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January 7, 2015

Howard Levenson  
Department of Resources Recycling and Recovery  
1001 I Street  
PO Box 4025, MS 13A  
Sacramento, CA 95812  
Submitted via email: [Paint@CalRecycle.ca.gov](mailto:Paint@CalRecycle.ca.gov)

**SUBJECT: Comments on PaintCare's Year 2 Annual Report**

Dear Mr. Levenson:

On behalf of the 22 rural county members, the Rural Counties' Environmental Services Joint Powers Authority (ESJPA) appreciates the opportunity to provide comments on PaintCare's Year 2 Annual Report. Overall, PaintCare has committed significant resources to expanding the California paint stewardship program as evidenced by the increased collection options at retail and continued addition of Household Hazardous Waste programs.

The review of this Year 2 Report is very significant since PaintCare requested and received approval for a two year implementation period. Therefore, the evaluation of this Year 2 report is essential is determining the success to date of the paint stewardship program.

Some of the significant achievements include:

- Continued efforts by PaintCare staff to pursue HHW programs even in rural areas
- Large volume collection
- Significantly reduced cost per gallon to \$8.62 from the \$14.72 indicated in the first year report
- Increased collection from temporary Household Hazardous Waste events including initiating the concept of paint only collection events
- Increased threshold for hazardous materials business plan submittal

Major questions or issues with program implementation and the report include:

- Rural counties that still do not have PaintCare options
- Restrictions on trained County Staff from packaging paint under PaintCare
- Although there is increased collection opportunities, PaintCare did not achieve the baseline service level from the approved Stewardship Plan
- More analysis of the obstacles to implementing more from Household Hazardous Waste program collection

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- Insufficient explanation to change the baseline service from the current Form 303 data
- Inaccuracies in the number of participating programs including an over estimate of the number of remaining Household Hazardous Waste programs.

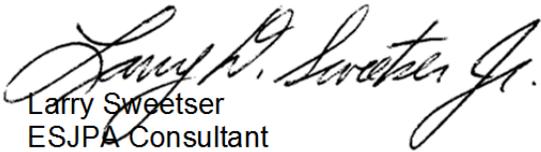
The ESJPA and its members will continue to work with PaintCare to provide service to all of our communities.

Specific comments on the report are attached.

Thank you again for the opportunity to comment on the on PaintCare's Year 2 Annual Report.

Please contact me at (510) 703-0898 or [lsweetser@rcrcnet.org](mailto:lsweetser@rcrcnet.org) with any questions.

Sincerely,



Larry Sweetser  
ESJPA Consultant

Enclosure

cc: Members, Rural Counties' Environmental Services Joint Powers Authority  
Mary Pitto, Program Manager, Rural Counties' ESJPA  
Allyson Willsey, CalRecycle

## SECTION 2 EXECUTIVE SUMMARY

### Establishing Partnerships with Municipal Household Hazardous Waste Programs - Page 4

PaintCare extended considerable effort to recruit Household Hazardous Waste programs. This section, nor any other, fully explains the issues with neither establishing those partnerships nor why delays in establishing partnerships with the remaining programs. PaintCare considers this effort as a significant delay in achieving the Service Level Goal. Therefore there should be more explanation on the effort and the delays.

These delays have been excessive in some cases but the difficulties are a result of PaintCare's program design requiring individual contracts with each sponsoring jurisdiction. The liability and operational limitations imposed by PaintCare are a major paradigm shift for jurisdictions and contrary to the typical government approach to utilizing service providers an indemnification. PaintCare did not understand the significance of this imposed requirement nor the long history of California's Household Hazardous Waste program development and jurisdiction liability issues. This structure is definitely the reason for the significant delays in adding Household Hazardous Waste programs. Rather than revising this approach, PaintCare chose to continue pursuing this program structure.

In addition, the report states that, "During this reporting period, 34 additional partnerships with municipal programs were established bringing the HHW program partnership total to 67 as of June 30, 2014". This increase indicates significant effort by PaintCare but it would be helpful for PaintCare to include a list of the past and new "municipal programs". CalRecycle should also provide a list of the total number of "municipal programs" that exist so that PaintCare's efforts can be compared to the total number of programs. This will help identify program participation gaps and facilitate adding those programs or identifying the program obstacles.

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## SECTION 3. Program Outline

### Latex Paint Reuse, Page 6

Reuse of latex paint through material exchange program is a valuable component of the paint stewardship program. PaintCare does allow HHW programs to receive funding for reused paint. Increasing the amount of paint set aside for reuse can be a significant cost savings to the program. Since the cost per gallon to process paint has decreased to \$8.62 per gallon, proving \$0.25 per container is a large disparity. PaintCare has indicated that this rate is negotiable and has streamlined the recordkeeping and reimbursement process. However, smaller rural programs tend not to participate in the reuse rebate since the time and effort to properly complete the process is not sufficient for the quantity of reuse paint set aside. Rural programs will continue to promote reuse programs regardless of payment.

### (B) Recycling Opportunities for Consumers – Page 7

The PaintCare term "Municipal HHW Program Sites" does not clearly indicate that it includes Permanent HHW facilities and Recycle-Only facilities. In order to avoid confusion, it would be more helpful if PaintCare could utilize classifications already established in California statute such as permanent and Recycle-Only facilities. Making a distinction between permanent and

Recycle-Only facilities is important. These facilities are permitted and operated differently. Recycle-only facilities cannot accept oil-based paint under that approval. Acceptance of oil-based paint at the Recycle-Only facility location requires operation of a "separate" PaintCare approved operation at the same location. Some hazardous waste enforcement agencies have requested those Recycle-Only facilities to store the oil-based paint in a separate area or locker than the Recycle-Only facility. The addition of oil-based paint at a Recycle-Only location also can raise additional fire protection issues including requirements for fire suppression on the storage area that were not required for the Recycle-Only facility.

There has been significant increases in collection opportunities from year one and from the start of the program. Prior to PaintCare there were about 147 permanent Household Hazardous Waste facilities, 95 Recycle-Only facilities, and numerous temporary events.

The first annual report indicated the following active sites under PaintCare with an existing infrastructure of 268 HHW programs not including temporary facilities.

**TABLE 1. ACTIVE SITES**

Site Type	Number
Paint Retailer	427
Paint Recycling Facility	3
Waste Transfer Station	5
HHW Facility*	60
<b>Total</b>	<b>495</b>

*\*Permanent or Temporary, open at least one day per month*

This Year 2 Report indicates the following collection options.

PERMANENT YEAR-ROUND SITES		SUPPLEMENTAL SITES, EVENTS AND SERVICES	
Site Type	Number	Site Type	Number
Paint Retail and Reuse Stores	543	Seasonal Sites	4
<b>Municipal HHW Program Sites</b>	<b>110</b>	Municipal HHW Events	141
Other Sites	20	Direct Large Volume Pick-Ups	241
<b>Total</b>	<b>673</b>	Door-to-Door Program Partnerships	11

*\*Other includes transfer stations, landfills, private recyclers and other non-municipal drop-off sites.*

It would be helpful to include Year 1 collection options compared to Year 2, the baseline service level, and future years to allow for an easier comparison on the progress of the program.

In addition, the number and types of sites in the Year 2 summary chart do not match the list in Appendix B.

Site Type	Number	Site Type	Number
Retail	548	Seasonal HHW	2
Municipal HHW Programs	107	Seasonal Municipal	2
ReStore	2	HHW Events	144
Other	31		

These values should be consistent between the summary and the detail. More effort is needed to ensure accuracy and consistency.

#### (D) Coordination with Existing Household Hazardous Waste Collection Programs and Retailers HHW Programs

##### Rural Convenience

Rural areas have significant difficulty establishing any Household Hazardous Waste program and the cost for these programs is significantly higher per resident than in urban areas. Most rural HHW programs operate in conjunction with solid waste facilities as a means to prevent illegal dispose of hazardous wastes. Retail collection of paint is extremely limited since there are few locations to buy paint. Therefore, the only feasible option for smaller rural areas for proper disposal of accumulated paint is the rural HHW program.

Most of our rural county members have established indirect contracts with PaintCare contractors. Only one has a direct contract and they are self-insured. We have and will continue to work with PaintCare on establishing some arrangement for the remaining eight jurisdictions. All of the remaining unserved Counties also have no existing retail programs and most do not any have retail paint stores to buy paint.

The indirect contract option is most favored by rural HHW programs since the direct contract with PaintCare imposes insurmountable liability issues to jurisdiction. Jurisdictions that are self-insured have less of a concern but of our 22 counties, only one has chosen the direct contract and they are self-insured.

##### Rural Convenience Limitation

There remains a major obstacle to fully implementing a more "convenient" PaintCare program for three of our member counties since PaintCare will not formally approve allowing these trained County staff to package paint and submit that paint under an informal contract amendment to their existing contracts. Two of these counties have informal contracts with PaintCare approved hazardous waste contractors. The third does not have any PaintCare arrangements yet and this issue is a major obstacle to establishing a contract.

County staffs operating these HHW facilities have received extensive initial and regular training including the required Hazardous Waste Operations and Emergency Response (HAZWOPER) training at significant expense to the County. The County contract with the hazardous waste contractor allows for County staff to package all types of hazardous wastes- paints, pesticides, flammables, corrosives, oxidizers, and even some minor explosives like flares. The County

assumes responsibility for their staff to package the wastes. The contractor provides oversight and quality control on those packaged wastes to insure proper compatibility and safety. The contractor may inspect the container contents at any time to verify proper packaging. If the County staff does not meet regulatory requirements or an issue results from incorrect packaging, that County assumes the responsibility. These contracts have existed for many years without incident with adequate protection for both parties.

Although our members are not privy to the contracts PaintCare has with their approved contractor, we are assured that the PaintCare has sufficient liability protection from that contractor for the contractor's collection, packaging, and transportation of collected paint. Our members have similar liability protection for the transport of all HHW from the County HHW facility regardless if the County or contractor staff package the wastes. PaintCare's contract with the contractor should have sufficient protection to cover contractor actions.

PaintCare does allow retail store staff to package paint into containers with only training provided by PaintCare. These containers are inspected by the contractor upon pick up. PaintCare has not provided details on what restrictions are imposed upon those retail locations.

Discussions with PaintCare approved hazardous waste contractors have indicated that they are not authorized by PaintCare to allow anyone but the contractor's staff to package the paint. The contractors have indicated that they would agree for County staff to package the paint under the same provisions as the other wastes but they are impeded from allowing this practice by PaintCare policy. If these counties have an indirect contract, they are required to stockpile the paint for up to six months and then pay the contractor when they arrive to package the paint at an additional expense to the County even though they have sufficient trained staff on site. Paint is a considerable portion of HHW collected (40-60%). Stockpiling paint can take considerable storage space in a HHW facility that was never designed for that amount of loose container storage and can also raise potential fire concerns from storage of old oil-based paint cans. **Stockpiling paint, while allowing the program to package all other HHW, is a significant inconvenience and cost to these three rural programs and is not warranted.**

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#### SECTION 4. Description of Goals and Activities – Page 10

Although PaintCare has made significant progress in expanding paint collection opportunities in the first two years of the plan, PaintCare did not achieve the Service Level Goals stated in the approved Plan. This Report section describes the goals and changes to the goal but does not provide much analysis on the why the plan goal was not achieved.

The approved plan indicated that a proposed "750 permanent collection sites" would be established as the baseline service level goal. PaintCare's Year 2 Report indicates 673 permanent sites after two years of implementation. Given all the complications, this number of permanent sites is worth "good-faith efforts" even if it is not yet in compliance with the approved plan. PaintCare did indicate at the January workshop that they have increased the number of permanent sites since this report date and is even closer to that goal.

In addition, the approved plan had a number of areas of California that were expected to have service based upon the GIS analysis. Some of these areas remain without PaintCare coverage after two years although there are some additional areas with PaintCare coverage that were not included in the approved plan.

Charts with the number of sites in the approved plan and a comparison with 2014 PaintCare sites is attached at the end of these comments along with the approved plan and 2014 report service areas.

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#### B. Architectural Paint Recovered – Page 15

A significant amount of paint (2,050,122 gallons) was collected. It would be helpful if there was more detail on the amount of paint collected by each program type especially paint collected from HHW programs. This would aid with determining the impact of paint stewardship on HHW programs and provide a comparison with Form 303 data. Form 303 data for FY 2013-2014 indicates that 16,796,541 pounds or about 1,679,654 gallons were collected by HHW programs. The Form 303 data also indicates that 850,448 gallons were handled via stewardship programs with another 798,674 gallons reported as recycled or reused.

#### Discussion of Baseline and Recovery Rate – Page 16

PaintCare has made significant efforts to enroll HHW programs but the report indicates that “nearly all of the remaining HHW programs did join the PaintCare program in the second reporting year”. This statement is not accurate. Utilizing Appendix B data, there are 107 permanent HHW facilities participating in the PaintCare program. Utilizing Department of Toxic Substances Control's data and data from other sources, there are about 149 permanent facilities in California. Thus, only about 72% of the permanent HHW facilities are enrolled in PaintCare. In addition, Appendix B shows that there are 8 counties not served by PaintCare through Retail, HHW, or other programs. Most of the eight counties do have ongoing or periodic HHW programs but have been unable to establish a relationship directly or indirectly with PaintCare. The reasons are both a function of PaintCare's requirements and internal issues and lack of resources within those counties.

The report's section, “Discussion of Baseline and Recovery Rate”, acknowledges the collection of paint did not achieve the approved 3% collection volume increase over baseline HHW program collection due to delays in signing up HHW programs. The report also indicates that the use of HHW-based baseline has flaws. These flaws do have some impact on the ability to develop a baseline value. These flaws most significantly impact the calculation for oil-based paint. Despite these flaws, a sufficient comparison can be made and is expected by the HHW community. This data has been collected for many years and abandonment of its use as a baseline standard is not warranted.

It would be more appropriate to address the inaccuracies of the Form 303 reporting system and develop a valid baseline from HHW collections rather than propose a new measurement benchmark of 7% recovery rate going forward.

Since the Form 303 data will continue to be reported by jurisdictions and comparisons to the Form 303 collection data would still be made for paint and other materials, abandoning a Form 303 based baseline would create additional work for all parties.

In addition, the proposal for a new 7% recovery rate benchmark is not explained in the approved Stewardship Plan. It is explained in more detail in the Year 1 report. Development of an alternative baseline warrants more discussion from the stakeholders on the benefits and issues.

There is no assurance that an alternative baseline system will not have other problems. It would be more productive to fix the current Form 303 based system and/or at least establish an understanding for a more accurate comparison base.

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#### SECTION 5 Financing Mechanism – Page 20

The cost per gallon processed during the reporting period was \$8.62 which is a significant decrease from the Year 1 report of \$14.72 per gallon. Hopefully, this rate will continue to decrease and will surpass the current non-PaintCare range of \$5 to \$7 per gallon for mixed latex and oil-based paint.

It would also be helpful to have separate costs for latex and oil-based paint as well as the aggregate rate. Disposal of oil-based paint is more expensive than latex paint and the amount of oil-based paint continues to decline over the years. Additional cost values would assist with long range planning for programs and for the per can consumer fee.

Approved plan – Number of Collection Sites

Appendix J

Table J. Number of Collection Sites Based on 30K or 50K Population Groups

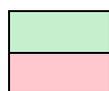
<i>County</i>	<i>30K</i>	<i>50K</i>	<i>County</i>	<i>30K</i>	<i>50K</i>
Alameda	30	15	Orange	46	30
Alpine	0	0	Placer	10	5
Amador	4	3	Plumas	2	2
Butte County	9	5	Riverside	27	20
Calaveras	2	1	Sacramento	33	23
Colusa	3	2	San Benito	5	2
Contra Costa	30	17	San Bernardino	26	18
Del Norte	1	1	San Diego	47	33
El Dorado	9	5	San Francisco	25	17
Fresno	15	7	San Joaquin	8	6
Glenn	2	2	San Luis Obispo	16	10
Humboldt	11	11	San Mateo	19	11
Imperial	2	2	Santa Barbara	15	11
Inyo	2	2	Santa Clara	26	20
Kern	18	11	Santa Cruz	15	12
Kings	3	3	Shasta	7	3
Lake	3	1	Sierra	0	0
Lassen	3	2	Siskiyou	7	6
Los Angeles	135	85	Solano	6	4
Madera	3	3	Sonoma	15	12
Marin	11	6	Stanislaus	13	5
Mariposa	2	2	Sutter	6	2
Mendocino	11	7	Tehama	2	2
Merced	3	2	Trinity	2	2
Modoc	2	2	Tulare	6	3
Mono	1	1	Tuolumne	2	2
Monterey	13	8	Ventura	16	10
Napa	3	2	Yolo	3	3
Nevada	3	1	Yuba	1	1
			Total	740	484

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Comparison of plan approved number of sites to Year 2 Report.

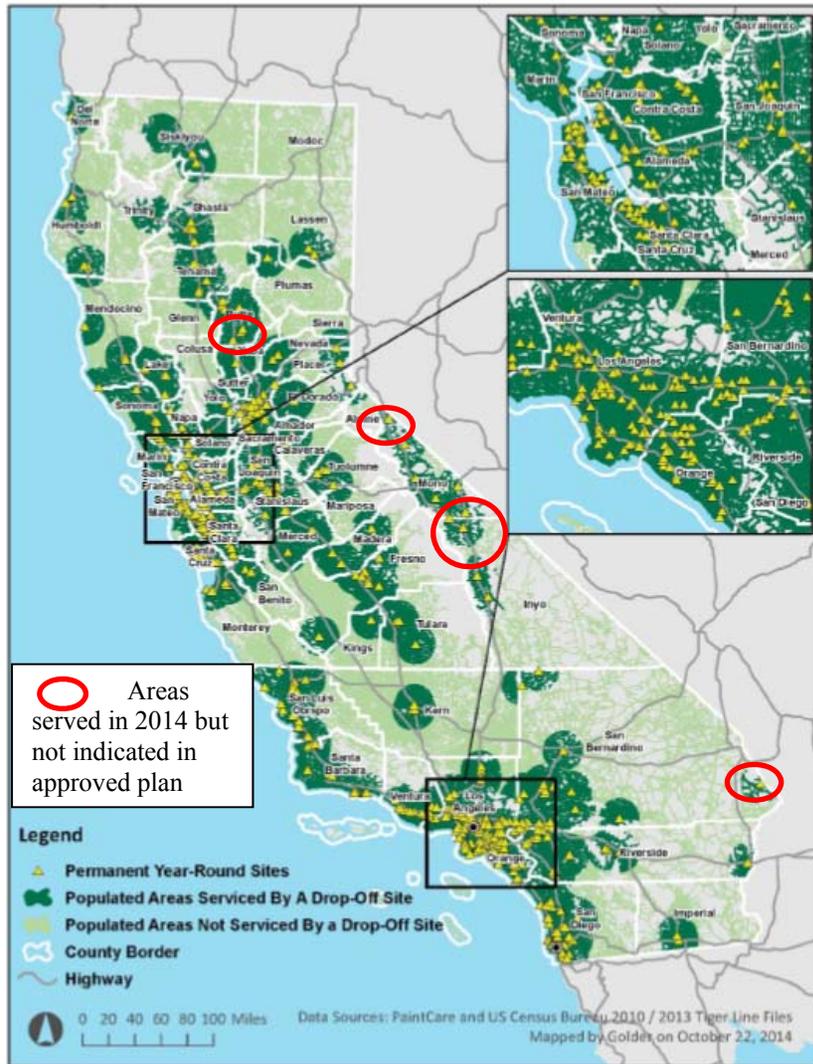
2014		Appendix J, Table J-4		2014		Appendix J, Table J-4	
County	Sites	30K	50K	County	Sites	30K	50K
Alameda	23	30	15	Orange	40	46	30
Alpine	0	0	0	Placer	9	10	5
Amador	2	4	3	Plumas	1	2	2
Butte	8	9	5	Riverside	30	27	20
Calaveras	0	2	1	Sacramento	32	33	23
Colusa	0	3	2	San Benito	2	5	2
Contra Costa	20	30	17	San Bernardino	48	26	18
Del Norte	1	1	1	San Diego	49	47	33
El Dorado	2	9	5	San Francisco	11	25	17
Fresno	14	15	7	San Joaquin	19	8	6
Glenn	0	2	2	San Luis Obispo	28	16	10
Humboldt	7	11	11	San Mateo	23	19	11
Imperial	2	2	2	Santa Barbara	18	15	11
Inyo	4	2	2	Santa Clara	49	26	20
Kern	7	18	11	Santa Cruz	9	15	12
Kings	1	3	3	Shasta	9	7	3
Lake	5	3	1	Sierra	0	0	0
Lassen	2	3	2	Siskiyou	3	7	6
Los Angeles	101	135	85	Solano	7	6	4
Madera	3	3	3	Sonoma	14	15	12
Marin	8	11	6	Stanislaus	12	13	5
Mariposa	0	2	2	Sutter	1	6	2
Mendocino	3	11	7	Tehama	5	2	2
Merced	6	3	2	Trinity	4	2	2
Modoc	0	2	2	Tulare	4	6	3
Mono	7	1	1	Tuolumne	5	2	2
Monterey	8	13	8	Ventura	17	16	10
Napa	7	3	2	Yolo	4	3	3
Nevada	3	3	1	Yuba	0	1	1
<b>Total</b>				<b>697</b>			
						<b>740</b>	
						<b>484</b>	



Indicates no sites by Year 2  
 Indicates counties with less than plan

32    17  
 Counties less than plan

Year 2 Report



○ Areas served in 2014 but not indicated in approved plan

Approved Program Plan

