

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0006
(916) 319-2006
FAX (916) 319-2106

DISTRICT OFFICE
3501 CIVIC CENTER DRIVE, SUITE 412
SAN RAFAEL, CA 94903
(415) 479-4920
FAX (415) 479-2123

<http://democrats.assembly.ca.gov/members/a06>

Assembly California Legislature



JARED HUFFMAN
ASSEMBLYMEMBER, SIXTH DISTRICT

COMMITTEES
CHAIR, WATER, PARKS AND
WILDLIFE
BUDGET
NATURAL RESOURCES
UTILITIES AND COMMERCE

BUDGET SUBCOMMITTEE NO.3
ON RESOURCES

April 12, 2011

Mark Leary, Acting Director
Department of Resources Recycling and Recovery
1001 I Street
Sacramento, CA 95812

Dear Director Leary:

As the author of AB 1343, I'm pleased the Department is moving forward quickly with regulations and implementation of the Architectural Paint Stewardship Act. As your Department is aware, AB 1343 represents a relatively new model of producer responsibility whereby paint manufacturers—and not state or local government—are responsible for developing, financing and implementing a program to meet the waste reduction, recycling and environmentally sound end-of-life management of used paint.

AB 1343 was supported by a broad coalition of stakeholders, including paint manufacturers and local governments. I think that you will find the intent, responsibilities and authorities are clearly spelled out in the statute, and in need of limited interpretation.

Unlike traditional 'command and control' legislation, the Department's role, while critical, is limited. As provided in Sections 48704, the Department shall review and make a determination that manufacturer stewardship plans and funding are sufficient to achieve the purposes of the Act and specifically meet the requirements of the plan as provided in Section 48703.

That said, I recognize that the Department has existing authority and responsibility for ensuring that wastes generated in this state are properly managed. Section 48702 requires that manufacturers: '...manage the end-of-life of postconsumer paint, in an environmentally sound fashion.' I recognize that the Department has the authority to request whatever information it deems necessary from any program participant to satisfy this requirement of statute and ensure that postconsumer paint is safely and properly managed.

As provided in the statute, it is paint manufacturers that are responsible for developing, financing, and implementing a program to:

“reduce the generation of postconsumer architectural paint, promote the reuse of postconsumer architectural paint, and manage the end-of-life of postconsumer architectural paint, in an environmentally sound fashion, including collection, transportation, processing, and disposal.”

Consistent with the ‘free market’ underpinnings of this model, subdivision (c) of Section 48703 is intended to encourage manufacturers to ‘coordinate’ with local HHW programs ‘as much as this is reasonably feasible and is mutually agreeable.’ There is no obligation on the part of manufacturers to utilize this potential collection infrastructure or for local HHW programs to participate. Likewise, there should be no expectation in the plan or funding demonstration that local governments/rate payers will continue to subsidize the collection of postconsumer paint.

So while manufacturers must demonstrate a plan for ‘collection’ (Sections 48700 and 48702) and must demonstrate sufficient funding for that collection (Section 48703), manufacturers may propose and demonstrate a collection system that they deem is most cost effective.

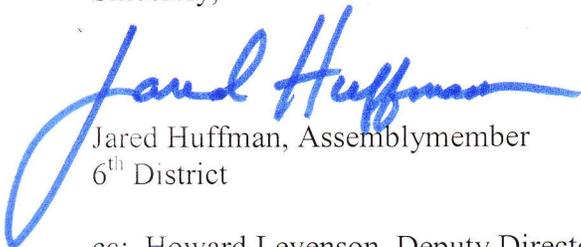
That said, unless paint manufacturers can demonstrate a collection infrastructure that is at least as convenient as local HHW’s, I think the manufacturers would be wise, at least initially, to negotiate a fair deal to motivate local HHW programs to continue to collect used paint.

Similarly, while subdivision (f) of Section 48703 provides that any retailer may voluntarily participate as a paint collection point, manufacturers are under no obligation to cover the collection costs of every retailer that may offer to participate.

We all want this program to be successful, and I think that there is a broad recognition that success will require that generators of used paint have convenient opportunities to recycle. If manufacturers can demonstrate to the Department stewardship plans with a sufficient level of collectors to meet the purposes of this chapter, they are under no obligation to provide funding to every entity (public or private) that may wish to participate.

I very much appreciate the Department's efforts so far. I look forward to continuing to work together on this important project.

Sincerely,


Jared Huffman, Assemblymember
6th District

cc: Howard Levenson, Deputy Director