

**REQUEST FOR APPROVAL**

**To:** Carol Mortensen  
Director

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

**Request Date:** April 15, 2014

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

**Action By:** April 15, 2014

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**Summary of Request:**

PaintCare submitted the revised California Paint Stewardship Program Year 1 Annual Report on January 5, 2014, with edits and amendments as requested by CalRecycle. Along with the revised report, PaintCare submitted a supplemental letter with additional information and responses to the requests from CalRecycle. The information provided by PaintCare in the revised report and supplemental letter is sufficient for purposes of reaching a determination on compliance. Although there are several important ongoing issues that require continued CalRecycle monitoring and oversight, PaintCare has made significant progress in implementing the Paint Stewardship Program in California and is working to continuously improve the program. CalRecycle staff reviewed PaintCare's revised annual report and program implementation and found that the program is in compliance. Accordingly, staff requests adopting a finding of compliance for the Year 1 Revised Annual Report, 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).

**Recommendation:**

Staff recommends finding the California Paint Stewardship Program Year 1 Revised Annual Report compliant.

**Action:**

On the basis of the information, analysis, and findings in this Request for Approval, I hereby approve a determination that the California Paint Stewardship Program Year 1 Revised Annual Report, submitted by PaintCare, dated January 5, 2014 is compliant.

**Dated:** \_\_\_\_\_

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**Carol Mortensen, Director**

**Attachments:**

1. Request for Approval, "Consideration of Staff Recommendation Regarding Completeness of the California Paint Stewardship Program Year 1 Revised Annual Report," January 21, 2014; available at: <http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1110&aiid=1015>.
  2. Revised California Architectural Paint Stewardship Program Annual Report, dated January 5, 2014; available at: <http://calrecycle.ca.gov/Paint/AnnualReport/2013/PaintCareRev.pdf>.
  3. PaintCare January 5, 2014 Response Letter to CalRecycle; available at: <http://www.calrecycle.ca.gov/Paint/AnnualReport/2013/PaintCare1514.pdf>.
  4. CalRecycle December 6, 2013 Letter to PaintCare; available at: <http://www.calrecycle.ca.gov/Paint/AnnualReport/2013/CalRecycleLtr.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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**Summary of Findings**

PaintCare has made significant progress in implementing the Paint Stewardship Program in California and is working to continuously improve the program. A total of 632,652 gallons of postconsumer paint was collected during the first 8 ½ month reporting period, and the collection volume is projected to increase substantially in Year 2. PaintCare has finalized contracts with 63 local government HHW programs and established 534 retail collection sites in California. PaintCare launched an education and outreach campaign utilizing various advertising strategies to build awareness of the program and encourage California residents to reduce, reuse and recycle leftover paint. PaintCare is also taking steps to simplify regulatory requirements, such as sponsoring AB 2748, which would reduce the requirements on retail stores to develop a hazardous material business plan and presumably enable increased participation in the program as paint drop-off sites. Furthermore, PaintCare made a concerted effort to respond to CalRecycle's requests for additional information in its submittal of the revised report.

CalRecycle staff reviewed PaintCare's revised annual report and program implementation and found that the PaintCare program is in compliance and making progress. At the same time, however, CalRecycle staff have also identified a number of priority areas for monitoring and oversight to ensure that the program continues to improve. These priority areas include establishing a convenient collection infrastructure of retail and local government paint drop-off sites statewide, ensuring fair and equal voluntary participation in the program for retailers, and maintaining reasonable program costs and financial transparency.

The remainder of this document is structured as follows:

- Background Information
- Program Performance Overview
- Annual Report Revisions
- Priority Areas for Monitoring and Oversight

## **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 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.

AB 1343 requires CalRecycle to review annual reports and make a determination regarding completeness and a subsequent determination of 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 also 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, total program costs, an evaluation of the funding mechanism, an independent financial audit, and educational materials provided to consumers.

PaintCare is the architectural paint stewardship organization that acts on behalf of participating paint manufacturers. PaintCare developed the Program Plan, designed and implements the program, and provides annual reports each year with data on program progress.

## **Program Performance Overview**

The California paint stewardship program has been operational for about 1 ½ years as of this month and PaintCare has accomplished the initial tasks of setting up the program. PaintCare's California Paint Stewardship Program Plan provides the foundation of the program by setting in place the fundamental elements and processes under which the program will operate, while annual reports provide periodic checkpoints to assess how the overall program is working.

With the submittal of the Year 1 Annual Report, CalRecycle's obligation is to assess how the overall program is working as well as to make a determination regarding the Annual Report. This includes assessing several key elements of a stewardship program: postconsumer product recovery, statewide program convenience, administrative and operational costs, establishment of adequate collection infrastructure, and proper management of collected products. These key elements are discussed below in the context of the overall California paint stewardship program. As with all new programs, there are and will be ongoing changes and opportunities for improvement.

## **Postconsumer Paint Recovery**

Statute does not specify a recovery goal for the paint stewardship program. However, the amount of paint recovered is the ultimate indication to measure program success, and continued improvement is critical. During the first reporting period, PaintCare recovered a total of 632,652 gallons of paint, which was managed through paint-to-paint recycling, recycling into alternative products, beneficial use, and fuel incineration. CalRecycle acknowledges that although the amount of paint recovered during the first 8 ½ month reporting period was low, the program is still maturing and the recovery volume is anticipated to increase in future years. CalRecycle's

expectations are that continued improvement will be made as the program matures and the amount of paint recovered will increase significantly in the next annual reporting period.

### **Statewide Program Convenience**

The California Paint Stewardship Law requires PaintCare to establish goals to reduce the generation of postconsumer paint, to promote reuse of postconsumer paint, and for proper end-of-life management of postconsumer paint. Providing consumers with convenient access to paint collection points statewide is a critical component of a paint stewardship program. As such, PaintCare set two convenience goals in their Plan, 1) distribution goal- establish a collection location within 15 miles of 90% of the California population, and 2) density goal- establish one additional site for every 30,000 residents in densely populated areas. PaintCare has already been successful in meeting their distribution goal by establishing collection locations within 15 miles of 97.3% of California residences, and anticipates meeting their density goal within 18-24 months of the program's start date (which suggests PaintCare should achieve this goal between April and October of 2014). CalRecycle will continue to monitor PaintCare's progress in meeting convenience goals and establishing adequate coverage statewide.

### **Program Costs**

During the first reporting period, the total cost of the PaintCare program was \$9,314,296 and the corresponding cost per gallon of paint managed through the program was \$14.72. PaintCare accumulated a surplus of \$9,892,568 in California consumer assessment funds. This exceeded the targeted balance, which, according to PaintCare's Plan, is approximately \$7,000,000 for California. PaintCare anticipates that, as the number of collection sites increase and consumers gain awareness of the program, the collection volume will increase along with the total cost of the program. As program costs increase, the amount of surplus funding should decrease.

CalRecycle held a public workshop to discuss the paint stewardship program on March 11, 2014, at which stakeholders suggested that program costs/gallon are too high and could potentially be reduced through practices such as increased paint reuse and bulking paint in 55 gallon drums, as opposed to loose-packing containers.

Increasing the amount of paint that is reused could reduce program costs by decreasing transportation and processing costs associated with recycling paint. In the first annual reporting period, 2% of oil-based and 2% of latex paint was reused. Stakeholders stated that the tracking and reporting requirements associated with running a reuse program funded by PaintCare may not be adequately incentivized by the 25 cents per container payment that is currently offered. Stakeholders suggested that if the 25 cent payment were increased, more programs may be willing to participate as paint reuse sites in the PaintCare program, which could ultimately help reduce program costs.

Stakeholders also stated that increased paint bulking could potentially help reduce transportation costs. Transporting bulked paint in 55 gallon drums is usually less expensive, on a volume of paint basis, than transporting large storage boxes of loose-packed paint containers. A 55 gallon drum typically contains as much or more paint as a large storage box of loose packed paint. However, most paint recyclers prefer loose-packed paint, which allows greater flexibility to separate collected products by color and sheen, resulting in the production of a higher quality recycled paint product.

A useful indicator to look at when considering program costs is the Oregon PaintCare program. In the Oregon program the cost/gallon has continued to decrease each year which is the general trend we anticipate to see for the California program. However, CalRecycle acknowledges that the program is still new and will continue to monitor and evaluate costs as the program matures.

### **Establishment of Collection Infrastructure**

- ***Contracts with Local Government Programs.*** PaintCare requires all local governments who volunteer to participate as collection sites in the PaintCare program to sign a contract that specifies the details of their agreement. Progress was initially slow in finalizing contracts with local governments, but PaintCare has continued to work with the diverse programs in California in an effort to find solutions to accommodate the unique needs of each jurisdiction. The primary concern for many local governments continues to be that PaintCare’s contracts require PaintCare to be indemnified and not held liable for potential accidents involving paint collected through the program, even after the paint is transported off of the local government HHW program site. In an effort to address this concern, PaintCare developed an indirect contracting method, which involves PaintCare contracting with the operator of the HHW site, rather than directly with the local government. This indirect contracting approach has helped increase the number of HHW sites participating in the program. PaintCare currently has 11 direct and 52 indirect contracts with local governments, and is in the process of negotiating several others.
  
- ***Retail Drop-off Sites***
  - **Voluntary Participation.** Statute specifies that retailers may voluntarily participate as drop-off sites in the paint stewardship program. However, some retailers have volunteered as drop-off sites but have been denied participation in the program. Conversely, “big-box” home improvement stores such as Home Depot and Lowe’s have declined to participate in the program, which has proven to be a barrier in establishing convenient collection locations in some areas. CalRecycle will continue to monitor retailer participation in an effort to ensure that retailers have a fair and equal opportunity to participate in the program and that PaintCare provides an adequate number of drop-off sites to meet the needs of California consumers.
  - **Paint Storage Requirements.** Many oversight agencies require a Hazardous Materials Business Plan (HMBP) when a retailer stores 55 gallons or more of postconsumer paint onsite, but local rules for hazardous material storage volumes vary throughout California. The HMBP requirement is a challenge for PaintCare in recruiting retail drop-off sites, due to costs associated with filing business plans and because retailers that store hazardous materials on site are subjected to additional oversight. PaintCare worked with the Department of Toxic Substances Control to try to create a more accommodating and consistent interpretation of the rules addressing HMBP requirements, but it was ultimately determined that a legislative fix may be necessary to address this issue. In an effort to reduce the burden on retailers and increase drop-off site participation, PaintCare is currently sponsoring Assembly Bill 2748, which would increase the amount of paint that could be collected and stored at a site without a HMBP. CalRecycle hopes that

changes to the HMBP requirements will assist in increasing the number of retail drop-off sites participating in the PaintCare program.

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

Considering that a primary purpose of the paint stewardship program is to ensure proper management of leftover paint, it is crucial that collected products are managed according to their highest and best use. Of the 555,515 gallons of latex paint collected during the first reporting period, 80% of was recycled into recycled-content paint, 14% was recycled into landscaping materials, interlocking retaining wall blocks or combined with other materials to create a fuel substrate, 2% was reused, and 4% was dried unusable paint that was sent to a landfill. Of the 77,138 gallons of oil-based paint collected during the first reporting period, 98% was blended or incinerated for fuel and 2% was reused. In future years, CalRecycle expects to see an overall increase in the amount of paint collected through the program and more emphasis on reuse of latex and oil-based paints.

### **Annual Report Revisions**

PaintCare submitted the first Annual Report to CalRecycle for review. The report provides information on PaintCare's paint management efforts during the first reporting period, which covers the 8 ½ month time period from program start-up through the end of the 2012/2013 fiscal year (October 19, 2012 – June 30, 2013). Specific details related to staff's recommendation of compliance, including a brief history of the report submittal and review process and detailed analysis of the report, are detailed as follows:

#### ***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 discuss the report and solicit stakeholder comments.
- CalRecycle staff conducted a thorough review of the October report, carefully considered stakeholder comments, and notified PaintCare that the October 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 for CalRecycle to find the report complete and also identified information that would be needed for the Department's compliance review.
- PaintCare submitted a revised report on January 5, 2014 (Attachment 2) with edits and amendments made in response to CalRecycle's request. PaintCare also submitted a supplemental letter with additional information and responses to CalRecycle's request (Attachment 3). The information provided in PaintCare's letter is considered part of the annual report and was utilized by CalRecycle in reaching a completeness and compliance determination.
- On January 21, 2014, at CalRecycle's January Public Meeting, PaintCare's revised report was found to be incomplete because information about sales of latex and oil-based paint types was not provided. CalRecycle understands that PaintCare does not have information on sales of latex and oil-based paint types and therefore could not include

this information in the annual report. As such, CalRecycle staff were directed to work with PaintCare to determine whether information acceptable to both parties can be obtained and provided in future annual reports. CalRecycle staff is currently evaluating alternative data sources and methodologies to estimate paint sales by type.

- On March 11, 2014, CalRecycle held a public workshop to discuss the paint stewardship program. The workshop focused on three areas of the California paint stewardship program: 1) convenience of paint recycling, 2) contracts with local government household hazardous waste (HHW) programs, and 3) methodologies to estimate sales of latex and oil-based paints. At the workshop, CalRecycle requested stakeholder comments on potential methodologies to estimate sales of latex and oil-based paints. CalRecycle also sent a listserv message on March 13, 2014 requesting stakeholder comments regarding compliance of the revised annual report.

### ***Analysis***

CalRecycle requested that the Year 1 Annual Report be revised to include information on 16 specific topics which would be needed for the compliance review. PaintCare submitted a revised report on January 5, 2014 that adequately addressed all 16 items as requested by CalRecycle. The following is a list of 16 topics that CalRecycle requested information on, a brief summary of the response provided by PaintCare, and CalRecycle's findings related to each topic.

1. CalRecycle request: Add the number and location of collection points, including temporary events to the annual report.
  - PaintCare response: Provided list of collection points, including temporary events in Appendix B.
  - CalRecycle finding: Request was adequately addressed and it is anticipated that this information will be included in future annual reports.
2. CalRecycle request: Include discussion on how PaintCare intends to monitor and address insufficient collection schedules in the annual report.
  - PaintCare response: Described some of the issues occasionally experienced at retail collection locations and several approaches they developed and are using to limit the instances where retail paint collection locations cannot accept paint because they have reached their paint storage capacity.
  - CalRecycle finding: Request was adequately addressed and it is anticipated that PaintCare will strive to continuously improve retail paint collection and that future annual reports will include discussion of any service related challenges that occurred during that reporting period and steps that were taken to overcome the challenges.
3. CalRecycle request: Provide explanation of the methodology used to determine the volume of postconsumer paint recovered that was included in the annual report.
  - PaintCare response: Described the methodology utilized by transporters, local government HHW programs, and reuse programs in reporting data to PaintCare.
  - CalRecycle finding: The information provided adequately addressed CalRecycle's request and it is anticipated that a description of PaintCare's methodology to determine the volume of paint recovered will be provided in future annual reports.
4. CalRecycle request: Explain the discrepancy in the total volume of paint processed in the text compared with the "Paint Processed" table in the annual report.

- PaintCare response: Explained that the final volume of paint processed was updated in the text but the corresponding edit was not made to the table. PaintCare updated the table in the revised annual report.
  - CalRecycle finding: Request satisfied.
5. CalRecycle request: Explain the inconsistency between the two tables that reported different volumes of total latex and oil-based paint processed.
- PaintCare response: Explained that the tables were not updated to reflect final data and updated the tables so consistent volumes are reported throughout the revised annual report.
  - CalRecycle finding: Request satisfied.
6. CalRecycle request: Clarify disposition methods categorized as “beneficial use” in the annual report.
- PaintCare response: Revised the report to clarify that “beneficial use” includes latex paint combined with other materials to create a fuel substitute. For ease in reporting, paint processed into alternative products such as interlocking retaining wall blocks or landscaping material is combined with the category of “beneficial use.”
  - CalRecycle finding: Request was adequately addressed and it is anticipated that future annual reports will clearly explain each disposition method.
7. CalRecycle request: Clarify the difference between reprocessing into “another product” and processing into “non-paint materials,” or correct this discrepancy in the annual report.
- PaintCare response: Corrected the discrepancy by omitting the term “another product” and replacing it with “alternative product,” a previously defined term..
  - CalRecycle finding: Request was adequately addressed and it is anticipated that consistent terms will be utilized in future annual reports.
8. CalRecycle request: In the annual report, explain that PaintCare’s Plan inadvertently reversed the projected transportation and processing expenses, which could cause confusion when comparing the projected transportation and processing expenses from the Plan to the actual expenses reported in the annual report.
- PaintCare response: Explained in the annual report that the Plan inadvertently reversed the projected transportation and processing expenses.
  - CalRecycle finding: Request was adequately satisfied and it is staff’s expectation that the next iteration of the Plan will be revised accordingly.
9. CalRecycle request: Include discussion of the factors that contributed to the high cost per gallon of paint managed, and how costs are projected to decrease over time in the annual report.
- PaintCare response: Discussed that the cost per gallon of paint managed through the program will decrease as collection volumes increase. Additionally, pre-program expenses were included for this reporting period, which increased the cost per gallon in Year 1. Pre-program expenses will not be included in future reporting periods.
  - CalRecycle finding: Request satisfied. CalRecycle will continually evaluate and assess costs as the program matures and it is anticipated that costs per gallon will decrease over time, and that discussion on the cost per gallon of paint managed through the program will be included in future annual reports.

- 10. CalRecycle request:** Include discussion of how surplus funding will be applied over the next reporting period to reduce program costs.
- **PaintCare response:** Discussed that the overall cost of the program is anticipated to increase as the program matures and more paint is managed. The increase in overall program costs will lead to a reduction in the growth of the surplus and eventual use of some (or all) of the surplus to pay for program expenses.
  - **CalRecycle finding:** PaintCare’s response was sufficient for purposes of reviewing the revised report. CalRecycle staff will annually evaluate whether or not the surplus is appropriate, or if some type of program modification such as an increase in expenditures or a change to the assessment may be warranted. It is anticipated that discussion on surplus funding will be included in future annual reports.
- 11. CalRecycle request:** Provide documentation that California assessment funds were used only for the California program.
- **PaintCare response:** Explained how different program codes for each state are utilized to separately record and allocate California funds to ensure that California assessment funds are used only for the California program.
  - **CalRecycle finding:** Explanation was sufficient and it is anticipated that documentation demonstrating that California funds are used only for the California program will be included in future annual reports. CalRecycle’s audit of the PaintCare program, currently scheduled for April 2014, will also evaluate the use of California assessment funds.
- 12. CalRecycle request:** Provide detailed explanation of the various expense categories in the annual report.
- **PaintCare response:** Described each line item outlined in the financial audit.
  - **CalRecycle finding:** Explanation was sufficient, but this topic will also be independently analyzed during CalRecycle’s audit of the PaintCare program. It is anticipated that each line item outlined in financial audits will be explained in future annual reports.
- 13. CalRecycle request:** Provide a breakdown of “legal fees,” including the specific amount charged for the lawsuit filed by PaintCare and ACA against CalRecycle in the annual report.
- **PaintCare response:** Provided a breakdown of legal fees, including the specific expenses related to the lawsuit.
  - **CalRecycle finding:** The information provided by PaintCare adequately addressed CalRecycles’ request and it is anticipated that a breakdown of legal fees, including the specific amount charged for the lawsuit, will be included in future annual reports. PaintCare’s expenses will be analyzed during CalRecycle’s audit of the PaintCare program.
- 14. CalRecycle request:** Describe the administrative support services provided by the American Coatings Association (ACA) that were charged to the program.
- **PaintCare response:** Described the administrative support services that were provided to PaintCare by ACA which include time incurred by ACA staff working on the PaintCare Program, building and office expenses, and back office support such as payroll, human resources, and information technology services.

- CalRecycle finding: The information provided sufficiently addressed CalRecycle's request and it is anticipated that discussion on the administrative support services provided by ACA will be included in future annual reports.
15. CalRecycle request: In the annual report, explain what is meant by "PaintCare owed the Program \$7,914,659 related to paint recovery fees that are being held on behalf of the Program..."
- PaintCare response: Explained that \$7,914,659 was the amount of California reserve funds maintained in PaintCare's corporate bank account at the end of the reporting period.
  - CalRecycle finding: The information provided adequately satisfied this request.
16. CalRecycle request: Provide more information on the allowance for bad debts in the annual report.
- PaintCare response: Explained how the allowance for bad debts was calculated and the steps PaintCare takes to ensure that all assessment funds are collected.
  - CalRecycle finding: The information provided was sufficient for purposes of reviewing the revised report and it is anticipated that information on the allowance for bad debts will be provided in future annual reports. PaintCare's procedures for ensuring all program funds are collected will be evaluated and assessed in CalRecycle's audit of the program.

### **Priority Areas For Monitoring And Oversight**

In addition to the items CalRecycle requested PaintCare address in a revised annual report, stakeholders have raised a number of issues related to convenience, retail participation, and costs. The Department considers these as priorities for its ongoing monitoring and oversight and that addressing them is critical for continuous improvement of PaintCare's paint stewardship program.

#### **Convenience**

- **Rural coverage.** Stakeholders commented that in some areas, particularly rural jurisdictions, there may be an inadequate number of drop-off sites for consumers to dispose of leftover paint. While AB 1343 does not contain enforceable goals relative to convenience, staff acknowledges that program convenience is a critical component of any paint collection program. The revised report indicates that PaintCare made significant progress towards achieving its statewide convenience goals during the first reporting period. In 8 ½ months, PaintCare established almost 500 paint drop-off sites which provided 97.3% of the California population with access to a collection site within 15 miles of their residence. However, some rural jurisdictions remain underserved. PaintCare is working to improve rural coverage by adding additional drop-off locations and is sponsoring legislation (refer to bullet below on Retail drop-off site requirements) which it hopes will aid in adding more retail sites to the program, improving rural coverage. CalRecycle will continue to monitor whether the convenience of the PaintCare program is sufficient to meet the needs of California residents.
- **Pick-up schedules.** Some participating retail sites have reached storage capacity prior to receiving pick-ups, and thus had to turn away customers attempting to drop off leftover paint. Staff recognizes that service strains are to be expected with any new program,

especially given the size and population of California. PaintCare's letter, submitted with the revised report, included additional information on methods that PaintCare developed and is utilizing to ensure efficient pick-ups at collection sites and minimize the instances when consumers are not able to drop-off leftover paint. PaintCare has continually addressed service issues with several approaches including implementation of automatic pick-ups for high-volume sites, reassigning sites among services providers, and continual pressure on haulers to meet contract terms. CalRecycle will monitor PaintCare's progress in addressing service issues on an ongoing basis to ensure program efficiency.

- **Temporary events.** Stakeholders requested additional information on temporary events to help explain the service level and assess the convenience of the program. PaintCare included an appendix (Appendix B) in the revised report, which lists the name, location, and type of all participating collection sites in California, including temporary events. CalRecycle appreciates the addition of Appendix B in the revised report and anticipates reviewing this type of information on an ongoing basis in future annual reports.

### **Retail Participation**

- **Retail drop-off site requirements.** Retailers have commented that the requirements to participate as a drop-off site in the PaintCare program are too onerous. In an effort to address this issue, PaintCare is currently sponsoring legislation (AB 2748) that would address some of the retailers concerns by reducing the number of instances when a retailer would need a Hazardous Material Business Plan and have to pay the associated fees in order participate in the program as a drop-off site.
- **Voluntary Participation.** Stakeholders expressed concern about being denied participation as a drop-off site in the PaintCare program. CalRecycle has a limited role with respect to this issue. PaintCare is required to negotiate with local government HHW programs and retailers as much as is reasonably feasible and mutually agreeable, while developing and implementing the program in a manner that is efficient and cost effective. CalRecycle will continue to monitor and evaluate concerns regarding participation in the program in an effort to ensure that drop-off sites have a fair and equal opportunity to participate in PaintCare program, which may improve statewide convenience.

### **Costs**

- **Financial transparency.** Several stakeholders found that the report and audit lacked sufficient detail and explanation of the various financial categories. Stakeholders expressed significant interest in whether PaintCare's legal fees related to the lawsuit filed against CalRecycle were paid by consumer assessment funds. In the January 5, 2014 letter submitted with the revised report, PaintCare provided additional information on program finances, including clarification that the legal expenses associated with the lawsuit were paid with California assessment funds. PaintCare's use of program funds will also be assessed and evaluated in CalRecycle's audit of the program that is scheduled for April 2014.
- **Cost per gallon.** Stakeholders commented that the program collected a low volume of leftover paint while incurring substantial costs. Staff recognizes that costs were high during the first reporting period, but expects that some of the initial start-up costs will

decrease over time and that collection volumes will continue to increase due to improved convenience and successful education and outreach efforts. CalRecycle will annually review the cost per gallon of the program to ensure PaintCare's expenses are reasonable and appropriate.

- **Reuse.** Stakeholders recommended that PaintCare further incentivize paint reuse by increasing the compensation for paint reuse. While PaintCare incurred an overall cost of \$14.72 per gallon of paint collected during the first annual reporting period, largely due to significant transportation and processing costs, an incentive of only \$0.25 per container is paid for paint reused through the program. Stakeholders stated that increased reuse of paint could decrease the overall program costs and recommended that the compensation for paint reuse be increased. CalRecycle acknowledges that reuse is at the top of the waste management hierarchy and a preferred method for managing leftover paint. It also appears that paint reuse could be increased without increasing overall program costs. CalRecycle will continue to work with PaintCare to explore opportunities to increase paint reuse in future years while ensuring that program funds are used in a cost effective manner.
- **Bulking vs. loose-packing paint.** Stakeholders suggested that it is more efficient and cost effective to bulk paint in 55 gallon drums, rather than storing collected paint in original containers. Alternatively, PaintCare prefers that drop-off sites loose-pack paint, so their processors can easily sort the recycled paint for its highest and best use according to various factors such as quality, color, and sheen. CalRecycle agrees that loose-packing paint can be more expensive and require more storage space at collection facilities, but also recognizes that this collection method can produce a higher quality recycled content product compared to bulked paint. Ultimately, each potential collection site must negotiate a contract with PaintCare that meets the specific needs of their site.
- **Conversion factor.** Stakeholders expressed concern that many programs convert paint weight to volume at the rate of 10 pounds per gallon, but suggested that a more realistic conversion factor may be up to 15 pounds per gallon. CalRecycle acknowledges the importance of utilizing an appropriate conversion factor and will continue working with PaintCare to ensure that the most appropriate conversion factor is used to compile and report data.