
From: Pamela Williams [pwilliams@calretailers.com]
Sent: Thursday, September 08, 2011 11:13 AM
To: Dunn, Cynthia
Cc: Paint Product Stewardship
Subject: Comments on Proposed Paint Regs
Attachments: Proposed Paint Regulations.doc; ATT00001.txt

Hi Cynthia,

Just wanted to give you a heads up that we have issues with two main areas of the proposed paint regs--the penalty section and the recordkeeping section. Attached are our comments.

My understanding is that the deadline passed on the 5th for written comments, but I plan on presenting these comments in person this afternoon and I assume that gets them into the public record.

Our issues are relatively easily resolvable, so we can discuss language if indeed you decide to pursue the recommended changes.

See you this afternoon.

Pamela



September 7, 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 PAINT RECOVERY PROGRAM

Dear Mr. Leary:

The California Retailers Association submits the following comments on the Proposed Regulations for Architectural Paint Recovery Program. The California Retailers Association is the only statewide trade association representing all segments of the retail industry including general merchandise, department stores, mass merchandisers, convenience stores, supermarkets and grocery stores, chain drug, and specialty retail such as auto, vision, jewelry, hardware and home improvement stores. CRA works on behalf of California's retail industry, which currently operates over 164,200 stores with sales in excess of \$571 billion annually and employing 2,776,000 people—nearly one fifth of California's total employment.

CRA was an early supporter of the enabling legislation (AB 1343, Chapter 420 of 2010) for the paint recovery program. We worked closely with the author's office, the American Coatings Association, and legislative policy committee staff to assure that the program was operationally workable and financially feasible for the retail industry, particularly since California's product stewardship programs are in their infancy and the legislation was likely to serve as a model for additional product programs in the future.

Section 18955. Civil Penalties

CRA is opposed to the penalty levels proposed in the regulations, which we believe are in conflict with the statute, and violate legislative intent.

AB 1343 specifically addressed the issue of penalties, in Section 48704 (f) (1) and (2) of the Public Resources Code:

“(f) (1) A civil penalty may be administratively imposed by the department on any person who violates this chapter in an amount of up to one thousand dollars (\$1,000) per violation per day.

“(2) A person who intentionally, knowingly, or negligently violates this chapter may be assessed a civil penalty by the department of up to \$10,000 per violation per day.”

The purpose of a penalty provision in the bill was to be able to enforce compliance with the statute for those manufacturers that do not comply by participating in a stewardship program or managing their own program, and retailers who do not comply with the no-sale provision for non-compliant manufacturers. Per Section 18955.1, the proposed regulations would establish a penalty structure far exceeding the amounts specified in the statute, up to \$5,000 for Level 2 violations and up to \$10,000 for Level 3 violations. (Curiously, Levels 2 and 3 are identified, but there is no Level 1.)

Subsection [c] permits the Department to assess a virtually unlimited penalty:

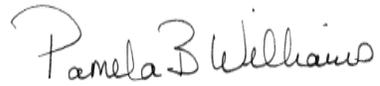
“The department may increase the final penalty beyond the penalty range established pursuant to paragraphs [a] and [b], if it determines, after considering the criteria set forth in Section 18955.2, that such an increase is warranted and appropriate.” CRA respectfully asserts that this proposed language exceeds the Department’s statutory authority and must change the penalty structure to reflect the two categories authorized by statute: up to \$1,000 , and up to \$10,000 only for intentional, knowing, or negligent violations. We support the criteria in Section 18955.2 to assist in assessing the level of penalty, but the level of penalty must not exceed that authorized by statute.

Section 18956. Record Keeping Requirements

The proposed regulation specifies in [b] that a retailer must “provide the Department with immediate access to its facilities, operations and any relevant records necessary to determine compliance with this Article...” In cases where public health or safety is threatened, such as a food-borne illness, or hazardous chemical incident, “immediate access” is warranted. But “immediate access” is certainly not warranted (and not set forth in the enabling legislation) to access records on paint sales. The regulation should provide what many other regulations do: a request for records within a “reasonable period of time”, or within 5-7-10 working days, for a retailer to access and provide the necessary information. We have no objection to the requirement to keep records for three years. Lastly, we request that the Department clarify with PaintCare as to whether the records required of retailers in 18956 [a] 1-4 will indeed be available from the stewardship organization. If so, it would be duplicative and unnecessary to require retailers to provide the same information, and this language should be removed.

The California Retailers Association is happy to work with you and your staff to ensure that the final regulations adopted by the Department are consistent with the program envisioned in AB 1343 and supported by our industry.

Sincerely,

A handwritten signature in cursive script that reads "Pamela Boyd Williams". The signature is written in black ink and is positioned below the word "Sincerely,".

Pamela Boyd Williams
Senior Vice President