

## **REQUEST FOR APPROVAL**

**To:** Rachel Machi Wagoner  
Director

**From:** Matt Henigan  
Deputy Director, Materials Management and Local Assistance  
Division

**Request Date:** January 19, 2021

**Decision Subject:** Consideration of California Paint Stewardship Program Year 8  
Annual Report

**Action By:** January 31, 2021

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### **Summary of Request:**

This Request for Approval (RFA) presents staff's compliance recommendation for PaintCare's California Paint Stewardship Program Year 8 Annual Report as evaluated according to the requirements in statute, regulations, and PaintCare's approved plan.

### **Background**

PaintCare submitted its Year 8 Annual Report on November 2, 2020, covering July 1, 2019, through June 30, 2020. CalRecycle has 90 days from the date of receipt to adopt a finding of compliance, non-compliance, or conditional approval of the annual report.

### **PaintCare Year 8 Annual Report Summary**

Despite impacts from COVID-19, the PaintCare program continues to properly manage collected paint in an environmentally sound fashion, offer convenient opportunities for Californians to recycle leftover paint, and reduce the financial burden on local governments for paint management. The following are key program metrics that demonstrate PaintCare's efforts to continually improve the program:

- 98.9 percent of Californians live within 15 miles of a permanent paint drop-off site, an increase from 98.5 percent from Year 7.
- 3,565,881 gallons of paint were processed through PaintCare's program in Year 8, with 96.1 percent (3,426,430 gallons) reused, recycled, or managed via methods other than disposal.
- 793 year-round collection sites, 15 supplemental partial-year collection sites, 250 municipal HHW events, 11 one-day paint-only events, and 16 door-to-door program partnerships provided California residents with convenient collection opportunities statewide.

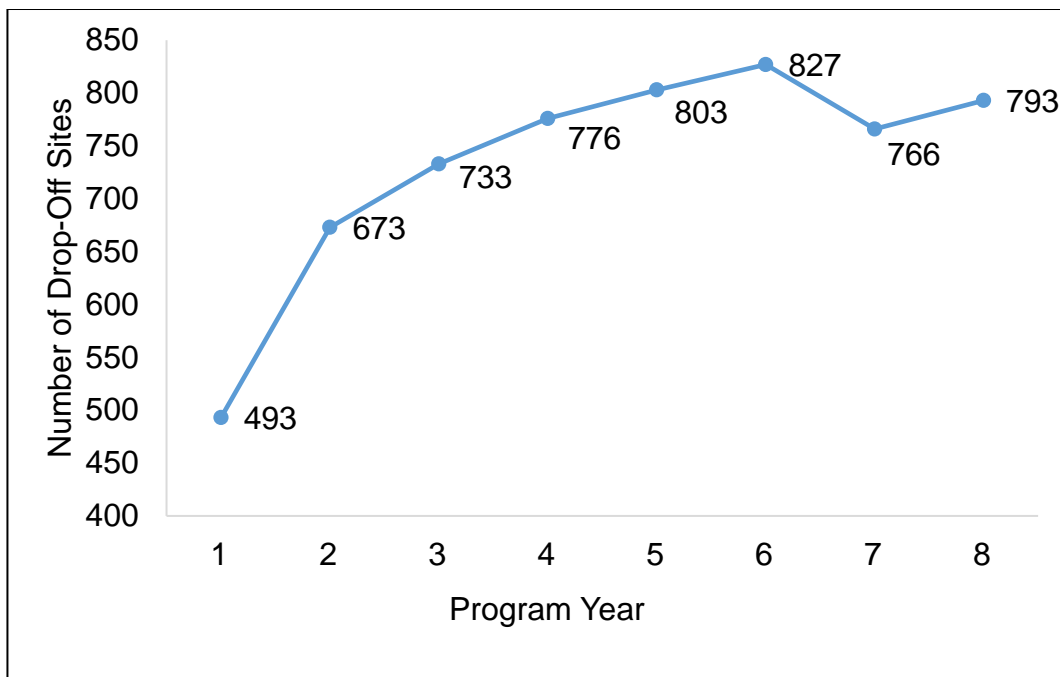
- 469 large volume pickups were performed, and eight additional recurring large volume pickups were established for a total of 71, which provided additional collection opportunities for businesses and other entities with large volumes of paint.
- The per gallon cost to operate the program was \$8.65 in Year 8. This is the fourth consecutive year that the per gallon cost has decreased, demonstrating increased program efficiencies.
- A \$100,000 grant was awarded to Visions Recycling to obtain pre-cast molds to make landscape décor, conduct marketability research, and showcase products at a national trade show. The landscape décor is now sold at various locations in California.

**Staff Analysis**

The purpose of the program is to reduce the generation, promote the reuse, and ensure proper end-of-life management of postconsumer paint, including recovery and recycling. The sections below contain staff’s analysis pertaining to elements of PaintCare’s Year 8 Annual Report, including program convenience, postconsumer paint management, and PaintCare’s accumulated reserve.

**Program Convenience**

**Figure 1. Year-round Paint Drop-off Sites**



### **Distribution Goal**

PaintCare has made it convenient for residents and businesses to recycle paint in the state by establishing free, permanent drop-off sites at paint retailers, partnering with household hazardous waste (HHW) facilities and door-to-door programs, holding collection events, and providing a direct pickup service to sites that have accumulated more than 200 gallons of paint. At the end of Year 8, PaintCare had partnerships with 793 year-round paint collection sites, an increase from 766 sites in Year 7 (Figure 1). PaintCare set a convenience goal in its plan to establish 750 paint drop-off sites in the state, which it achieved in Year 4 and exceeded each year since. Additionally, in order to provide an appropriate distribution of sites statewide, PaintCare determined it would establish collection sites within 15 miles of 90 percent of the California population. PaintCare has exceeded its distribution goal every year since the start of the program. In Year 8, PaintCare provided 98.9 percent of Californians with access to a drop-off site within 15 miles of their residence, an increase from 98.5 percent in Year 7. PaintCare made significant progress in recruiting new drop off sites to recuperate the 84 sites lost in Year 7 due to the unanticipated closure of all Orchard Supply Hardware stores.

### **Density Goal**

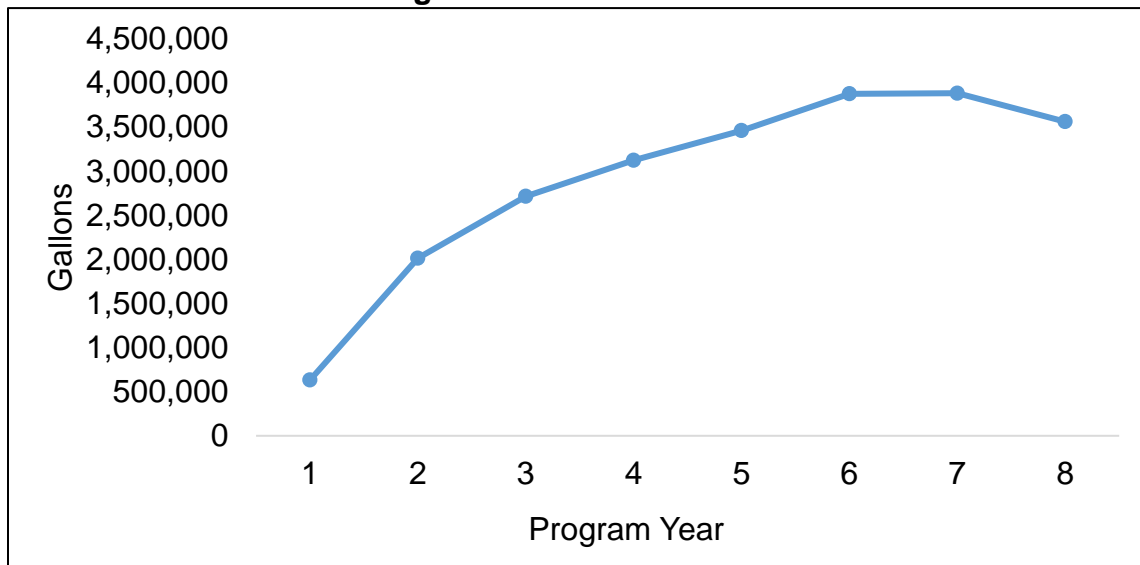
In addition to distributing paint drop-off sites throughout the state, PaintCare set a population density target to establish one additional drop-off site for every 50,000 residents in urbanized areas to provide convenience in densely populated areas. PaintCare met its density criterion for permanent drop-off sites in 54 of 73 regions, demonstrating progress by meeting this target in three additional areas compared to Year 7. In five other areas of the state, PaintCare made progress towards achieving its density target. In the remaining 14 regions, 11 had the same number of permanent sites as Year 7, and the number of permanent sites slightly decreased in three areas. However, as a direct result of public health orders associated with COVID-19, PaintCare supported 38 fewer HHW event sites and held 73 fewer events in Year 8 compared to Year 7. While PaintCare demonstrated continued progress, it has never achieved its density target. Staff encourage PaintCare to consider alternate strategies to increase convenience in regions where it has not achieved its density target. For example, PaintCare could offer a mobile paint collection service for residents and businesses, increase the volume of paint accepted at sites in these areas, lower the 200-gallon threshold to allow more entities to utilize PaintCare's Large Volume Pickup Service, hold additional paint collection events, and look for other types of locations to serve as drop-off sites, such as community centers, electronic waste recyclers, and storage facilities.

### **Postconsumer Paint Management**

PaintCare processed 3,565,881 gallons of postconsumer paint in Year 8. While the proportion of latex versus oil-based paint processed was consistent with prior years, at 80.3 percent and 19.7 percent, respectively, there was an eight percent decrease (322,363 gallons) in volume collected from the previous year (Figure 2). Temporary

collection site closures at retail and HHW facility locations, cancellation of temporary events, and the suspension of PaintCare's Large Volume Pickup Service from March through May 2020, were a direct result of COVID-19 which led to the decrease in the collection volume. PaintCare's preliminary data for July 2019 through March 2020 showed that PaintCare's collection volume was higher than the same period of Year 7, demonstrating that COVID-19 site closure impacts in the final months of Year 8 were responsible for the eight percent decrease in the annual collection volume.

**Figure 2. Paint Processed**



Additionally, in response to the pandemic and subsequent shelter-in-place orders, PaintCare suspended or changed its outreach strategy to inform the public of the limitations and temporary closures of program drop-off sites and services. PaintCare also delayed some advertising campaigns that were planned before the start of the pandemic. For advertising campaigns that could not be delayed, PaintCare shifted its education and outreach to encourage consumers to properly store and use paint at home.

While staff recognize that a shift in PaintCare's outreach strategy during the pandemic was warranted, the consumer awareness survey in PaintCare's Year 8 Annual Report showed that only 42 percent of California respondents knew that paint can be recycled. Staff recommend that PaintCare use reserve funds to further raise consumer awareness about the program and increase paint collection, such as by incorporating television commercials and expanding the use of billboards in PaintCare's existing education and outreach campaigns.

Despite the decrease in processing volumes, disposition methods (by percentage) remained similar to prior years (Tables 1 and 2). CalRecycle staff continue to engage in monthly discussions with PaintCare to identify methods the program could utilize to increase the percentage of paint sent to reuse and paint-to-paint recycling.

In Year 8, 53 percent of the paint processed was collected through HHW and municipal programs, consistent with prior years. PaintCare added an HHW facility in Modoc County, as well as solid waste facilities in Kern, Modoc, and Tulare counties, demonstrating that local governments continue to find partnerships with PaintCare beneficial in significantly reducing their cost burden for paint management. In 2016, the Product Stewardship Institute issued a report showing that local governments in California save, on average, \$151,905 annually by participating in PaintCare’s program.

**Table 1. Latex Paint Disposition, by Percent of Gallons Processed**

	<b>Year 5</b>	<b>Year 6</b>	<b>Year 7</b>	<b>Year 8</b>
<b>Reuse</b>	5%	4%	4%	5%
<b>Recycled Paint</b>	66%	70%	71%	68%
<b>Decorative Ground Cover</b>	<1%	<1%	<1%	<1%
<b>Concrete Products</b>	5%	6%	5%	6%
<b>Energy Recovery</b>	18%	13%	12%	16%
<b>Alt. Daily Landfill Cover</b>	<1%	<1%	<1%	<1%
<b>Disposal</b>	6%	7%	7%	5%
<b>Total Latex Paint (Gallons)</b>	<b>2,841,732</b>	<b>3,230,925</b>	<b>3,221,725</b>	<b>2,863,132</b>

**Table 2. Oil-Based Paint Disposition, by Percent of Gallons Processed**

	<b>Year 5</b>	<b>Year 6</b>	<b>Year 7</b>	<b>Year 8</b>
<b>Reuse</b>	3%	2.5%	3%	2%
<b>Energy Recovery</b>	42%	48%	55%	60%
<b>Incineration</b>	55%	49.5%	42%	38%
<b>Total Oil-Based Paint (Gallons)</b>	<b>622,417</b>	<b>650,988</b>	<b>666,519</b>	<b>702,749</b>

**Reuse**

According to the state’s waste management hierarchy, source reduction and reuse are the most preferable paint management methods. PaintCare recruited four additional reuse stores for a total of 39 reuse partners, and reuse represented 4.6 percent of the total gallons of paint managed, an increase from 3.7 percent in Year 7. The COVID-19 pandemic caused temporary closures of some reuse services at drop-off sites and events beginning in March 2020; however PaintCare still managed to increase its reuse volume from 142,379 gallons in Year 7 to 163,134 gallons in Year 8. Staff encourage PaintCare to use excess reserve funds to further increase the amount of paint reused in California.

## **Recycling**

Every year, the majority of latex paint collected is used to manufacture recycled-content paint by private paint recyclers and HHW programs. The percentage of latex paint that was recycled decreased slightly, from 71 percent in Year 7 to 68 percent this year. Year-to-year changes in disposition are due to a shift in the volume of paint handled among PaintCare's contracted haulers. Each PaintCare contracted hauler then contracts with specific paint recyclers who utilize different paint processing methods. Therefore, a shift in the volume of paint received by a hauler can result in a different proportion of paint processed by a specific disposition method. The decline in percentage of latex paint that was recycled is concerning. Paint recyclers have continued to manage paint using the same disposition methods they used prior to the program, and PaintCare and its contracted haulers have done little to require or incentivize recyclers to achieve higher paint-to-paint recycling rates and decrease energy recovery of latex paint. Staff encourage PaintCare to use excess reserve funds to employ strategies to increase the amount of paint recycled in California by getting its contracted haulers to deliver more paint to recyclers who have higher recycling rates. Strategies could include financial incentives for haulers and recyclers who achieve higher rates of paint-to-paint recycling.

In an effort to increase recycling of latex paint that cannot be recycled back into paint, PaintCare awarded a \$100,000 grant to Visions Recycling, Inc., to obtain pre-cast molds to make landscape décor, conduct marketability research, and showcase products at a national trade show. Visions' landscape products are now sold at various locations in California. Staff commend PaintCare for developing the grant program to incentivize additional postconsumer paint recycling opportunities and look forward to future grant cycles. Staff would like PaintCare to use reserve funds to expand its grant program and explore additional incentives and activities to increase reuse and paint-to-paint recycling.

## **Program Finances and Accumulated Reserve**

PaintCare's program is funded by an assessment charged on containers of architectural paint sold in California. Revenue from paint sales was \$35,992,569, an increase of \$1,381,112 from Year 7. An increase in home improvement projects during the COVID-19 pandemic when shelter-in-place orders were in effect may have contributed to the increase in paint sales. PaintCare's reserve balance increased in Year 8. PaintCare maintains a portion of its reserve funds in an investment portfolio which is intended to earn a return equal to the rate of inflation. PaintCare's financial projections do not include estimated investment return because PaintCare has stated there is too much variability in investment returns. However, the program has earned between \$1 million to \$2.6 million in investment returns each year since Year 4. PaintCare's investment portfolio generated \$2,098,712 in investment income in Year 8, which exceeded the rate of inflation and led to a further increase in the reserve balance. Including anticipated revenue from investment returns should be considered as a strategy to improve the accuracy of the financial projections and the management of reserve levels.

The total cost of PaintCare’s program was \$30,648,343, a decrease from \$33,619,394 in Year 7. Due to the impacts of COVID-19, beginning in March 2020, PaintCare experienced temporary closures of drop-off sites, and temporarily suspended its Large Volume Pickup Service. During this time period, outreach expenditures were reduced by about \$1 million to avoid directing generators of paint to closed collection locations.

As a result of these unanticipated and unavoidable impacts, less paint was collected in March through May 2020, which led to a decrease in collection, transportation, and processing costs. The unexpected decrease in program expenses and increase in revenue, both in part due to the COVID-19 pandemic, contributed to an increase of the program’s reserve balance.

**Accumulated Reserve**

PaintCare’s Reserves Policy sets a target reserve level of 100 percent (12 months) of annual expenses, with a minimum threshold of 75 percent (nine months) and maximum of 125 percent (15 months). PaintCare’s reserve balance increased by over \$7 million to \$56,855,233, which equates to 186 percent of annual expenses. Since 2013, PaintCare’s financial projections have shown that the reserve balance will decrease over time, but the balance has actually grown every year since the program began and has consistently exceeded PaintCare’s target reserve level (Table 3). PaintCare’s financial projections for revenue do not appear to include estimated investment return, and total expense projections have generally been overestimated since PaintCare started doing projections in Year 3. Staff will discuss with PaintCare how it plans to improve its projections in future years.

**Table 3. Reserve Balance and Percentage of Expenses**

	<b>Reserve Balance</b>	<b>Reserve Level as Percentage of Total Annual Expenses</b>
<b>Year 1</b>	\$9,892,568	106%
<b>Year 2</b>	\$27,462,632	155%
<b>Year 3</b>	\$35,114,056	134%
<b>Year 4</b>	\$39,442,812	123%
<b>Year 5</b>	\$43,762,360	135%
<b>Year 6</b>	\$45,853,006	132%
<b>Year 7</b>	\$49,412,295	147%
<b>Year 8</b>	\$56,855,233	186%

Staff have consistently recommended, through regular monthly communications and past annual report RFAs, that PaintCare address the growing reserve balance and consider the constructive use of excess funds to further improve the program. In January 2020, CalRecycle conditionally approved PaintCare’s Year 7 Annual Report and requested that PaintCare provide an evaluation of program finances pursuant to its

Reserves Policy. In response, PaintCare submitted a Financial Evaluation in March 2020 (see Attachment 2), which stated that PaintCare anticipates using excess reserve funds beginning in Year 9. PaintCare's Year 8 Annual Report reiterated its commitment to use a portion of the surplus funding in Year 9 and in subsequent years. Staff expect PaintCare's reserve balance to decrease in Year 9 as predicted by its Financial Evaluation.

Staff note that, unlike under the state's mattress stewardship law, the paint stewardship law does not cap PaintCare's reserve balance or otherwise compel PaintCare to increase spending to reduce its reserve balance. Assembly Bill 187 (Garcia, C., Chapter 673, Statutes of 2019) requires that the mattress recycling organization shall not maintain total reserves exceeding 60 percent of its annual operating expenses and allows CalRecycle to require the organization to increase spending in order to reduce excess reserves.

### **CalRecycle Audit**

CalRecycle's Office of Audits is currently conducting a routine audit regarding PaintCare's compliance with the Architectural Paint Recovery Program statute and regulations, covering July 1, 2018, through June 30, 2020. The audit objective is to gain a further understanding of the operating control environment utilized by PaintCare and includes validation of some financial and nonfinancial data reported by PaintCare. The final audit report is still under development, and results will be discussed in next year's RFA.

### **CalRecycle Oversight and Enforcement Activities**

The law requires regulatory oversight for a community consisting of approximately 4,100 paint retailers and 222 paint manufacturers. Staff conducted the following activities in Year 8 to continue to assist PaintCare and stakeholders with implementation of the program and all parties' responsibilities under the law:

- Staff met regularly with PaintCare to keep apprised of program developments;
- Maintained webpages related to the paint program and an inspection tracking database used for all EPR programs that CalRecycle oversees;
- Provided technical assistance during compliance inspections to retailers who sell products that fall under the law.

CalRecycle's enforcement staff conducted inspections of paint retailers and paint manufacturers in Year 8 to confirm compliance with the Architectural Paint Recovery Program. Inspections included verification of record keeping, evaluation to determine accurate assessment amounts are charged on program products (when listed as a line item on receipts), ensuring non-program products are not being assessed a fee, 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 being 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 Year 8, 65 inspections were conducted. Through these inspections, 48 businesses were found to be in compliance at the initial inspection. Enforcement staff issued a Notice of Violation (NOV) to 17 businesses. Of these, 16 corrected their violations within 30 days, and one business required a second NOV and corrected the violation within 60 days of the initial NOV. No additional actions were necessary. During Year 8, CalRecycle inspectors identified one paint manufacturer selling paint in the state who was not registered with PaintCare. This manufacturer corrected this violation by registering with PaintCare within 30 days with no additional actions necessary.

Through inspections in Year 8, CalRecycle has found that 11 percent of retailers were either selling non-registered architectural paint products or were collecting assessments on non-program products. Field inspections indicate the need for continued outreach by PaintCare to remind retailers to regularly monitor lists of registered manufacturers and brands posted on CalRecycle's website. Staff recommend that PaintCare use reserve funds to increase education and outreach to retailers on PaintCare's program products and assessment amounts.

### **Stakeholder Comments**

CalRecycle solicited public comments regarding PaintCare's Year 8 Annual Report. No public comments were received.

### **Conclusions**

After conducting a thorough analysis of PaintCare's Year 8 Annual Report pursuant to the requirements in statute, regulations, and PaintCare's approved stewardship plan, staff recommend a finding of compliance. However, staff remain concerned about PaintCare's continued increased fund reserve. Recognizing the COVID-19 pandemic contributed to the growth in the reserve balance particularly in March through June 2020, the department, nonetheless, will work with PaintCare to encourage spending down the reserve.

Despite this concern, the PaintCare program continues to provide convenient paint collection opportunities to California residents and reduces the financial burden on local governments for paint management. Staff acknowledge PaintCare for quickly adjusting their operations when the program experienced temporary closures of drop-off sites at the onset of the COVID-19 pandemic. Staff recognize that the ongoing pandemic may have unforeseen impacts on the program through the next reporting period and appreciate PaintCare for its close, continued communication with CalRecycle, especially during this unprecedented time.

**Recommendation:**

Staff recommend finding PaintCare’s California Paint Stewardship Program Year 8 Annual Report compliant, pursuant to the Architectural Paint Stewardship Law (Public Resources Code sections 48700-48706, California Code of Regulations, Title 14, sections 18950-18958), and PaintCare’s approved stewardship plan. Despite impacts from COVID-19, in Year 8 the PaintCare program continued to properly manage collected paint in an environmentally sound fashion, offered convenient opportunities for Californians to recycle leftover paint, and reduced the financial burden on local governments for paint management. PaintCare’s program continues to be high performing and offers convenient collection opportunities to California residents and businesses.

**Action:**

On the basis of the information, analysis, and findings in this RFA, I find PaintCare’s Year 8 Annual Report compliant. I request that PaintCare use reserve funds to expand its grant program, to increase reuse and recycling of paint, to reduce energy recovery of latex paint, and to expand education and outreach to consumers and retailers.

**Dated:** February 22, 2021

Signed by Rachel Machi Wagoner, Director

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Rachel Machi Wagoner, Director

**Attachments:**

1. [PaintCare’s Year 8 Annual Report](https://www.paintcare.org/wp-content/uploads/docs/ca-annual-report-2020.pdf), submitted November 2, 2020; available at: <https://www.paintcare.org/wp-content/uploads/docs/ca-annual-report-2020.pdf>
2. [PaintCare’s March 2020 Financial Evaluation](https://www2.calrecycle.ca.gov/Docs/Web/117156); available at: <https://www2.calrecycle.ca.gov/Docs/Web/117156>