

REQUEST FOR APPROVAL

To: Scott Smithline
Director

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

Request Date: January 26, 2016

Decision Subject: Consideration of California Paint Stewardship Program Year 3 Annual Report

Action By: January 26, 2016

Summary of Request:

This item recommends that the California Paint Stewardship Program Year 3 Annual Report, submitted by PaintCare on November 3, 2015, be found compliant. In year 3, 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 launched a successful education and outreach campaign. As of June 30, 2015, PaintCare had established 733 permanent paint drop-off sites providing access to a drop-off site within 15 miles of 98.4% of the California population, and increased the number of partnerships with local government HHW programs to 81. These efforts enabled the program to increase the amount of leftover paint processed in year 3 to 2,717,307 gallons at a cost of \$9.66 per gallon. CalRecycle staff reviewed the annual report and PaintCare's overall program implementation and found that the program is in compliance. Accordingly, staff recommends finding PaintCare's Year 3 Annual Report compliant. Although the program has improved over the course of the last year, CalRecycle expects further increases in the recovery rate, program convenience, and paint reuse during year 4.

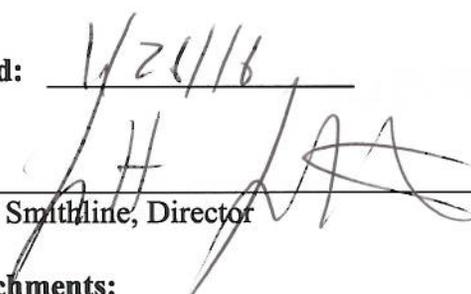
Recommendation:

Staff recommends finding PaintCare's California Paint Stewardship Program Year 3 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).

Action:

On the basis of the information, analysis, and findings in this Request for Approval, I hereby find the California Paint Stewardship Program Year 3 Annual Report, submitted by PaintCare, dated November 3, 2015, to be compliant. I also direct that staff work with PaintCare to include additional transparency and detail with respect to budget projections in the next Annual Report, and I request that PaintCare evaluate, by June 30, 2016, whether a reduction in the consumer assessment or additional investment in the California program should be considered in the near term to reduce the accumulated surplus. I further direct staff to work with PaintCare to ensure that the Year 4 Annual Report include discussion of PaintCare's ongoing analysis regarding convenient drop-off sites statewide, particularly in areas with high population or few sites.

Dated: 1/24/16



Scott Smithline, Director

Attachments:

1. California Architectural Paint Stewardship Program Year 3 Annual Report, dated November 3, 2015; available at: <http://www.calrecycle.ca.gov/Paint/AnnualReport/2015/PaintCare.pdf>.
 2. CalRecycle November 16, 2015 Completeness Letter to PaintCare; available at: <http://www.calrecycle.ca.gov/Paint/AnnualReport/2015/Yr3AnRptComp.pdf>.
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Summary of Findings

CalRecycle staff reviewed PaintCare's Year 3 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 third year of program implementation. From July 1, 2014, to June 30, 2015, PaintCare collected and processed 2,717,307 gallons of paint, an increase of over 700,000 gallons from year 2. By the end of the third reporting year, PaintCare had established partnerships with 81 local government HHW programs which resulted in 106 permanent municipal collection sites, 11 seasonal municipal sites, 192 municipal HHW events, and 16 door-to-door program partnerships. PaintCare also increased the number of participating retail drop-off sites to 583, performed 184 large volume pick-ups, set up contracts and regular pick-ups with 24 businesses/organizations that generate large volumes of paint on a regular basis, and sponsored 9 one-day paint drop-off events to provide additional collection opportunities in previously underserved areas. In total, 733 permanent collection sites have been established under the program, which provides 98.4% of California's population with access to a drop-off site within 15 miles of their residence.

In August of 2015, PaintCare increased the reuse reimbursement rate for local government reuse participants from \$0.25 per container to \$1.20 (or \$1.60 per liquid gallon). Since this time, more jurisdictions have started to contract with PaintCare for reuse, and CalRecycle is hopeful that the increased incentive will contribute to increased reuse volumes in year 4. Additionally, PaintCare has continued to enhance and improve a robust education and outreach campaign to increase public awareness about the paint stewardship program, which demonstrates an on-going commitment to education and outreach that is critical to programs success.

The program improvements made in year 3 have costs associated with them. The cost per gallon to manage leftover paint under the program increased from \$8.76 in year 2 to \$9.66 in year 3. However, even with the increased cost per gallon, the program continued to accrue significant surplus funds during the course of year 3, such that it exceeds the Plan's targeted reserve balance of 6 months of operating costs. Expending the funds collected from consumers, in a fiscally responsible manner, to achieve the legislative goals of reducing the generation of post consumer paint, promoting reuse, and providing a system for the management of paint in an environmentally sound manner is preferable to building up a large reserve of surplus funds. Looking ahead to the Year 4 Annual Report, CalRecycle expects PaintCare to make continuous improvements in a number of program areas including: 1) increasing the paint recovery rate, 2) further improving program convenience, particularly in underserved areas, 3) increasing paint

reuse, 4) ensuring cost efficiency of the program, 5) providing additional transparency and detail regarding budget projections, and 6) giving careful consideration to the \$35 million dollars in accumulated surplus funds and evaluating whether any steps such as increased investment in the program or reductions in the consumer assessment should be considered in the near term.

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 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 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 Plan¹ 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 3 Annual Report, CalRecycle is obligated to make a determination regarding compliance of the report, as well as evaluate the overall program. This includes assessing several key elements of the stewardship program, including: program convenience; postconsumer paint recovery; proper management of collected paint; program costs; 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 developing programs, there will continue to be ongoing challenges and opportunities for improvement.

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 its 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.

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

Distribution Goal

PaintCare successfully met and exceeded its distribution goal. PaintCare has established 733 permanent year-round drop-off sites, which provide collection locations within 15 miles of 98.4% of the California population.

Density Goal

Due to PaintCare's unresolved concerns regarding the accuracy of the GIS model used to measure progress in achieving the population density goal, CalRecycle agreed that PaintCare could submit the Year 3 Annual Report without information on the density goal. PaintCare has committed to performing further research and analysis to resolve the concerns with the GIS model and to develop an appropriate GIS model for measuring progress towards achieving the California program's density goal. Additionally, PaintCare has offered to provide an updated Year 3 Report that includes information on the density goal analysis once the GIS model issues are resolved. Alternatively, CalRecycle would also accept the year 3 density goal analysis as part of the Year 4 Report.

Rural Convenience

Stakeholders have commented that even with the additional temporary events, rural areas still do not have adequate access to paint drop-off sites and that rural areas often lack the convenience of permanent drop-off sites. PaintCare established 2 additional contracts with rural counties in year 3 and provided 52 total permanent drop-off sites with 19 supplemental sites or events².

Following the end of the year 3 reporting period, 1 additional rural county, Siskiyou, finalized a contract with PaintCare. In November 2014, PaintCare began holding one-day paint-only collection events to further improve convenience in underserved areas. 9 one-day paint-only events were planned, promoted, and sponsored by PaintCare in year 3. Rural stakeholders have stated that the events have been successful in collecting large volumes of paint and that they would like to see more events held in the future.

Performance of Retail Drop-off Sites

Early in program implementation, CalRecycle received several stakeholder comments regarding 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, which 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 pick-up scheduling system in order to increase the efficiency and timeliness of bin pick-ups. CalRecycle surveyed about 15% of the retail drop-off sites in 2015 to determine if bin pick-ups were on-time and efficient and the frequency with which customers attempting to drop off paint had to be turned away. The results of this survey indicate that retail drop-off sites rarely need to turn customers away and that transporters are picking up the retail paint storage containers in a timely manner.

² By the end of the second reporting period, 13 rural counties had contracts with PaintCare and there were 50 permanent drop-off sites, and 10 supplemental sites/events in rural areas.

Baseline and Recovery Rate

Statute requires the stewardship organization to establish goals in the Program Plan, including a baseline from which progress is measured, and to report on progress in annual reports. In lieu of a baseline, PaintCare proposed in year 2 report to measure progress by reporting the annual volume of paint collected compared to the volume of paint sold in order to measure progress toward achieving a 7.0% recovery rate³, while also providing discussion on the year-over-year change in recovery. CalRecycle agreed that measuring progress against a target recovery rate is an acceptable methodology until a more appropriate baseline can be set. However, PaintCare did not provide the recovery rate or discuss the year-over-year change in recovery in the year 3 annual report. CalRecycle discussed this omission with PaintCare, and PaintCare committed to provide the recovery rate in future reports. CalRecycle calculated PaintCare's recovery rate and determined it was 4.1% for year 3. Although falling short of the 7.0% target set in the Plan, PaintCare did increase the paint recovery rate from 3.0% in year 2. PaintCare has demonstrated the ability to meet and exceed a 7.0% recovery rate in other states and CalRecycle anticipates that the amount of paint recovered will continue to increase and a greater recovery rate will be achieved in year 4.

PaintCare is currently conducting a study in Oregon to establish a baseline that can be used to quantify source reduction efforts. CalRecycle will follow this process closely to see if the study in Oregon results in the development of a methodology to establish a baseline that would be appropriate for the California program.

The amount of paint recovered is one metric of program success, and continued improvement is important. During the third reporting period, PaintCare processed a total of 2,717,307 gallons of paint, an increase of over 700,000 gallons from year 2. CalRecycle's Form 303 data⁴ shows that there was also a decrease in the amount of paint managed by local governments outside of the PaintCare program during year 3⁵. PaintCare is continuing to establish contracts with local government programs, including contracting with Orange County, which should bring significant volumes of paint into the program in year 4. CalRecycle anticipates that the volume of paint managed outside the program by local governments will continue to decrease in future years.

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 consistent with the waste management hierarchy. Previously, PaintCare reported one combined volume/percentage for paint used for "alternative product/beneficial use," which included decorative ground cover, concrete products, energy recovery, and alternative daily landfill cover (ADC).

In year 3, PaintCare separately reported the amount of paint that went to each specific disposition method, per CalRecycle's request. Of the 459,079 gallons of oil-based paint processed, 57%

³ 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.

⁴ 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.

⁵ 566,748 gallons of paint were managed by local governments outside of the program in year 3 while 1,242,660 gallons were managed in year 2.

went to fuel incineration, 41% was managed through energy recovery, and 2% was reused. Of the 2,258,228 gallons of latex paint processed during the third reporting period, 72% went to paint-to-paint recycling, 15% was used for energy recovery, 5% went to concrete products, 5% was landfilled, 3% was reused, and less than 1% was used as decorative ground cover or ADC. Although PaintCare slightly increased paint-to-paint recycling to 72% in year 3 compared to year 2, it remains lower than the 80% rate of paint-to-paint recycling in year 1. CalRecycle will work with PaintCare to determine strategies to further increase paint recycling, such as contract modifications that incentivize highest and best use. In future annual reports, CalRecycle would like PaintCare to discuss factors that impact year-to-year changes in the percentages of paint managed via the various disposition methods and efforts that were undertaken to increase the amount of paint managed via reuse and recycling, strategies at the top of the waste management hierarchy.

Paint Reuse

PaintCare reused 66,991 gallons of paint during year 3, an increase from year 2⁶. However, reuse still accounted for just 2.5% of the total paint processed. A significant amount of paint reuse continues to take place outside of the PaintCare program⁷. During the Year 2 Annual Report review process, CalRecycle and stakeholders suggested that PaintCare consider increasing the incentive offered to local government reuse programs in order to increase the volume of paint reused within the PaintCare program. In August 2015, after the year 3 reporting period ended, PaintCare increased the reuse reimbursement rate for local government reuse participants from \$0.25 per container to \$1.20 (or \$1.60 per liquid gallon). Since this time, more jurisdictions have started to contract with PaintCare for reuse, and CalRecycle is hopeful that the increased incentive will contribute to increasing reuse volumes in year 4. While CalRecycle appreciates PaintCare's effort to increase program reuse by increasing the reimbursement rate, we would like to see additional efforts to find innovative ways to increase paint reuse in the program. For example, paint recyclers have expressed interest in offering paint reuse at their facilities, which could allow for much larger volumes of paint to be reused through the program. CalRecycle will continue to work with PaintCare and stakeholders to explore opportunities to increase paint reuse in the program.

Program Costs

During the third reporting period, the total cost of the PaintCare program was \$26,244,982 and the corresponding cost per gallon of paint managed through the program was \$9.66, an increase from \$8.76 per gallon in year 2. The increased cost per gallon is largely attributed to a substantial growth in education and outreach expenditures, which increased by over \$2 million from year 2. In the past, CalRecycle has received stakeholder comments regarding the cost per gallon to manage paint through the program. PaintCare has shared that it does not expect the cost per gallon to decrease as the program matures, because as the volume of paint collected increases, transportation and processing costs will also increase, and education/outreach costs will continue to be substantial. In future annual reports, CalRecycle would like to see a discussion of factors that contribute to changes in the cost per gallon from year to year.

⁶ Due to a calculation error, PaintCare initially reported a total of 73,691 gallons of paint reuse in the year 2 annual report. However, only 55,552 gallons of paint were reused in year 2.

⁷ 54,073 gallons of paint was reused through local government programs independent of the PaintCare program, per CalRecycle's 2014/15 Form 303 data.

Accumulated Surplus

PaintCare has accumulated a surplus of \$35,114,056, which significantly exceeds its target balance of six months annual operating expenses. PaintCare's surplus has continued to increase each year since the program started in California. During the Year 2 Annual Report review process, CalRecycle received comments regarding the accumulated surplus, and stakeholders questioned whether the assessment paid by consumers should be lowered. PaintCare indicated that they prefer to wait before evaluating whether a change in the consumer assessment fee is warranted until a consistent level of paint collection is reached in anticipation that overall program costs are likely to increase as well.

In the Year 3 Annual Report, PaintCare provided budget projections for the next five reporting periods, which show the reserve balance gradually declining and in 2020 (year 8) reaching PaintCare's reserve target balance of 6 months annual operating expenses. However, more explanation regarding the assumptions used to calculate the budget projections is needed.

CalRecycle will work with PaintCare to ensure the assessment amount is sufficient to recover, but not exceed the cost of the stewardship program and that surplus funds are put back into the program to achieve the legislative goals of reducing the generation of post consumer paint, promoting reuse, and providing a system for the management of paint in an environmentally sound manner. CalRecycle anticipates that PaintCare will give careful consideration to the \$35 million dollars in accumulated surplus funds and evaluate whether any steps such as increased investment in the program or reductions in the consumer assessment should be considered in the near term.

Investment of Program Funds

CalRecycle learned that PaintCare began investing program funds in December 2014 in order to maintain its purchasing power of the capital. PaintCare shared with CalRecycle that California's share of the initial investment made in December 2014 was \$24,905,397. PaintCare reported California's share of the investment gain at the end of year 3 was \$62,378. CalRecycle has limited authority over PaintCare's investment choices, but intends to closely follow the investment of program funds to ensure all assessments collected in California are appropriately utilized for implementation of the California Program. CalRecycle did not conduct an audit during the year 3 reporting period, but may conduct another audit of the PaintCare program in the future.

Education and Outreach

In year 3, education and outreach costs increased to 15% of total program costs from 10.5% in year 2. PaintCare's advertising firm, Civilian Agency, launched an enhanced advertising campaign in April 2014 and PaintCare saw a number of positive results, such as a spike in visits to its website. In addition, in November 2014 PaintCare unveiled a national Facebook page that had almost 20,000 followers by June 2015. Other outreach efforts included targeted mail advertising, educational flyers, newspaper, magazine, billboard, mural, and radio advertisements, television commercials, digital and banner advertisements, improvements to PaintCare's website, a video blog contest, and education partnerships with local governments.

PaintCare also performs annual consumer awareness surveys. The 2015 survey found that respondents were storing less paint and more respondents were taking advantage of paint drop-

off locations. However, fewer respondents knew where to take leftover paint than in 2014. PaintCare will continue to use the survey to evaluate changes in public awareness over time regarding paint recycling options.

CalRecycle Field Inspections

To date, CalRecycle has conducted approximately 250 inspections of paint retailers and manufacturers to confirm their compliance with the Paint Stewardship Law, including record keeping, assessment collection, website monitoring, and due diligence to ensure that only program products from compliant manufacturers and brands are sold. CalRecycle enforcement staff have noted that paint retailers are generally knowledgeable about the program and have received PaintCare Program outreach materials including a collection site operations binder. Most retailers have been found in compliance. However, field inspections have demonstrated a need for additional outreach to remind retailers to regularly monitor the list of registered paint manufacturers to ensure that only program products from compliant manufacturers and brands are sold. During inspections, CalRecycle staff identified retail locations selling program products from non-compliant paint manufacturers who were not registered with a stewardship organization. PaintCare has worked cooperatively with CalRecycle to register 8 paint manufacturers identified as non-compliant during field inspections.

Next Steps

CalRecycle will continue to monitor program implementation to ensure that the paint stewardship program reduces the generation of postconsumer paint, promotes paint reuse, and properly manages leftover paint. Staff will track progress and work with PaintCare and stakeholders to ensure that meaningful improvements continue to be made in improving program convenience, increasing the paint recovery rate, increasing the amount of paint reuse, and ensuring the cost effectiveness of the program. CalRecycle would also like to see PaintCare include additional transparency and detail when providing budget projections, and evaluate whether additional investment in the California program or a reduction in the consumer assessment should be considered in the near term to reduce the accumulated surplus. In 2016, CalRecycle will follow the GIS analysis process and work with PaintCare to ensure clear convenience goals are provided.