

**From:** sgeorge@stefangeorge.com  
**Sent:** Friday, September 02, 2011 1:43 PM  
**To:** Paint Product Stewardship  
**Cc:** Dunn, Cynthia; Wang, Emily; Marjaneh Zarrehparvar; 'akeane@paint.org'  
**Subject:** California Paint Council Comments on CalRecycle's Proposed Paint Regulations  
**Attachments:** CALRECYCLE CPC COMMENTS ON PROPOSED REGS 8 30 2011.doc

Attached, please find comments submitted by the California Paint Council on the Proposed Paint Regulations implementing AB 1343.

Sande George  
Lobbyist, CPC  
916-443-5301



September 2, 2011

Mr. Mark Leary, Acting Director  
CalRecycle  
801 K Street, MS 19-01  
Sacramento, CA 95814

**RE: Comments RE: Regulations for Architectural Paint Recovery Program**

Dear Mr. Leary:

The California Paint Council (CPC) is submitting comments on the above referenced California Department of Resources, Recycling and Recovery (CalRecycle) Regulations for the Architectural Paint Recovery Program (herein after referred to as "Proposed Regulations"). CPC also supports the comments submitted by the American Coatings Association (ACA) and PaintCare. CPC represents California paint and coatings manufacturers, all of whom anticipate joining PaintCare, the product stewardship organization that will run the Architectural Paint Recovery Program in California.

CPC supported AB 1343, the statute that these regulations are purportedly designed to implement. We have also worked cooperatively with CalRecycle since the bill's passage last year and appreciate the many discussions and meetings with CalRecycle staff before the Proposed Regulations were drafted.

**However, CPC would not have supported a program as envisioned in these Proposed Regulations if they had been authorized by AB 1343 – we would have strongly opposed such legislation and unfortunately must oppose the Proposed Regulations as drafted for the following reasons:**

#### **PROPOSED REGULATIONS EXCEED AUTHORITY OF THE STATUTE**

CPC strongly believes that the Proposed Regulations would mandate requirements that go well beyond the scope of CalRecycle's statutory authority under AB 1343. The Proposed Regulations do not meet the Office of Administrative Law's threshold tests for legally authorized regulations for necessity, authority, clarity, consistency, reference or nonduplication. The Proposed Regulations do not as required by OAL "demonstrate by substantial evidence the need for a regulation to effectuate the purpose of the statute ... that the regulation implements, interprets, or makes specific..." The regulations quite simply are not consistent with the existing statute and in many cases actually run contrary to the statute and its underlying legislative intent. PaintCare is a program supported by industry and to be run by industry. The impetus for the program was to reduce the cost and burden of local governments managing postconsumer paint at its end-of-life, not to establish and finance a new costly state Agency program.

#### **PROPOSED REGULATIONS ESTABLISH A BROAD EPR REGULATORY FRAMEWORK RATHER THAN THE PAINT-SPECIFIC PROGRAM ENACTED IN AB 1343**

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In fact, AB 1343 was deliberately written with plain language to clearly establish PaintCare as an industry-run program that was consistent with the multi-state, multi-stakeholder Memorandum of Understanding (MOU), to which CalRecycle was a signatory. That MOU provided the template for a nationally coordinated and consistent paint recovery program. CPC members are ready to begin implementing the paint stewardship program in the state of California. However, CPC cannot support what appears instead to be a broad format for extended producer responsibility regulatory policy by which products unrelated to paint are to be measured at some later date. As is evident by the ten pages of concerned comments from ACA, there is a disturbing disconnect between the statute that authorizes PaintCare and the much broader Proposed Regulations.

### **PROPOSED REGULATIONS INCONSISTENT WITH NATIONAL MOU FOR PAINTCARE AND PUT CALIFORNIA'S PAINT RECOVERY GOALS AT RISK**

As stated, the MOU was the basis for AB 1343 as well as the PaintCare program already being implemented in Oregon and that will be implemented in Connecticut. Both of those states, unlike California, have decided that regulations were not needed because the statute clearly outlines the PaintCare program. The industry has worked hard to ensure consistency among all states implementing PaintCare, which is the only way PaintCare will be successful on such a large national scale. The Proposed Regulations would instead subject manufacturers operating in multiple PaintCare states to inconsistent and inappropriate requirements, putting California's own goals for a successful paint recovery program at risk.

### **PROPOSED REGULATIONS NEED TO BE AMENDED TO REMOVE SUPERFLUOUS, BURDENSOME AND COSTLY ADDITIONAL REQUIREMENTS NOT INCLUDED IN STATUTE**

In order to ensure that the residents of California receive the PaintCare program in a timely fashion, CPC urges CalRecycle to revise the Proposed Regulations based on the plain language in the statute as suggested by the ACA and PaintCare comments, removing superfluous, burdensome and costly additional requirements that the Proposed Regulations currently contain.

Thank you for your prompt attention to these comments, as well as those from ACA, PaintCare and manufacturers which plan to participate in PaintCare. Please do not hesitate to contact me with any questions.

Sincerely,



Freidan Anwari, Chair  
CPC Steering Committee