

REQUEST FOR ACTION

To: Rachel Machi Wagoner
Director

From: Zoe Heller
Deputy Director, Materials Management and Local Assistance
Division
Acting Deputy Director, Policy Development and Analysis Office

Request Date: January 17, 2023

Decision Subject: Consideration of PaintCare's Fiscal Year 2022 Annual Report

Action By: January 30, 2023

Summary of Request

PaintCare submitted its *California Paint Stewardship Program Fiscal Year 2022 Annual Report* to the Department of Resources Recycling and Recovery on November 1, 2022. This Request for Action presents a summary of staff's analysis regarding PaintCare's *California Paint Stewardship Program Fiscal Year 2022 Annual Report*.

Staff Analysis

Public Resources Code (PRC) section 48705(a) states that on or before November 1 of each year, an architectural paint manufacturer or stewardship organization shall submit to the Department of Resources Recycling and Recovery (CalRecycle) a report that describes its activities for the preceding fiscal year. Pursuant to PRC section 48705(b) and Title 14, California Code of Regulations (14 CCR) section 18952(c)(3), CalRecycle shall adopt a finding of compliance, noncompliance, or conditional approval for PaintCare's *California Paint Stewardship Program Fiscal Year 2022 Annual Report (Annual Report)* within 90 days of receipt (by January 30, 2023).

CalRecycle reviewed the *Annual Report*, which describes PaintCare's program activities in fiscal year 2022 (July 1, 2021, through June 30, 2022), to determine whether the *Annual Report* met the requirements in statute, regulations, and PaintCare's approved stewardship plan. The sections below summarize staff's analysis of the *Annual Report*.

Convenience Goals

Requirements: Describe how consumers of architectural paint in California had an opportunity to recycle and properly manage their postconsumer paint on a statewide basis, including the number, location, and type of collection points pursuant to 14 CCR section 18954 (a)(3)(B). Describe the best management practices followed by service providers that are acting as collection points, which may include any training that the manufacturer or stewardship organization provided or required of service providers to ensure proper collection and management of postconsumer paint pursuant to 14 CCR section 18954(a)(3)(C). A statement that the manufacturer or stewardship organization coordinated with existing household hazardous waste collection programs and retailers as potential collection points pursuant to 14 CCR section 18954(a)(3)(D). State goals

from the approved stewardship plan, the baseline from which goals were measured, and report on achievement during the reporting period pursuant to PRC section 48703(d) and 14 CCR section 18954(a)(4).

Analysis: Met requirements.

PaintCare established program goals in its plan and reported on the achievement of those goals in its *Annual Report*. To provide statewide coverage, PaintCare established a distribution goal to provide 95 percent of Californians with access to a free paint drop-off site within a 15-mile radius of their home. To ensure sufficient site density, PaintCare established a population goal to provide at least 1 drop-off site for every 50,000 residents of California. As of the 2020 U.S. Census, the population of California was 39,538,223, resulting in a baseline of 790 sites needed.

In fiscal year 2022, PaintCare continued to increase program convenience by collecting paint at 847 free drop-off sites (compared to 820 sites in fiscal year 2021) within 15 miles of 99 percent of California’s population, exceeding both its distribution and population goals. An additional 18 sites participated in the program for part of the year. PaintCare also managed paint collected by 289 municipal household hazardous waste collection events, 18 door-to-door collection programs, and held 20 PaintCare paint-only collection events. PaintCare performed 646 large volume pickups for residents and businesses with more than 100 gallons of paint (an increase from 599 pickups in fiscal year 2021) and serviced 73 recurring large volume pickup sites who routinely accumulate large amounts of paint. Therefore, PaintCare achieved its goals and met the convenience requirements in statute and regulations.

Table 1. PaintCare Drop-off Sites (Fiscal Years 2019 to 2022)

	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022
Number of Drop-Off Sites	766	793	820	847

Paint Management

Requirements: Report the total volume of postconsumer architectural paint recovered, by type pursuant to PRC section 48705(a)(2) and 14 CCR section 18954(a)(4)(B). Describe methods to collect, transport, and process postconsumer architectural paint, by type, in California pursuant to PRC section 48705(a)(3) and 14 CCR section 18954(a)(3)(A). Report the disposition of postconsumer paint collected, by type and by estimated volume, including names and corporate addresses for contracted processors for each pursuant to 14 CCR section 18954(a)(4)(C).

Analysis: Met requirements.

PaintCare reported processing 3,580,449 gallons of postconsumer paint in fiscal year 2022, a decrease from PaintCare’s highest ever volume of 4,033,477 gallons processed in fiscal year 2021. Of the 3,580,449 gallons processed, 94 percent was reused, recycled back into paint or another product, or used for a purpose other than landfill disposal.

PaintCare’s program reused more paint in fiscal year 2022 than ever before. PaintCare reported that it increased total reuse from 225,413 gallons (5.6 percent of the total gallons of paint managed) in fiscal year 2021 to 307,780 gallons (8.6 percent of the total gallons of paint managed) in fiscal year 2022. To accomplish this, PaintCare provides compensation to local government reuse programs, partners with reuse stores, works with paint recyclers to give away paint, and offers give-away tables at most of its paint collection events. Additionally, to help increase the amount of paint reused and maximize the highest and best use of collected paint, PaintCare held its first two paint give-away events at an ACTenviro facility in Merced, which provided 4,753 gallons of free paint to 251 participants. PaintCare stated that it plans to hold additional reuse events in fiscal year 2023 and will potentially expand the give-away program in the future.

The majority of paint collected by PaintCare is latex paint. Of the 3,184,756 gallons of latex paint processed, 2,141,226 gallons (67 percent) were made into recycled-content paint by private recyclers and household hazardous waste programs. After reuse and paint-to-paint recycling, the highest and best use of latex paint is to recycle it into other products. Accordingly, 353,777 gallons (11 percent) were mixed with sawdust and used for energy recovery, and 189,523 gallons (6 percent) were recycled into lightweight aggregate. Lightweight aggregate is used to produce pre-cast concrete products, including landscape stones, parking stops, and retaining wall blocks. The remaining seven percent of latex paint collected was dry or unusable by recyclers and sent to permitted landfills.

Eleven percent of the total paint collected by PaintCare in fiscal year 2022 was oil-based. PaintCare processed 395,693 gallons of oil-based paint, 47 percent of which was managed through energy recovery and 48 percent through incineration. Oil-based paint is not currently recycled in California due to constraints such as volatile organic compound emission limits, its hazardous nature, distance from the only known oil-based paint recycler (Loop in Ontario, Canada), and lack of feasible alternative products into which oil-based paint can be recycled. PaintCare’s *Annual Report* included information regarding paint collection, transportation, and disposition, consistent with the statutory and regulatory requirements.

Table 2. Latex Paint Disposition, by Percent of Gallons Processed (Fiscal Year 2019 to 2022)

	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022
Reuse	4%	5%	6%	9%
Recycled Paint	71%	68%	69%	67%
Decorative Ground Cover	<1%	<1%	0%	0%
Concrete Products	5%	6%	5%	6%
Energy Recovery	12%	16%	12%	11%
Alternative Daily Landfill Cover	<1%	<1%	<1%	<1%
Disposal	7%	5%	8%	7%
Total Latex Paint (Gallons)	3,221,725	2,863,132	3,456,151	3,184,756

Table 3. Oil-Based Paint Disposition, by Percent of Gallons Processed (Fiscal Year 2019 to 2022)

	Fiscal Year 2019	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022
Reuse	3%	2%	2%	5%
Energy Recovery	55%	60%	71%	47%
Incineration	42%	38%	27%	48%
Total Oil-Based Paint (Gallons)	666,519	702,749	577,326	395,693

Funding Mechanism

Requirements: Report the total volume of architectural paint sold in California during the preceding fiscal year pursuant to PRC section 48705(a)(1) and 14 CCR section 18954(a)(4)(A). Evaluate how the program’s funding mechanism operated, including whether the funding was sufficient to recover, but not exceed, the administrative, operational, and capital costs of the manufacturer or stewardship organization's program pursuant to PRC section 48705(a)(5) and 14 CCR section 18954(a)(5). Include documentation on how the collection and expenditure of assessment funds shall be kept separate from other activities of the manufacturer or stewardship organization and the methodology for distribution of shared costs pursuant to 14 CCR section 18954(a)(5). Include the total cost of implementing the program pursuant to PRC section 48705(a)(4) and 14 CCR section 18954(a)(5)(B). Include an independent financial audit funded from the paint stewardship assessment pursuant to PRC section 48705(a)(6) and 14 CCR section 18954(a)(7).

Analysis: Met requirements.

PaintCare’s program is funded by an assessment charged on containers of architectural paint sold in California. PaintCare reported that paint sales declined to 71,973,691 gallons in fiscal year 2022 (a decrease from 76,586,694 gallons in fiscal year 2021), which indicates a return to pre-pandemic sales volumes. Accordingly, PaintCare’s revenue totaled \$34,825,732 compared to \$38,561,592 in fiscal year 2021 and its expenses totaled \$34,014,902 compared to \$37,103,825 in fiscal year 2021. Program funds are spent primarily on paint processing, transportation, collection, education and outreach, and administrative costs. The allocation of program expenses in fiscal year 2022 was consistent with prior years. Additionally, PaintCare maintains a portion of the program funds in an investment portfolio, which has consistently generated gains since its establishment. However, in fiscal year 2022, the investment portfolio lost \$4,581,753 in market value.

PaintCare’s Reserves Policy set a target reserve level of 100 percent (i.e., 12 months) of annual expenses, with a minimum threshold of 75 percent (i.e., 9 months), and maximum of 125 percent (i.e., 15 months). PaintCare’s reserve balance decreased for the first time in program history to \$59,452,008, a decrease of \$3,770,922, due to the decrease in paint sales and investment losses. Although the reserve balance decreased, it is still above PaintCare’s maximum target range of 125 percent (currently

at 175 percent). To further reduce its reserve balance, PaintCare reduced the assessment amount, which took effect on July 1, 2022. PaintCare projects the new fee structure will reduce its reserve level over the next few years to align with its Reserves Policy. Additionally, PaintCare’s independent financial audit did not identify any findings, deficiencies in internal controls, or instances of noncompliance. Accordingly, PaintCare’s funding mechanism, expenditures, and independent financial audit described in the *Annual Report* meet the statutory and regulatory requirements.

Table 4. PaintCare’s Fiscal Year 2022 Program Expenses by Expense Category

Expense Category	PaintCare’s Fiscal Year 2022 Expenses
Paint Processing	\$18,391,413
Paint Transportation	\$3,650,317
Collection Supplies and Support	\$3,517,641
Communications	\$3,875,527
Personnel, Professional Fees, and Other	\$1,315,039
State Administration Fees	\$310,963
Allocation of Corporate Activity	\$2,954,002
Total Program Cost	\$34,014,902

Education and Outreach

Requirements: Provide examples of educational materials that were provided to retailers, consumers, and contractors during the reporting period and any changes made to those materials pursuant to PRC section 48705(a)(7) and 14 CCR section 18954(a)(6). These education and outreach materials may include but are not limited to signage that is prominently displayed to the consumer, written materials, promotional materials, and link to the website pursuant to 14 CCR section 18954(a)(6)(A)-(D). Identify any methods used to determine the effectiveness of educational and outreach efforts, if applicable, pursuant to 14 CCR section 18954(a)(6).

Analysis: Met requirements.

In fiscal year 2022, education and outreach costs totaled \$3,875,527, accounting for 11 percent of PaintCare’s total program expenses. PaintCare educated consumers, retailers, manufacturers, painting contractors, collection sites, and other audiences about the program, through press releases, digital advertising, streaming audio, social media, video, radio, print advertising, and other methods. PaintCare’s education and outreach efforts focus on directing the public to PaintCare’s website to learn more about the program, locate convenient recycling opportunities, and promote buying the right amount of paint and using up leftovers. PaintCare also conducted a statewide outreach campaign to inform paint manufacturers, retailers, and consumers about the assessment reduction that took effect on July 1, 2022.

To determine the effectiveness of its outreach efforts, PaintCare conducted its annual public awareness survey, which highlighted that 57 percent of California respondents knew that paint can be recycled. Of the 57 percent, 80 percent knew where to take

leftover paint and 77 percent knew about the assessment added to paint purchases to support future recycling. PaintCare's *Annual Report* included the education and outreach information required by statute and regulations.

CalRecycle Compliance Inspections of Retailers

CalRecycle provides regulatory oversight for a community consisting of approximately 4,100 paint retailers and 222 paint manufacturers. During fiscal year 2022, CalRecycle conducted field inspections of paint retailers to confirm compliance with the statute and regulations. Inspections include verification of record keeping, evaluation to determine accurate assessment amounts are charged on program products (when listed as a line item on receipts), confirming non-program products do not have an assessment added to the purchase price, checking manufacturer and brand compliance, and confirming entities are monitoring CalRecycle's website to ensure that only program products and brands from compliant manufacturers are sold in the state. Inspections also provide the opportunity for CalRecycle staff to address questions regarding the program and how to maintain compliance with the law.

In fiscal year 2022, 49 site inspections were conducted. Through these on-site inspections, 38 businesses were found compliant. The remaining 11 businesses were found noncompliant and issued Notices of Violation. All 11 businesses corrected their violations and no additional enforcement actions were necessary.

During this period, CalRecycle identified three paint manufacturers selling architectural paint products in the state that were not registered with PaintCare. All three manufacturers corrected their violations by registering with PaintCare and no additional enforcement action was necessary.

Stakeholder Feedback

CalRecycle solicited public comments regarding PaintCare's *Annual Report* from November 2, 2022, through November 18, 2022, and did not receive any comments.

Action

Based on PaintCare's *Annual Report*, the analysis in this Request for Action, PRC section 48705(b), and 14 CCR section 18952(c)(3), I hereby:

- Find PaintCare's *Annual Report* compliant.
- Conditionally approve PaintCare's *Annual Report*.
- Find PaintCare's *Annual Report* noncompliant.

Dated: 1/17/2023

Signed by: Rachel Machi Wagoner, Director

Attachments

Documents listed below are posted to CalRecycle's website. To request documents that are referenced in this Request for Action, but are not listed below, please submit a [Public Records Act Request](#)

(<https://www2.calrecycle.ca.gov/Forms/ContactUs/PublicRecordsRequest/>).

1. [PaintCare's California Paint Stewardship Program Fiscal Year 2022 Annual Report](https://www2.calrecycle.ca.gov/Docs/Web/122532), <https://www2.calrecycle.ca.gov/Docs/Web/122532>