

**State of California
Office of Administrative Law**

In re:
Department of Resources Recycling and
Recovery

NOTICE OF APPROVAL OF REGULATORY
ACTION

Regulatory Action:

Government Code Section 11349.3

Title 14, California Code of Regulations

OAL File No. 2012-0515-01 SR

Adopt sections: 18950, 18951, 18952,
18953, 18954, 18955,
18955.1, 18955.2, 18955.3,
18956, 18957, 18958

Amend sections:
Repeal sections:

The Department of Resources, Recycling, and Recovery proposed to adopt sections 18950, 18951, 18952, 18953, 18954, 18955, 18955.1, 18955.2, 18955.3, 18955.5, 18956, 18957, and 18958 of title 14 of the California Code of Regulations to implement, interpret, and make specific Assembly Bill 1343, Chapter 420, Statutes of 2010, establishing the Architectural Paint Recovery Program. The regulations include definitions, submittal instructions, criteria for stewardship plans, criteria for annual reports, and provide for enforcement, record keeping, confidentiality, and service payments.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 6/6/2012.

Date: 6/6/2012

RAIG TARPENNING

Craig S. Tarpenning
Senior Staff Counsel

For: DEBRA M. CORNEZ
Director

Original: Caroll Mortensen
Copy: Ty Moore

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2011-0708-02	REGULATORY ACTION NUMBER 2012-0515-01 SR	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only		2012 MAY 15 AM 10:57	
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY Department of Resources Recycling and Recovery (CalRecycle)			AGENCY FILE NUMBER (if any)

ENDORSED FILED
IN THE OFFICE OF

2012 JUN -6 PM 2:25

Debra Bowen
DEBRA BOWEN
SECRETARY OF STATE

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Z	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Product Stewardship for Paint	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2012-0224-035
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT Sections 18950, 18951, 18952, 18953, 18954, 18955, 18955.1, 18955.2, 18955.3, 18956, 18957, & 18958
AMEND
REPEAL TITLE(S) 14

3. TYPE OF FILING
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Emergency Rereadoption (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
7/22/11-9/5/11, 10/10/11-10/25/11, 12/7/11-12/22/11, 2/1/12-2/16/12, 4/13/12-4/30/12

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON Ty Moore	TELEPHONE NUMBER (916) 996-8952	FAX NUMBER (Optional) (916) 319-7238	E-MAIL ADDRESS (Optional) ty.moore@calrecycle.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Elliot W. Block</i>	DATE 5/14/2012
TYPED NAME AND TITLE OF SIGNATORY Elliot Block, Chief Counsel	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 06 2012

Office of Administrative Law

Proposed Regulations for Architectural Paint Recovery Program

PROPOSED REGULATIONS

ARCHITECTURAL PAINT RECOVERY PROGRAM

<u>TITLE 14:</u>	<u>NATURAL RESOURCES</u>
<u>DIVISION 7.</u>	<u>DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY</u>
<u>CHAPTER 11.</u>	<u>PRODUCT STEWARDSHIP</u>
<u>ARTICLE 2.</u>	<u>ARCHITECTURAL PAINT RECOVERY PROGRAM</u>

§18950. Purpose.

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

Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Section 48700, Public Resources Code.

§18951. Definitions.

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

- (1) "Must" or "shall" means a provision is mandatory.
- (2) "May" means a provision is permissive.

(b) "Administrative fee" means the fee imposed by the department on the architectural paint manufacturer or stewardship organization in order to cover the costs of 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 manufacturer or stewardship
6 organization's paint stewardship program, including, but not limited to, collection,
7 transportation, processing, disposal, and 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, 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.

16
17 Authority cited: Sections ⁴⁰⁴⁰¹~~40401~~ and 40502, Public Resources Code, Reference: Section
18 48700, 48702, 48703, 48704, and 48705, Public Resources Code.

CT

19
20 **§18952. Submittals.**

21 (a) A corporate officer, acting on behalf of an architectural paint manufacturer or
22 stewardship organization, shall submit as part of the stewardship plan the following
23 information:

24 (1) Contact information of the corporate officer responsible for submitting
25 stewardship plan and annual report documents to the department and for
26 overseeing paint stewardship program activities, including, but not limited to:

27 (A) Contact Name

28 (B) Title

29 (C) Name and Company or Stewardship Organization

30 (D) Mailing address

31 (E) Phone number

- 1 (F) E-mail address
- 2 (G) Web address, if applicable
- 3 (2) List and contact information for each architectural paint manufacturer
- 4 participating in the stewardship organization, including, but not limited to:
- 5 (A) Name of Company
- 6 (B) Mailing or corporate address
- 7 (C) Web address (if applicable), Contact Name, Title, Phone Number, and e-
- 8 mail address of participating architectural paint manufacturers shall be
- 9 provided to the department upon request. The department shall include a
- 10 reason for any request of this information. The requested information shall be
- 11 submitted within 30 days of the request unless extended as determined by
- 12 the department.
- 13 (3) List of brands covered under the stewardship plan.
- 14 (b) The stewardship plan may be submitted electronically according to instructions
- 15 provided by the department. A hard copy, signed by a corporate officer of a
- 16 manufacturer or stewardship organization, must be submitted to the department.
- 17 (1) The information submitted in a stewardship plan shall address the criteria for
- 18 approval in §18953 and be organized according to this standard outline:
- 19 (A) Contact Information
- 20 (B) Program Goals and Activities
- 21 (C) Collection Systems
- 22 (D) Financing Mechanism
- 23 (E) Education and Outreach
- 24 (F) Stakeholder Consultation
- 25 (2) The department shall determine if the plan is complete and notify the submitting
- 26 manufacturer or stewardship organization within 30 days. If the department finds
- 27 that the stewardship plan is complete, the department's 90-day review period for
- 28 consideration of approval of the stewardship plan, set forth in Public Resources
- 29 Code section 48704, will commence upon the original date of receipt. If the
- 30 stewardship plan is incomplete, the department shall identify what additional
- 31 information must be submitted to make it complete and the plan shall be

1 resubmitted within 30 days. If the department determines upon resubmittal that the
2 plan is complete, the department's 90-day review period for consideration of
3 approval of the stewardship plan will commence upon the original date of receipt of
4 the resubmittal.

5 (3) The department may approve, disapprove, or conditionally approve a
6 stewardship plan.

7 (A) The plan must be approved if it provides for the establishment of a paint
8 stewardship program that meets the requirements of Public Resources
9 Code section 48703.

10 (B) If the department conditionally approves a plan, the department shall
11 identify the deficiencies in the plan and the manufacturer or stewardship
12 organization shall comply with the conditions of approval within 60 days
13 of the notice date. If the conditions are met, the department shall approve
14 the plan.

15 (C) If the department disapproves a plan, the department shall identify the
16 deficiencies in the plan and the manufacturer or stewardship organization
17 shall resubmit a plan or provide supplemental information requested by
18 within 60 days of the notice date.

19 (D) If the department conditionally approves a plan and the conditions are not
20 met, the department shall disapprove the plan.

21
22 (4) The stewardship plan must be submitted for re-approval upon any significant or
23 material change, as defined. The department shall review the revised stewardship
24 plan within 90 days of receipt and make a determination whether or not to approve
25 the plan.

26 (5) The approved stewardship plan shall be a public record, except that financial,
27 production, or sales data reported to the department by a manufacturer or
28 stewardship organization is not a public record under the California Public Records
29 Act, as described in Chapter 3.5 (commencing with § 6250) of Division 7 of Title 1
30 of the Government Code and shall not be open to public inspection. The

1 department may release financial, production, or sales data in summary form only
2 that cannot be attributable to a specific manufacturer.

3 (c) The annual report shall be submitted by a corporate officer acting on behalf of a
4 manufacturer or stewardship organization that is operating an architectural paint
5 stewardship program under a department-approved stewardship plan.

6 A hard copy, signed by a corporate officer of a manufacturer or stewardship
7 organization must be submitted.

8 (1) The information submitted in an annual report shall address the criteria for a
9 finding of compliance per §18954 and be organized according to this standard
10 outline:

11 (A) Contact Information

12 (B) Executive Summary

13 (C) Program Outline

14 (D) Description of Goals and Activities Based on the Stewardship Plan

15 (E) Financing Mechanism

16 (F) Education and Outreach

17 (G) Audits

18 (2) The department shall determine if the report is complete and notify the submitting
19 manufacturer or stewardship organization within 30 days. If the department finds
20 that the annual report is complete, the department's 90-day review period for the
21 annual report, set forth in Public Resources Code §48705, will commence upon
22 the original date of receipt. If the annual report is incomplete, the department
23 shall identify what additional information must be submitted to make it complete
24 and the report shall be resubmitted within 30 days. If the department determines
25 upon resubmittal that the report is complete, the department's 90-day review
26 period of the report will commence upon the original date of receipt of the
27 resubmittal.

28 (3) The department may adopt a finding of compliance, non-compliance, or
29 conditional approval for an annual report.

1 (A) If the department adopts a finding of compliance, the manufacturer or
2 stewardship organization may continue to sell or offer paint for sale in the
3 state.

4 (B) If the department conditionally approves a report, the department shall
5 identify the deficiencies in the report and the manufacturer or stewardship
6 organization shall comply with the conditions of approval within 60 days
7 of the notice date. If the conditions are met, the department shall adopt a
8 finding of compliance.

9 (C) If the department adopts a finding of non-compliance, the department
10 shall identify the deficiencies in the report and the manufacturer or
11 stewardship organization shall resubmit a report or provide supplemental
12 information requested by within 60 days of the notice date.

13 (D) If the department conditionally approves a report and the conditions are
14 not met, the department shall adopt a finding of non-compliance.

15 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Section
16 40502, 48700, 48702, 48703, 48704, and 48705, Public Resources Code.

17
18 **§18953. Stewardship Plan Approval Criteria.**

19 (a) Paint stewardship plans must follow the standard outline per §18952 and contain
20 the following:

21 (1) Contact information. Identify the manufacturer or designated stewardship
22 organization responsible for the stewardship plan submittal. A manufacturer
23 or stewardship organization shall provide updates to the list of manufacturers
24 and brands participating in its program within 30 days of any changes to that
25 list.

26 (2) Program Goals and Activities. Include program goals that are specific to and
27 appropriate for California. Factors to consider when determining program
28 goals may include the current and future recycling infrastructure and capacity
29 and changes in market conditions in California. Description of goals must
30 include a baseline, to be provided by the manufacturer or stewardship
31 organization, from which the goals will be measured and reported in the

1 manufacturer or stewardship organization's annual reports. The baseline
2 should indicate the status of household hazardous waste management in
3 California at the time of plan submission. Describe how the goals will be
4 measured, including a description of the methodology used for estimating the
5 amount of leftover paint available for collection in California. Describe how
6 the program will:

7 (A) Reduce the generation of postconsumer paint;

8 (B) Promote the reuse of postconsumer paint;

9 (C) Properly manage postconsumer paint at end-of-life in an environmentally
10 sound fashion, including recovery, recycling, and proper disposal of
11 postconsumer paint; and

12 (D) Manage paint containers and undertake market development activities, if
13 a manufacturer or stewardship organization chooses to engage in these
14 activities.

15 (3) Collection Systems. Describe the system that will be used to collect and
16 properly manage postconsumer architectural paint to demonstrate how there
17 will be sufficient funding for the program and how it will be implemented in an
18 environmentally sound fashion. This description must include the following:

19 (A) Collection methods used for architectural paint, by type.

20 (B) Destination for reuse activities, processing (including recycling) and/or
21 disposal for architectural paint, by type.

22 (C) Description of best management practices to be followed by service
23 providers that are acting as collection points, which may include any
24 training that the manufacturer or stewardship organization intends to
25 provide to or require of service providers to ensure proper collection and
26 management of postconsumer architectural paint.

27 (D) Description of how each consumer of architectural paint in California will
28 have an opportunity to recycle and properly manage their unwanted
29 architectural paint on a state wide basis, including the proposed number,
30 location, and type of collection points located in the state.

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1 (E) Address the coordination of the architectural paint stewardship program
2 with existing local household hazardous waste collection programs. A
3 manufacturer or stewardship organization must negotiate with existing
4 local household hazardous waste collection programs wanting to
5 participate in the paint stewardship program as a collection point as much
6 as is reasonably feasible and is mutually agreeable.

7 (F) Address the coordination of the architectural paint stewardship program
8 with potential retail collection points. Any retailer may participate, on a
9 voluntary basis, as a paint collection point pursuant to the paint
10 stewardship program. A manufacturer or stewardship organization must
11 negotiate with any retailer wanting to participate in the paint stewardship
12 program as a collection point, as much as is reasonably feasible and is
13 mutually agreeable.

14 (4) Financing Mechanism. Include a funding mechanism that provides sufficient
15 funding to recover, but not exceed, the cost of the architectural paint
16 stewardship program, including the administrative (including financial audits
17 per PRC §48705(a)(6)), operational, and capital costs of the program. The
18 funding mechanism includes the following:

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

21 (B) A budget for the program that includes revenue estimates from the
22 assessment, operational costs, capital costs, and administrative costs
23 (including those pursuant to §18958 re: service payment to the
24 department).

25 (C) Stewardship organization and manufacturers shall allocate revenues and
26 expenditures applicable to this program in accordance with Generally
27 Accepted Accounting Principles (GAAP).

28 (5) Education and Outreach. Include a description of education and outreach
29 efforts to consumers, contractors, and retailers to promote source reduction
30 and recycling of architectural paint. The description shall include how the
31 outreach and education methods will be used and distributed. Educational

1 information may include, but is not limited to, signage, written materials,
2 advertising, or other promotional materials pursuant to PRC §48703(e). A
3 manufacturer or stewardship organization may not advertise a collection
4 point(s) as being part of a manufacturer or stewardship organization's
5 program that is not a contracted collection point for the manufacturer or
6 stewardship organization's stewardship program. This provision does not
7 apply to referrals to collection points based on publically available information.

8 (6) Stakeholder Consultations. In addition to existing local household hazardous
9 waste collection programs per §18953(a)(3)(E), other stakeholders that may
10 be consulted include, but are not limited to, consumers, retailers, architectural
11 paint recyclers, architectural paint contractors, and haulers.

12 (b) The manufacturer or stewardship organization submitting the stewardship plan shall
13 provide, upon request, additional information to assist the department as may be
14 necessary for the approval of the plan in compliance with the California Environmental
15 Quality Act.

16
17 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Section
18 48700, 48702, 48703, 48704, and 48705, Public Resources Code.

19
20 **§18954. Annual Report Compliance Criteria.**

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

22 (1) Contact information. Identify the manufacturer or stewardship organization
23 responsible for the annual report submittal. Stewardship organizations shall
24 include an updated list of participating manufacturers and any updates to their
25 respective contact information per §18952(a)(2).

26 (2) Executive Summary. The purpose of the Executive Summary is to provide a
27 broad understanding of the manufacturer or stewardship organization's
28 program as a whole and to put into context the data and information that will
29 follow. Provide a brief description of the manufacturer or stewardship
30 organization's architectural paint recovery efforts during the reporting period

1 pursuant to PRC §48705(a). This may include anticipated steps, if needed, to
2 improve performance and a description of challenges encountered during the
3 reporting period and how they will be addressed. This may also include a
4 description of paint container management and market development activities
5 if the manufacturer or stewardship organization has chosen to engage in
6 those activities.

7 (3) 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 California.

11 (B) Description of how each consumer of architectural paint in California had
12 an opportunity to recycle and properly manage their postconsumer paint
13 on a state wide basis, including the number, location, and type of
14 collection points located in-the state.

15 (C) Description of best management practices followed by service providers
16 that are acting as collection points, which may include any training that the
17 manufacturer or stewardship organization provided or required of service
18 providers to ensure proper collection and management of postconsumer
19 paint.

20 (D) A statement that the manufacturer or stewardship organization
21 coordinated with existing household hazardous waste collection programs
22 and retailers as potential collection points per §18953(a)(3)(E) and (F)
23 during the reporting period.

24 (4) Description of goals and activities based on the stewardship plan. State
25 goals from the approved stewardship plan, the baseline from which goals
26 were measured, and report on achievement during the reporting period.
27 Describe any adjustments to goals stated in the approved stewardship plan
28 that may be made for the upcoming reporting period and accompanying
29 rationale for those changes. The annual report must include quantitative
30 information and discussion on the following categories pursuant to PRC
31 §48705(a) and PRC §48703(d):

1 (A) The total volume of architectural paint sold, by type, in the state during the
2 preceding reporting period.

3 (B) The total volume of postconsumer architectural paint recovered, by type,
4 in the state during the preceding reporting period.

5 (C) Disposition of postconsumer paint collected, by type and by estimated
6 volume, including name(s) and corporate address(es) for contracted
7 processors for each

8 (5) Financing Mechanism. The annual report shall include the total cost of
9 implementing the architectural paint stewardship program and an evaluation of
10 how the program's funding mechanism operated, including whether or not the
11 funding was sufficient to recover, but not exceed, the administrative, operational,
12 and capital costs of the manufacturer or stewardship organization's program.
13 Include a statement that any surplus funds are put back into the program to reduce
14 the costs of the program, including the assessment amount. Any proposed
15 change in the amount of the architectural paint stewardship assessment must be
16 submitted to the department for re-approval (see §18952. Submittals). If a
17 manufacturer or stewardship organization conducts activities that are separate
18 from the implementation and management of the California paint stewardship
19 program, then the annual report shall include documentation on how the collection
20 and expenditure of assessment funds shall be kept separate from other activities
21 of the manufacturer or stewardship organization and the methodology for
22 distribution of shared costs. Consistent with PRC §48705(a)(5), the annual report
23 shall include the following:

24 (A) Assessment amount per container

25 (B) Total program cost

26 (C) Capital costs

27 (D) Cost(\$)/capita

28 (E) Cost (\$)/gallon collected

29 (F) Education/Outreach (% of total program cost)

1 (G) End-of-life materials management (% of total program cost, with line
2 items for reuse, transportation, recycling, fuel incineration, and proper
3 disposal)

4 (H) Program administration (% of total program cost, including annual
5 administrative fee for service payments to the department)

6 (I) Surplus funding, if any, and how it will be applied to reduce program costs

7 (6) Education and Outreach. Describe educational and outreach activities in
8 context of those identified in the stewardship plan. Provide a description of
9 educational materials that were provided to retailers, consumers, and
10 contractors during the reporting period and provide electronic examples of
11 these materials. Identify any method(s) used to determine the effectiveness
12 of educational and outreach efforts (e.g., surveys, hits on specific web pages,
13 number of participants at events, etc.), if applicable. These education and
14 outreach materials may include, but are not limited to, any of the following per
15 PRC §48703(e):

16 (A) Signage that is prominently displayed and easily visible to the consumer.

17 (B) Written materials and templates of materials for reproduction by retailers
18 to be provided to contractors and consumers at the time of purchase or
19 delivery or both.

20 (C) Promotional materials or activities, or both, that explains the purpose of
21 paint stewardship and the means by which it is being carried out.

22 (D) Links to website(s) created and maintained by the stewardship
23 organization.

24 (7) Audits. The annual report shall include an independent financial audit of the
25 California Architectural Paint Recovery Program funded from the paint
26 stewardship assessment. The audit shall be conducted in accordance with
27 auditing standards generally accepted in the United States of America, and
28 standards set forth in Government Auditing Standards issued by the
29 Comptroller General of the United States. The financial audit submitted to the
30 department shall be prepared by an Independent Certified Public Accountant
31 (CPA). The CPA shall not perform non-audit services for the manufacturer or

- 1 stewardship organization that would impair independence as defined in the
2 Government Auditing Standards issued by the Comptroller General of the
3 United States (e.g., accounting services, development of internal controls,
4 management decisions). The independent financial audit shall include:
5 (A) California Architectural Paint Recovery Program financial statements, as
6 required by GAAP.
7 (B) An opinion on the manufacturer or stewardship organization's compliance
8 with the financial aspects of PRC §48700 and Title 14, Division 7, Chapter
9 11, Article 2 of the California Code of Regulations.
10 (C) Findings and recommendations as they relate to the financial aspects of
11 the Architectural Paint Recovery Program.
12 (D) Management Letter, if issued, by the manufacturer or stewardship
13 organization's CPA.

14
15 Authority cited: Sections 40401 and 40502, Public Resources Code, Reference: Section
16 48700, 48703, and 48705, Public Resources Code.

17
18 **§18955. Civil Penalties.**

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

22
23 (a) Any manufacturer offering architectural paint for sale in California or a
24 manufacturer or stewardship organization submitting a stewardship plan or annual
25 report to the department is subject to enforcement under this Article. Architectural paint
26 manufacturers are subject to penalties as a result of the failure of their designated
27 stewardship organization to comply with this Article on their behalf.

28 (b) Notwithstanding paragraph (a), an architectural paint manufacturer is not subject
29 to any penalty for failing to comply if that manufacturer can demonstrate that it provided
30 true and accurate information to the stewardship organization and the stewardship
31 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 40401 and 40502, Public Resources Code, Reference: Section 48700, 48702, and 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) Base Penalty Table I is to be used for stewardship organizations and architectural paint manufacturers.

(A) Identify what violations have occurred.

(B) Identify the severity of the violations.

(C) Establish the possible range of the base penalty per violation based on the severity levels described in paragraph (b).

<u>Base Penalty Table I: For Stewardship Organizations and Architectural Paint Manufacturers</u>		
<u>Violation</u>	<u>Description of Violation</u>	<u>Severity</u>
<u>PRC 48702(b)(1)</u>	<u>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.</u>	<u>Level 3</u>
<u>PRC 48702(a) and 48703(a)</u>	<u>Failure to submit, individually or through a stewardship organization, an architectural paint stewardship plan to the department</u>	<u>Level 3</u>

<u>14 CCR 18952(b)(3)</u>	<u>Failure to resubmit a stewardship plan or provide supplemental information within 60 days after receiving a notice of disapproval or conditional approval from the department</u>	<u>Level 1</u>
<u>PRC 48704(c)</u>	<u>Failure to implement an architectural paint stewardship program described in a department-approved stewardship plan</u>	<u>Level 3</u>
<u>PRC 48704(e)</u>	<u>Failure to pay an annual administration fee to the department</u>	<u>Level 3</u>
<u>PRC 48705(a)</u>	<u>Failure to submit, individually or through a stewardship organization, an annual report to the department</u>	<u>Level 3</u>
<u>PRC 48705(a)</u>	<u>Annual report does not contain required elements</u>	<u>Level 2</u>
<u>14 CCR 18956</u>	<u>Failure to meet record keeping requirements</u>	<u>Level 2</u>

1

2

(2) Base Penalty Table II is to be used for retailers.

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 II: For Retailers

<u>Violation</u>	<u>Description of Violation</u>	<u>Severity</u>
<u>PRC 48702(b)(1)</u>	<u>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.</u>	<u>Level 3</u>
<u>14 CCR 18956</u>	<u>Failure to meet record keeping requirements.</u>	<u>Level 2</u>

8

1 (b) For the purpose of implementing this [Section/Article], penalty severity levels are
2 described as follows:

3 (1) For a violation classified as Level 1, the amount of the base penalty may be
4 up to \$1,000 per day.

5 (2) For a violation classified as Level 2, the amount of the base penalty may be
6 up to \$5,000 per day.

7 (3) For a violation classified as Level 3, the amount of the base penalty may be
8 up to \$10,000 per day.

9 (c) A penalty amount may exceed \$1,000 per day only if a person intentionally,
10 knowingly, or negligently violates this Article.

11 (d) The department will set the final penalty amount after considering the criteria set
12 forth in §18955.2. The department may increase the final penalty beyond the penalty
13 range established pursuant to paragraphs (a) and (b), if it determines, after considering
14 the criteria set forth in §18955.2, that such an increase is warranted and appropriate.

15 (e) If the department sets an aggregated penalty amount for multiple violations, the
16 aggregated penalty amount shall not exceed \$1,000 per day per manufacturer,
17 stewardship organization, or retailer. If a person intentionally, knowingly, or negligently
18 violates this Article, the aggregated penalty amount shall not exceed \$10,000 per day
19 per manufacturer, stewardship organization, or retailer.

20
21 Note: Authority cited: Sections 40401 and 40502, Public Resources Code.

22 Reference: Sections 48700, 48702, 48703, 48704 and 48705, Public Resources
23 Code; and Section 11506, Government Code.

24
25 **§18955.2. Criteria to Impose a Civil Penalty.**

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

28 (a) The nature, circumstances, extent, and gravity of the violation(s).

29 (b) The number and severity of the violation(s).

30 (c) Evidence that the violation was intentional, knowing, or negligent.

31 (d) The size of the violator.

- 1 (e) History of violation(s) of the same or similar nature.
2 (f) The willfulness of the violator's misconduct.
3 (g) Whether the violator took good faith measures to comply with this chapter and
4 the period of time over which these measures were taken.
5 (h) Evidence of any financial gain resulting from the violation(s).
6 (i) The economic effect of the penalty on the violator.
7 (j) The deterrent effect that the imposition of the penalty would have on both the
8 violator and the regulated community.
9 (k) Any other factor that justice may require.

10

11 Note: Authority cited: Sections 40401 and 40502, Public Resources Code.12 Reference: Section 48704, Public Resources Code.

13

14 **§18955.3 Procedure for Imposing Civil Penalties.**

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

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

21 (1) Personal service.

22 (2) Substitute service by using the same service procedures as described in
23 §415.20 of the Code of Civil Procedure.

24 (3) Certified Mail: For respondents who have submitted a stewardship plan,
25 certified mail or registered mail if the letter containing the accusation or
26 complaint and accompanying material is mailed, addressed to the respondent
27 at the latest facility or mailing address(es) provided in the stewardship plan on
28 file with the department. Any address provided in the stewardship plan may
29 be used for service of process. Proof of service of the accusation or complaint
30 shall be the certified mail receipts or registered mail receipts proving the
31 accusation or complaint and accompanying materials were sent to respondent

1 by certified mail or registered mail. For respondents who have not submitted
2 or are not required to submit a stewardship plan to the department, certified
3 mail or registered mail pursuant to the procedures indicated in the
4 Administrative Procedure Act at §11505(c) of the Government Code applies.

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

7
8 Note: Authority cited: Sections 40401 and 40502, Public Resources Code.

9 Reference: Section 48704, Public Resources Code; and Section 11500,

10 Government Code.

11
12 **§18956. Record Keeping Requirements**

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

16 (a) Maintain records to support the requirements in this Article. Stewardship
17 organizations and manufacturers must maintain records to support §18954. Retailers
18 must provide access to existing records on all architectural paint sold or offered for sale
19 in the state including:

20 (1) The manufacturer of the paint.

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

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

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

29 (b) Provide the department with reasonable and timely access, as determined by the
30 department, to its facilities, operations, and any relevant records necessary to

1 determine compliance with this Article, upon request. Retailers will maintain and
2 provide access to records required by this Article for 3 years. Manufacturers and
3 stewardship organizations will maintain and provide access to records required by this
4 Article for three years after submission of the annual report which relies upon those
5 records.

6 (c) The department may take disciplinary action against any stewardship organization
7 or manufacturer who fails to provide the department with access pursuant to this
8 subdivision. If any stewardship organization or manufacturer fails to comply after the
9 imposition of a civil penalty, the department may immediately remove the
10 manufacturer(s) from the department's list of manufacturers that are in compliance with
11 Chapter 5 (commencing with §48700), Part 7, Division 30 of the Public Resource Code.

12
13 Note: Authority cited: Sections 40401 and 40502, Public Resources Code. Reference:
14 Sections 48700, 48702, 48703, 48704, and 48705, Public Resources Code.

15
16 **§18957. Proprietary, Confidential, or Trade Secret Information.**

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

21 Authority cited: Sections 40401 and 40502, Public Resources Code; and Section 6253,
22 Government Code. Reference: Sections 48700, 48702, 48704, 48705, 48706, Public
23 Resources Code; and Sections 6250 et seq., Government Code.

24 **§18958. Service Payments to Department of Resources Recycling and Recovery.**

25 (a) The department director, or his/her delegated authority, shall approve the annual
26 administrative fee described in Public Resources Code Section 48704, subdivision (e)
27 for the full administration and enforcement costs at a public meeting that will occur no
28 later than September 30, commencing in 2012. The fee shall reflect the department's

1 actual costs to administer and enforce this chapter for the period from July 1 of the prior
2 year through June 30 of the current year. The department's costs shall include the cost
3 of staff, overhead expenses applicable to staff, contract services, and any other
4 expenses incurred in administering or enforcing the program and in developing this
5 regulation and the program. For payments due in 2012, the fee shall also reflect the
6 department's actual costs incurred in developing this regulation and the program for the
7 period from October 1, 2010 through June 30, 2011. The department will provide
8 unofficial staff estimates upon request prior to the public meeting notification to assist a
9 manufacturer or stewardship organization with program budgetary planning, however,
10 actual costs will not be known until that public meeting.

11 (b) The department fee shall be prorated, if there is more than one stewardship plan,
12 by the number of approved or conditionally-approved plans.

13 (c) The department shall issue invoices to each manufacturer or stewardship
14 organization to which this section applies-by September 30 each year. Payment is due
15 annually on October 31.

16

17 Authority cited: Sections 40401 and 40502, 48704, Public Resources Code, Reference:
18 Section 48700, 48703, and 48704, Public Resources Code.