From: Alison Keane [akeane@paint.org]
Sent: Thursday, September 01, 2011 8:40 AM
To: Paint Product Stewardship
Subject: FW: American Coatings Association and PaintCare Comments on CalRecycle's Proposed Paint Regulations
Attachments: Final Comments on CalRecycle Proposed Paint Regulations.pdf

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From: Alison Keane
Sent: Thursday, September 01, 2011 11:38 AM
To: paint@calreycle.ca.gov
Cc: Cynthia Dunn (Cynthia.Dunn@CalRecycle.ca.gov); Emily Wang (Emily.Wang@CalRecycle.ca.gov); Marjaneh Zarrehparvar; Sande George
Subject: American Coatings Association and PaintCare Comments on CalRecycle's Proposed Paint Regulations

Attached, please find comments submitted by the American Coatings Association and PaintCare on the Proposed Paint Regulations implementing AB1343.

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AmericanCoatings
ASSOCIATION

September 5, 2011

Mr. Mark Leary, Acting Director
California Department of Resources,
Recycling and Recovery
801 K Street, MS 19-01
Sacramento, CA 95814

RE: Proposed Regulations for Architectural Paint Recovery Program

Dear Mr. Leary:

The American Coatings Association (ACA) is submitting comment on the above referenced California Department of Resources, Recycling and Recovery (CalRecycle) Regulations for Architectural Paint Recovery Program (herein after referred to as "Proposed Regulations"). ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. In addition, ACA incorporated "PaintCare," a 501(c)(3) organization as a product stewardship organization with the expressed purpose of the end-of-life management of post-consumer paint and has been operating the PaintCare program in Oregon since July 1, 2010.

Introduction

As ACA and its local California Paint Council (CPC) were the primary supporters of Assembly Bill 1343 – now §48700 of the Public Resources Code (PRC) – which these regulations attempt to implement, the Association and its member architectural paint manufacturers have a particular interest in seeing that any final regulations comport not only with the plain language of PRC §48700, but also the intent of the underlying legislation. In addition, as PaintCare will be the primary, if not the only product stewardship organization representing paint manufacturers implementing the program, ACA is uniquely qualified to comment on and request changes to the Proposed Regulations to ensure that the final regulations do not overly burden or interfere with implementation of the industry's program. Lastly, as the impetus for the PaintCare program was the result of a multi-state, multi-stakeholder dialogue and Memorandum of Understanding (MOU), to which CalRecycle (then the California Integrated Waste Management Board) was a signatory, and the purpose of which was to implement a nationally coordinated approach to postconsumer paint management, ACA must work to ensure consistency among all states implementing the PaintCare program.

Unfortunately, as drafted the Proposed Regulations would fail all three of these tests. Not only do the Proposed Regulations broaden the scope of the program as well as the authority of CalRecycle in overseeing the program well beyond the clear language of the statute and the underlying legislative intent, the Proposed Regulations would imposed unnecessary, burdensome and costly requirements on

manufacturers or a product stewardship organization and would subject manufacturers operating in multiple PaintCare states to inconsistent and inappropriate requirements. In fact, as CalRecycle did not support AB1343, ACA is concerned that CalRecycle is using the regulatory process, rather than reliance on the literal language of the statute, as a means to interpret the statute in a way that they were not able to persuade supporters of the bill or the California legislative body to adopt when passing the bill.

CalRecycle must return to the clear language of AB1343 and remove the overly broad and unduly burdensome provisions as outlined below. In addition, ACA requests changes to the Proposed Regulations to provide further clarity with regard to legislative intent and ensure national consistency.

§18951. Definitions

As the intent of the legislation was to have manufacturers develop and implement an end-of-life management program for architectural paint (AB 1343 Legislative Counsel's Digest) and to fund the program in a manner that meets but does not exceed the costs of the program (§48703(4)), the definition of "operational costs" should be changed to reflect that these are operational costs incurred by the manufacturer or paint stewardship organization as described in the plan, and not costs established by CalRecyle. In addition, it should be consistent with the definition of "assessment," which is the funding mechanism for the operation of the program. ACA requests that the definition be changed to:

"Operational costs" means cost necessary to cover the costs of implementing a manufacturer or stewardship organization's paint stewardship program, including, but not limited to collection, transportation, processing, disposal, and education and outreach operations."

CalRecycle must make it clear that their review of a manufacturer or product stewardship organization's costs is only to ensure that the budget and assessment rate meet, but do not exceed the costs of the program, and not a review of individual costs for these operations. CalRecycle cannot interfere with the right of a manufacturer or stewardship organization to negotiate contract pricing for operational services.

The definition of "service provider" needs to reflect proper disposal as a management method as provided for in the statutory language (PRC §48702(a)). In addition, per §48703 and pending amendments to the statute, this definition should better reflect the contractual requirements for collection services. ACA requests that the definition be changed to:

"Service Provider" means an entity, including, but not limited to, local household hazardous waste collection programs and paint retailers, as much as this is reasonably feasible and is mutually agreeable, that contracts with a manufacturer or stewardship organization to provide services including, but not limited to collection, consolidation, transportation, processing or disposal of postconsumer architectural paint."

§18952. Submittals

§18952(a)

ACA believes the submittals under §18952(a) are overly burdensome and unnecessary to the oversight of a paint stewardship program. The Proposed Regulations mandate that a manufacturer or stewardship organization shall register with CalRecycle according to instructions provided by the department – instructions that are not specified in the Proposed Regulation – so are impossible to comment upon. In

addition, the Proposed Regulations state that the registration process shall include, "but not be limited to," the following information outlined – which would allow CalRecycle to request any information at any time from a manufacturer or stewardship organization without any notice and comment opportunity. Thus, the registration process must be open for notice and comment before being finalized and the phrase "but not limited to," must be removed from§18952(a).

Lastly, the Proposed Regulations mandate information not only from a product stewardship organization, but from each manufacturer within a product stewardship organization – in some cases, information that a product stewardship organization such as PaintCare does not even collect from its participants. Contact information should only be required from an individual manufacturer operating a program or a product stewardship organization - it should not be required from all individual manufacturer participants in a product stewardship organization. Under the PaintCare Program plan, CalRecycle will receive a list of participating manufacturers. As PaintCare will be legally representing these paint manufacturers for the purpose of the program and submitting all applicable contact information for PaintCare, submitting the same information for each participating architectural paint manufacturer is unnecessary and burdensome. In addition, some of the information the Proposed Regulations require, such as web addresses for each architectural paint manufacturer, is not currently collected by PaintCare and has little to no relevance to the program. Similarly, requesting the physical addresses for these companies in addition to the legal address, which for most will result in multiple listings, is superfluous and not information generally required by PaintCare.

CalRecycle needs the contact information for any individual manufacturer submitting a program plan or for a product stewardship organization on behalf of a number of manufacturers. In addition, as under PRC §48702(2) CalRecycle must list all manufacturers which are operating under an approved plan; CalRecycle needs the name of all manufacturers represented by a product stewardship organization. Lastly, as retailers are obligated to check with CalRecycle to ensure they are selling product from only manufacturer's complying with this law, CalRecycle needs a list of brands for each manufacturer under an approved program plan. Everything else contained in §18952(a) is unnecessary, overly burdensome and could result in costly penalties to the program. While CalRecycle maintains that this information is needed for enforcement purposes, ACA submits that it would be information on manufacturers that were not in the PaintCare program that the Agency would need for enforcement purposes – information that ACA or PaintCare may or may not have, but regardless would not be in any program plan submitted pursuant to these regulations.

Thus, for program plans submitted by product stewardship organizations, ACA requests that, along with the stewardship organization's contact information, only the name of participating manufacturers and a list of participating brands be mandated as submittals under §18952(a). Further, contact information for individual manufacturers should only be available to CalRecycle upon request and for a specified reason. In addition, ACA requests a specified time period be dictated for response to a request in this regard. As contact information for these companies changes frequently due to consolidation and personnel overturn – PaintCare will need time to verify and submit such to CalRecycle or could face potential paperwork violations for untimely submission and/or submitting incorrect data under §18955.1, the base amount for such being $10,000 a day.

§18952(b)

The Proposed Regulations request that the information submitted in the stewardship plan be organized according to an outline, that, as discussed below under §18953 – Stewardship Plan Approval Criteria – requests information far beyond the scope of the underlying legislation; are beyond the authority of CalRecycle to impose under the statute' were not contemplated by AB1343 and would not have been supported in the legislative process.. This includes (F) Market Development; (I) Program Performance Measurement; (J) Stakeholder Consultation; and (K) Audits.

§18952(c)

Similarly, the Proposed Regulations mandate information be submitted that is not required by the plain language of the statute, as discussed below under §18954 – Annual Report Compliance Criteria, including (B) Executive Summary; (C) Scope; (D) Program Outline; (E) Description of Goals and Activities Based on the Stewardship Plan; and (F) Market Development.

§18953. Stewardship Plan Approval Criteria

§18953(a)

This section of the Proposed Regulations states that stewardship plans "must" contain certain elements – many of which were not contemplated by the legislation and not contained in the statute. These elements must be removed from the regulation. If, over ACA objection, these elements are not removed, CalRecycle must make it clear that these elements are permissive and not mandatory and that any stewardship plan lacking these elements will not be deemed insufficient in this regard, but will be approved based on only the statutorily mandated criteria.

§18953(a)(2) – this provision is beyond the authority of CalRecycle to impose under the statute, was not contemplated by AB1343 and would not have been supported in the legislative process, thus, paint container management cannot be a mandatory element of the paint stewardship plan. Further, with regard to this section, ACA requests that a manufacturer or stewardship organization update the list of participating manufacturers and brands within 30 days of any change to the lists provided in the stewardship plan. Once a final manufacturer and brand list is compiled, these list change infrequently. By alerting CalRecycle within a certain time frame (30 days) of a change allows a manufacturer or stewardship organization to provide an updated list in a timely manner, however, a manufacturer or stewardship organization is not unnecessarily updating the list every six months regardless of any relevant changes and would not be subject to costly paperwork violations for lack of submittal.

§18953(a)(3) – the legislation clearly states what the plan must have with respect to goals established by a manufacturer or stewardship organization. Thus, CalRecycle must go back to the clear language of the statute and remove such mandates as "including program goals that are specific to and appropriate for California recognizing the current recycling infrastructure and capacity; estimating changes in market conditions; anticipating recycling infrastructure and capacity in California; and goals must include a baseline, to be provided by the manufacturer or stewardship organization, from which the goals will be measured and reported in the manufacturer or stewardship organization's annual reports." These provisions are beyond the authority of CalRecycle to require as they were not contemplated by the legislation, are not mandated by the statute and in this instance are actually contrary to the plain language and legislative intent.

The statute clearly says that the plan shall include goals established by the manufacturer or stewardship organization, as practical, based on current household hazardous waste program information; and that these goals may be revised by the manufacturer or stewardship organization based on the information collected for the annual report. Thus, a stewardship plan will be based on current program information supplied by CalRecycle for current infrastructure – and the goals will be revised as applicable based on actual results during the program year. Mandating that a manufacturer or stewardship organization undertake an evaluation of California's current and/or future recycling capacity and estimating market conditions is well beyond the scope of the statute. And, while a revision of the goals may take place, CalRecycle cannot mandate a baseline or measurement against such as the plain language of the statute establishes that it is at the manufacturer or stewardship organization's discretion to do so, not CalReycle's.

Thus, the provision should read "Include program goals established by the manufacturer or stewardship organization to reduce the generation of postconsumer paint, to promote the reuse of postconsumer paint, and for the proper end-of-life management of postconsumer paint. The goals shall include recovery and recycling of postconsumer paint, as practical. The goals shall be based on current household hazardous waste program information available to the manufacturer or stewardship organization. The goals may be revised by the manufacturer or stewardship organization based on information collected through implementation of the program and reported through the annual report."

§18953(a)(5)(D) – there is no provision in the statute for convenient collection, nor is there a standard for such. In addition, as the plain language of the statute calls for a state-wide program, the provision for listing sites in each county needs to be removed. Thus, the provision should read "Description of collection for California residents to recycle and properly manage their unwanted architectural paint on a state wise basis, including the proposed number, location and type of collection sites located in the state."

§18953(a)(5)(E) – this should be resolved through amendments to the statute, however, if not, this provision should be revised to be identical to the statutory language for household hazardous waste collection locations. Thus, the provision should read "The plan shall address the coordination of the architectural paint stewardship program with retail collection locations, who may participate on a voluntary basis, as much as this is reasonable feasible and is mutually agreeable between the parties."

§18953(a)(5) – this provision must be removed as it is beyond the scope of the statutory language, was not contemplated by AB1343 and would not have been supported in the legislative process. If, over ACA objection, "market development" is not removed from the Proposed Regulations, CalRecycle must make it clear that this is permissive and not mandatory and that any stewardship plan lacking these elements will not be deemed insufficient in this regard, but will be approved based on only the statutorily mandated criteria.

§18953(a)(7)(B) – this provision should read "operational costs" instead of "full program costs."

§18953(a)(7)(D) – this provision has no relevance – contracts with various service providers will evidence mutually agreeable and reasonably feasible agreements – making a statement to this affect in a stewardship plan is illogical. In addition, as none of the service provider agreements would address "all operational costs," since these cost range from transportation to education and outreach and will encompasses different service providers for the various services (i.e., a contract with a transporter would

not address recycling and a contract with a marketing firm would not address collection, etc.), this section of the provision must be removed

§18953(a)(7)(F) – this provision is beyond the scope of the statutory language and appears illogical. The collection and expenditure of assessment funds will most definitely not be kept separate from "any other activities of the stewardship organization" since this funding will, in fact, recover all costs for the program. Financial management of the assessment funds and a manufacturer or stewardship organization's budget will be reviewed through a yearly independent financial audit – thus, this provision, even if it made sense, is unnecessary as a criteria for the stewardship plan and must be removed.

§18953(a)(10) – this provision is beyond the scope of the statutory language, was not contemplated by AB1343 and would not have been supported in the legislative process, so must be removed. The statute states that a manufacturer or stewardship organization must address coordination with current household hazardous waste collection locations in a stewardship plan, but goes no farther. There is no requirement that a manufacturer or stewardship organization include a consultation process with existing local household hazardous waste collection programs, nor any other stakeholders as listed in this provision. If, over ACA objection, this provision remains in any final regulations, CalRecycle must make it clear that this is permissive and not mandatory and that any stewardship plan lacking this element will not be deemed insufficient in this regard, but will be approved based on only the statutorily mandated criteria.

§18953(a)(11)(B) – this provision's requirements – a description of how the postconsumer paint "was managed in accordance with the stewardship plan," and the total amount of architectural paint sold and collected, and if applicable, the recovery rate" – are not applicable in this section as they are not something a manufacturer or stewardship organization would have for a stewardship plan since the program plan is submitted *prior* to actual implementation. This information would only be available once the program was implemented and is already included in the Annual Report criteria, so must be removed in this section.

§18954. Annual Report Compliance Criteria

This section is probably the most egregious of all with regard to expanding the scope of the statute beyond its clear language and intent. The Proposed Regulations add additional, burdensome and costly requirements on a manufacturer or stewardship organization that neither ACA, nor our member proponents of AB1383 would have agreed to or supported through the legislative process. CalRecycle must return to the plain language of the statute, which lays out 7 elements that the annual report – and remove or revise the following provisions from the Proposed Regulations accordingly.

§18954(a)(2) – this provision calls for an executive summary that would provide an evaluation of the effectiveness of the paint stewardship plan and anticipated steps to improve performance – including challenges encountered during the year and how they were addressed. This was not contemplated by the legislation and is not contained in the statute as an element of the annual report. This provision would add burdensome and costly evaluation requirements on a manufacturer or stewardship organization and, seemingly, if CalRecycle did not agree with that evaluation, subject a manufacturer or stewardship organization to severe penalties for non-compliance. This provision must be removed.

§18954(a)(3) – this provision requires information that will already be supplied in a manufacturer or stewardship organizations program plan and through regular updates as per §18952(a)(2) and ACA

comments to this section above. So this provision, which is not contained in the statutory language, is also simply unnecessarily duplicative.

§18954(a)(4) – the only section in this provision that comes close to what is actually stated in the statute as a requirement for the annual report is (A) – a description of the methods used to collect, transport, and process architectural paint in the state. However, even here, CalRecycle manages to add an additional requirement to this section as well – adding "by type" to the language with regard to architectural paint. (B) through (E) add requirements far beyond the plain language of the statute and in most cases add duplicative information and burden without commensurate benefit. (B) mandates a description of convenient collection, which is not part of the statute, but will already be addressed in the program plan as commented on above; (C) mandates a description of best management practices that will also already be addressed in the program plan; (D) mandates a "description of how each consumer of architectural paint had an opportunity to properly manage their postconsumer paint," which is a provision that is seemingly impossible to articulate except that there is a state wide system in place to do so; and (E) mandates a statement with regard to contracting for collection services with retailers, that, as stated above, is wholly unnecessary as it again will be covered in the program plan – not just for retailers, but for any contracted collection location under an approved plan.

§18954(a)(5) – again, this provision mandates information that is beyond the statutory language. While some of the sections come close to the actual language of the law – overall, this provision fails and must be revised to match the clear language of the statute. There is no mandate in the statute to report on achievement of goals or measurement of such against a baseline. There is no mandate in the statute to make adjustments to goals, unless a manufacturer or a stewardship organization in their own discretion decides to do so. And, there is no mandate in the statute to provide a description of efforts to increase reuse or recyclability of postconsumer paint (E) and (F) respectively. These provisions must be removed as they are beyond the authority of CalRecycle to impose under the statute and would add cost and burden on a manufacturer or stewardship organization far beyond what was contemplated by AB1343 and what would have been supported in the legislative process.

§18954(a)(6) – market development provisions must be removed, as commented on above – they are beyond the authority of CalRecycle to impose under the statute, were not contemplated by AB1343 and would not have been supported in the legislative process.

§18954(a)(7) – the statute has a provision for an independent financial audit of the program to be included in the annual report – anything over and above what would be included in an independent financial audit is beyond the authority of CalRecycle to impose under the statute. Thus, provisions (D) through (K) must be removed from the Proposed Regulations. While CalRecycle will get most of the information sought by these sections through a manufacturer or stewardship organization's budget submitted with the program plan – in many cases what the Proposed Regulations outline in this provision would be protected as confidential business information protected under PRC 48704(b)(1) and therefore, would not be contained in the Annual Report even if the Agency had the authority to mandate such.

§18954(a)(8) – this provision must be revised to reflect what is statutorily mandated – information on education and outreach materials provided to consumers for the first year of the program and only changes to those materials in subsequent annual reports. A description of the materials will be contained in a manufacturer's program plan and need not be reiterated in the Annual Report. Further, there is no mandate that an evaluation of the educational materials be done to determine effectiveness through surveys or any other means as the Proposed Regulations would require. Mandating such only adds cost

and burden to the program and subjects a manufacturer or stewardship organization to potential costly fines for non-compliance – every year.

§18954(a)(9) – the statute calls for an independent financial audit of the program – mandating supplemental information to CalRecycle and giving CalRecycle the ability to investigate further as sections (1), (3) and (4) of the Proposed Regulations contemplate is beyond the authority of the Agency under the statute. In addition, the non-financial information needs to be removed as it is beyond the scope of the statute, was not contemplated by AB1343 and would not have been supported through the legislative process.

The Proposed Regulations must be revised to read exactly what the statute has mandated the annual reporting requirements to be:

- The total volume of architectural paint sold in the state during the preceding calendar year;
- The total volume of postconsumer architectural paint recovered in the state during the preceding calendar year;
- A description of the methods used to collect, transport, and process postconsumer architectural paint in the state;
- The total cost of implementing the architectural paint stewardship program;
- An evaluation of how the architectural paint stewardship program's funding mechanism operated;
- An independent financial audit funded from the paint stewardship assessment; and
- Examples of educational materials that were provided to consumers the first year and any changes to those materials in subsequent years.

§18955. Civil Penalties

The Proposed Regulations specify certain levels for certain penalties ranging from Level 1 to Level 3; however, there are actually no penalties that are lower than Level 2 as proposed. And, in fact, both manufacturers and retailers are subject to mostly Level 3 severity violations under the statute. For a program supported by industry and to be run by industry, these severity levels are outrageous. The intent of the legislation was to give an even-level playing field to all manufacturers and retailers selling paint in California, by mandating that all manufacturers participate in the industry program and that all retailers pass through a nominal fee added to the purchase price of paint sales as a sustainable financing mechanism. It was not the intention to subject them to costly penalties for even the slightest infraction of a program, they ostensibly are running. The intent was to give CalRecycle the authority to oversee the program for compliance and to ensure the financing mechanism was used to cover the cost of the program and not exceed those costs. Unfortunately, the Proposed Regulations go far beyond this intent and not only impose substantial additional requirements on a manufacturer or stewardship organization and a retailer, they would impose extremely severe penalties for non-compliance with these additional requirements – penalties that range from $5,000 to $10,000 a day – the base penalty being 5 times the amount contemplated in the legislation, which states that the penalties should start at $1,000 per day.

While ACA appreciates §18955.2 and §18955.3 criteria in assessing or reviewing the amount of the civil penalty imposed for a violation and the procedure for imposing a civil penalty, respectively, the criteria are fairly subjective and the imposition of such is left up to the discretion of the Agency. Thus, architectural paint manufacturers, retailers, and product stewardship organizations could face substantial penalties for non-compliance with little or no notice of such. This section needs to be revised to reflect the intent of the legislation.

§18956. Record Keeping Requirements

These record keeping requirements impose significant requirements on retailers, which are wholly unnecessary and more importantly, unworkable. CalRecycle will have a list of compliant manufacturers and brands, which will be updated periodically as discussed above. To have retailers keep the same list as well as dates bought and sold for literally hundreds of thousands of architectural paint products is absurd. In addition, how would the Agency account for these records across the thousands of paint retail stores in California, not to mention mail and direct ship orders. A manufacturer of paint or a stewardship organization will have records on the participating manufacturers, remittance of fess and provide the Agency with any known non-compliant manufacturers or retailers as it is in the best interest of the program to do so. To add further burden and subject manufacturers and retailers to heavy penalties for recordkeeping violations is unwarranted. Thus, the provisions of §18956(a) should be removed.

The provisions of §18956(b) must be removed – it is inconceivable that a manufacturer, stewardship organization or retailer would give the department "*immediate"* access to its facilities or operations, upon request (*emphasis added*) and for a specified reason. Access should only be granted to relevant institutions and records upon written request and with window for time for compliance. Similarly, §18956(d) needs to be revised so that copies of relevant records are submitted to the Agency upon request, with a relevant reason and with a window of time for compliance – not *at a "frequency approved by the department"* at some later date without notice and comment (emphasis added).

§18957. Proprietary, Confidential, or Trade Secret Information

The Proposed Regulations must reflect the specific provision included in PRC §48704(b)(1), which requires CalRecycle to keep certain records supplied by a manufacturer or stewardship organization confidential. This is above and beyond what is provided for under the Proposed Regulation, which merely cites current California Code. This provision must be revised to include the special exemption afforded by the statute.

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

ACA strenuously objects to this provision as it gives a manufacturer or stewardship organization no opportunity whatsoever for notice and comment and subjects a manufacturer or stewardship organization to completely unknown and arbitrary costs – costs which must be accounted for in a manufacturer or stewardship organization's program plan, which would be impossible since they will not be available until after the statutorily mandated program plan submission date. The Agency must publish the amount of the service payments; must cap those service payments based on a percentage of the actual program costs; and must, like a manufacturer or stewardship organization evidence that these costs cover, but do not exceed the costs of oversight and enforcement. In addition, the provision, like a manufacturer or stewardship organizations budget, must provide for the return of any surplus money back into the program to reduce the Service Payments in subsequent years. 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 finance a new costly state Agency program.

Conclusion

Simply put, the Proposed Regulations are far beyond the statutory authority granted CalRecycle by PRC §48700. CalRecycle must revise the regulations to reflect not only the plain language of the underlying legislation (AB1343), but also the intent behind the legislation. ACA and PaintCare stand ready and willing to implement a paint stewardship program in the state of California, and as stated above, were the driving force behind passage of the legislation last year. However, we cannot support the Agency's attempt to satisfy their own interest in setting precedence for a broader extended producer responsibility regulatory policy by which future products are measured. The additional program requirements CalRecycle has attempted to add through the Proposed Regulations simply would not have been supported under AB1342. Thus, the Proposed Regulations will not survive administrative or judicial scrutiny and unless revised accordingly, there is a real possibility that the residents of California will not see a paint stewardship program any time in the foreseeable future. PaintCare is already implementing the program – based on the same underlying legislation – in Oregon and preparing for such in Connecticut as well – both without any need for subsequent regulation. Thus, if the legislation and ensuing statute provide ample plain language with which to actually implement the program, they provide ample opportunity for CalRecycle to draft simple, direct and clear regulations upon. CalRecycle must return to this language and remove the superfluous, burdensome and costly additional requirements they have attempted to add to the program without the requisite authority.

In advance, thank you for your attention to these comments. ACA and PaintCare stand willing to assist the Agency in ensuring that the final regulations for this program adhere to the plain language of the statute and the legislative intent behind the legislation. Therefore, please do not hesitate to contact me with any questions and/or further information.

Sincerely,

Alison A. Keane, Esq.
Vice President, Government Affairs

Cc: Cynthia Dunn
Emily Wang

** Sent in Electronic Format **