used in California and all costs (direct and indirect) have been incurred for California’s program, not programs in other states. PaintCare should re-submit this budget information for further evaluation (please note that if there is any information considered confidential or proprietary, staff would like those items to be flagged).

PaintCare Response: *The budget table in Section 8d (Program Budget) has been revised to include additional sub-categories, and the anticipated Program start date has been changed to October 1, 2012.*

PaintCare maintains a chart of accounts and books of ledgers that enable auditors to verify the authenticity of source documents and the accuracy of PaintCare’s financial statements. PaintCare’s financial statements dated June 30, 2011 were audited by an independent auditing firm, who rendered an unqualified opinion on the accuracy of those financial statements. The accounting framework that currently exists will be used to maintain the financial information for the California program.

CalRecycle Comment #6: Describe what factors PaintCare will use to determine when the level of funds in the budget becomes enough for the program to re-evaluate its assessment rate.

PaintCare Response: Additional information addressing this comment has been added to Section 8e (Budget Discussion) under the sub-heading “Program Surplus/Deficit.”

CalRecycle Comment #7: The California Program allocation of PaintCare administrative costs is \$1.5 million per year, but the Plan does not describe how this figure is derived. Provide further clarification on the administrative costs of the program to ensure that the assessment will be funding California costs specifically.

PaintCare Response: Additional information addressing this comment has been added to Section 8e (Budget Discussion) under the sub-heading “Administrative Costs.”

CalRecycle Comment #8: From Program Year 1 to Program Year 2, PaintCare anticipates collecting 20% more paint, yet the Transportation and Processing costs are approximately 50% more. Further detail in the budget would help to explain this disparity.

PaintCare Response: Additional information addressing this comment has been added to Section 8e (Budget Discussion). See the second bullet under the sub-heading “Operational Costs.”

CalRecycle Comment #9: Page 27. Section 8.e. under “Operational Costs,” the third bullet states that CalRecycle’s oversight costs (Administrative Fee) are estimated at \$600,000 in Year 1 – this is actually *through* Year 1, not *in* Year 1 and CalRecycle suggests this to be revised.

PaintCare Response: This has been corrected. See Section 8e (Budget Discussion), bullet 6 under sub-heading “Operational Costs.”

CalRecycle Comment #10: Page 28 of the Plan uses the term “non-substantial” when quoting statute; this should be revised since AB 1343 does not contain this term, and if it is used in the Plan it should be defined.

PaintCare Response: The statement containing this term under Section 8f (PaintCare Recovery Fee) has been deleted and further explanation regarding budget surplus/deficit has been added to Section 8e (Budget Discussion) under the sub-heading “Program Surplus/Deficit.”

CalRecycle Question #1: Is PaintCare including the reserve as part of its budget?

PaintCare Response: No. According to generally accepted accounting principles, contributions to a reserve are not considered expenses. The contribution to the reserve is equal to the change in net assets in each accounting period.

CalRecycle Question #2: What is the difference between Administrative and Operational Costs?

PaintCare Response: Operational costs are directly related to fulfillment of the California Program and do not benefit or overlap with costs that affect other states. Administrative costs (also known as “indirect costs” in some companies) are indirectly related to the California program. Like any organization, PaintCare incurs general costs that support the company as a whole and are shared among all the programs of the company, including California. (See the response to Comment 7 for further explanation.)

CalRecycle Question #3: The surplus is \$3,783,830 in year 1 and \$5,353,161 in year 2. Is year 2 cumulative (i.e., does the year 2 budget include the surplus from year 1)? When would the surplus be put back into the budget and/or used to lower the assessment? See Comment #6.

PaintCare Response: The surplus figures listed in the budget are not cumulative, but rather relate specifically to each period presented. See the response to Comment 6 for further explanation of program surplus.

CalRecycle Comment #11: It is advisable not to use “and” in a budget line (e.g. “Transportation and processing”).

PaintCare Response: In the revised Program Plan, transportation costs and processing costs are shown on separate lines in Section 8d (Program Budget). However, the actual expenses may or may not have sufficient transparency to report both cost categories individually as some service providers bundle the two services together and bill as one line item. To the extent that PaintCare can break out the costs in its actual reporting, it will do so.

CalRecycle Comment #12: Large Quantity Generators (LQGs). Currently, the Plan describes how LQGs of latex paint can coordinate directly with PaintCare to arrange for pick-ups, but states that existing applicable state and federal hazardous waste regulations prohibit PaintCare from allowing LQGs of oil-based paint from utilizing the program. Describe how LQGs that pay the assessment will be able to utilize the program.

PaintCare Response: As described in Section 6d (Collection Infrastructure, Identification and Recruitment), SQGs and LQGs may use the Program to recycle any quantity of latex paint. The following factors contribute to and validate the proposed Program funding mechanism that SQGs/LQGs may contribute to.

- Oil-based paint collection from non-exempt hazardous waste generators is beyond the scope of the Program which was put in place to relieve local government -funded HHW programs of the burden of postconsumer HHW and CESQG paint management, not SQG/LQG paint.
- Even if it was not beyond the scope of the Program, acceptance of oil-based paint from SQG/LQG generators would add too much cost and liability under the current US regulatory structure.
- The assessment fee that funds this program is not tied to the collection service. A participant may use the program regardless of whether they ever paid the assessment fee or not. The fee system is merely a way to fairly distribute the costs of the Program onto manufacturers based on market share.

The only way to tie the assessment fee to the service is for the fee to be assessed at the point of collection, based on the amount of postconsumer paint the participant returns. Furthermore, the fee would have to be based on the actual cost for their volume of paint, not the nominal PaintCare Recovery Fee that is spread over many gallons of paint – only a fraction of which comes back into the Program.

- *Oil-based paint represents no more than 20% of architectural paint sales and SQGs/LQGs purchase only a fraction of this 20%.*

CalRecycle Question #4: Does PaintCare intend to work/partner with local governments in some capacity relative to education and outreach? If so, it may be helpful to describe these potential efforts in the Plan.

PaintCare Response: Section 9h (Working with Local Governments) has been added to address this question and recommendation.

CalRecycle Comment #13: Page 36. Section 10.f. Latex Paint Management: Consider changing to “Beneficial Reuse” to “Beneficial Use” to be more consistent with the types of activities described.

PaintCare Response: The term “Beneficial Reuse” has been changed to “Beneficial Use” in Section 10e (Processing, Recycling and Disposal) and Section 10f (Latex Paint Management).

CalRecycle Comment #14: The Plan should note that the “Beneficial Reuse” activities described would only occur in areas where they are allowed. For example, per Title 27 California Code of Regulations (27 CCR), Chapter 3, Subchapter 4, Article 2, Section 20690(b), latex paint is not currently on the CalRecycle approved list of materials allowed for Alternative Daily Cover (ADC). Also see the CalRecycle web page on ADC at <http://www.calrecycle.ca.gov/lqcentral/basics/adcbasic.htm>.

PaintCare Response: The statement “as permissible by state and local authority” has been added to the description of Beneficial Use under Section 10f (Latex Paint Management).

Appendix G. Registered Brands

Comment #15: Consider adding a statement at the top of the list of registered brands such as, “The following brands include all colors and all sheens.” in order to avoid any confusion as some of the brands indicate certain colors or sheens are included and others do not mention this.

PaintCare Response: The suggested statement has been added to the brand list. Please note that prior to Program implementation, PaintCare will provide CalRecycle an updated list, and will remove “Appendix G” from the title to avoid confusion for retailers accessing the information without knowledge of the Program Plan.