From: Mike Mohajer [mikemohajer@yahoo.com]
Sent: Friday, September 02, 2011 9:09 PM
To: Dunn, Cynthia
Cc: Leary, Mark; Levenson, Howard; Wang, Emily
Subject: Comments on Proposed Regulation for Architectural Paint Recovery Program
Attachments: AB 1343 Rulemaking 45-Day Comment Letter 9-2-2011.pdf

LOS ANGELES COUNTY
SOLID WASTE MANAGEMENT COMMITTEE/
INTEGRATED WASTE MANAGEMENT TASK FORCE

TO: Ms. Cynthia Dunn
California Department of Resources Recycling and Recovery (CalRecycle)

FROM: Mike Mohajer, Member
Los Angeles County Solid Waste Management Committee/
Integrated Waste Management Task Force (Task Force)

SENT: September 2, 2011 – 9:09 PM

Attached. Please find the Task Force letter of September 2, 2011 commenting on the the "Proposed Regularion for Archtectural Paint Recovery Program" implementing AB 1343. If you have any questions, please contact me via email or at 909-592-1147. Thank you

LOS ANGELES COUNTY
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GAIL FARBER, CHAIR
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September 2, 2011

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

Dear Ms. Dunn:

COMMENTS AND RECOMMENDATIONS ON THE PROPOSED REGULATIONS FOR THE ARCHITECTURAL PAINT RECOVERY PROGRAM REQUIRED BY ASSEMBLY BILL 1343 (HUFFMAN, 2010)

The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force (Task Force), in conjunction with the County of Los Angeles (County), the County Sanitation Districts of Los Angeles County (CSD), and the City of Los Angeles (City), would like to resubmit recommendations presented in a letter dated April 6, 2011 (enclosed), to the Department of Resources Recycling and Recovery (CalRecycle) for consideration when reviewing architectural paint stewardship plans required pursuant to Assembly Bill 1343 (Chapter 420, 2010 statutes). At the August 18, 2011, Task Force meeting, Howard Levenson indicated that the Task Force's recommendations would be considered by CalRecycle during the formal Architectural Paint Stewardship Rulemaking Process.

The Task Force in coordination with the listed agencies would like to offer the following comments on the Proposed Regulations to also be considered.

GENERAL COMMENTS

1. **Recovery Program** - A key objective of AB 1343 is to establish an architectural paint recovery program (Recovery Program) that requires manufacturers or their designated stewardship organization to develop and implement a program to collect, transport, and process postconsumer paint to reduce costs to local governments and shift the costs to manufacturers and consumers. Consistent with CalRecycle's Extended Producer Responsibility Framework (see below), such a program must be designed to maximize convenience to consumers, be adequately funded, and require minimal local government involvement. The proposed regulations should be revised and expanded to ensure these objectives are met.

2. **Consistency with EPR Framework** - Except where in conflict with the requirements of AB 1343, the proposed regulations should establish a Recovery Program that is consistent with CalRecycle's EPR Framework, including Framework Policy Goals, Guiding Principles, Roles and Responsibilities, and Governance. For example, the proposed regulations should ensure system effectiveness, set minimum recovery rates, and establish minimum environmental standards as appropriate.

3. **Collaboration with Local Governments** - The proposed regulations minimally address and require the manufacturers or the designated stewardship organization to work collaboratively with existing local government collection programs to transfer the responsibility for managing post-consumer paint to manufacturers (or the designated stewardship organization) and consumers. As a general principle, stewardship plans should be designed to be stand-alone, that is, not dependent on a local government program since local government participation is voluntary. A stewardship plan that relies on a local government program must include a copy of the signed agreement established with the local government prior to being approved by CalRecycle.

   Also, provisions need to be incorporated into CalRecycle's review and approval process to allow and consider local government input prior to approval of the stewardship plans.

SPECIFIC COMMENTS

1. Section 18953(a)(5)(D), Stewardship Plan Approval Criteria, Collection Systems

   The following must be considered in the development of a stewardship plan: (a) If local governments choose not to contract with the manufacturer or stewardship organization to provide collection services, the plan must describe in detail how reasonable access to convenient product collection locations will be provided to all consumers and (b) how collection and financing will be coordinated if there is more than one stewardship organization plan (i.e., will each individual plan or manufacturer only collect their own brands?).

2. Section 18953, Stewardship Plan Approval Criteria (a)(7), Financing Mechanism

   The proposed regulations should be revised to require that the funding mechanism be sufficient to compensate local governments for their full costs to manage architectural paint delivered to their programs/facilities even though no agreement may have been established.

   Subsection (7)(D) should be revised to require that a copy of the signed agreement with a local government service provider be submitted with the stewardship plan if the plan is to rely on the local program to meet the collection system requirements. Prior to approving any new stewardship plan or plan revision, CalRecycle should give local governments a 30-day opportunity to review and comment on the plan. Consistent with the EPR Framework, CalRecycle should collaborate with agencies, internal and external, and other key stakeholders to effectively address cross-media and cross-organizational issues when considering approval of product stewardship plans.

3. Subsection 18951(e), Collection Definition

   Revise the definition to read as follows: "'Collection' means any <u>process or</u> method by which a service provider <u>calls for</u>, receives, <u>and gathers</u> postconsumer architectural paint from a consumer."

4. Subsection 18951, Definitions

   Expand to include a new definition for "Collection cost" to read as follows: "<u>'Collection costs' means the costs incurred by the service provider for the collection of architectural paint including costs for administration, planning, set-up, storage, advertising and outreach</u>."

5. In accordance with AB 1343, Section 48703 (b)(1), stewardship plans must demonstrate sufficient funding for the architectural paint stewardship program as described in the plan including a funding mechanism for securing and dispersing funds to cover *administrative, operational, and capital cost and* including the assessment of charges on architectural paint sold by manufacturers in this state. Therefore, the definition of "Assessment" (Subsection 18951(c)) should be revised to read as follows: "'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 <u>including the cost of collection, transportation, processing and disposal as well as the program's fair share of orphaned products</u>." This is also consistent with the EPR Framework.

6. Subsection 18951, Definitions

   Expand to include a new definition for "Paint Collection Site." [See 18953(a)(5)(E)]. Definition must clarify that the collection will be "free" to the residents and no additional fees will be charged to the residents for the collection of architectural paint.

7. Section 18951(a)(f), Definitions

   Expand the definition for "operational costs" to include costs to administer the program, such as those associated with administering the collection of architectural paint through the local household hazardous waste collection programs.

8. Subsection 18953(a), Stewardship Plan Approval Criteria

   The reference to Section 18942 should be changed to 18952.

9. Subsection 18953(a)(3), Stewardship Plan Approval Criteria

   Expand to include an initial recovery goal and provisions to require a manufacturer or stewardship organization to achieve annual increases in the recovery rate of postconsumer paint while maintaining a free service to the consumer. This will encourage manufacturers or the product stewardship organization to focus on recruiting retail participation to increase program convenience and effectiveness. It will also encourage enhanced outreach efforts to create public awareness of available services in order to increase participation by the public. This would serve as a good measurement tool of the overall paint product stewardship efforts and is consistent with the EPR Framework.

10. Subsection 18953 (a)(5)(E), Stewardship Plan Approval Criteria

    Expand to list the minimum qualifications that a retailer must meet to operate as a "paint collection site."

11. Subsection 18953(a)(7), Stewardship Plan Approval Criteria, Financing Mechanism

    The "funding mechanism" should also include the "Administrative Fee." Therefore Subsection 18953(a)(7)(B) – reference to Section 19858 should be changed to 18958.

12. Subsection 18953(a)(7)(D), Financing Mechanism

    Revise Subsection to state that the agreements established between the manufactures or the stewardship organization and the service providers will not just *address* all operational costs but will ensure *compensation* of all operational costs to the service providers.

13. Subsection 18953(a)(8), Stewardship Plan Approval Criteria, Education and Outreach

    Expand to require that the manufacturers or the product stewardship organization provide free education, outreach, and promotional materials to service providers to be distributed to consumers to promote source reduction and recycling of architectural paint and create awareness on the services available through the paint stewardship program.

14. Subsection 18953(a)(10), Stewardship Plan Approval Criteria, Stakeholder Consultations

    Expand to require that manufacturers or the stewardship organization maintain close communication with local government programs in developing a paint stewardship plan. While existing infrastructure may be considered in the development of the plan, such as an existing local government program, it also must consider that, as AB 1343 recognizes, existing infrastructure is not sufficient or convenient enough to capture a significant portion of the postconsumer architectural paint (only about five percent of all households currently participate in the local programs).

    Also, since the purpose of the legislation is to reduce costs to local governments and shift the costs to manufacturers and consumers, existing local government programs/infrastructure should not be relied upon without proper compensation to the local government programs for all the costs incurred in the collection of the postconsumer paint.

15. Subsection 18958(a), Service Payments

    Expand to include a cap on the Administrative Fee that CalRecycle can charge to the architectural paint manufacturer or stewardship organization in order to cover the costs of administrating and enforcing the statute. This will minimize the ultimate Assessment Fee charged to the consumers.

16. Subsection 18958(b), Service Payments

    The authority to approve the Administrative Fee charged by CalRecycle must be limited to the Director and can be approved only after conducting a public hearing.

We appreciate your consideration of these recommendations in the development of Paint Stewardship Plan's review tools. If you have any questions, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147 or mikemohajer@yahoo.com.

Sincerely,

Margaret Clark

Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste Management Task Force and
Council Member, City of Rosemead

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Enc.

cc: CalRecycle (Howard Levenson, Cara Morgan, Brenda Smyth)
California State Association of Counties
League of California Cities
California Product Stewardship Council
Each Member of the County of Los Angeles Board of Supervisors
Each City Mayor and City Manager in Los Angeles County
City of Los Angeles Bureau of Sanitation (Enrique Zaldivar, Alex Helou, Karen Coca)
County Sanitation Districts of Los Angeles County (Steve Maguin, Grace Chan, Chris Salomon)
County of Los Angeles Department of Public Works (Pat Proano)
League of California Cities, Los Angeles County Division
San Gabriel Valley Council of Governments
South Bay Cities Council of Governments
Gateway Cities Council of Governments
Each City Recycling Coordinator in Los Angeles County
Each Member of the Los Angeles County Integrated Waste Management Task Force