

REQUEST FOR ACTION

To: Rachel Machi Wagoner
Director

From: Zoe Heller
Deputy Director, Division of Circular Economy

Request Date: January 16, 2024

Decision Subject: Consideration of PaintCare's Fiscal Year 2023 Annual Report

Action By: January 30, 2024

Summary of Request

PaintCare submitted its *California Paint Stewardship Program Fiscal Year 2023 Annual Report (July 1, 2022 – June 30, 2023)* to the Department of Resources Recycling and Recovery on November 1, 2023. This Request for Action presents staff's analysis regarding PaintCare's *California Paint Stewardship Program Fiscal Year 2023 Annual Report (July 1, 2022 – June 30, 2023)*.

Background

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. On November 1, 2023, PaintCare submitted its *California Paint Stewardship Program Fiscal Year 2023 Annual Report (July 1, 2022 – June 30, 2023) (Annual Report)* to CalRecycle. CalRecycle determined the *Annual Report* was complete and notified PaintCare on December 1, 2023, in accordance with Title 14, California Code of Regulations (14 CCR) section 18952(c)(2). Pursuant to PRC section 48705(b) and 14 CCR section 18952(c)(3), CalRecycle shall adopt a finding of compliance, noncompliance, or conditional approval for the *Annual Report* within 90 days of receipt (by January 30, 2024).

Staff Analysis

PaintCare states in its *Annual Report* that it conducted the following program activities:

- Established convenient paint collection opportunities for California residents, including 868 year-round collection sites, 11 supplemental partial-year collection sites, 277 municipal household hazardous waste events, 11 one-day paint-only events, and 18 door-to-door collection programs.
- Provided 99.1 percent of Californians a year-round paint drop-off sites within a 15 miles radius of their residence.

- Processed 3,103,173 gallons of postconsumer paint, of which 88 percent (2,369,370 gallons) was reused, recycled, or used for a purpose other than disposal.
- Continued a multi-year effort to expand reuse activities, including holding three paint giveaway events and adding four new reuse stores to the program.
- Launched a three-year initiative to visit every paint retailer in California that is not currently participating as a drop-off site, with a focus on educating store staff about the PaintCare program.
- Received the Environmental Initiative Award at the Sustainability, Environmental Achievement and Leadership Business Sustainability Awards in recognition of PaintCare's environmental and sustainability initiatives.

Staff evaluated PaintCare's *Annual Report* to determine whether the requirements of statute, regulations, and PaintCare's *California Architectural Paint Stewardship Program Plan (Plan)* were met. The following sections provide a summary of staff's analysis of PaintCare's *Annual Report*.

Program Convenience

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). 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 *Plan*, the baseline from which goals were measured, and report on achievement during the reporting period pursuant to 14 CCR section 18954(a)(4).

Analysis: Met requirements

PaintCare employed a Geographic Information System to establish population and distribution convenience goals, and track progress toward achievement of its goals. To provide statewide coverage, PaintCare established a distribution goal to ensure that 95 percent of Californians had access to a paint drop-off site within a 15-mile radius of their residence. To maintain adequate site density, PaintCare established a population goal to provide at least one drop-off site for every 50,000 residents in California (790 sites needed statewide based on 2020 U.S. Census data). PaintCare reported achieving both convenience goals by providing 868 free year-round drop-off sites within 15 miles of 99.1 percent of California's population. In fiscal year 2023, PaintCare reported its highest number of year-round drop-off sites and served the largest percentage of the population to date.

PaintCare managed paint collected by 277 municipal household hazardous waste collection events, 18 door-to-door collection programs, and held 8 paint-only collection events. Additionally, PaintCare conducted 755 large volume pickups for residents and businesses with at least 100 gallons of paint, demonstrating an increase from its 645 pickups in fiscal year 2022. Furthermore, 73 entities that routinely accumulate large amounts of paint utilized PaintCare's recurring large volume pickup program.

In summary, PaintCare met the convenience requirements outlined in statute and regulations and achieved the goals in its *Plan*.

Table 1. PaintCare Year-Round Drop-off Sites (Fiscal Years 2020 to 2023)

	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022	Fiscal Year 2023
Number of Year-Round Drop Off Sites	793	820	848	868

Paint Collection and 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

In fiscal year 2023, PaintCare processed 3,103,173 gallons of postconsumer paint, a decrease from 3,580,449 gallons processed in fiscal year 2022. While PaintCare consistently increased the amount of processed paint over the first nine years of the program, it has declined the past two years. Of the total processed gallons, 88 percent were reused, recycled back into paint or another product, or repurposed for a use other than landfill disposal.

Latex paint constituted 88 percent of the total paint processed. Of the 2,735,514 gallons of processed latex paint, 2,154,037 gallons (79 percent) were made into recycled-content paint by private recyclers and household hazardous waste programs, compared to 2,141,226 gallons (67 percent) in fiscal year 2022. While paint-to-paint recycling increased, the disposal volume also rose to 366,144 gallons (13 percent) from 211,981 gallons last year (7 percent). The energy recovery of latex paint also dropped to 0 from 353,777 gallons (11 percent) in fiscal year 2022. Additionally, 82,513 gallons, or 3 percent, were recycled into lightweight aggregate, used for products such as landscape stones, parking stops, and retaining wall blocks, and 249 gallons went to alternative daily cover.

Oil-based paint constituted 12 percent of the total paint processed by PaintCare. Of the 367,699 gallons of oil-based paint processed, 201,910 gallons (55 percent) went to energy recovery and 153,997 gallons (42 percent) were managed through incineration. Presently, oil-based paint is not recycled in California due to constraints such as organic compound emission limits, its hazardous nature, and the absence of feasible alternative recycling options.

PaintCare hosted three paint giveaway events, dispersing 6,533 gallons of paint among 420 participants. Additionally, paint reuse tables were provided at seven of the eight paint collection events and four new reuse stores were added to the program. Despite

PaintCare’s ongoing efforts to expand paint reuse, there was a decline in reuse from the previous year. PaintCare saw a decrease from 288,029 gallons of latex paint and 19,751 gallons of oil-based paint reused last year to 132,571 gallons of latex paint and 11,752 gallons of oil-based paint in fiscal year 2023.

In fiscal year 2023, Amazon Paint, Inc., Cemex, Covanta, and two of four Clean Harbors facilities were removed from PaintCare’s list of contracted processors, and Green America, Lehigh Cement, and two ACTenviro facilities were added as new contracted processors.

PaintCare’s *Annual Report* included the required information regarding paint collection, transportation, and disposition, meeting statutory and regulatory requirements.

Table 2. Latex Paint Disposition, by Percent of Gallons Processed (Fiscal Year 2020 to 2023)

	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022	Fiscal Year 2023
Reuse	5%	6%	9%	5%
Recycled Paint	68%	69%	67%	79%
Decorative Ground Cover	<1%	0%	0%	0%
Concrete Products	6%	5%	6%	3%
Energy Recovery	16%	12%	11%	0%
Alternative Daily Landfill Cover	<1%	<1%	<1%	<1%
Disposal	5%	8%	7%	13%
Total Latex Paint (Gallons)	2,863,132	3,456,151	3,184,756	2,735,514

Table 3. Oil-Based Paint Disposition, by Percent of Gallons Processed (Fiscal Year 2020 to 2023)

	Fiscal Year 2020	Fiscal Year 2021	Fiscal Year 2022	Fiscal Year 2023
Reuse	2%	2%	5%	3%
Energy Recovery	60%	71%	47%	55%
Incineration	38%	27%	48%	42%
Total Oil-Based Paint (Gallons)	702,749	577,326	395,693	367,659

Funding Mechanism

Requirements: Report the total volume of architectural paint sold in this state 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 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 pursuant to PRC section 48705(a)(6) and 14 CCR section 18954(a)(7).

Analysis: Met requirements

PaintCare's funding mechanism is an assessment charged on containers of architectural paint sold in California. PaintCare's reduced assessment amounts went into effect on July 1, 2022. PaintCare reported a decline in paint sales to 64,451,704 gallons, the lowest sales volume observed since the program's inception and down from 71,973,691 gallons in fiscal year 2022. Accordingly, PaintCare's revenue decreased to \$28,111,255 compared to \$34,825,732 in fiscal year 2022, and expenses increased to \$35,351,544, from \$34,014,902 in the previous fiscal year. Program funds covered paint processing, transportation, collection, education and outreach, and administrative costs, with the allocation of expenses aligning with prior years. Furthermore, PaintCare maintains a portion of the program funds in an investment portfolio, which increased by \$1,731,567 in market value in fiscal year 2023.

PaintCare established a reserve policy to maintain a target reserve level of 100 percent (equivalent to 12 months) of annual expenses, with a minimum threshold of 75 percent (or 9 months) and a maximum of 125 percent (or 15 months). The reserve balance decreased for the second consecutive year from \$59,452,008 in fiscal year 2022 to \$53,943,285 in fiscal year 2023 (equivalent to 153 percent of annual expenses) due to diminished paint sales and reduced assessment amounts. While the reserve continues to decrease, it surpasses PaintCare's initial projections outlined in its *Plan*, which projected PaintCare's reserve balance to reach 146 percent, or \$57,054,685, of program expenses by fiscal year 2023. Staff will continue to monitor PaintCare's reserve balance in the coming years to ensure that it aligns with the established reserve policy. Additionally, PaintCare's independent financial audit revealed no findings, deficiencies in internal controls, or instances of noncompliance.

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 2023 Program Expenses by Expense Category

Expense Category	PaintCare’s Fiscal Year 2023 Expenses
Paint Processing	\$17,863,741
Paint Transportation	\$4,042,428
Collection Supplies and Support	\$3,730,966
Communications	\$4,783,807
Personnel, Professional Fees, and Other	\$1,306,590
State Administration Fees	\$449,277
Allocation of Corporate Activity	\$3,174,735
Total Program Cost	\$35,351,544

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 (e.g., surveys, hits on specific web pages, number of participants at events), if applicable, pursuant to 14 CCR section 18954(a)(6).

Analysis: Met requirements

PaintCare’s education and outreach endeavors to guide the public to its website for information about the program, including locating convenient recycling options, advocating for buying the right amount of paint, and using up leftovers. PaintCare distributed information to consumers, retailers, manufacturers, painting contractors, collection sites, and various audiences through point-of-sale print materials, fact sheets, signage, direct mail, digital ads, streaming audio, radio, social media, and online videos. Education and outreach costs totaled \$4,783,807, constituting 14 percent of PaintCare’s total program expenses, an increase from \$3,875,527, which constituted 11 percent of total program expenses in fiscal year 2022.

In fiscal year 2023, PaintCare initiated a three-year effort to visit every paint retailer in California that is not currently participating as a drop-off site to educate them about the program, provide point-of-sale materials, and discuss the retailers’ obligations under the stewardship law. PaintCare also executed a statewide outreach campaign to inform paint manufacturers, retailers, and consumers about the assessment reduction effective July 1, 2022.

PaintCare conducted its annual public awareness survey to gauge the effectiveness of its outreach. In fiscal year 2023, PaintCare updated some survey questions to learn more about awareness of paint disposal options, the large volume pickup program, and recyclability of paint. Among other findings, PaintCare found that 30 percent of

California respondents were aware of the recyclability of paint. Within this percentage, 71 percent knew where to take leftover paint, and 54 percent were informed that the assessment was added to paint purchases to support future recycling efforts. The survey also revealed that 66 percent of respondents, who were aware of paint recyclability, had previously taken paint for recycling.

PaintCare's *Annual Report* met the statutory and regulatory requirements regarding education and outreach.

Circular Economy

Stewardship programs help drive the state to a circular economy through activities such as innovative source reduction, reuse, and recycling and remanufacturing at responsible end markets. PaintCare's *Annual Report* demonstrated support in developing a circular economy through its multi-year reuse pilot program, achieving increases in latex paint-to-paint recycling, and eliminating energy recovery from latex paint. CalRecycle looks forward to working with PaintCare on this effort.

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 2023, CalRecycle conducted field inspections of paint retailers to confirm compliance with the statute and regulations. Inspections include verification of record keeping, checking manufacturer and brand compliance, confirming entities are monitoring CalRecycle's website to ensure that only paint brands from compliant manufacturers are sold in the state, evaluation to determine accurate assessment amounts are charged on program products (when listed as a line item on receipts), and confirming non-program products do not have an assessment added to the purchase price. 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 2023, 30 site inspections of paint retailers were conducted. Through these on-site inspections, 22 businesses were found compliant. The remaining eight businesses were found noncompliant and issued Notices of Violation. All eight businesses corrected their violations and no additional enforcement actions were necessary.

During this period, CalRecycle did not identify any paint manufacturers selling architectural paint products in the state that were not registered with PaintCare.

Feedback from Interested Parties

CalRecycle solicited public comments regarding PaintCare's *Annual Report* from November 3, 2023, through November 20, 2023, and did not receive any comments.

Action

Pursuant to 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

Signed by: Rachel Machi Wagoner, Director **Dated:** January 18, 2024

Attachments

Documents listed below are posted to CalRecycle's website.

1. [California Paint Stewardship Program Fiscal Year 2023 Annual Report \(July 1, 2022 - June 30, 2023\) \(November 1, 2023\)](https://www2.calrecycle.ca.gov/Docs/Web/126288)
<https://www2.calrecycle.ca.gov/Docs/Web/126288>
2. [California Architectural Paint Stewardship Program Plan \(October 31, 2021\)](https://www2.calrecycle.ca.gov/Docs/Web/121086)
<https://www2.calrecycle.ca.gov/Docs/Web/121086>