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**From:** Bill Worrell [bworrell@iwma.com]  
**Sent:** Tuesday, December 20, 2011 3:22 PM  
**To:** Dunn, Cynthia  
**Subject:** Paint regulation comments  
**Attachments:** Paint regulations comments.pdf

Hi Cynthia,  
Attached are my comments on the paint regulations.

Bill Worrell  
SLO County IWMA  
870 Osos Street  
San Luis Obispo, CA 93401  
805-782-8530 fax 805-782-8529

December 20, 2011

Cynthia Dunn  
Materials Management and Local Assistance Division  
California Department of Resources Recycling and Recovery (CalRecycle)  
P.O. Box 4025  
Sacramento, CA 95812-4025

Dear Cynthia,

The San Luis Obispo Integrated Waste Manage Authority appreciates the opportunity to comment on the revisions to the proposed regulations implementing AB 1343. In general, we view the revisions as a further weakening of the regulations. We certainly understand and appreciate the fact that some of these revisions may be necessary or prudent in the face of threatened litigation by PaintCare and the inherent weakness of the enabling legislation. However in one instance, we believe the revision is neither necessary nor consistent with the statutory language. Our comment addresses the provision on retail participation as collection points in Section 18953(a)(3)(F).

As revised, the proposed regulations include the following provision in Section 18953(a)(3)(F):

(F) Address the coordination of the architectural paint stewardship program with potential retail collection points. Any retailer may participate, on a voluntary basis, as a paint collection point ~~site~~ pursuant to the paint stewardship program. A manufacturer or stewardship organization must negotiate with any retailer wanting to participate in their paint stewardship program as a collection point, site as much as is reasonably feasible and is mutually agreeable ~~to attempt to establish a mutually agreeable and reasonably feasible agreement with the retailer that addresses all operational costs.~~

We respectfully submit that the above language, in particular, the addition of the phrase “as much as is reasonably feasible and is mutually agreeable” is fundamentally inconsistent with the statutory provision contained in Section 48703(f) of the Public Resources Code which reads:

*Section 48703(f) Any retailer may participate, on a voluntary basis, as a paint collection point pursuant to the paint stewardship program.*

A basic principle of statutory interpretation is that statutes should be construed “so as to avoid rendering superfluous” any statutory language. Since retailers already have the ability independent of the statute to act as a collection point, the addition of the phrase “as much as is reasonably feasible and is mutually agreeable” would render the statutory provision superfluous.

We also note the difference in the statutory language used Section 48703(f) and that in Section 48703(c), which reads:

*(c) The plan shall address the coordination of the architectural paint stewardship program with existing local household hazardous waste collection programs as much as this is reasonably feasible and is mutually agreeable between those programs.*  
*(emphasis added)*

Another general principal of statutory interpretation is that when a legislative body includes particular language in one section of a statute but omits it in another, it is generally presumed that it acted intentionally and purposely in the disparate inclusion or exclusion. In other words, if the Legislature had intended to apply the “as much as this is reasonably feasible and is mutually agreeable” standard to retail participation in the stewardship program they would have included such language.

Based upon the foregoing analysis, we would respectfully submit that inclusion of the phrase “as much as is reasonably feasible and is mutually agreeable” in Section 18953(a)(3)(F) is fundamentally inconsistent with the statutory provision contained in Section 48703(f) of the Public Resources Code. We propose that this Section be modified as follows:

(F) Address the coordination of the architectural paint stewardship program with potential retail collection points. Any retailer may participate, on a voluntary basis, as a paint collection point site pursuant to the paint stewardship program **on the same basis as any other retailer participating in the paint stewardship program.** ~~A manufacturer or stewardship organization must negotiate with any retailer wanting to participate in their paint stewardship program as a collection point, site as much as is reasonably feasible and is mutually agreeable to attempt to establish a mutually agreeable and reasonably feasible agreement with the retailer that addresses all operational costs.~~

We would note that retailers are already required to participate in the paint stewardship program in that they must: (1) collect the assessment and remit it to the stewardship organization; (2) not sale paint from a manufacturer that has failed to comply with the plan requirements and (3) retain certain records. We submit that they should be allowed to become full participants should they so choose.

In the absence of the revised language which we have proposed, PaintCare will have the ability to limit the number of retail collection points by simply not agreeing to allow a retail site to serve as a collection point. For example, Paint Care could give priority to selecting retail sites that are also paint manufactures, thus creating an uneven playing field for those retailers that are not paint manufacturers, such as local hardware stores. An excluded retail store that wanted to provide their customers with the opportunity to drop off paint would be at a further disadvantage

in that under AB 408 only PaintCare collection sites are allowed to collect oil based paint. Thus an excluded retail store could only accept latex paint.

In conclusion, AB 1343 was very clear in that any retailer that wanted to be a collection point should have the opportunity to be one. This provided not only a level playing field for the retail stores, but also ensured collection opportunities for the public. The proposed language must be changed to reflect the intent of AB 1343.

Sincerely,

A handwritten signature in blue ink that reads "Bill Worrell". The signature is written in a cursive style with a large initial "B" and "W".

William A. Worrell