

From: Alison Keane [akeane@paint.org]
Sent: Thursday, September 01, 2011 8:38 AM
To: paint@calrecycle.ca.gov
Cc: Dunn, Cynthia; Wang, Emily; Marjaneh Zarrehparvar; Sande George
Subject: American Coatings Association and PaintCare Comments on CalRecycle's Proposed Paint Regulations
Attachments: Final PaintCare Comments on CA Regulations.pdf

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

Alison A. Keane. Esq.

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September 5, 2010

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:

PaintCare is submitting comments 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"). PaintCare is a 501(c)(3) non-profit organization incorporated by the American Coatings Association (ACA), a trade association representing all paint manufacturers as well as suppliers and technical professionals in the industry. PaintCare was established to provide a product stewardship organization for the architectural paint industry in order to manage postconsumer architectural paint at its end-of-life. PaintCare works to ensure effective operation of paint product stewardship programs on behalf of all architectural paint manufacturers by providing a level playing field for all participants, a sustainable financing mechanism, and cost efficient administration. In addition, on behalf of manufacturer participants, PaintCare undertakes responsibility for ensuring an environmentally sound and cost-effective program by developing and implementing strategies to reduce the generation of post-consumer architectural paint; promoting the reuse of post-consumer architectural paint; and providing for the collection, transport and processing of post-consumer architectural paint using the hierarchy of reduce, reuse, recycle and proper disposal.

PaintCare is concerned that the Proposed Regulations mandate additional costly and burdensome requirements that were not contemplated by the underlying legislation, which PaintCare supported. PaintCare supports the ACA's comments in this regard and urges the Agency to revise the regulations based on the clear language of the statute (PRC §48702). PaintCare is particularly concerned with the following provisions, which would make it virtually impossible to implement a cost effective program in California.

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. PaintCare must be able to contract directly with service providers and negotiate prices based on marketability – costs are a manufacturer or product stewardship organizations costs – not CalRecycle's or any other program's costs. Thus, CalRecycle must change the definition of operational costs to reflect this and must make it clear in the Proposed Regulations under sections §18953(a)(5)(E) – coordination with collection locations; §18953(a)(7)(D) – evidencing contracts are mutually agreeable, feasible and cover all operational costs, and §18953(a)(10) – coordination with current household hazardous waste collection locations do not impose any restrictions in this regard.

In addition, CalRecycle needs to remove or revise based on ACA comments provisions that were not contemplated by the legislation and would not have been supported should they have been pursued through the



legislation. Merely intimating that some of these provisions are only optional does not address the fact that these provisions are well beyond the statutory authority of CalRecycle to mandate or even request. In addition, these provisions, if PaintCare were even to attempt to comply – would add astronomical costs to the program – costs that will ultimately be borne by the residents of California. Therefore, in the interests of administrative procedure and the best interests of the residents of California – the following provisions must be removed or substantially revised:

- §18952(a)(2). Submittals - Manufacturer Contact Information
- §18953(a)(2). Stewardship Plan Approval Criteria – Container Management
- §18953(a)(3). Stewardship Plan Approval Criteria – Plan Goals
- §18953(a)(5). Stewardship Plan Approval Criteria – Market Development
- §18954(a)(2). Annual Report Compliance Criteria – Executive Summary
- §18954(a)(4). Annual Report Compliance Criteria – Program Description
- §18954(a)(5). Annual Report Compliance Criteria – Program Measurement
- §18954(a)(6). Annual Report Compliance Criteria – Market Development
- §18954(a)(7). Annual Report Compliance Criteria – Financial Information
- §18954(a)(8). Annual Report Compliance Criteria – Educational Evaluation

Further, CalRecycle must revise the penalty provisions to accurately reflect the legislative intent to start with a nominal \$1,000 a day for violations – not the Proposed Regulations \$5,000 and \$10,000 minimum penalty severity levels. Recordkeeping provisions need to be revised to give timely notice to a manufacturer or stewardship organization of records requested as well as a specific reason for such request. And, the Proposed Regulations must be revised to accurately reflect the special confidential business information provision a manufacturer or stewardship organization afforded under the statute. Lastly, CalRecycle cannot finalize these regulations without notice and comment on the actual administrative costs that a manufacture or stewardship organization will be required to remit to the Agency. Even if it were not in violation of the California Administrative Procedures Act, without this information, PaintCare is not able to finalize a budget and/or assessment rate for the program – effectively stranding implementation of the program.

As ACA points out – both organizations stand ready to help the Agency establish fair and reasonable regulations to put the paint stewardship program contemplated by the underlying legislation and implementing statute in place. The current Proposed Regulations, however, do not do this and therefore, cannot be supported.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Zarrehparvar", with a large, stylized flourish at the end.

Marjaneh Zarrehparvar,
Executive Director

Cc: Cynthia Dunn
Emily Wang