

Oregon's Paint Product Stewardship Law

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State of Oregon
Department of
Environmental
Quality



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Oregon's Paint Product Stewardship Law Report

Executive Summary

DEQ's Paint Product Stewardship Program

Leftover paint is the largest component of household hazardous waste collection programs. An estimated 10 percent of the more than 750 million gallons of architectural paint – paint used to coat the interior and exterior of houses and other structures – sold each year in the United States goes unused. This difficult-to-manage waste can be captured for reuse, recycling, energy recovery or safe disposal. However, doing so requires public awareness and a convenient and effective local collection system.

Building on national discussions, DEQ, local governments and their partners in the paint industry worked with lawmakers to propose a product stewardship law for paint in Oregon. Product stewardship is an approach where all parties involved in the design, production, sale and use of a product take responsibility for minimizing the environmental impact throughout the stages of the product's life. Product stewardship requires a balance between flexibility, innovation and proper oversight. Oregon's Paint Product Stewardship Law, adopted as House Bill 3037 in 2009, established the nation's first statewide product stewardship program for managing leftover architectural paint.

This pilot program, which began in July 2010 and is currently due to “sunset” in June 2014, serves as a demonstration for similar future programs in other states. PaintCare, a non-profit organization created by the American Coatings Association, a trade group for paint manufacturers, administers the Oregon program. PaintCare develops and implements a program plan providing a series of depots statewide to collect unused paint. Consumers pay for the program by paying a surcharge on paint and stain containers at the point of sale. Fees range from \$0.35 to \$1.60 per can, depending on paint container size. DEQ must review and approve PaintCare's program plan and the fee. Manufacturers and retailers may be prohibited from selling paint unless they participate in an approved program. Retailers are also required to provide consumers information on their options to recycle or safely dispose of leftover paint.

Section 11 of HB 3037 requires DEQ to submit a report to the Oregon Legislature describing results of the Paint Stewardship Pilot Program and recommending whether the program should be made permanent and whether modifications are necessary to improve its functioning and efficiency. The report must include an accounting of the administrative fees paid by the producers to the Oregon Department of Environmental Quality under Section 9 of the 2009 Paint Product Stewardship Law. This report, in addition to a memo DEQ submitted to the Legislature on Oct. 1, 2011, fulfills this requirement.

In this report, DEQ evaluates results and identifies opportunities for improvement in the areas of convenience, education and covering program costs. This report covers only the first year of data for the pilot project. Information from the second year of program implementation will be available in PaintCare's September 2012 annual report. DEQ will continue to evaluate results from subsequent years.

Findings

Although the pilot program's first year did not result in a much greater volume of paint collection than from previous paint collection programs, first-year data provide valuable baseline information. Noteworthy findings include:

- Significantly more sites became available for Oregonians to drop off unwanted paint.
- The cost of managing unwanted paint shifted from local government household hazardous waste programs to those who purchase paint.
- The process of developing and implementing a paint product stewardship program provided learning opportunities for Oregon and other states planning similar programs.

Recommendations

DEQ believes the Oregon paint stewardship pilot program sets the foundation for a valuable long-term product stewardship program. **DEQ thus recommends that the Legislature extend this program indefinitely, after taking into account data from subsequent years of the pilot program and the following considerations.** Legislation to amend the current statute is required no later than 2014 to provide uninterrupted service in Oregon.

Based on information in PaintCare's 2011 annual report, EPA evaluation, input from stakeholders and experience providing oversight of the program in the first year, DEQ recommends the following changes be made in a permanent program. The recommended changes would improve program function and efficiency for the benefit of DEQ, the paint industry, consumers buying paint and Oregon's environment by providing clear standards, goal, and procedures.

1. Improve collection convenience.
2. Ensure full costs of program activities are covered.
3. Establish program measures to ensure accountability.
4. Amend annual report requirements.
5. Expand scope of covered products to include aerosol paints.
6. Clarify and strengthen requirements for education and outreach.
7. Make oversight and process changes.
8. Consider changing the program funding mechanism.

The full report is available online via this link:

www.deq.state.or.us/lq/pubs/docs/sw/LegReportPaintProdStewardshipLaw.pdf

Background

Paint Collection in Oregon

Leftover paint is the largest component of local household hazardous waste collection programs. An estimated 10 percent of the more than 750 million gallons of architectural paint – paint used to coat the interior and exterior of houses and other structures – sold each year in the United States goes unused. This difficult-to-manage waste can be captured for reuse, recycling, energy recovery or safe disposal. However, doing so requires public awareness and a convenient and effective local collection system. Many locally operated household hazardous waste programs have been collecting paint in Oregon for many years (see Figure 1); however, paint collection is expensive and is currently beyond the capacity of, and budgets for, many local governments.

Figure 1. Timeline of paint collection in Oregon

1986	Lane County and Metro were the first municipal household hazardous waste programs to collect paint in Oregon.
1991	DEQ began sponsoring household hazardous waste collection events, which included paint in addition to used oil, pesticides and other hazardous materials typically found in the home.
1992	Metro Paint began processing and selling 100 percent recycled latex paint in Portland.
1997-1998	DEQ implemented the Paint Smart return-to-retail leftover paint prevention and recycling initiative. Eleven stores statewide participated in this voluntary pilot program, testing the feasibility of having retail stores collect leftover paint from residents for recycling and safe disposal. This program was paid for by state and local governments.
1998 – present	After the Paint Smart program ended, state and local governments continued paint collection at household hazardous waste sites and events. A handful of retail locations also continued to provide collection.
2003-2010	DEQ and paint manufacturers joined national discussions about alternative approaches to collecting and recycling paint.

Product Stewardship

Product stewardship is a policy tool where all parties involved in the design, production, sale and use of a product take responsibility for minimizing the environmental impact throughout the stages of the product's life. Oregon is a leader in implementing product stewardship, with several programs already in place, such as the 2007 Oregon E-Cycles law for electronic waste and the 1971 bottle bill for beverage containers.

National discussions about paint product stewardship began in earnest during 2003. The Product Stewardship Institute spearheaded two nationally-negotiated Memorandums of Understanding through the Paint Product Stewardship Initiative. The MOUs were signed by eight state governments, 31 local government agencies, five paint manufacturers, a national trade association representing more than 350 paint and coatings manufacturers, raw material suppliers, distributors and technical professionals, plus several other related

businesses and organizations. The memorandums called for the Paint Product Stewardship Initiative to develop a new nationally-coordinated system for the management of leftover architectural paint. The intent was for the State of Minnesota to undertake a state-wide “demonstration project” to work through critical issues and gather information needed to develop a functional, fully funded, environmentally sound, and cost-effective nationally-coordinated leftover paint management system. The MOUs also called for the nationally-coordinated system to be implemented in the rest of the United States according to a phased implementation schedule, after completion of the demonstration project. When the State of Minnesota was unable to fulfill this role, the State of Oregon served as the pilot program test state.

House Bill 3037, Oregon's Paint Product Stewardship Law

Building on the PPSI agreements and recommendations from the 1997 Paint Smart pilot program, DEQ, local governments and their partners in the paint industry worked with law makers to propose a paint product stewardship law in Oregon. Oregon's Paint Product Stewardship Law, adopted as House Bill 3037 in 2009, established the nation's first product stewardship program for managing leftover architectural paint. Architectural paint is defined as both oil-based and latex paint used for the interior and exterior of buildings that is sold in containers of five gallons or less. This pilot program, which began July 2010 and will run until 2014, serves as a demonstration for similar future programs in other states.

Since passage of HB 3037, California and Connecticut have passed paint product stewardship legislation; however, those states will not implement programs until 2012 and 2013, respectively. State and local governments outside Oregon continue to carefully track the performance of Oregon's demonstration project.

Implementation

Producers of paint sold in Oregon – or a stewardship organization representing the producers – are required to set up and run a convenient, statewide system for the collection of post-consumer architectural paint. PaintCare, a stewardship organization, developed and is implementing the program in Oregon (Figure 2). PaintCare is the only approved program.

Retailers selling paint in Oregon must ensure that manufacturers of any paint they sell are participating in the statewide paint stewardship pilot program. At the time of sale, retailers must provide the consumer with information on available end-of-product-life management options offered by the stewardship program.

Consumers pay a fee which is added to the cost of paint to cover PaintCare's program costs. In addition, Oregon residents who purchase paint receive information that recommends ways to purchase the right amount of paint. They also receive information about what to do with any leftover paint. Individuals and businesses are able to drop off their leftover paint at collection locations for no charge at point of drop-off.

Oregon DEQ reviewed and conditionally approved PaintCare's stewardship plan in 2010, including the paint assessment (Appendix 1). Conditional approval requires the stewardship organization to demonstrate in its annual report that program implementation complies with the statute in four key areas:

- Adequate scope and budget for the PaintCare outreach and education program
- Adequate collection system, including collection site convenience and availability, analysis of gaps, review of convenience criteria, and establishment of a baseline
- Performance by paint processing service providers and establishment of baseline levels for recycling
- Adequate PaintCare budget implementation that recovers, but does not exceed, program costs, using an adequate fee structure

DEQ will also review future PaintCare reports and provide an updated public Web page with a list of compliant manufacturers and the brands of paint they sell.

Report to Legislative Assembly

Section 11 of HB 3037 requires DEQ to submit a report to the Oregon Legislature describing results of the paint stewardship pilot program and recommending whether the program should be made permanent and any modifications necessary to improve its functioning and efficiency. The report must include an accounting of the administrative fees paid by the producers to DEQ under Section 9 of the 2009 Paint Product Stewardship Law. This report, in addition to a memo DEQ submitted to the Legislature on Oct. 1, 2011(Appendix 2), fulfills the requirement.

This report covers only the first year of data for the pilot project. Information from program's second year of implementation will be available in PaintCare's September 2012 annual report.

Figure 2 depicts the implemented program including the flow of paint, money and information in the pilot program.

The arrows (pink) illustrate the flow of virgin paint from producers to retailers and finally consumers. Leftover paint (orange arrows) then flows from consumers to collections through retailers, household hazardous waste sites, events or curbside service. After collection, some paint is exchanged and goes directly back to the consumer. Collected paint is transported for recycling back into paint, reprocessing as non-paint, energy recovery or disposal. Exchange (reuse) and recycling are more preferred, and disposal is less-preferred.

PaintCare provides information (purple arrows) directly to retailers and consumers. Retailers also provide information to consumers.

Funds (green arrows) move via per-container paint assessment from consumers to retailers, who in turn pass funds from the assessment on to producers. Funds flow from producers to PaintCare. A small portion of the funds are paid to Oregon DEQ via an administrative fee to cover administrative costs. The majority of funds are used by PaintCare for the paint management system.

The online version of this figure developed by the U.S. Environmental Protection Agency, available at www.paintstewardshipprogram.com, also provides results of evaluation questions and answers regarding cost impact, impact evaluation and process evaluation.

Results and Evaluation of Year One of Pilot Program

PaintCare began implementing the Paint Product Stewardship Law in July 2010 and provided the first annual report to DEQ describing the program in September 2011, as required by Section 6 of the Paint Product Stewardship Law. The following section of this report summarizes information reported to DEQ by PaintCare and DEQ's evaluation of the pilot program. The full PaintCare annual report is available on the DEQ website at: www.deq.state.or.us/lq/sw/prodstewardship/paint.htm

DEQ evaluated whether the pilot program met statutory requirements by examining overall program effectiveness, education and outreach efforts, finances and other considerations. DEQ also considered preliminary findings from the Paint Product Stewardship Initiative's independent evaluation of the Oregon Pilot Program in its review (PPSI, 2011). The Paint Product Stewardship Initiative is a program of the Product Stewardship Institute, a national non-profit membership-based organization located in Boston, Mass. PSI works with state and local government agencies to partner with manufacturers, retailers, environmental groups, federal agencies and other key stakeholders to reduce the health and environmental impacts of consumer products.

Summary

Overall, the first year of the program was a successful pilot, establishing a baseline regarding amount of paint sold, amount available for collection, and recovery and capture rates for Oregon. This information will be valuable for future program planning and evaluation. The following results and subsequent evaluation are limited to data for the first year of program implementation, due to the legislative deadline for this report. Therefore, analysis is limited to available data about the first year of the pilot program. More complete analyses of program effectiveness will be possible in fall 2012.

In addition to providing baseline data, the pilot program established several indicators of initial success, including:

- **Collection of over 450,000 gallons of leftover paint at more than 90 sites.** Although there wasn't a large increase in the volume of paint collected in Oregon compared to previous years by household hazardous waste programs, the number of collection locations doubled during the first year. DEQ anticipates increased paint collection as the program matures.
- **Oregon's residents value the paint stewardship program.** Ninety-two percent of recent paint purchasers indicated the need for this type of program was "very important" (61percent) or "somewhat important" (31 percent), in a survey conducted by PaintCare in July 2011(PaintCare, 2011b).
- **The pilot program shifted the cost of paint collection and recycling from local governments to those who purchase paint.** For example, Metro reported that the paint product stewardship program saved the regional government more

than \$1 million of its \$5.4 million total hazardous waste program budget for fiscal year 2010-11 (Jim Quinn, personal communication).

Despite the pilot program's initial success, much work remains to improve its visibility, cost, and effectiveness over time. For example, only 27 percent of Oregonians purchasing paint were aware of the program after its first year of operation (PaintCare, 2011b). Potential options for improving the amount of paint collected, disposition of collected paint, program convenience, education and outreach, and cost per gallon to process collected paint are described in this report.

Paint Collected

PaintCare collected and processed 469,665 gallons (4,696,650 pounds) of paint between July 1, 2010 and June 30, 2011. This compares to 4,548,258 pounds collected in Oregon in 2008 under municipal household hazardous waste programs (PaintCare, 2010b).¹ Seventy-five percent of the paint collected was latex, and 25 percent was oil-based.

Figure 3. Pounds of paint collected before and after pilot program

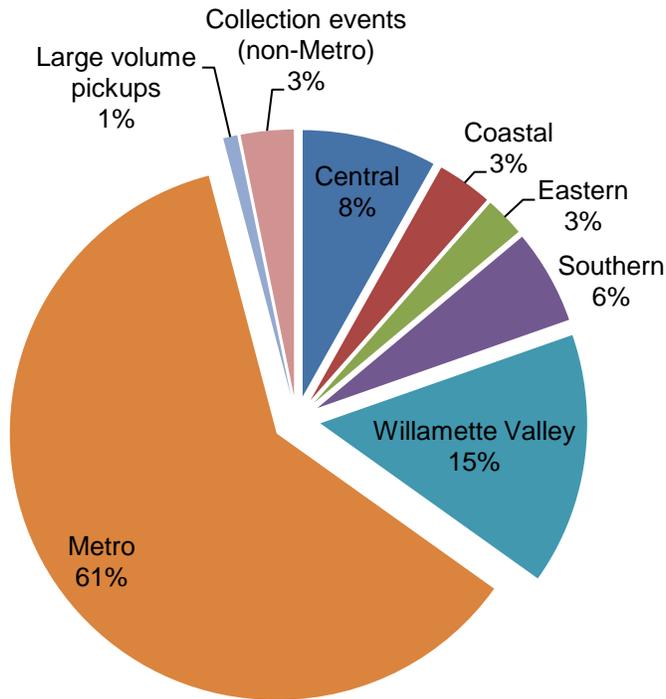
	2008 (calendar year)	2011 (fiscal year)
Paint Collected		
Pounds	4,548,258	4,696,650

DEQ attempted to analyze PaintCare data to calculate volume of paint collected by geographic regions. Information was only available for fixed collection sites, not collection events, so the following numbers are rough estimates. Counties not listed below did not collect any paint. According to DEQ's analysis, approximately:

- **61 percent of the paint was collected in the Portland Metro area** (Multnomah, Washington and Clackamas counties)
- **15 percent was collected in the Willamette Valley** (Marion, Yamhill, Columbia, Benton, Linn and Lane counties)
- **6 percent was collected in Southern Oregon** (Douglas, Jackson, Josephine and Klamath)
- **3 percent was collected in Coastal areas** (Clatsop, Coos, Curry and Lincoln counties)
- **8 percent was collected in Central Oregon** (Crook, Deschutes and Jefferson counties)
- **3 percent was collected at events outside the Portland Metro area.**
- **Less than one percent was collected by direct pickups** from institutional, commercial and industrial entities with large volumes, rather than permanent sites or collection events. (Most of these pickups occurred in Multnomah County)

¹Consistent measures for paint volume were not used for the pilot program and paint collection programs prior to 2010. Some volumes were estimated or converted from weight to volume using different conversion factors; data collected prior to the 2010 pilot project may include products not covered by the PaintCare program (for example, paint related materials like thinners and solvents) and also may include the weight of paint containers. Therefore, comparison between the pilot program and previous efforts is limited.

Figure 4. Gallons of paint collected by region



Evaluation of Paint Collected

Although difficult to compare, the pilot program collected approximately 3 percent more paint than was collected in Oregon in 2008 under municipal household hazardous waste programs. Despite this increase in collection, the volume of paint collected during year one was about 14 percent less than estimated in the program plan (PaintCare, 2010b). Most of the paint was collected in the Metro area and Willamette Valley.

Future program plans should include actions to achieve a higher-percentage capture of available paint, particularly in areas outside the Willamette Valley. The recommendation section in this report details opportunities to increase paint collection.

Disposition of Collected Paint

Collected paint was recycled, reused, landfilled, or used in energy recovery.

Recycling

Recycled paint was mixed and processed for resale as paint by several service providers. Metro was the primary service provider for recyclable latex under contract for the PaintCare Program. Latex paint under the Metro contract was made into new recycled content paint and sold or distributed through a variety of channels.

The majority of collected paint was recycled, likely due to the presence of existing Oregon based latex paint recyclers with available processing capacity. Fifty-seven percent of latex paint was recycled as paint by Metro and Amazon.

Reuse

Paint acceptable for reuse was sold “as-is” at eight Habitat for Humanity ReStores throughout the state, given away, or sold through several local government programs. Paint that is acceptable for re-use is often the lighter colors and highest-quality paint collected in the program. The reusable paint offered for exchange or reuse is not available as feedstock for the recycling process.

Only three percent of latex and three percent of oil-based paint were reused as paint. Fewer than 10 percent of collection locations had shelves for paint exchange; PaintCare reported that it did not recruit retail sites for paint reuse due to concerns about liability. PaintCare offered some collection locations an incentive of \$0.25 per gallon exchanged, but no sites took advantage of this incentive.

Landfill

Paint that was not recyclable or for which PaintCare did not have a readily available market was sent to the Columbia Ridge Landfill in Arlington, Oregon. This landfill is one of a handful nationwide with a special research, development and demonstration permit to test a biodegradation approach to solid waste landfilling. The facility injected the leftover paint into the landfill in order to improve degradation of landfilled wastes (biodegradation) and increase gas recovery. Twenty-eight percent of latex paint was disposed at a landfill in this way.

Reprocessing

Latex paint collected outside the Portland Metro area deemed unsuitable for recycling was sent to Amazon Environmental. Amazon recycled some of this material into recycled content paint, while the rest was used to make either a raw material used in cement manufacture, or a biomass fuel product. Processed Latex Pigment is Amazon's patented process that uses leftover paint to bind dusty, but mineral-rich wastes, such as lime kiln dust, to make a raw material that can replace a portion of shale, clay or limestone, used in the manufacture of cement. (PaintCare, 2011a). Eight percent of latex paint was processed into Processed Latex Pigment, a cement additive patented by Amazon Environmental.

Energy Recovery

Amazon Environmental used latex paint to bind materials such as sawdust for more efficient burning, primarily in cement production. Four percent of latex paint was processed into biomass.

Ninety-seven percent of oil-based paint was bulked for energy recovery (fuel blending).

Figure 5. Disposition of collected latex paint

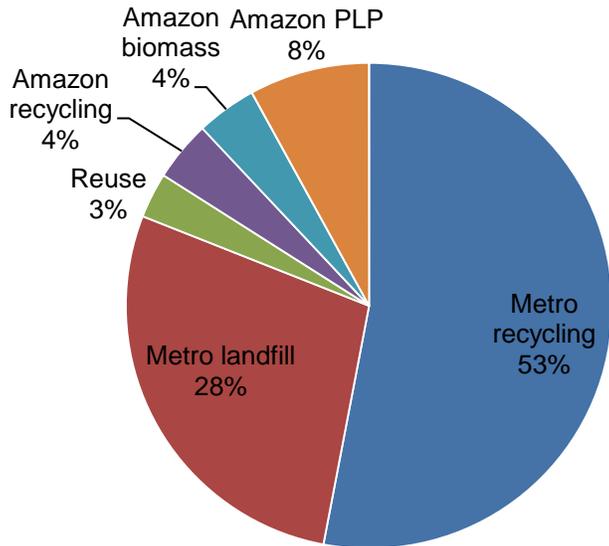
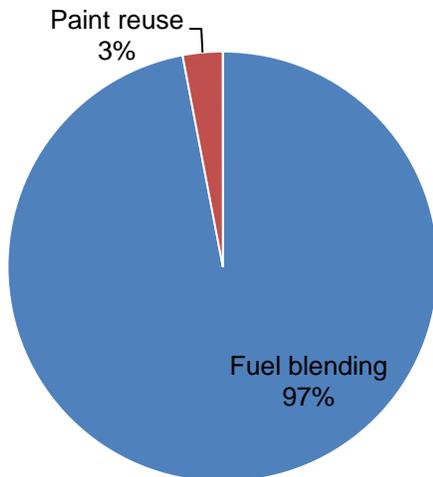


Figure 6. Disposition of collected oil-based paint

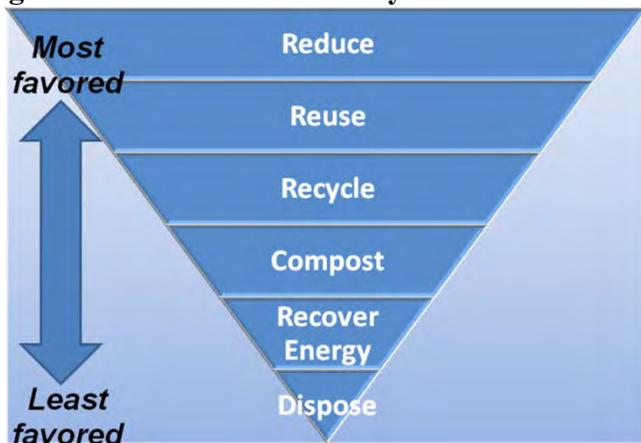


Evaluation of Disposition

The State of Oregon's policy is, after consideration of technical and economic feasibility, to prioritize methods of managing solid waste in Oregon as follows:

- (A) First, to **reduce** the amount of solid waste generated;
- (B) Second, to **reuse** material for the purpose for which it was originally intended;
- (C) Third, to **recycle** material that cannot be reused;
- (D) Fourth, to **compost** material that cannot be reused or recycled;
- (E) Fifth, to **recover** energy from solid waste that cannot be reused, recycled or composted so long as the energy recovery facility preserves the quality of air, water and land resources; and
- (F) Sixth, to **dispose** of solid waste that cannot be reused, recycled, composted or from which energy cannot be recovered by landfilling or other method approved by the Oregon Department of Environmental Quality (ORS 459.015(a)).

Figure 7. Solid waste hierarchy



Oregon DEQ implements this legislative direction using the solid waste hierarchy (illustrated above) to guide policy decisions. When considering the solid waste hierarchy relative to paint:

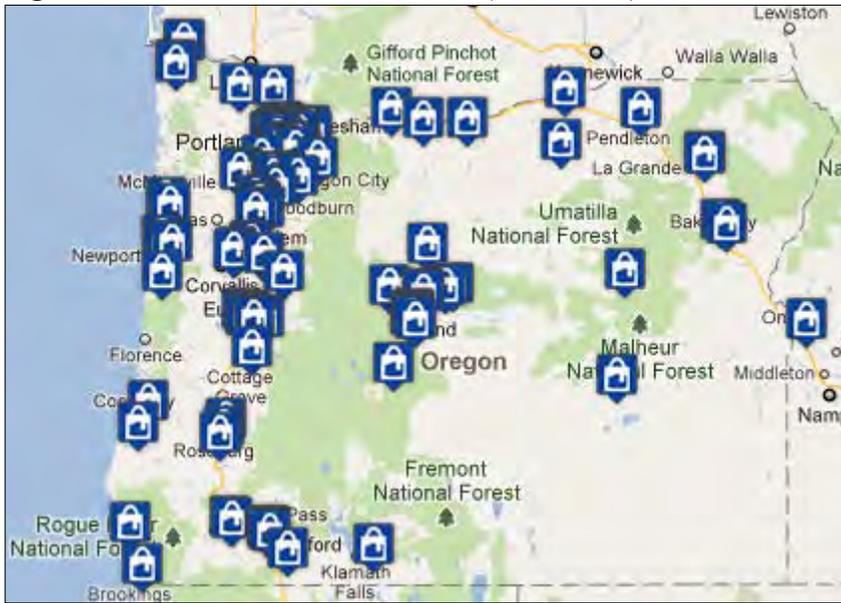
- The most favorable management option is reducing purchase of excess paint. Reduction is tied to education and outreach efforts, described in a following section of this report.
- The second most favorable option is reusing paint that might otherwise become solid waste. **Reuse also has lower management costs than other options.** PaintCare incurred \$2.4 million in transportation and processing costs to collect 469,665 gallons of paint, or \$5.13 per gallon. Reuse provides a much less expensive option.
- When reduction and reuse of leftover paint are not possible, recycling is a good option. Recycling efforts and results were adequate for the program's first year. The pilot program benefitted from existing infrastructure, and in turn provided incentive for innovation in Oregon's paint recycling programs.
- Energy recovery and disposal are less favorable options but play an important role for leftover paint that cannot be reused or recycled.

Collection Locations

The number of paint collection locations in Oregon increased significantly during the first year of the paint product stewardship pilot program. PaintCare established collection sites in three phases over the first six months of the program, as outlined in the approved Oregon Paint Stewardship Pilot Program Plan. Collection sites volunteered to participate in the program, and PaintCare made adjustments to establish additional collection sites after the program was underway. By June 30, 2011 Oregon had 95 paint collection sites located in 28 of 36 counties (PaintCare, 2011c).² Collection locations were not compensated to serve as collection sites and the retail sites had no obligation to participate.

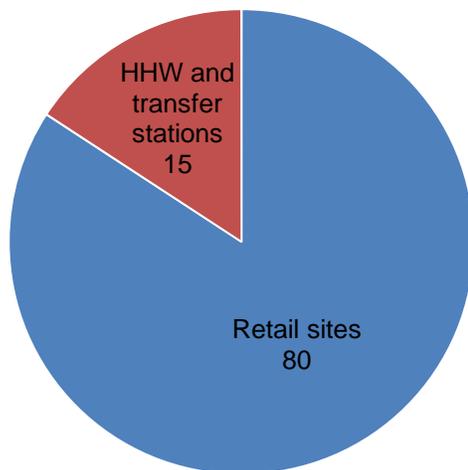
² PaintCare reported that it established 98 sites by September 2011 (PaintCare 2011a).

Figure 8. PaintCare collection sites (June 2011)³



Most collection sites were operated by retail locations such as paint stores and Habitat for Humanity ReStores (PaintCare, 2011c). In addition eight household hazardous waste collection facilities participated. These were located in Clackamas County (Metro South), Multnomah County (Metro Central), Lane, Deschutes, Columbia, Hood River, Wasco, and Marion Counties. Seven transfer stations participated, with five located in Lincoln County, and two located in Coos and Crook Counties. The following figure demonstrates distribution of collection sites.

Figure 9. Number and types of collection sites (June 30, 2011)

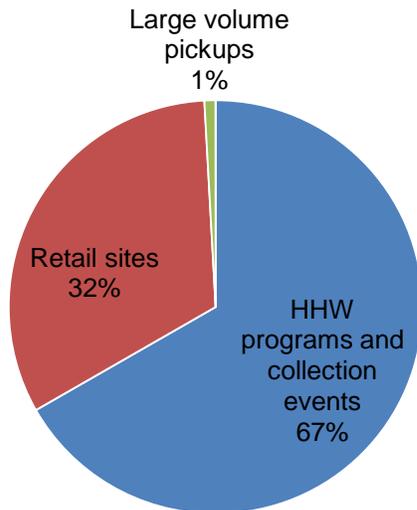


Collection sites were not located everywhere in the state, and other mechanisms were used to fill the gaps in service. PaintCare conducted two paint collection events where a permanent collection site could not be located. Many municipal-led household hazardous waste collection events also accepted paint. Under the pilot program, six counties will be

³ Image from Product Care website, <http://www.productcare.org/Oregon-collection-sites> (2011)

serviced by collection events only (rather than permanent sites).⁴ In addition to permanent collection sites and events, PaintCare offered large volume pick-ups for institutional, commercial and industrial entities that had too much paint to transport to a collection site. PaintCare provided 19 of these pick-ups in year one (PaintCare, 2011a).

Figure 10. Volume of paint collected by site



Retail sites collected approximately 152,300 gallons of paint (32.4 percent of total), household hazardous waste programs collected about 313,315 gallons (66.7 percent of total), and large volume pickups accounted for 4,050 gallons (less than 1 percent of the total) (PaintCare, 2011a).

Evaluation of Collection Locations

Household hazardous waste facilities operated by state and local governments collected more than 60 percent of the paint. The HHW programs, despite representing only 15 percent of the facilities are currently the backbone of the collection system.

Many retail locations volunteered to provide paint collection services during the program's first year, and opportunities exist to continue this trend. DEQ received anecdotal information that additional retailers wanted to participate but were not able to establish collection sites during the first year.

Alternate mechanisms for collecting paint played a useful supporting role. Collection events are not ideal when compared to permanent collection sites, but provided some service where there otherwise would have been none. PaintCare went beyond compliance to offer large volume pickups at institutional, commercial and industrial locations, making it possible for stockpiles of leftover paint to be processed for other uses.

Convenience

Section 4(2)(a) of House Bill 3037 requires the statewide paint stewardship pilot program plan to "provide for convenient and available statewide collection of post-consumer architectural paint in urban and rural areas..." The pilot program successfully increased

⁴ Note that Tillamook County, which had no collection during year one, will have collection 1 day per month during the pilot program's second year.

availability of paint collection sites in Oregon. As of June 30, 2011, approximately 70 percent of the entire Oregon population lived within 15 miles from a paint collection site, compared to 51 percent of the population before pilot program implementation (PaintCare, 2011a).

PaintCare's annual report noted that pilot program collection locations provide a greater level of convenience than pre-program collection service because the majority of sites are open multiple days a week (PaintCare, 2011a). DEQ evaluated hours of operation for permanent sites and frequency of collection events. DEQ's analysis confirmed that many collection sites had "retail hours" (open morning until evening at least five days a week), yet as of June 2011 several gaps in service remained:

- Eight counties had no permanent collection sites (Gilliam, Jefferson, Lake, Polk, Sherman, Tillamook, Wallowa and Wheeler);⁵ and
- Two counties had collection available to most residents only one day per month (Columbia and Hood River).⁶

Evaluation of Convenience

DEQ noted significant differences in service levels in different parts of the state. Statewide estimates indicate that about 95 percent of Oregon residents living in incorporated cities, towns and Census Designated Places and 70.9 percent of all Oregon residents lived within a 15-mile radius of a collection site as of June 30, 2011 (PaintCare, 2011a). Oregonians in several counties had no access to service. Based on this analysis, DEQ does not consider collection sites to meet the statutory requirement and legislative intent for convenient, available service. **Oregonians expect free and convenient collection service, particularly because they pay an assessment when purchasing paint.**

Continued development of additional collection sites will likely increase convenience. For example, this type of collection convenience has been achieved by Oregon's successful E-Cycles (ORS459A.320) program which requires "convenient service in every county in this state and at least one collection site for any city with a population of at least 10,000." The E-Cycles program currently has over 250 collection sites in Oregon.

Education and Outreach

Section 3(2) of House Bill 3037 provides:

"At the time of sale to a consumer, a producer or retailer selling or offering for sale architectural paint must provide the consumer with information on available end-of-product-life management options offered through an architectural paint stewardship pilot program."

Section 4(3) requires the stewardship organization to:

- “(b) Provide for the development and implementation of strategies to reduce the generation of post-consumer architectural paint; and
- (c) Promote the reuse of post-consumer architectural paint ...
 - (4) A stewardship organization shall promote the architectural paint stewardship pilot program and provide consumers with educational

⁵ Polk County is served by the Marion County HHW facility; Sherman County is served by Wasco County HHW facility; and as this report is written, Tillamook County now has collection facility open one day/month)

⁶ A site was created in Hood River County between June 2011 and the time this report was written.

materials describing collection opportunities for post-consumer architectural paint and information promoting waste prevention, reuse and recycling. The educational materials must also make consumers aware that funding for the operation of the architectural paint stewardship pilot program has been added to the purchase price of all architectural paint sold in this state.”

To meet these requirements, PaintCare developed an education and outreach strategy that included the following objectives:

- building awareness of the program among consumers
- identifying what products are included in the program
- identifying collection site locations
- emphasizing the negative environmental impact if leftover paint is not managed properly
- emphasizing the purchase of the correct amount of paint in order to reduce the amount of leftover paint
- promoting the reuse of leftover paint
- promoting recycling and proper disposal of leftover paint (PaintCare, 2010b)

PaintCare implemented its outreach campaign through news releases and purchased advertising on television, radio and in newspapers. PaintCare also distributed point-of-sale materials (counter cards and posters) for use by retailers, produced a number of mass mailings to inform contractors and retailers, produced a website and bilingual toll-free phone number, and participated in eight tradeshow (PaintCare, 2011a).

Evaluation of Education and Outreach

PaintCare conducted two surveys of residents and paint purchasers to evaluate its education and outreach efforts. The Paint Product Stewardship Initiative also interpreted survey results. **These analyses indicate that education and outreach efforts did not generally affect consumer awareness or behavior change (PPSI, 2011).**

Program awareness. Surveys indicated that few respondents were aware of the program (27 percent), or were aware of established drop-off locations to collect leftover paint (31 percent) (PaintCare, 2011b).

Fee awareness. A July 2011 survey indicated that few (less than 11 percent) recent purchasers of paint were aware of the fee (PaintCare, 2011b).

Importance of reducing purchase of excess paint. Messages about the importance of purchasing the right amount of paint were unsuccessful. The vast majority (93 percent) of respondents in a 2011 survey said that the information they saw or heard about the Oregon paint recycling program had no effect on the amount of paint they purchased or planned to purchase (PaintCare, 2011b).

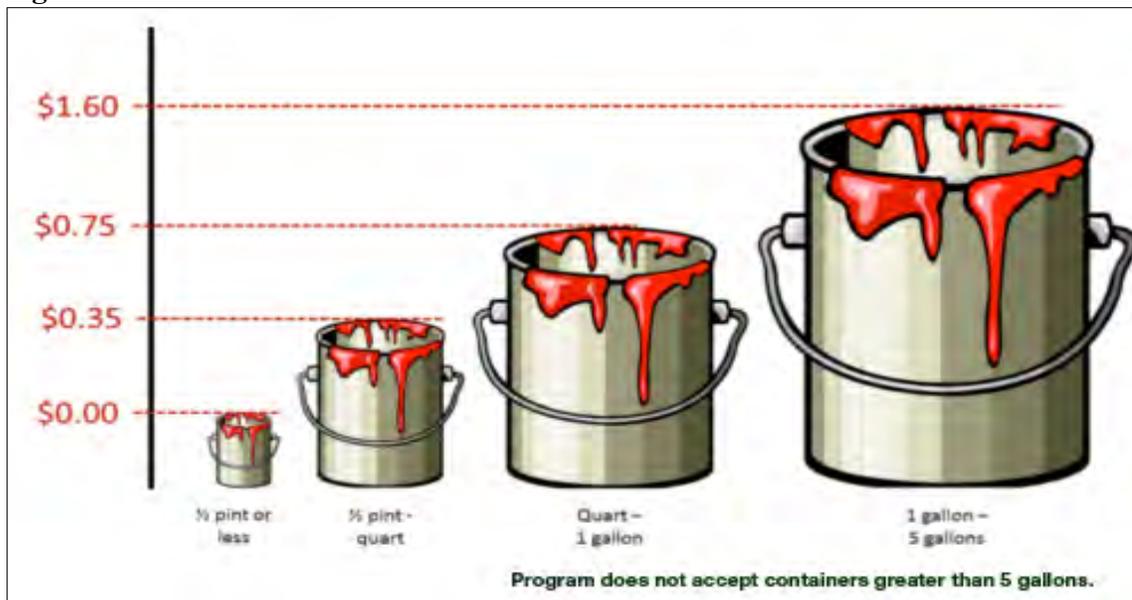
Financial Overview

DEQ reviewed information about the assessment rate, revenue and expenses for program operation.

Assessment Rate

Section 4 of HB 3037 requires that the program plan submitted by the stewardship organization include a funding mechanism whereby each paint producer remits to the stewardship organization an assessment for each container the producer sold to Oregon retailers and distributors. The amount of the assessment submitted by PaintCare was based on a multi-year budget for the duration of the pilot program. The assessment rate is below:

<i>1/2 pint container or less</i>	\$ 0.00
<i>1/2 pint to 1 quart container</i>	\$ 0.35
<i>1 quart to 1 gallon container</i>	\$ 0.75
<i>1 gallon to 5 gallon container</i>	\$ 1.60

Figure 11. Assessment rate

DEQ's conditional approval of the PaintCare plan requires review of the budget and assessment annually. If, as the program progresses, it appears that the assessment rate is insufficient to cover program costs, or substantially exceeds program costs, PaintCare may submit a request to Oregon DEQ to modify the assessment rate.

Evaluation of Assessment Rate

The fee assessed on new paint purchases was reasonable for consumers. In an August 2010 survey of Oregon residents, most surveyed (73 percent) indicated that the fee was reasonable while a few (23 percent) indicated it was not reasonable (PaintCare, 2010a). The overwhelming majority (93 percent) of paint purchasers surveyed answered that the fee did not have any impact on the quantity of paint they purchased most recently (PaintCare, 2011b).

Accounting of Assessment Fees Paid to PaintCare

Program expenses fall into two main categories: program delivery expenses and administrative costs. Revenue came only from the assessment paid on purchase of new paint. Figure 12 outlines the costs for these services as well as a total of the program costs for year one of the Oregon PaintCare Program.

PaintCare received about \$4 million in revenue from the paint recovery fee assessment and spent more than \$3.7 million to deliver the program in its first year. The majority of expenses were attributed to program delivery (nearly \$2.8 million). Program delivery expenses included collection support (\$7,590), transportation services, processing services, including reuse, recycling and proper disposal (\$2,389,721) and communications including marketing, advertising, website support, a national 1-800 number and point-of-sale materials (\$324,796). Statewide baseline information regarding the costs to collect paint under previous programs is not available.

Administrative expenses accounted for about \$1 million (27.6 percent) of PaintCare's costs. Administrative expenses included pre-program development costs expended before the program's July 1, 2010 start date by Product Care and the American Coatings Association (\$459,677); management fee service payments (\$273,476) to Product Care, the American Coatings Association and the Oregon DEQ; legal and banking fees (\$132,899); program insurance (\$68,171); and advanced development costs after July 1, 2010 (\$105,324).

Figure 12. PaintCare profit and loss (Oct. 1, 2009 – June 30, 2011)

Revenue (from assessment)	4,021,565
Administrative Expenses	
Pre-program development costs	459,677
Management fees	273,476
Legal & Bank fees	132,899
Program insurance	68,171
Advanced development costs	105,324
Total Administrative Expenses	1,039,547
Program Delivery Expenses	
Collection support	7,590
Transportation & processing	2,389,721
Communications	324,796
Total Program Delivery Expenses	2,722,107
<u>Total Expenses</u>	<u>3,761,654</u>
Net Assets	259,911

Evaluation of Administrative Fees Paid to PaintCare

PaintCare reported that the assessment adequately covered its cost of operating the program during year one, and determined that the surplus realized in the first year is not enough to reduce the assessment rates. PaintCare stated that the surplus will be carried over into year two and used for program costs (PaintCare, 2011a). PaintCare will re-evaluate rate structure at the end of year two. DEQ agrees with this approach.

Cost to Operate the Program

PaintCare estimated that program delivery cost \$7.03 per gallon of paint collected (PaintCare, 2011a). This estimate does not include pre-program development costs or collection costs. Complete information about the total cost of operating the program is not available because financial reports do not detail the cost of collecting leftover paint. Calculating a value for collection costs is complex. Some variables such as estimating the cost of labor are relatively straightforward, while other items such as valuing the loss in building space that is used for storing waste paint and the percent of overhead expenses (e.g., insurance and administrative) that should be attributed to the collection are more challenging to estimate. PaintCare did not reimburse collection sites for these costs during the pilot program. Due to this omission, the program's actual costs are higher than reported here.

Evaluation of Cost to Operate the Program

More information about collection costs is needed to evaluate whether full costs of program expenses exceed revenue.

Accounting of Administrative Fees Paid to DEQ

Section 11 of the Paint Product Stewardship Law requires this legislative report to include an accounting of the administrative fees paid by the producers to the Department of Environmental Quality.

DEQ received \$20,000 in Paint Product Stewardship Fees over two years to provide program oversight. Most of DEQ's expenses were related to staff costs such as salary (\$78,126). The remaining expenses were for legal fees (\$14,741). Expenses exceeded revenue (\$72,867).

Evaluation of Administrative Fees Paid to DEQ

Administrative fees paid to Oregon DEQ did not cover its administrative costs. The funding mechanism established in HB 3037 section 4(2)(c), the uniform architectural paint stewardship assessment for a paint sold in the state, requires the department to actively supervise the conduct of the stewardship organization. This required oversight accounts for a significant portion of DEQ administrative costs.

Figure 13. Administrative Fees paid to DEQ

Revenue	
Paint Product Stewardship Fees	20,000
Expenses	
DEQ Staff Costs	78,126
Legal Fees	14,741
<u>Total DEQ Expenses</u>	<u>93, 257</u>
Total Deficit	72,867

Other Considerations

Reporting

PaintCare submitted its annual report shortly before DEQ began drafting this legislative report, prompting DEQ to include suggestions regarding future annual reports in the recommendations section of this report.

Input from Stakeholders

Oregon's paint stewardship pilot program continues to attract local and national interest. Many stakeholders submitted input to DEQ about the program. These letters are included in Appendix 3.

DEQ Recommendations

House Bill 3037, the legislation launching the paint product stewardship program, established a pilot for architectural paint manufactures to finance and manage an environmentally sound, cost-effective program. As the first of its kind in the nation, the Oregon Paint Product Stewardship Program was designed to act as a state-wide demonstration program. The pilot has served as a means to work through critical issues and provide information needed to develop a functional, fully funded, environmentally sound, cost-effective, and nationally-coordinated leftover paint management system. House Bill 3037 was drafted broadly with general language to allow flexibility in the pilot before Oregon and other states prepared permanent legislation for such programs.

DEQ believes the Oregon paint stewardship pilot program sets the foundation for a valuable long-term product stewardship program. **DEQ thus recommends that the Legislature extend this program indefinitely, taking into account data from subsequent years of the pilot program and the following considerations.** The Oregon paint stewardship pilot program currently “sunset” in June 2014. Legislation to amend the statute is required no later than 2014 to provide uninterrupted service in Oregon.

Based on information in PaintCare's 2011 annual report, EPA evaluation, input from stakeholders and experience providing oversight of the program in the first year, DEQ recommends the following changes be made in a permanent program. The recommended changes would improve program function and efficiency for the benefit of consumers buying paint, the paint industry, Oregon's environment, and DEQ by providing clear standards, goal, and procedures.

1. Improve collection convenience

The statute requires the program to “provide for convenient and available statewide collection of post consumer architectural paint in urban and rural areas of the state.” [Section 4(2)]. In practice this language has proven to be too general to provide adequate guidance to both DEQ and producers; it has resulted in problems with significant differences in service levels in various parts of the state. **Future legislation should ensure that all Oregonians have reasonable access to paint collection by providing a collection convenience standard.** A standard would provide clarity and certainty to producers, DEQ, local governments, and Oregon residents.

The standard should be established in statute and include specific criteria about the number of collection sites, based on geographic distribution of the population at the county level, including requirements for minimum operating days per month and hours per day. Criteria for the convenience standard should address unique paint program needs but may be similar to the Oregon E-Cycles program convenience standard. DEQ recommends using a Geographic Information Systems model to determine optimum collection site placement.

House Bill 3037 is silent regarding requirements for collection site infrastructure. PaintCare selected sites for the pilot program using a combination of existing household hazardous waste collection facilities and volunteer retail outlets. The local HHW

programs allow for one-stop management of all household hazardous waste as well as the capacity to collect large volumes of materials. Retail outlets are often more convenient for customers and provide collection sites in many more locations. However, PaintCare has indicated that not all retail outlets seeking to participate may be included in the program because of budget constraints. Therefore, DEQ recommends that **the statute also provide that in areas where collection convenience standards are not met, the permanent program should allow additional retailers to participate.**

2. Ensure full costs of program activities are covered

DEQ interprets the intent of HB 3037 to be that the per-container paint assessment covers the cost of collecting, transporting and processing the post-consumer architectural paint managed through a statewide architectural paint stewardship program. The program implemented by PaintCare does not cover the cost of collecting the paint at collection sites, however. While local HHW collection programs already collecting paint in Oregon realized significant savings as a result of PaintCare paying for transportation and disposal costs, expenses related to collecting the paint such as labor and storage space were not covered.

Not compensating for collection costs created an externality paid by collectors who participated in the program. Covering all costs is an essential element of a successful long-term program providing all collectors with the incentive to do not only a minimal job, but also a good job over the long term. If costs of paint collection were covered, then collectors would also have an incentive to bring in more paint. Finally, keeping a diverse system of collectors motivated in the program will provide continuity, convenience and a stable program. While the addition of compensation for collection costs will add to the program's overall cost, these costs are not significant and will substantially increase the program's stability and effectiveness.

For a permanent paint product stewardship program, DEQ recommends that collection costs be included in the per-container paint assessment and the stewardship organization be required to pay fair compensation for collection costs to collection sites. This is consistent with the Oregon E-Cycles program, where collection site service providers are reimbursed for their services on a per-pound basis as negotiated through their contracts or agreements. It is also consistent with intent of the National Paint Product Stewardship Initiative Memorandum of Understanding (PPSI, 2007). The memorandum anticipated the need to "negotiate agreements with existing and additional collection sites to fairly compensate them for their efforts." In order to track this information, the producers' plans and annual reports should include data about (a) detailed costs of collection, (b) other external costs not currently being covered by the assessment, and (c) who incurs the cost.

Section 9 of HB 3037 directs DEQ to charge fees to be paid by the stewardship organization for administering the law. DEQ's cost of administering the paint stewardship program exceeds the \$10,000 per-year administrative fees currently provided (see Financial Overview section above). **Thus the permanent program should impose administrative fees in an amount sufficient to cover DEQ's full costs of administering and enforcing the program.**

3. Establish program measures to ensure accountability

The current law requires paint manufacturers to finance and manage an architectural paint stewardship pilot program. The program must include strategies to reduce the generation of leftover paint, to promote reuse and to manage the paint at end of life. The law however, does not establish measures to guide the stewardship organization, to evaluate the program or to provide guidance to DEQ in its oversight role. Therefore, **the permanent program should require measures for the program either in statute or in the DEQ-approved program plan.** Program measures will ensure accountability of the stewardship organization.

Specific measures should be written after further data gathering and pilot program evaluation and be based on the statutory solid waste management hierarchy. Generally, measures might include setting levels of service or performance in the following areas:

- Generation of post-consumer (leftover) paint
- Reuse of post-consumer (leftover) paint
- Collection convenience and volume
- Rate of recycling of collected latex paint
- Consumer education and outreach
- Continuous program improvement

The measures should include a baseline and be reported in the annual reports. Consistent, standardized metrics should be established (for example including standard conversion factors for calculating gallons of paint collected). PaintCare and DEQ will be able to use these measures to continue program oversight.

4. Amend annual report requirements

Current law requires that the stewardship organization (PaintCare) submit a report to the director of DEQ no later than September 1st of each year and lists information that the report must contain. The permanent program should be changed to:

- Extend the deadline for the report to October 1st of each year to provide additional time for the stewardship organization to compile and analyze program data
- Remove the provision in section 6(8) requiring an analysis of the environmental costs and benefits of collecting and recycling latex paint. This requirement was intended only on a one time basis for the pilot program
- Require reporting on measures
- Require the stewardship organization to identify changes needed to improve program operations in the following year and how those changes will be implemented
- Require reports to show that the stewardship organization has evaluated program effectiveness at the site and county levels. This evaluation could compare total gallons collected per site and per county with statewide averages. For locations with well-above or below-average collection rates, the report could examine differences in operating hours, population served, and distance to nearest site, and recommend changes as appropriate

5. Expand scope of covered products to include aerosol paints

Aerosol paints (spray paints) were not explicitly included in the 2009 legislation in order to make the pilot program simpler, with the intent to add them after the pilot. **While the general language of HB3037 would allow aerosols to be included, the permanent program should specifically include aerosol paints.**

6. Clarify and strengthen requirements for education and outreach

Requirements for education and outreach exist in several sections of HB 3037 including making information available at time of sale regarding end-of-life management options, implementing strategies to reduce generation, promoting reuse, and ensuring awareness of the funding mechanism. **DEQ's evaluation of program implementation during the pilot program's first year indicates a need to improve education and outreach.**

Improvements should include:

- Using targeted messages for key demographic groups
- Focusing education on prevention and reuse
- Increasing outreach in areas with lower paint collection volumes based on annual report
- Ensuring all paint retailers have adequate supply of point-of-sale materials
- Clarifying retailer responsibility for education

7. Make oversight and process changes

Several general oversight and process changes would improve the functioning of the program. Changes to the statute relative to DEQ's oversight should include:

- Requiring annual plan approval unless DEQ determines a different time frame is appropriate
- Requiring plan to be resubmitted for re-approval upon any significant material change
- Requiring more detailed description of program costs to allow DEQ to adequately supervise the conduct of the stewardship organization's use of the assessment
- Clarifying violations and penalties
- Providing process for changes to the per-container paint assessment
- Providing a clear process for continued stakeholder involvement

8. Consider changing the program funding mechanism

The current law requires that the per-container assessment be added to the cost of all architectural paint sold to Oregon retailers and distributors, and that the assessment be added to the cost of paint sold in the state. This assessment or eco-fee must be approved by the DEQ director. Approval of the fee requires DEQ to actively supervise the stewardship organization. **Before the program is made permanent, DEQ should consider replacing the assessment with a funding mechanism that internalizes the cost of program to reduce DEQ oversight costs.**

Appendix 1 – June 28, 2010 DEQ Approval of PaintCare's Oregon Paint Stewardship Pilot Program Plan



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

September 29, 2011

The Honorable Jackie Dingfelder
Chair, Senate Committee on Environment & Natural Resources
900 Court St. NE, S-407
Salem, OR 97301

Re: Architectural Paint Stewardship Pilot Program / Legislative Report

Dear Senator Dingfelder:

As requested, the Department of Environmental Quality (DEQ) is submitting this letter as a first step in complying with HB 3037. This legislation, passed in 2009, requires DEQ to provide the Legislature with a report on the Architectural Paint Stewardship Pilot Program by October 1, 2011. This letter is intended to serve as an initial report.

This report will be supplemented by a second and final report that fully evaluates the program and provides legislative recommendations. As we explained to the committee, DEQ received the annual report from PaintCare on September 1, 2011 (available at <http://www.deq.state.or.us/lq/pubs/docs/sw/PaintProdStewardshipPilotPlanAnnualReport.pdf>). With only 30 days until the deadline, we asked to delay the legislative report to allow for a more complete evaluation of the program and adequate public comment on the findings and recommendations. We have scheduled a stakeholder meeting on October 18th and will keep the public comment period open until November 1, 2011.

DEQ intends to deliver the final report by November 15, 2011. The report will recommend making the program permanent and address whether to increase requirements for collection convenience, the adequacy of the administrative fees paid to DEQ and amending report deadlines. On these issues and others, the final report will include recommendations that may be considered in future legislation.

We appreciate the committee's acknowledgment that HB 3037 unintentionally limited public comment on the report to the Legislature. We trust that the submission of this initial report today and the final report by November 15, 2011 will demonstrate our efforts to honor legislative intent while ensuring a fair and reasonable public process.

Sincerely,

Wendy Wiles
Administrator, Land Quality Division

CC: Dick Pedersen, Director, Oregon Department of Environmental Quality



Appendix 2 – Sept. 29, 2011 Memo to Legislature



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

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June 28, 2010

Alison A. Keane
PaintCare, Inc.
1500 Rhode Island Avenue NW
Washington, DC 20005
akeane@paint.org

RE: DEQ Approval of PaintCare's Oregon Paint Stewardship Pilot Program Plan

Dear Ms. Keane:

The Department is conditionally approving the four-year Oregon Paint Stewardship Pilot Program Plan dated June 21, 2010. The Department has reviewed the plan and paint stewardship assessment and finds both are sufficient as described for approval with the following conditions:

1. PaintCare will provide statewide collection service as described in the Plan for Phase I by July 1, 2010.
2. As part of our oversight, DEQ will review program performance as described in the required annual reports and may require plan amendments if necessary to ensure the program as implemented complies with the statute. DEQ will pay particular attention to the evaluations of the following in the annual report due September 1, 2011:
 - Adequacy of the scope and budget for the PaintCare outreach and education program [Section 3(2), Section 4(3&4), and Section 6(7)];
 - Adequacy of the collection system including collection site convenience and availability, analysis of gaps, review of convenience criteria, and establishment of baseline [Section 4(2)];
 - Performance of the paint processing service providers and establishment of baseline levels for recycling [Section 4(3)(c) and Section 6(3)]; and
 - Adequacy of the PaintCare budget to recover, but not exceed, the costs of the program and the adequacy of the fee structure [Section 4(2)(c)].

REGULATORY EFFECT OF THIS LETTER

This letter constitutes conditional approval of the PaintCare Plan and is a final agency action pursuant to Oregon Laws 2009 Chapter 777. Failure to follow the approved plan or to submit amendments DEQ may require as a condition for this approval is a violation of Oregon Laws 2009 Chapter 777 and may result in enforcement action.

If you have questions about this letter or the terms of the approval, please contact Abby Boudouris at 503-229-6108 or boudouris.abby@deq.state.or.us. I look forward to working with PaintCare for a successful paint stewardship program.

Sincerely,

Wendy Wiles
Land Quality Division Administrator

Cc: Dick Pederson, Director
Abby Boudouris, SW Program

Appendix 3 – Stakeholder Input

Input regarding DEQ Draft Legislative Report

- A. **Oregon Refuse and Recycling Association** letter to Oregon DEQ
RE: Comments to DEQ Draft Legislative Report on Oregon's Paint Product Stewardship Law posted on 10/13/11. Nov. 1, 2011.
- B. **Metro** letter to Oregon DEQ
RE: Comments on DEQ Draft Report on Paint Product Stewardship Law. Nov. 1, 2011.
- C. **Northwest Product Stewardship Council** letter to Oregon DEQ
Nov. 1, 2011.
- D. **American Coatings Association** letter to Oregon DEQ
RE: Draft Legislative Report – Oregon's Paint Product Stewardship Law. Nov. 1, 2011
- E. **PaintCare** letter to Oregon DEQ
RE: Draft Legislative Report – Oregon's Paint Product Stewardship Law. Nov. 1, 2011
- F. **Behr Process Corporation** letter to Oregon DEQ
RE: Draft Legislative Report – Oregon's Paint Product Stewardship Law.
November 1, 2011
- G. **Dunn-Edwards Corporation** letter to Oregon DEQ
RE: Draft Legislative Report – Oregon's Paint Product Stewardship Law. Nov. 1, 2011
- H. **AkzoNobel Paints** letter to Oregon DEQ
RE: Draft Legislative Report – Oregon's Paint Product Stewardship Law. Nov. 1, 2011
- I. **Miller Paint Company** letter to Oregon DEQ
RE: Draft Legislative Report – Oregon's Paint Product Stewardship Law.
November 1, 2011
- J. **Sherwin-Williams** letter to Oregon DEQ
RE: Draft Legislative Report – Oregon's Paint Product Stewardship Law. Nov. 1, 2011

- K. **Kelly-Moore Paint Company** letter to Oregon DEQ
RE: Draft Legislative Report – Oregon's Paint Product Stewardship Law. Nov. 1, 2011

- L. **City Garbage Service** letter to Oregon DEQ
RE: draft paint program report for the Oregon legislature
Nov. 7, 2011

Input regarding first year of Oregon Paint Stewardship Pilot Program, received before PaintCare Annual Report and DEQ Draft Legislative Report

- M. **Bob Fankhauser** letter to Oregon DEQ
RE: Concerning the Oregon Paint Program. Oct. 18, 2011

- N. **Oregon Refuse and Recycling Association** letter to Oregon DEQ
RE: Year One Review of Oregon Paint Stewardship Pilot Program. July 1, 2011.

- O. **PaintCare** letter to Oregon Refuse and Recycling Association
RE: ORRA's Year One Review of the Paint Stewardship Pilot Program in Oregon. July 18, 2011.

- P. **Association of Oregon Counties** letter to Oregon DEQ
RE: Oregon's Paint Stewardship Pilot Program. July 25, 2011.



OREGON REFUSE & RECYCLING ASSOCIATION

November 1, 2011

Abby Boudouris
Household Hazardous Waste Coordinator
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

sent via email to:
boudouris.abby@deq.or.us

Re: Comments to DEQ Draft Legislative Report on Oregon's Paint Product Stewardship Law posted on 10/13/11

Dear Abby:

Thank you for the opportunity to comment on the DEQ Draft Legislative Report on Oregon's Paint Product Stewardship Law (herein referred to as "Report"). As you know, the Oregon Refuse & Recycling Association (ORRA) is the statewide trade association representing the majority of private solid waste management companies in Oregon. ORRA members collect and process most of Oregon's residential and commercial refuse and recyclables, as well as operate material recovery facilities and many of Oregon's municipal solid waste transfer stations and landfills. ORRA, and its members, have participated in the stakeholder meetings and have submitted informal comments at these meetings. Following are ORRA's comments to the Report that was posted for review on October 13:

1. "Background," page 2: ORRA proposes the following changes to the "Background" provided on page 2 of the Report:
 - HB 3037 requires the paint pilot program to sunset in 2014, however the Report indicates that the program will run "at least through 2014." This discrepancy should be corrected to make it clear this date cannot be extended unless done through legislation.
 - The Report states that consumers pay a "small" fee to cover program costs when they purchase paint from a retailer. The term "small" is subjective and should be deleted. In the same paragraph, the Report indicates that persons are able to drop of their leftover paint at collection locations "for no charge." This is not accurate since consumers are required to pay a fee at the point of purchase and therefore the program is not free of charge.
2. "Results and Evaluation," page 6: The Report states that "the pilot program was successful, resulting in the collection of over 450,000 gallons of leftover paint at more than ninety sites." (Report, page 6) **How does DEQ define "success"? What**

information and data does DEQ rely on to determine the overall success of the pilot program? Data obtained from the first year of the program shows there are many areas in need of improvement:

- The pilot program collected only 3 percent more paint than was collected in Oregon in 2008 under municipal household hazardous waste programs. (Pages 6-7)
- More than one in four gallons (28%) of all paint latex paint collected through the program is still being landfilled. (page 8)
- Transportation and processing costs is \$5.13 per gallon of paint collected through the program. (Page 10) The overall program cost is \$7.06 per gallon of paint collected through the program. (2011 PaintCare Annual Report, page 26)
- There are 95 paint collection sites located in 28 of 36 counties (page 10). Compare this with over 200 collection sites under the Oregon E-Cycles Program.
- Eight counties still do not have permanent collection sites but customers are still required to pay the mandated fee when purchasing paint. (page 13)
- Only 27 percent of Oregonians are aware that the paint program exists. (page 14)
- Over 27 percent of the assessment fee paid by consumers covers the programs administrative costs. (page 15)
- Actual costs of the program are higher than reported because PaintCare does not reimburse collection sites for the costs incurred during collection, such as labor, loss of building space, advertising and printing costs by local solid waste and recycling haulers trying to educate their customers about the program, etc...(page 16)

ORRA recognizes that PaintCare has only been implementing this program for one year and that it is the first of its kind in the United States and they should be commended for this effort. However, the data outlined in the Report demonstrates that progress needs to be made in several areas of the program and the Report should explain how DEQ determined the program's success.

3. "Recommendations," page 18: The Report does a thorough job of outlining areas of improvement for the pilot program, however **ORRA does not agree with DEQ's recommendation that the Legislature extend the program indefinitely based on the limited data from the pilot program's first year** and given the much needed areas of improvement on information provided in the Report that is outlined in Section 2 of these comments. ORRA requests that DEQ consider adding the following recommendations to the Report:

- Require permitting of collection sites: It is ORRA's position that a solid waste permit is required for collection sites to take back paint. OAR 340-093-0050(3)(e) states that facilities that receive only source-separated recyclable materials are exempt from permitting requirements unless DEQ determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health.

However, there is no such exemption for facilities that collect solid waste for disposal. Because the program's collection sites accept materials destined for solid waste disposal, a solid waste permit is required pursuant to OAR 340-093-0050(2)(f) which requires permits for transfer stations. Stores may be exempt when they handle their own products, but when they accept material from the public, it's not their waste anymore. Incoming materials may have been contaminated or mixed with other products, increasing the potential threat of adverse impact.

- Collection site training. The Paint Stewardship Plan states that collection sites will receive training and site visits from the program but there is no mention of any formal training that will be required from regulating agencies, such as Oregon OSHA or Oregon DEQ. Similar activities done at transfer stations would require formal staff training (from entities like North American Hazardous Materials Management Association), amending permits, and updating operations plans. ORRA believes this demonstrates a general lack of oversight of the collection sites from regulating agencies and requests that this issue be further evaluated.
- Improve education and outreach. PaintCare's Portland-based media strategy did not accomplish its objectives, was not state-wide in its reach, or specific enough in directing people to appropriate local collection sites. According to the Paint Stewardship Plan, all retail locations were required to provide information at the point of sale explaining the assessment and notifying customers of the local collection sites. No attempts were made to reach out to the significant number of non-English-speaking residents of the state. DEQ should establish clear guidelines, evaluate PaintCare's efforts by watershed, and recommend the reduction or elimination of the assessment in areas where the collection or education efforts fall short.
- Reduce administrative costs. PaintCare's administrative expenses during the first year of the pilot program were 27.6 percent of the overall cost of the program. In other words, 27.6 percent of the fees consumers pay to PaintCare are going towards costs other than diverting paint from the waste stream. Even with the "year zero" costs excluded, the administrative costs were 14.4%, significantly higher than the norm for our industry. ORRA recommends that a percentage cap – 12%, for example - should be placed on administrative costs.
- Disclose certain program costs. Full disclosure to DEQ of program costs, including pre-program expenditures, should be required. PaintCare should be required to illustrate how costs were allocated for shared staff, and how staff accounted for time spent on efforts to expand the program to other states. In addition, any expenses related to PaintCare's lobbying efforts to significantly alter the reporting requirements during the 2010-11 Legislative session should be identified and excluded from the allowable expenses when determining the

appropriateness of the assessment. PaintCare should be required to demonstrate that its expenses were reasonably and prudently incurred in delivering the program.

- Aim at overall reduction of cost/gallon goal. The 2011 Paint Program Annual Report states that the pilot program cost \$7.03 per gallon of paint recovered under the program. (Page 26) A goal of the program should be lowering the cost per gallon of paint collected under the program.

Thank you for this opportunity to comment. We look forward to providing additional comments as the pilot program progresses.

Sincerely,



Holly Sears
Governmental Affairs Director

c: ORRA Governmental Affairs Committee

TO: Abby Boudouris
Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland OR 97205
503-229-6108
boudouris.abby@deq.state.or.us

FROM: Jim Quinn
Hazardous Waste Program Manager

Scott Klag
Senior Planner

Metro
600 NE Grand Ave.
Portland, OR 97232

RE: Comments on DEQ Draft Report on Paint Product Stewardship Law

Thank you for the opportunity to comment on the Department's Draft Report on Oregon's Paint Product Stewardship Law. Our comments are divided into two main parts: first, on the "Results and Evaluation" portion; and second on the "Draft DEQ Recommendations"

In general, we will direct our comments to the draft recommendations as they encompass many of the issues addressed in the "Results and Evaluation" section of the report.

Part 1 – Comments on "Results and Evaluation of Year 1 of the Pilot Program"

The information provided in this section is very valuable. Together with the information provided in the Paint Care Annual Report and the EPA evaluation referenced in the report, there is a tremendous amount of information available about the first year of the program.

1. Information on paint collected

The presentation about the amount of paint collected might be better presented. We recognize there are difficulties with comparing what's being collected under the program now, with what was collected previously under various programs around the state. However, perhaps a simple table that could be used this year and then also used in forthcoming years could be developed.

2. Disposition of material

As we mentioned at the stakeholder's meeting on this draft report and DEQ staff acknowledged, the text needs to be clarified so that the landfill biodegradation process is better described. The mixing of process washwater with paint occurs at Metro's paint facility not at the landfill.

3. Reuse

A more cost effective approach for a large paint recycler (e.g., Metro under contract with Paint Care) is to include prime recyclable paint in the recycling process rather than diverting it to reuse. This is due to several factors including the reduction in revenues from recycled paint sales and a decreased ability to offer consumers the more desirable colors.

4. Benefit of pilot program to local governments and consumers

As a result of the paint stewardship program, the Metro region has more 13 new retail collection opportunities for consumers – however, also note our comment regarding collection convenience. (Below in Part 2 #2.) Metro now also receives substantial payment for processing paint for recycling and significantly reduced management costs for solvent based paints collected in the region. (The total benefit to our region is in excess of one million dollars.) The draft report should include information such as this about the benefits of the program to local jurisdictions in the state.

Part 2 – Comments on “Draft DEQ Recommendations”

1. Make the paint product stewardship program permanent

This DEQ report makes a number of recommendations about improving the program that we concur with. There are also several areas where we’d like to see more discussion over the next year or so. Presuming satisfactory resolution of those issues, which we are optimistic can be achieved, we agree strongly with the draft report’s recommendation that the program should be extended indefinitely.

In addition, as the program sunsets in June 2014, bringing this before the 2013 legislative session would be the preferred approach rather than waiting until the 2014 session.

2. Improve convenience of collection opportunities

We have previously brought the issue of the need for some additional collection opportunities in the Metro area before the DEQ and Paint Care. We generally agree with the draft report’s recommended approach to set a specific standard in statute based on geographic distribution of population. We will, of course, want to see exactly what that might be and how it would help with the coverage problems we’ve seen in the region.

However, we also think that performance goals regarding paint collected and perhaps consumer satisfaction may need to play a role. Giving the DEQ the ability to work with Paint Care in the plan approval process may also need to be part of the solution to the convenience standard issue.

3. Ensure architectural paint stewardship assessment covers cost of program activities

We concur with the report's observation that not paying for collection costs is a significant burden to some HHW programs that want to participate in the Paint Care program. Under the pilot program, the assessment *can* be used to pay for collection costs. However, because the current convenience standard is inadequate, payments for collection have not been used as a tool to get more sites.

We concur with the draft report's recommendation that non-retail collection sites be given fair compensation for collection costs. This should help provide part of the solution the service level issue. It is also consistent with the view that the assessment was not just available to cover collection costs – but would actually be used for that. We also recognize that there will be discussion necessary among stakeholders about what fair compensation entails and how such a provision would work together with improved convenience standards and the establishment of performance goals.

4. Establish program goals

We strongly agree that a permanent program should have performance goals. We also concur that any goals should strive to be consistent with the state waste reduction hierarchy. DEQ should examine the approach proposed in previous product stewardship legislation. (For example, the 2011 Mercury Lighting bill SB 529.) Under that approach, for two years industry establishes non-enforceable performance goals consistent with legislative guidelines. In the third year, DEQ establishes enforceable ones.

5. Amend annual report requirements

We support the recommendations in this section as they look reasonable and valuable.

Several of the recommendations in this section might best be described as directing the paint stewardship organization and the DEQ to take a “continuous improvement” approach to the program. Other recommendations, including #8 on education and outreach, and #9 on oversight – also take that perspective. When the time comes to draft specific legislative language DEQ may wish to consider how that philosophy could best be reflected in statute.

6. Expand scope of covered products

We agree with adding aerosol (spray) paints to the permanent program.

7. Expand opportunities for collectors

We are interested in the concept presented in the report of allowing additional retailers to join in the program if certain other program goals are not met. This idea should be part of a wider discussion of convenience standards and performance goals.

8. Clarify and strengthen requirements for education and outreach

We strongly agree with the points made in this section. We have heard very similar concerns from local government partners in the Metro region. We also agree that these issues should be addressed now and not just wait for statutory changes to the program down the road.

9. Make oversight and process changes

We support the recommendations in this section. In particular, requiring additional transparency about the assessment is very appropriate.

10. Consider changing the program funding mechanism

We agree that the eco-fee assessment is an important issue that requires discussion. We also are concerned about the additional oversight from DEQ that the assessment requires and resources DEQ must devote to that.

Thank you for this opportunity to comment.

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Northwest Product Stewardship Council

Abby Boudouris
Oregon Department of Environmental Quality
811 SW 6th Ave
Portland, Or 97204

November 1, 2011

Dear Ms. Boudouris,

The following comments on the draft report and recommendations titled *Oregon's Paint Product Stewardship Law (Oct. 2011)* are submitted on behalf of the Washington state members of the Northwest Product Stewardship Council's Steering Committee. The Oregon members have recused themselves from these comments as they are directly involved in the program and /or development of the report.

The Northwest Product Stewardship Council (NWPSC) is a coalition of government organizations in Washington and Oregon that operates as an unincorporated association of members who work together to establish product stewardship programs in the Northwest. We appreciate this opportunity to comment and recommend revisions for permanent programs based on the lessons learned from the nation's first paint product stewardship pilot program.

First we would like to applaud the American Coatings Association, the Oregon Legislature, and the Oregon Department of Environmental Quality for a job well done. As we explain below, the Oregon legislation and resulting program, Oregon PaintCare, was envisioned as a pilot and test for the rest of the nation. We thank Oregon for taking the lead when the original pilot state, Minnesota, was unable to serve this function due to vetoes of enabling legislation by then Minnesota Governor Pawlenty. Oregon passed the enabling legislation and the American Coatings Association and Oregon Paint Care established a successful, respectable and first-of-its-kind paint take-back program in the U.S. Oregon DEQ has done an exceptional job at providing opportunities for stakeholders inside and outside the state of Oregon to track progress of the pilot and provide comment. You have taken your roles seriously and preformed excellently. Those of us who have been part of the Paint Product Stewardship Initiative and its resulting Memorandum of Understanding (MOU) have had the opportunity to observe and learn from Oregon's work.

A number of our members have had a long time involvement on this issue (since 2003), including being involved with two nationally-negotiated MOUs covering the time periods of April 2005-April 2007 and October 2007-November 2010, through the Paint Product Stewardship Initiative (PPSI) spearheaded by the Product Stewardship Institute (PSI). Our members and others have contributed significant time and funding to the activities described in the MOUs and we have carefully observed the resulting activities, including Oregon's role as the pilot program state, how that program has preformed, and emerging issues. The second MOU was signed by the Washington State Department of Ecology and sixteen local government agencies from Washington State.

The second national Paint Product Stewardship MOU called for:

“the continuation of the Paint Product Stewardship Initiative (PPSI), first established in 2003, for another three years in order to develop a new nationally-coordinated system for the management of leftover architectural paint. As part of this MOU, a state-wide “Demonstration Project” is to be undertaken in the State of Minnesota to work through critical issues and gather information that will be needed to develop a functional, fully funded, environmentally sound, and cost-effective nationally coordinated leftover paint management system. At the end of the Minnesota Demonstration Project, the nationally-coordinated system is to be implemented in the rest of the United States according to a phased implementation schedule.”

As explained above, when the State of Minnesota was unable to fulfill this role, the State of Oregon stepped in as the pilot program test state. Following passage of the Oregon pilot legislation, paint stewardship bills have been enacted in California and Connecticut, but without the intended benefit of observing and analyzing the lessons learned from the “Oregon Experiment.” The second national Paint Product Stewardship Initiative MOU laid out a number of activities related to the pilot state including:

“PPSI participants agree to implement the Demonstration Project by jointly conducting the following tasks:”

...

“Develop a Final Report that evaluates the effectiveness of the Demonstration Project and assists in determining the best options for rolling out a nationally coordinated paint management system. The Report is to include recommendations on how the methods used in the Demonstration Project should be modified for successful implementation in other areas of the country.”

While it is unclear if such a report is forthcoming from the PPSI group, the draft Oregon DEQ Legislative Report titled “Oregon’s Paint Product Stewardship Law” provides significant value to the Washington State PPSI participants and other states that are considering paint stewardship legislation. This report provides a thorough analysis of the elements of the program that worked, those that didn’t and will provide guidance to other states on what can be improved in future legislation. As such, we provide our comments on certain sections and recommendations of the draft report.

Background and Page 6

The background section of the report begins with House Bill 3037 but does not provide the historic and national significance of the Oregon pilot as outlined above. While this section does identify the program as a pilot, it does not describe the intent, which was to serve as a pilot for the other states and the nation, as well as for the State of Oregon. This should be reflected in text on page 6 as well. While we would agree that the program was successful, its role as a pilot will only be successful if key lessons learned are openly addressed and incorporated into the next phases of legislative initiatives and program design, including new initiatives in Washington and elsewhere and revisions in Oregon.

Draft Recommendations

1. Make the paint product stewardship program permanent.

We agree that the program has been very successful as a pilot and can be improved through lessons learned during the pilot phase. The program is highly beneficial to paint customers and local governments and should be made permanent, with amendments.

2. Improve convenience of collection opportunities.

We agree that the current language is too general regarding convenience standards and have observed that this has created problems in the Oregon pilot with significant differences in service levels in different parts of the state. We agree that convenience standards should be set in statute and these

standards should be based on geographic distribution of population, and unique to the paint program. A basic tenet should be that all consumers of paint should have reasonable access to the program's collection locations.

Preliminary work in Washington State shows that the following requirements would provide good convenience levels in Washington State and could be analyzed to determine suitability for Oregon or other states:

- Incorporate existing government-run or established collection locations for paint.
- A minimum of one collection site should be provided for each county. Additionally:
 - If there are no government-provided collection sites, or paint retailers, and the county's population is less than 10,000, then collection events should be provided.
 - Counties with a population of 10,000 or more and less than 30,000 are provided with a minimum of one site.
 - Counties with a population of 30,000 or more and less than 60,000 are provided with a minimum of two sites. An additional site should be provided for in each county for each additional 30,000 in population.
- Collection sites should be geographically distributed throughout each county in a manner similar to the geographic distribution of architectural paint retailers.
- The State Agency should provide appropriate solid waste officials in each county the opportunity to comment on the adequacy of the number and geographic distribution of proposed collection sites for the county according to the criteria laid out in statute.
- Special accommodations should be made for geographically isolated communities such as rural areas or in Washington's case, island communities.

3. Ensure architectural paint stewardship assessment covers cost of program activities.

We agree with the recommendation that collection costs be included as a required program cost to be covered such that fair compensation is paid to collection sites other than retail. We recommend that Oregon DEQ use available data to calculate what the cost for the Oregon program would be if, at a minimum, collection labor costs were covered for government locations, and then for all collection sites, including government and all other collection locations.

The following sections below highlight how this recommendation is supported by the intent of the second National Paint Product Stewardship Initiative MOU as follows:

Section IV Goals and Objectives, Item B, states:

*“Undertake a “Demonstration Project” (see Appendix B) in the State of Minnesota, under the auspices of PPSI, to work through critical issues and gather information that will be needed to develop a **fully-funded**, functional, environmentally sound, and cost effective nationally-coordinated leftover paint management system.”*

In addition, Section IV, Item H states:

*“Create an arrangement where industry partners with state and local governments to share the full cost and responsibility of managing leftover paint. Existing collection programs in the private and public sectors are encouraged to participate with the development and implementation of the nationally-coordinated leftover paint management system. In most states, additional collection sites will be required to meet the needs of the community. The Paint Stewardship Organization will typically need to negotiate agreements **with existing and additional collection sites to fairly compensate them for their efforts** to participate in the nationally-coordinated system.”*

In addition, Appendix B, Section 2 states:

“Paint Stewardship Organization

- a. Create an industry-run Paint Stewardship Organization that incorporates government and industry perspectives, and is accountable and transparent to PPSI stakeholders.*
- b. Develop the Paint Stewardship Organization’s role, budget, administrative and other tasks, timeline (including date of full implementation), milestones, governance structure, and education plan.*
- c. Establish an operable funding mechanism no later than July 1, 2008, **to cover all post-consumer paint management costs.** Establish a timeline to evaluate the funding mechanism.”*

And, Appendix B, Section 4(e) states:

“4. Collection and Management Infrastructure

- e. Develop a costing structure for government and private collection sites **that provides an incentive to collect through reimbursement payments or other mechanisms.**”*

The original intent of the funding mechanism was to cover all costs of the program including, but not limited to collection, transportation, recycling and/or disposal. We suggest that it may be beneficial to provide compensation for the costs of collection to all collectors, including retail collectors. Although we do recognize that there may be a sound argument that retailers can benefit by serving as a paint collection site without receiving compensation. For example, by forgoing compensation they can lower the programs costs and reduce the amount of assessment per container that is passed on to their customers. Also, the program may increase the foot traffic into their stores and they may benefit from increased sales and customer loyalty resulting from providing additional services to customers.

Covering all post-consumer paint management costs is an essential element of successful long-term program design with regards to service providers. All actors in the fulfillment of the program should be “kept whole” and provided with the incentives and resources to not only do a minimal job, but a good job. Also, certain locations might have pressures on them to provide paint collection service as is the case with many government-run or private solid waste, household and moderate risk waste handling facilities, even if other locations are available (such as retail locations).

Documentation of the Oregon pilot shows that transportation and processing costs of the collected paint amounted to \$5.09 per gallon of collected paint. Preliminary calculations show that if government facilities had been paid \$.30 per container handled, then the cost to the Oregon program would have come in at \$5.40 per gallon. Our preliminary analysis shows that if that sum had been paid to all collectors, then the cost per gallon to the Oregon program would have been \$5.61.¹

¹ Note that \$.30 per container handled is based on a limited number of facilities utilizing a time and motion study and cost analysis tool developed by Cascadia Consulting in conjunction with the NWPSC Paint Subcommittee (<http://www.productstewardship.net/productsPaintActivities.html> accessed 10/25/11). The estimated costs for labor include the costs to handle paint and do not include supply costs, or facility and overhead costs. Supply costs may be reduced based on whether supplies are contributed by the Stewardship Organization. Overhead costs (\$7.57per container) were not included due to the fact that “household hazardous waste facilities” have large overhead expenses due to the special nature of their operations. These costs could be considered local governments’ contribution in a “shared responsibility” system.

A number of key reasons to address covering at least some portion of the labor costs for specific collection facilities are outlined below.

Incentivize effective collection.

In the first year of the Oregon pilot, Oregon PaintCare has not covered the cost that collectors incur in providing collection service. While there are now many more collection sites for receiving paint than before the pilot, the actual amount of paint collected appears to have been only 3 percent greater than the quantity of paint collected in the year preceding the new program, and the program collected 14 percent less paint than it had projected in its program plan. If the costs of collecting paint were covered, then it is logical that collectors would do more to bring in more unwanted paint. When their costs aren't covered, they have a disincentive to handle greater volumes of paint and incur the additional labor costs. In the first year of the Oregon pilot, 82 percent of the collection sites were retail locations and these locations only collected 32.4 percent of the paint system-wide. A modest payment per tote of paint or per container collected might have provided incentive for increased collection at these locations.

Use of government-provided or established solid waste and household hazardous waste facilities.

A successful system needs to incorporate multiple types of collection locations and should cover the costs of labor in certain cases. Citizens behave differently under different circumstances regarding recycling and disposal of unwanted household hazardous wastes. In many cases, taking leftover paint to a paint retailer will be an easy and logical decision. In other cases, such as when doing a spring clean out of hazardous wastes from the home, or when preparing to move, citizens want easy one-stop disposal options. In many communities, this role is served by government-established household hazardous waste facilities. In fact, in the first year of the Oregon pilot, 60.3 percent of the collected paint gallons came through household hazardous waste collection sites, while only 32.4 percent came through retail locations. In addition, many retail stores can't handle large volumes of paint. Customers with large volumes can be directed to the household hazardous waste facilities that were set up to manage large volumes of unwanted materials. As consumers are financing the stewardship activities through the assessment on the paint they purchase, the funds should pay for the labor, as well as the transportation and recycling costs, at the sites that bring in the most paint.

Stabilize the collection system for the long term.

While Oregon PaintCare was successful in recruiting 80 retail collection sites (June 1, 2011) to collect paint without receiving compensation for any collection costs in the first year, it is unclear if such agreements will be sustainable in the future. These collection sites have volunteered to collect and they can presumably discontinue their participation whenever they want to. If the 60.3 percent of the gallons that were collected by government facilities had instead shifted to the retail locations, would the retailers have been able to handle the volume and would they have remained willing to provide collection services? Ensuring a diverse mix of collector types is likely in the best interests of the stewardship organization, its service providers, and the public. One means of doing this is to make sure that diverse service providers are kept "whole" financially so they can continue to effectively participate in the program.

For these reasons, we recommend that Oregon DEQ use available data to calculate what the cost for the Oregon program would be if, at a minimum, collection labor costs were covered for government locations, and then for government and all other collection locations.

We also agree that the department should be able to sufficiently cover the department's full costs of administering and enforcing the program.

4. Establish program goals.

We agree that program goals should be established and the best route to do so is likely through the program plan.

5. Amend annual report requirements.

We agree with the recommended changes regarding the annual report.

6. Expand scope of covered products.

We agree that aerosol paints should be included in the permanent program.

7. Expand opportunities for collectors.

We agree that the permanent program should allow additional retailers of architectural paint to participate as collectors if the retailer agrees to meet approved program standards. We think this should be available to any retailer regardless of whether or not program goals have been achieved. If a retailer is responsible for participating in the cost recovery mechanism and providing program promotional materials, then they should have the right to participate as a collector if they so choose. Otherwise, retailers who may want to serve as collectors may be excluded, and effectively forced to refer their paint customers to their competitors for disposing of leftover paint. Retailers who do not want to serve as collectors under these circumstance are free to not participate, but those that do want to participate as collectors should be allowed to do so.

The enabling legislation, HB 3037 includes text on “Conduct authorized.” This section grants immunity from federal and state antitrust laws subject to the regulatory supervision of the department. As such, it seems particularly important that oversight protect against activities that might disadvantage one business or advantage another. Limiting retailer participation might be of concern in this regard.

The section reads in part:

“SECTION 5. Conduct authorized. (1) It is the intent of this section that a stewardship organization operating an architectural paint stewardship pilot program pursuant to sections 1 to 10 of this 2009 Act, approved by the Department of Environmental Quality and subject to the regulatory supervision of the department, is granted immunity from federal and state antitrust laws for the limited purpose of establishing and operating an architectural paint stewardship pilot program. The activities of the stewardship organization that comply with the provisions of this section may not be considered to be in restraint of trade, a conspiracy or combination or any other unlawful activity in violation of any provisions of ORS 646.705 to 646.826 or federal antitrust laws.

(2) The department shall actively supervise the conduct of the stewardship organization, including but not limited to conduct related to payments made by architectural paint producers to the stewardship organization for the architectural paint stewardship assessment specified in section 4 of this 2009 Act. The department may require the stewardship organization to take whatever action the department considers necessary to:

(a) Ensure that the stewardship organization is engaging in conduct authorized under this section;

(b) Ensure that the policies of this state are being fulfilled by an architectural paint stewardship pilot program; and

(c) Enjoin conduct that is not authorized by the department or conduct that the department finds does not advance the interests of this state in carrying out the architectural paint stewardship pilot program.”

8. Clarify and strengthen requirements for education and outreach.

We agree with the recommended improvements regarding education and outreach.

9. Make oversight and process changes.

We agree with the recommended changes, except we are unclear about the recommendation regarding annual plan approval. We agree that plan review and approval is essential and review and approval of the annual reports is equally important. The overall plan can be approved for a longer period than one year however, and the time period for which a plan is approved should be considered to ensure a high level of oversight while also avoiding additional costs to the stewardship organization and the agency.

10. Consider changing the program funding mechanism.

We agree that DEQ should evaluate a funding mechanism that internalizes the cost of the program.

Thank you again for your good work and for the opportunity to comment on the draft legislative report titled Oregon's Paint Product Stewardship Law. It holds great importance to those of us that are learning from the pilot program before initiating our own programs.

Sincerely,

A handwritten signature in cursive script that reads "Lisa M Sepanski".

Lisa Sepanski
Washington Co-chair
Northwest Product Stewardship Council



AmericanCoatings ASSOCIATION

November 1, 2011

Abby Boudouris
Household Hazardous Waste Coordinator
Solid Waste Policy and Program Development
Oregon Department of Environmental Quality
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RE: Draft Legislative Report – Oregon’s Paint Product Stewardship Law

Dear Ms. Boudouris:

The American Coatings Association (ACA)¹ is submitting comments on the Oregon Department of Environmental Quality’s (DEQ) above referenced Draft Report to the Legislature on Oregon’s Paint Product Stewardship Law (herein after referred to as “Draft Report”). ACA was the primary supporter of HB 3037, which enacted the Pilot program.

The reason HB 3037 was enacted as a Pilot was to give industry an opportunity to test a product stewardship or extended producer responsibility program for post-consumer paint before bringing it to other interested states. The reason legislation is necessary for industry to run this type of program is to ensure a level-playing field for all manufacturers and enable a sustainable financing system that eliminates the potential for competitive advantage or disadvantage between manufacturers and between retailers. In order to implement the program, ACA incorporated the 501(C)(3) PaintCare organization whose sole purpose is to ensure effective operation and efficient administration of paint product stewardship programs on behalf of all architectural paint manufacturers. In addition, 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.

While the PaintCare has only one year of implementation information to evaluate under the Pilot, the program is working as intended by the statute and envisioned by the paint and coatings industry. Thus, ACA supports DEQ’s recommendation that the program become permanent. Unfortunately, ACA opposes the majority of DEQ’s other recommendations, as they only serve to erode the fundamental purpose of the underlying legislation and the specific protections afforded industry under the statute. In addition, although DEQ’s statutory mandate for this report is to recommend whether or not the program should be made permanent and to suggest “*any modifications necessary to improve its functioning and efficiency*,” (*emphasis added*), DEQ has gone far and above this mandate in the Draft Report. Not only would DEQ’s recommended changes not serve to improve program function and efficiency, they would actually add significant costs to the program – costs that would be borne by Oregon residents and that do not provide for any commensurate environmental benefit.

¹ ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

CORRECTIONS TO THE DRAFT REPORT

Paint Collected

DEQ incorrectly states that PaintCare's "program plan estimated that 10% of paint sold in the state would be available for collection."² In fact, the program plan states:

"Architectural Paint is designed to be consumed by application to building and other surfaces. Although the amount actually recovered can be determined, it is difficult to determine exactly how much of the product is available for collection. The lag time between purchase of the paint and the decision that the leftover product is unwanted, and then the additional time taken to return it to a site can vary greatly. Architectural paint products are often used by consumers over a span of years and have a long shelf-life so a product sold in a given year may not be determined by the owner to be "unwanted" for several years. It is possible that the introduction of an architectural paint stewardship program offering improved accessibility and consumer awareness will result in a higher than expected return rate of stored leftover paint in the early part of the program, which may also impact return rates in later years."

Since the amount of leftover paint that is unwanted or available for collection is unknown, PaintCare used various studies on the subject to try and determine what may be potentially available in order to budget for the program. The studies produced ranges from as low as 2.5% to as high as 16% of paint sold becoming available for collection and PaintCare used an average – 10%. Further, these studies were not Oregon specific and did not represent an annual rate as DEQ suggests. Since paint is generally only purchased every 5 to 10 years, the 10% estimate of paint available for collection does take into consideration the "legacy" paint (paint that is stored in basements and garages). Thus, it is incorrect to state that PaintCare estimated that 10% of paint sold in Oregon would be available for collection and it is incorrect to state that this average does not take into consideration paint purchased prior to the program. And, to attempt to use the 10% of Oregon paint sales in the last year to quantitatively evaluate the program with regard to paint collection, as DEQ attempts to do in this section, is inappropriate and misleading.

Lastly, DEQ's recommendation to increase the percentage of paint collection in future years dismisses the concept of waste minimization. Again, since paint is a consumable product – the program should be working to eliminate leftover paint, not working to increase its collection. The only quantitative measurement that can be made in this regard is what was collected prior to the PaintCare program versus what was collected under the PaintCare program. Any qualitative evaluation must take into consideration the fact that paint is a consumable product. This section must be revised to reflect this.

Disposition of Collected Paint

The Draft Report states that "collected paint was recycled, reused, landfilled or used for energy recovery."³ No paint collected in the first year of the PaintCare program in Oregon was disposed of in a landfill. Thus, this should be changed to read reused, recycled, beneficially reused or used for energy recovery. All paint collected was reused, recycled, fuel blended, or beneficially used – including biodegradation, as DEQ notes later in this section. While biodegradation is a beneficial process used at a landfill (i.e., to increase biodegradation of solid waste and produce methane gas for energy recovery), it is not landfill disposal and should not be referred to as such in the Draft Report.

² *Oregon's Paint Product Stewardship Law*, Draft Legislative Report, page 7 (Oregon Department of Environmental Quality), October 2011.

³ Id.

Reuse

DEQ states that “PaintCare offered some collection locations an incentive of \$0.25 per “reuse” gallon **to reflect avoided transportation and processing costs (emphasis added).**”⁴ This is incorrect. PaintCare offered a \$0.25 per container incentive for paint exchange (i.e., paint offered to the public at participating collection sites without charge). This incentive was never intended to reflect avoided transportation and/or processing costs – the above referenced statement must be removed from the Draft Report.

Collection Locations

In the text of the Draft Report, Figure 6 is referred to as collected paint by June 1, 2001 – this should read June 1, 2011.

Convenience

The Draft Report says that “PaintCare’s Annual Report noted that pilot program collection locations provide greater level of convenience than pre-program collection service because the majority of sites are open multiple days a week.”⁵ While this is true – it is only one factor in PaintCare providing a superior level of convenience than what was available prior to the program. In the first year of the program, PaintCare provided Oregon residents with close to 100 locations in order to return leftover paint, where prior to the program, only 15 sites were available. PaintCare has also provided collection sites in all areas of the state, where prior to the program, close to half the state had no service. Further, the PaintCare program provides permanent locations (year round) and only utilized mobile events where necessary, where prior to the program, the majority of collection opportunities were mobile events. Finally, PaintCare’s collection infrastructure provides a greater level of convenience as the vast majority of the program’s collection sites are open during retail hours. Again, this is only one factor with regard to PaintCare’s collection convenience – the other factors must be articulated in the Draft Report, if the program is to accurately be portrayed.

Evaluation of Convenience

The Draft Report states in bold that “Because all Oregonians purchasing paint pay the paint assessment, collection opportunities should be convenient and available for all Oregonians.”⁶ This statement is inappropriate and misleading. The collection infrastructure must be “convenient and available statewide,”⁷ by law. The assessment or “PaintCare Recovery Fee” is merely a way to fairly apportion the cost of the program to manufacturers selling paint within or into Oregon based on sales. It is not tied to service or service level, for example an Oregonian who never purchases paint can still use the program. If the paint assessment were tied to convenience and collection, then the program would have to be changed to ensure that convenient and available collection opportunities only exist for Oregonians purchasing paint and paying the assessment. As ACA does not believe this is DEQ’s intention – this statement must be removed or revised to reflect that the law dictates the collection infrastructure, not the assessment on new paint sales.

Education and Outreach

The Draft Report lists opportunities to improve education and outreach, which are not suited for this portion of the report – entitled, Results and Evaluation of Year 1 of the Program. This section belongs in the Draft DEQ Recommendations section. Once moved, this list should also reflect that (1) PaintCare’s education and outreach does focus on prevention and reuse, even though this is inapposite to DEQ’s recommendation to increase collection as well as its next bullet in this section which reads “increasing outreach in areas with lower paint

⁴ Id at 9.

⁵ *Oregon’s Paint Product Stewardship Law*, Draft Legislative Report, page 12 (Oregon Department of Environmental Quality), October 2011.

⁶ Id at 13.

⁷ Chapter 777 Oregon Laws 2009, Section 4(2)(a).

collection volumes;” and (2) considering whether fee awareness is still a relevant program goal does not relate to PaintCare’s education and outreach program, but to a statutorily mandated requirement of the program.

Financial Overview

Figure 8 is incorrect. It is titled “PaintCare Profit and Loss for Year 1 Revenue.” As PaintCare is a non-profit 501(c)(3) organization, this is mistitled and misleading. It should read PaintCare Statement of Activities and Changes in Net Assets for Year 1. Furthermore, DEQ mistakenly adds “Preprogram Development Costs” to the list of Administrative Expenses for year 1, when these were spent prior to year 1 of the program. These costs should be reflected as “Net Assets Beginning of Year” prior to Net Assets or the Figure must be renamed to reflect the true time period for the administrative expenditures – PaintCare’s Statement and Changes in Net Assets from Inception (October 1, 2009 – June 30, 2011).

The Draft Report states that “information regarding the total cost of operating the program is not available because financial reports do not include the cost of collecting leftover paint.”⁸ Again, this is false and misleading. PaintCare’s financial statements reflect **all program costs (emphasis added)**, including collection costs incurred by the program. The program does not and is not supposed to reflect costs of any service provider, be it collection, transportation, recycling, etc. that are not incurred by PaintCare. Thus, the actual costs are reflected and the Draft Report must reflect this.

What DEQ appears to be contemplating are “potential costs,” if PaintCare were to pay for current infrastructure for collection. Regardless of what those cost might be – DEQ correctly states that value for such is a complex question – a question inappropriate for DEQ to even ask. DEQ has no authority to interfere with or set pricing for PaintCare contracts for collection – or for any service contracted for under the program. Thus, this discussion and the recommendation that follows are improper in this report.

Lastly, the Draft Report states that “DEQ received \$20,000 in Paint Product Stewardship Fees over two years to provide oversight for the program.”⁹ Again, this is simply incorrect. DEQ received \$10,000 when the plan was submitted to the agency, and receives \$10,000 each year thereafter for administration costs related to the program.¹⁰ Administrative fees under the statute were not intended to cover all DEQ’s expenses under the program. And, the statute already provides for an alternative method DEQ may use to establish a schedule of fees in lieu of the annual \$10,000 payment. This should accurately be reflected in the Draft Report.

COMMENTS ON DEQ RECOMMENDATIONS

Permanency of the Program

ACA agrees that the program should be made permanent – but only under the existing structure. As the Draft Report states – the underlying legislation’s intent was clear – to establish a program for architectural paint manufactures to finance and manage an **environmentally sound, cost effective program** for paint product stewardship (**emphasis added**). This has been accomplished, and there is no reason not to continue the program permanently. There is also no reason to change the program as per the remaining DEQ recommendations. In fact, instituting the majority of DEQ’s recommendations would only serve to add costs to the programs – costs that cannot be supported by any environmental benefit. DEQ’s statutory mandate for the Draft Report is to recommend whether or not the program should be made permanent and to suggest **“any modifications necessary to improve its functioning and efficiency,” (emphasis added)**.¹¹ Unfortunately, DEQ has gone far and above this mandate and suggests changes that would not serve to improve program function and efficiency, but would instead add considerable cost and burden.

⁸ *Oregon’s Paint Product Stewardship Law*, Draft Legislative Report, page 16 (Oregon Department of Environmental Quality), October 2011.

⁹ *Id.*

¹⁰ Chapter 777 Oregon Laws 2009, Section 9.

¹¹ *Id.* at Section 11.

Collection Opportunities

ACA is completely confused by DEQ's statement that "future legislation should ensure that all Oregonians have access to paint collection."¹² Again, the current law mandates that collection be convenient and available statewide. In addition, ACA is confused by DEQ's recommendations in this regard, since option 3 in the Draft Report is exactly what is currently being employed. Under the program plan, PaintCare pledged to provide convenient collection locations across the state. In order to provide for statewide collection coverage as mandated under the statute, PaintCare delineated the following criteria for convenience and availability.

"The Program will use distance and population as criteria for determining convenient and available statewide collection under the legislation. The Program will use a 15 mile radius as the criteria for distance and incorporated cities and towns. The PaintCare system of collection sites as proposed in the Program Plan would establish paint collection sites within a 15 mile radius of 97.21% of residents who live in all incorporated cities, towns, and Census Designated Places (CDP)¹³ in Oregon. Based on the current Oregon population of 3,471,700, as reported by the US Census, 71.88% of the Oregon population will have a collection site within 15 miles of where they live, which PaintCare believes fulfills the intent of a statewide program and provides a baseline for further evaluation.

PaintCare will set up collection sites in 3 phases (data represents the percent of population in cities or towns residing in state). These sites are detailed in Appendix L and provided via maps in Appendix M. Phase 1 sites are identified via the blue shaded rows. Appendix L will be updated to identify phase 2 and 3 sites prior to those phase-in start dates.¹⁴

- Phase 1 (July 1, 2010) 45 sites – 94.78% of the population living in incorporated cities, towns and CDPs and 70.08% of the entire population of Oregon. Phase 1 will include locations to provide statewide coverage.
- Phase 2 (October 1, 2010) 78 sites – 97.14% of the population living in CDPs, incorporated cities and towns and 71.83% of the entire population of Oregon. Phase 2 will include areas without any collection sites as well as remaining larger cities without collection sites and additional collection sites in metropolitan areas.
- Phase 3 (December 31, 2010) 91 sites – 97.21% of the population living in CDPs, incorporated cities and towns and 71.88% of the entire population of Oregon. Phase 3 will fill in areas that still do not have coverage or do not have coverage within a 15 mile radius as well as additional coverage in metropolitan areas.

This system represents 34 out of 36 counties, which represents 98.89% of the total population in Oregon. For the remaining portion of the population that does not have a permanent collection location within a 15 mile radius, PaintCare will strive to provide regular service in at least one area in their county or the closest population center where paint is purchased.¹⁵

PaintCare has accomplished convenient and available statewide collection under these criteria. After completing all three phases and adjusting throughout the first year for proposed sites that dropped out as well as additional sites added due to demand, as of June 30, 2011 the Program had established 95 collection sites throughout the

¹² *Oregon's Paint Product Stewardship Law*, Draft Legislative Report, page 18 (Oregon Department of Environmental Quality), October 2011.

¹³ CDP is defined as a statistical entity defined for each decennial census according to Census Bureau guidelines, comprising a densely settled concentration of population that is not within an incorporated place, but is locally identified by a name. CDPs are delineated cooperatively by state and local officials and the Census Bureau, following Census Bureau guidelines. Beginning with Census 2000 there are no size limits.

¹⁴ Appendix L of the Program Plan is now Appendix B in this report.

¹⁵ (PaintCare Oregon Paint Pilot Stewardship Program Plan, page 17 (June 21, 2010)).

state that serviced 95.9% of the Oregon population under the above referenced standard. This translates into 70.9% of the total Oregon population having a collection site within 15 miles. PaintCare believes this figure is overly conservative since it assumes that anyone not living in an incorporated city, town or CDP does not live within 15 miles (of what?), which is not the case.

In fact, an independent review of PaintCare's collection convenience using GIS technology found that 53%, 78%, and 90% of the population is within 5, 10, and 20 minutes respectively of the closest collection facility and 71%, 84%, and 91% is within 5, 10, and 15 miles respectively of the nearest collection facility.¹⁶ This is exactly what DEQ proposes as option 1 and recommends as its primary method going forward; yet, earlier in the Draft Report DEQ states that it does not consider this very criterion, as employed by PaintCare, to meet the statutory requirements in this regard. ACA agrees that this is the correct approach, but questions why, since it is already being accomplished, it is contained as a recommendation going forward? And, why if this is the recommended approach, it is not currently considered to meet the statutory requirements of convenient and statewide collection?

Program Costs

As stated above, the assessment per container on new paint sales does cover the cost of the PaintCare program's activities. The only responsibility that DEQ has with regard to the assessment is to ensure it is "sufficient to recover, but not exceed, the costs of the architectural paint stewardship pilot program."¹⁷ By law, it is the stewardship organizations obligation and its obligation alone to "undertake the responsibility of negotiating and executing contracts to collect, transport, recycle and process post-consumer architectural paint for end-of-product-life management that includes recycling, energy recovery and disposal using sound management practices." The discussion in the Draft Report in this section – centering on PaintCare paying certain costs to some service providers and not for others – borders on Intentional Interference with Contract and is not only far beyond DEQ's statutory authority for the program – it is wholly inappropriate for a state agency charged with oversight and enforcement. Thus, this recommendation must be removed from the Draft Report.

Again, with respect to the recommendation that DEQ should be allowed to impose fees in an amount sufficient to cover the department's full costs – the administrative fees under the statute were not intended to cover all DEQ's expenses under the program; and the statute already provides for an alternative method DEQ may use to establish a schedule of fees in lieu of the annual \$10,000 payment. Thus, this recommendation is moot.

Program Goals

The Draft Report recommends that a permanent program should require goals for the program and that these goals could either be set in statute or in the program plan. This is already being done through the program plan. In fact, the program plan has extensive sections on the 5 recommendations DEQ presents – reducing the generation of post-consumer paint; promoting the reuse of post-consumer paint; properly managing paint for its end-of-life; recycling latex paint; and effectually providing consumer education and outreach. As discussed above, however, since paint is a consumable product and the amount available for collection is unknown, articulating a denomination for each of these goals would be nearly impossible. However, PaintCare has actually employed strategies to meet these goals over the past year and intends to continue doing so for the duration of the pilot and/or permanent program. Thus, DEQ's recommendation in this regard presents no value added proposition to the program.

Annual Report

ACA agrees that the deadline for Annual Reports should be extended to October 1st in future years. The current deadline of September 1st only gives PaintCare 30 days with which to turn around the data and an independent financial audit from the end of the fiscal year. This timeframe is too short for a thorough and complete job. ACA also

¹⁶ See <http://www.paintstewardshipprogram.com/>, Item 18 -Convenience Analysis of the Oregon Paint Management Pilot Program by Hedrick Strickland, Duke University; advised by Dr. Lynn Maguire and Matt Keene, US EPA.

¹⁷ Chapter 777 Oregon Laws 2009, Section 4(2)(c).

agrees that removing the requirement of section 6(8) – requiring an analysis of the environmental costs and benefits of the program – is appropriate, as this was intended to be a one-time report and the report has come to completion.

ACA does not agree with the rest of the recommendations in this section as they are already being done (i.e., reporting on goals and identifying areas for improvement) or can be done through the data already being reported in the annual report (i.e., efforts to increase reuse of paint and comparison of gallons collected).

Scope of Products

The Draft Report suggests adding aerosol paints to the list of covered products under the program. This does not need to be made through statutory change since current law does not preclude aerosols from being part of the program. However, given the highly combustible nature of aerosols, the PaintCare program chose for safety reasons not to include them as covered products under the pilot program. DEQ cites no reason for adding them at this time except to make the program “simpler.”¹⁸ Adding aerosols as covered products will not simplify the program – it will add more complexity as well as costs to the program with little to no environmental benefit. Collection locations will still have to identify whether or not the aerosol is a covered architectural paint product – many products come in aerosol form; costs to the program will increase significantly given the special handling requirements necessary for aerosol containers; and, unlike latex paint, which can be recycled and oil based paint, which can be used for fuel blend, there will be little to no increase in recycling rates by adding aerosols. Given the fact that adding aerosols to the program will make the program more complex and introduce safety implications without commensurate environmental benefit, ACA disagrees with this recommendation.

Collection Infrastructure

ACA is unsure why this recommendation is not part of recommendation 2 since it appears to relate to collection convenience. First, it is incorrect to state that PaintCare “used retail relationships inside the stewardship organization to select collection sites”¹⁹. PaintCare has no retail relationships inside the stewardship organization – we are not affiliated with, nor do we represent any retail establishments. PaintCare sent requests to all retail establishments in Oregon giving them the ability to volunteer to be collection sites under the program. If this recommendation is to remain, this point should be corrected. However, given the fact that the program goals for convenience have been met; DEQ has no authority to dictate or interfere with PaintCare’s contracts for collection services; and it goes without saying that any collection site under contract with PaintCare must meet approved program standards (contained in the contract); thus, ACA does not believe this recommendation is necessary.

Education and Outreach

ACA does not disagree that improvements can be made to the education and outreach strategies PaintCare employed in the first year of the program. In fact, improvements have already been made – based on two consumer awareness studies PaintCare employed in 2010 and 2011. These improvements and areas for continuing improvement are detailed in PaintCare’s Annual Report. In contrast, DEQ’s recommendations in the Draft Report provide little substance. PaintCare already uses targeted messaging for key demographics and focuses education on waste minimization and reuse. Increasing outreach in areas with lower collection volumes cannot be recommended without further study to determine whether it is the lack of outreach in those areas or the fact that they are getting the waste minimization and reuse message, or if there is some other reason for why that area has a lower collection volume in comparison to another area. And, while ACA agrees that ensuring all paint retailers have an adequate supply of point of sale materials is important, as well as clarifying retailer responsibility for such, the Draft Report does not make any concrete recommendations with which to accomplish this. Finally, with regard to considering if fee awareness is still a relevant program goal – ACA submits that this is not, in fact, a

¹⁸ *Oregon’s Paint Product Stewardship Law*, Draft Legislative Report, page 20 (Oregon Department of Environmental Quality), October 2011.

¹⁹ *Id* at 21.

program goal at all – but a statutory mandate. As discussed further below, this mandate, and the assessment itself, protects Oregon manufacturers and retailers from having the program used against them for competitive advantage; provides for consumer protection; and is used as a piece of PaintCare’s educational strategy. ACA fails to see how not having fee awareness as a program goal, as DEQ recommends, would serve to increase awareness, which DEQ states is needed.

Oversight

PaintCare is an industry run program, a fact that DEQ’s Draft Report fundamentally fails to recognize. Unlike other regulatory programs, including other waste recovery programs, DEQ’s role is narrowly defined by the legislation. The reason is simple and clear – no need exists for DEQ to be fully engaged, this is an industry-run program. Even a summary review of the Draft Report’s recommendations demonstrates that DEQ misunderstands its role. As a consequence, it has, in many of its recommendations, greatly expanded the specific provisions of the statute, and proposes additional mandates that are simply inconsistent with the intent of the Legislature.

The legislative intent of the program is as follows:

“The Legislative Assembly finds that an architectural paint stewardship pilot program would **allow paint manufacturers to (emphasis added):**

- (1) Establish an environmentally sound and cost-effective architectural paint stewardship program;
- (2) Undertake responsibility for the development and implementation of strategies to reduce the generation of post-consumer architectural paint;
- (3) Promote the reuse of post-consumer architectural paint; and
- (4) Collect, transport and process post-consumer architectural paint for end-of-product-life management.”²⁰

The pilot program was pursued so that industry would have a chance to learn from its experience before moving to other states. DEQ did not request the pilot as it states in the Report. Nor is it a “new” program as DEQ states. The program is actually modeled after the successful British Columbia Product Care program that has been in operation for over 20 years. The legislation was enacted as a pilot to allow the US paint and coatings **industry (emphasis added)** to test critical components before bringing the program to other states. Further, the statute was not broadly written, as DEQ goes on to state – it is actually very clear. DEQ’s role should be minimal – one of oversight and compliance. While the Draft Report states that their recommendations in this section” would improve the functioning of the program”²¹ – it fails to articulate how the recommendations would do so. In fact, DEQ fails anywhere in the Draft Report to articulate why the program is not working as intended – thus, increased oversight is an inappropriate recommendation to make.

The first two recommendations in this section simply give DEQ more control over a program that was intentionally set-up to minimize government involvement. Requiring an annual plan and approval of an annual plan and requiring a plan be resubmitted for a yet to be defined “material change,” would not improve function or performance of the program – but it would increase costs and burdens on both PaintCare and DEQ – something contradictory to DEQ’s stated intent in the Draft Report to “reduce DEQ oversight costs.”²²

The last three recommendations in this section are already provided for by statute. The legislation is clear – when it comes to the funding of the program the architectural paint stewardship assessment must be approved by the Director as part of the plan and must be sufficient to recover, but not exceed, the costs of the architectural paint stewardship pilot program.”²³ If the assessment is changed, the assessment must be reapproved and again DEQ must ensure that it is sufficient to cover, but not exceed the costs, of the program. Nothing in the plain language of

²⁰ Chapter 777 Oregon Laws 2009, Section 1.

²¹ *Oregon’s Paint Product Stewardship Law*, Draft Legislative Report, page 21 (Oregon Department of Environmental Quality), October 2011.

²² *Id.*

²³ Chapter 777 Oregon Laws 2009, Section 4(2)(c).

the statute rises to the suggestion that this authorizes DEQ to supervise or dictate PaintCare's use of the assessment funds, which is what the Draft Reports recommendations in this regard would enable.

Finally, the language of the statute is clear with regard to violations and penalties – “A producer or retailer may not sell or offer for sale architectural paint to any person in this state unless the producer is participating in a statewide architectural paint stewardship pilot program organized by a stewardship organization.”²⁴ Thus, providing for statutory language to clarify violations and penalties is not necessary.

Funding Mechanism

Again, if it is really DEQ's intent to reduce its oversight costs, the Draft Report must be completely rewritten, something that ACA would support. Unfortunately, as currently written it would only add oversight costs as it attempts to give DEQ more import to the program than intended or necessary for the program to function and function well. If DEQ would simply comply with the current statutory language, instead of misreading or intentionally interpreting it to give the Agency greater authority, ACA believes DEQ's costs would be minimal. But again, with this recommendation, DEQ fundamentally misunderstands its obligation under the law. The funding mechanism is provided for under the statute – it does not have to be approved by DEQ. Nor does the approval of the fee require active supervision by DEQ. Again, the statute states that “the architectural paint stewardship assessment must be approved by the director as part of the plan and must be sufficient to recover, but not exceed, the costs of the architectural paint stewardship pilot program.”²⁵ The assessment was already approved as part of the plan and the annual reports submitted pursuant to the statute contain third party audits to verify whether or not the assessment was sufficient to cover but not exceed the program's costs.

The purpose of the assessment or funding mechanism in the statute is to provide for a sustainable financing system that eliminates the potential for competitive advantage or disadvantage between manufacturers and between retailers. In contemplating the specifics of the program, particularly the financing system, before drafting model legislation for such, it quickly became apparent to industry that cost internalization of the program, as DEQ suggests in this recommendation, would not be appropriate. Over and above the fact that this type of system would still need anti-trust protection, and thus, the same or even greater DEQ oversight, cost internalization raises numerous business and consumer protection concerns. Most notably, an internalized cost system would result in, among other things:

- Competitive advantages for companies with their own retail outlets as they have more control over retail prices than companies that sell into big box and hardware stores;
- Competitive disadvantages for local and regional companies in any state where the program was implemented as they cannot absorb additional costs over national or international markets as larger companies are able to. This is particularly true in OR, since it has several of only a handful of remaining regional paint companies in the US; and
- Potentially increases costs to consumers, since any increase in producer or retailers prices would not be tied to program costs.

Thus, in order to avoid potential wide-spread anti-competitive behavior, to fairly apportion the program expense to producers based on actual sales, and to protect the consumer from unnecessary costs, a transparent uniform fee system was chosen as the financing option for legislation and ensuing program. This financing system also addresses consumer education and outreach, as having consumers share the responsibility for the ultimate disposition of the product in order to decrease the amount of waste paint generated and increase reuse and recycling is one of the goals of the PaintCare program. Thus, DEQ's recommendation in this regard not only fundamentally alters one of the main principles behind the statute; it erodes a key protection of the program for Oregon manufacturers, retailers and consumers. Thus, this recommendation should be removed.

²⁴ Chapter 777 Oregon Laws 2009, Section 3.

²⁵ Id at Section 4(2)(c).

Conclusion

The Draft Report does not articulate why the current program, implemented as per the intention of the Legislature and as statutorily mandated, is not working. Furthermore, the Draft Report does not articulate how any of DEQ's recommendations would improve the functioning or efficiency of the PaintCare program, which is DEQ's statutory mandate for the Draft Report. Instead, the Draft Report merely reiterates outdated concepts from DEQ's failed attempt for an extended producer responsibility framework bill, which would grant the Agency broad authority to institute extended producer responsibility programs for numerous products by regulation. That legislation was not enacted by the Oregon Legislature and should not be instituted now as a substitute for the PaintCare program. If the recommendations in the Draft Report were to be accepted, it would not result in the intended extended producer responsibility program that is PaintCare, but instead a more costly and bureaucratic program that the residents of Oregon would have to pay for. Thus, ACA cannot support the majority of DEQ's recommendations in this regard and would not support PaintCare becoming a permanent program if the offending changes were pursued.

Sincerely,



Alison A. Keane, Esq.
Vice President, Government Affairs



November 1, 2011

Abby Boudouris
Household Hazardous Waste Coordinator
Solid Waste Policy and Program Development
Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

RE: Draft Legislative Report – Oregon’s Paint Product Stewardship Law

Dear Ms. Boudouris:

PaintCare is submitting comments on the above referenced Department of Environmental Quality Draft Legislative Report regarding Oregon’s Paint Product Stewardship Law (Draft Report). 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 supports ACA’s comments on the Draft Report, as we are concerned that the recommendations contained therein, if implemented, would make it virtually impossible to continue to implement the cost effective paint product stewardship program currently serving the residents of Oregon. The program is working as intended and nothing in the Draft Report’s evaluation suggests otherwise. Further, there is no evidence in the Draft Report that any of the recommendations contained therein would improve the functioning and efficiency of the program, which is DEQ’s charge under the statute in this regard. However, PaintCare is committed to the management of post-consumer paint in an environmentally sensitive and economical manner, and will continue to serve the residents of Oregon for the remainder of the pilot and would recommend the continuation of the program permanently, but only under the current statutory framework and structure.

Sincerely,

Marjaneh Zarreparvar
Executive Director



A Masco Company

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Abby Boudouris
Household Hazardous Waste Coordinator
Solid Waste Policy and Program Development
Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

RE: Draft Legislative Report – Oregon’s Paint Product Stewardship Law

Dear Ms. Boudouris:

Behr Process Corporation (Behr) is submitting comments on the above referenced Draft Report to the Legislature on Oregon’s Paint Product Stewardship Law (herein after referred to as “Draft Report”). Behr

Behr supports the comments submitted by the American Coatings Association (ACA) and PaintCare.¹ Behr is committed to the management of post-consumer paint in an environmentally sensitive and economical manner. Behr supported HB 3037, the underlying legislation for the program, sponsored by ACA. Behr is currently participating in the Oregon program and gearing up for implementation of the same program in California and Connecticut. As you are aware, the impetus for the program and the enabling legislation was a multi-state, multi-stakeholder dialogue. The dialogue resulted in a Memorandum of Understanding, which the Oregon Department of Environmental Quality (DEQ) was a signatory, and a consensus based national model for post-consumer paint management which HB 3037 follows.

The reason HB 3037 was enacted as a Pilot was to give PaintCare an opportunity to test the industry’s program before launching it in other interested states. The reason legislation is necessary for industry is so that a level-playing field for all manufacturers under the program can be ensured and so that a

¹ ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. 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.

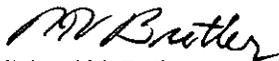
sustainable financing system is enabled that eliminates the potential for competitive advantage or disadvantage between manufacturers and retailers. While the PaintCare has only one year of implementation to evaluate under the Pilot, the program is working as intended by the statute and envisioned by the paint and coatings industry. Thus, Behr supports DEQ's recommendation that the program become permanent, but opposes the majority of DEQ's other recommendations, as they only serve to erode the fundamental purpose of the underlying legislation and the specific protections afforded industry under the statute.

In addition, although DEQ's statutory mandate for this report is to recommend whether or not the program should be made permanent and to suggest "*any modifications necessary to improve its functioning and efficiency,*" (*emphasis added*), DEQ has gone far and above this mandate in the Draft Report. Not only would DEQ's recommended changes not serve to improve program function and efficiency, they would actually add significant costs to the program – costs that would be borne by Oregon residents and that do not provide for any commensurate environmental benefit.

PaintCare is an industry run program, a fact that DEQ's Draft Report fundamentally fails to recognize. DEQ's role should be minimal – one of oversight and compliance. Instead, DEQ recommendations would insert the Agency into almost every aspect of the program – dictating contractual relationships and pricing arrangements; manipulating the collection system; and controlling the program's educational messages. If the recommendations were to be accepted, it would not result in the intended extended producer responsibility program that is PaintCare, but instead a more costly and bureaucratic program that DEQ clearly envisions.

Thus, Behr does not support DEQ's Draft Report nor any changes to the PaintCare program based on its recommendations.

Sincerely,



Michael V. Butler
Director – Environmental and Regulatory Affairs
Behr Process Corporation



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November 1, 2011

Abby Boudouris
Household Hazardous Waste Coordinator
Solid Waste Policy and Program Development
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204

RE: Draft Legislative Report -- Oregon's Paint Product Stewardship Law

Dear Ms. Boudouris:

Dunn-Edwards Corporation submits these comments on the above referenced Draft Report to the Legislature on Oregon's Paint Product Stewardship Law (herein after referred to as the "Draft Report"). Dunn-Edwards is a California-based manufacturer and distributor of paints and other architectural coatings, serving the Southwestern United States. Dunn-Edwards coatings are frequently specified for use on many public buildings, including federal, state, county and municipal facilities, in addition to residential, commercial, institutional and industrial structures of all kinds. Dunn-Edwards is one of the few paint companies to offer a recycled latex paint product, our RECOVER brand. Although Dunn-Edwards does not yet distribute paint in Oregon, we are involved in the paint stewardship program there through our involvement in the national Paint Product Stewardship Initiative (PPSI), and Karl Altergott, president of Dunn-Edwards, sits on the Board of Directors of PaintCare.

Dunn-Edwards supports the comments submitted by the American Coatings Association (ACA) and PaintCare. Dunn-Edwards is committed to the management of post-consumer paint in an environmentally sensitive and economical manner. Dunn-Edwards supported HB 3037, the underlying legislation for the program, sponsored by ACA, and Dunn-Edwards is currently participating in preparations for implementing the same program in California. As you know, the impetus for the program and its enabling legislation was a lengthy multi-state, multi-stakeholder PPSI dialogue. The dialogue resulted in a Memorandum of Understanding, to which the Oregon Department of Environmental Quality (DEQ) is a signatory, and a consensus-based national model for post-consumer paint management, which HB 3037 follows.

The reason HB 3037 was enacted as a Pilot was to give PaintCare an opportunity to test the industry's program before launching it in other interested states. The reason industry considers legislation necessary is so that a level-playing field for all manufacturers under the program can be ensured, and a sustainable financing system enabled to eliminate the potential for disparate competitive impacts on manufacturers and retailers as program participants. While PaintCare

has only one year of implementation to evaluate under the Pilot, the program is working as intended by the statute and as envisioned by the paint and coatings industry. Consequently, Dunn-Edwards supports DEQ's recommendation that the program become permanent, but opposes the majority of DEQ's other recommendations, as they would serve only to erode the fundamental purpose of the underlying legislation and the specific protections afforded industry under the statute.

In addition, although DEQ's statutory mandate for this report is to recommend whether or not the program should be made permanent and to suggest "*any modifications necessary to improve its functioning and efficiency,*" (*emphasis added*), DEQ has gone far beyond this mandate in the Draft Report. Not only would DEQ's recommended changes not serve to improve program function and efficiency, they would actually add significant costs to the program -- costs that would be borne by Oregon residents, and that would not provide for any commensurate environmental benefit.

PaintCare is a paint industry run program, a fact that DEQ's Draft Report fundamentally fails to acknowledge. DEQ's role should be minimal -- one of oversight and compliance. Instead, DEQ recommendations would insert the department into almost every aspect of the program -- dictating contractual relationships and pricing arrangements; manipulating the collection system; and controlling the program's educational messages. If the recommendations were to be accepted, it would not result in the intended extended producer responsibility program that is PaintCare, but instead a more costly and bureaucratic program that would not achieve program goals effectively or efficiently.

Thus, Dunn-Edwards supports the DEQ's Draft Report recommendation to make the paint stewardship program permanent, but opposes the additional recommendations and any mandated changes to the PaintCare program based on those additional recommendations.

If you have any questions regarding this letter, please feel free to call me at (323) 826-2663.

Very truly yours,

DUNN-EDWARDS CORPORATION



Robert Wendoll
Director of Environmental Affairs

Cc: Karl Altergott
Alison Keane
Marjeneh Zarrehparvar



AkzoNobel Paints
Strongsville Research Center
16651 Sprague Road
Strongsville, Ohio 44136
Telephone: 440-826-5519
Fax: 440-826-5629

October 28, 2011

Abby Boudouris
Household Hazardous Waste Coordinator
Solid Waste Policy and Program Development
Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

RE:Draft Legislative Report – Oregon’s Paint Product Stewardship Law

Dear Ms. Boudouris:

AkzoNobel Paints is submitting comments on the above referenced Draft Report to the Legislature on Oregon’s Paint Product Stewardship Law (herein after referred to as “Draft Report”). AkzoNobel is the largest coatings company in the world with 57,000 employees worldwide. AkzoNobel also has a strong sustainability program and consistently ranks in the top three of the Dow Jones Sustainability Index.

AkzoNobel Paints supports the comments submitted by the American Coatings Association (ACA) and PaintCare.¹ AkzoNobel Paints is committed to the management of post-consumer paint in an environmentally sensitive and economical manner. We supported HB 3037, the underlying legislation for the program, sponsored by ACA. AkzoNobel Paints is currently participating in the Oregon program and gearing up for implementation of the same program in California and Connecticut. As you are aware, the impetus for the program and the enabling legislation was a multi-state, multi-stakeholder dialogue. The dialogue resulted in a Memorandum of Understanding, which the Oregon Department of Environmental Quality (DEQ) was a signatory, and a consensus based national model for post-consumer paint management which HB 3037 follows.

The reason HB 3037 was enacted as a Pilot was to give PaintCare an opportunity to test the industry’s program before launching it in other interested states. The reason legislation is necessary for industry is so that a level-playing field for all manufacturers under the program can be ensured and so that a sustainable financing system is enabled that eliminates the potential for competitive advantage or disadvantage between manufacturers and retailers. While the PaintCare has only one year of implementation to evaluate under the Pilot, the program is working as intended by the statute and envisioned by the paint and coatings industry.

¹ ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. 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.

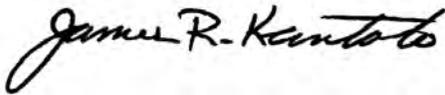
Thus, AkzoNobel Paints supports DEQ's recommendation that the program become permanent, but opposes the majority of DEQ's other recommendations, as they only serve to erode the fundamental purpose of the underlying legislation and the specific protections afforded industry under the statute.

In addition, although DEQ's statutory mandate for this report is to recommend whether or not the program should be made permanent and to suggest "*any modifications necessary to improve its functioning and efficiency,*" (*emphasis added*), DEQ has gone far and above this mandate in the Draft Report. Not only would DEQ's recommended changes not serve to improve program function and efficiency, they would actually add significant costs to the program – costs that would be borne by Oregon residents and that do not provide for any commensurate environmental benefit.

PaintCare is an industry run program, a fact that DEQ's Draft Report fundamentally fails to recognize. DEQ's role should be minimal – one of oversight and compliance. Instead, DEQ recommendations would insert the Agency into almost every aspect of the program – dictating contractual relationships and pricing arrangements; manipulating the collection system; and controlling the program's educational messages. As AkzoNobel Paints is not only a manufacturer participating in the program, but a retailer serving to provide the public with outreach on the program and acting as a collection site – DEQ's recommendations are particularly burdensome. If the recommendations were to be accepted, it would not result in the intended extended producer responsibility program that is PaintCare, but instead a more costly and bureaucratic program that DEQ clearly envisions.

Thus, AkzoNobel Paints does not support DEQ's Draft Report nor any changes to the PaintCare program based on its recommendations.

Sincerely,

A handwritten signature in black ink that reads "James R. Kantola". The signature is written in a cursive, flowing style.

James R. Kantola
Regulatory Affairs Manager

October 28, 2011

Abby Boudouris
Household Hazardous Waste Coordinator
Solid Waste Policy and Program Development
Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

RE: Draft Legislative Report – Oregon’s Paint Product Stewardship Law

Dear Ms. Boudouris:

Miller Paint Company is submitting comments on the above referenced Draft Report to the Legislature on Oregon’s Paint Product Stewardship Law (herein after referred to as “Draft Report”). Miller Paint Company is an employee-owned company that manufactures paint in Portland, Oregon and operates stores located throughout the state.

Miller Paint Company supports the comments submitted by the American Coatings Association (ACA) and PaintCare.¹ Miller Paint is committed to the management of post-consumer paint in an environmentally sensitive and economical manner. Miller Paint Company supported HB 3037, the underlying legislation for the program, sponsored by ACA. Miller Paint Company is currently participating in the Oregon program and gearing up for implementation of the same program in California and Connecticut. As you are aware, the impetus for the program and the enabling legislation was a multi-state, multi-stakeholder dialogue. The dialogue resulted in a Memorandum of Understanding, which the Oregon Department of Environmental Quality (DEQ) was a signatory, and a consensus based national model for post-consumer paint management which HB 3037 follows.

The reason HB 3037 was enacted as a Pilot was to give PaintCare an opportunity to test the industry’s program before launching it in other interested states. The reason legislation is necessary for industry is so that a level-playing field for all manufacturers under the program can be ensured and so that a sustainable financing system is enabled that eliminates the potential for competitive advantage or disadvantage between manufacturers and retailers. While the PaintCare has only one year of implementation to evaluate under the Pilot, the program is working as intended by the statute and envisioned by the paint and coatings industry. Thus, Miller Paint Company supports DEQ’s recommendation that the program become permanent, but opposes the majority of DEQ’s other

¹ ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. 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.

recommendations, as they only serve to erode the fundamental purpose of the underlying legislation and the specific protections afforded industry under the statute.

In addition, although DEQ's statutory mandate for this report is to recommend whether or not the program should be made permanent and to suggest "*any modifications necessary to improve its functioning and efficiency,*" (*emphasis added*), DEQ has gone far and above this mandate in the Draft Report. Not only would DEQ's recommended changes not serve to improve program function and efficiency, they would actually add significant costs to the program – costs that would be borne by Oregon residents and that do not provide for any commensurate environmental benefit.

PaintCare is an industry run program, a fact that DEQ's Draft Report fundamentally fails to recognize. DEQ's role should be minimal – one of oversight and compliance. Instead, DEQ recommendations would insert the Agency into almost every aspect of the program – dictating contractual relationships and pricing arrangements; manipulating the collection system; and controlling the program's educational messages. As Miller Paint Company is not only a manufacturer participating in the program, but a retailer serving to provide the public with outreach on the program and acting as a collection site – DEQ's recommendations are particularly burdensome. If the recommendations were to be accepted, it would not result in the intended extended producer responsibility program that is PaintCare, but instead a more costly and bureaucratic program that DEQ clearly envisions.

Thus, Miller Paint Company does not support DEQ's Draft Report nor any changes to the PaintCare program based on its recommendations.

Sincerely,

Steve Serra
VP Production / Distribution
Miller Paint Company
503.255.0190

November 1, 2011

Abby Boudouris
Household Hazardous Waste Coordinator
Solid Waste Policy and Program Development
Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

RE: Draft Legislative Report – Oregon’s Paint Product Stewardship Law

Dear Ms. Boudouris:

Sherwin-Williams is submitting comments on the above referenced Draft Report to the Legislature on Oregon’s Paint Product Stewardship Law (herein after referred to as “Draft Report”). Sherwin-Williams is one of largest paint manufacturers in the world, with sales of almost \$8 billion annually. We manufacture and distribute well-known, nationally branded products like Dutch Boy® and Pratt & Lambert® paints, Minwax® interior wood finishing products, Krylon® aerosol paints, Thompson’s® WaterSeal® exterior waterproofing products, Purdy® paint brushes and rollers and Dupli-Color® automotive specialty products, as well as selling Sherwin-Williams® branded paints and stains exclusively through company owned stores. In addition to these well known coatings, we provide industrial coatings to a significant number of factories, plants, and shops directly, as well as through the large network of company owned stores, of which over 46 are located within the State of Oregon. In addition, we have production facilities throughout the world, including two within the State of California, and employ over 1080 people within the State. In recognition of our development of water-based acrylic alkyd technology, US EPA presented to Sherwin-Williams, on June 20, 2011 a Presidential Green Chemistry Challenge Award, one of only five given this year.

Sherwin-Williams supports the comments submitted by the American Coatings Association (ACA) and PaintCare.¹ Sherwin-Williams is committed to the management of post-consumer paint in an environmentally sensitive and economical manner. Sherwin-Williams supported HB 3037, the underlying legislation for the program, sponsored by ACA. Sherwin-Williams is currently participating in the Oregon program and gearing up for implementation of the same program in California and Connecticut. As you are aware, the impetus for the program and the enabling legislation was a multi-state, multi-stakeholder

¹ ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. 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.

dialogue. The dialogue resulted in a Memorandum of Understanding, which the Oregon Department of Environmental Quality (DEQ) was a signatory, and a consensus based national model for post-consumer paint management which HB 3037 follows.

The reason HB 3037 was enacted as a Pilot was to give PaintCare an opportunity to test the industry's program before launching it in other interested states. The reason legislation is necessary for industry is so that a level-playing field for all manufacturers under the program can be ensured and so that a sustainable financing system is enabled that eliminates the potential for competitive advantage or disadvantage between manufacturers and retailers. While the PaintCare has only one year of implementation to evaluate under the Pilot, the program is working as intended by the statute and envisioned by the paint and coatings industry. Thus, Sherwin-Williams supports DEQ's recommendation that the program become permanent, but opposes the majority of DEQ's other recommendations, as they only serve to erode the fundamental purpose of the underlying legislation and the specific protections afforded industry under the statute.

In addition, although DEQ's statutory mandate for this report is to recommend whether or not the program should be made permanent and to suggest "*any modifications necessary to improve its functioning and efficiency,*" (*emphasis added*), DEQ has gone far and above this mandate in the Draft Report. Not only would DEQ's recommended changes not serve to improve program function and efficiency, they would actually add significant costs to the program – costs that would be borne by Oregon residents and that do not provide for any commensurate environmental benefit.

PaintCare is an industry run program, a fact that DEQ's Draft Report fundamentally fails to recognize. DEQ's role should be minimal – one of oversight and compliance. Instead, DEQ recommendations would insert the Agency into almost every aspect of the program – dictating contractual relationships and pricing arrangements; manipulating the collection system; and controlling the program's educational messages. As Sherwin-Williams is not only a manufacturer participating in the program, but a retailer serving to provide the public with outreach on the program and acting as a collection site – DEQ's recommendations are particularly burdensome. If the recommendations were to be accepted, it would not result in the intended extended producer responsibility program that is PaintCare, but instead a more costly and bureaucratic program that DEQ clearly envisions.

Thus, Sherwin-Williams does not support DEQ's Draft Report nor any changes to the PaintCare program based on its recommendations.

Sincerely,
Richard Posatiere
Manager
Corporate Regulatory Affairs



November 1, 2011

Abby Boudouris
Household Hazardous Waste Coordinator
Solid Waste Policy and Program Development
Oregon Department of Environmental Quality
811 SW Sixth Ave.
Portland, OR 97204

RE: Draft Legislative Report – Oregon’s Paint Product Stewardship Law

Dear Ms. Boudouris:

Kelly-Moore Paint Company (KMPC) is submitting comments on the above referenced Draft Report to the Legislature on Oregon’s Paint Product Stewardship Law (herein after referred to as “Draft Report”). KMPC is a west-coast centric manufacturer and retailer of architectural coatings. We are an employee-owned company and have over 1400 employees.

KMPC supports the comments submitted by the American Coatings Association (ACA) and PaintCare.¹ KMPC is committed to the management of post-consumer paint in an environmentally sensitive and economical manner. KMPC supported HB 3037, the underlying legislation for the program, sponsored by ACA. KMPC is currently participating in the Oregon program and gearing up for implementation of the same program in California. As you are aware, the impetus for the program and the enabling legislation was a multi-state, multi-stakeholder dialogue. The dialogue resulted in a Memorandum of Understanding, which the Oregon Department of Environmental Quality (DEQ) was a signatory, and a consensus based national model for post-consumer paint management which HB 3037 follows.

The reason HB 3037 was enacted as a Pilot was to give PaintCare an opportunity to test the industry’s program before launching it in other interested states. The reason legislation is necessary for industry is so that a level-playing field for all manufacturers under the program can be ensured and so that a sustainable financing system is enabled that eliminates the potential for competitive advantage or disadvantage between manufacturers and retailers. While the PaintCare has only one year of implementation to evaluate under the Pilot, the program is working as intended by the statute and envisioned by the paint and coatings industry. Thus, KMPC supports DEQ’s recommendation that the program become permanent, but opposes the majority of DEQ’s other recommendations, as they only serve to erode the fundamental purpose of the underlying legislation and the specific protections afforded industry under the statute.

¹ ACA is a voluntary, non-profit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. PaintCare is a 501(c)(3) non-profit organization incorporated by the American Coatings Association (ACA). 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.

In addition, although DEQ's statutory mandate for this report is to recommend whether or not the program should be made permanent and to suggest "*any modifications necessary to improve its functioning and efficiency,*" (*emphasis added*), DEQ has gone far and above this mandate in the Draft Report. Not only would DEQ's recommended changes not serve to improve program function and efficiency, they would actually add significant costs to the program – costs that would be borne by Oregon residents and that do not provide for any commensurate environmental benefit.

PaintCare is an industry run program, a fact that DEQ's Draft Report fundamentally fails to recognize. DEQ's role should be minimal – one of oversight and compliance. Instead, DEQ recommendations would insert the Agency into almost every aspect of the program – dictating contractual relationships and pricing arrangements; manipulating the collection system; and controlling the program's educational messages. As KMPC is not only a manufacturer participating in the program, but a retailer serving to provide the public with outreach on the program and acting as a collection site – DEQ's recommendations are particularly burdensome. If the recommendations were to be accepted, it would not result in the intended extended producer responsibility program that is PaintCare, but instead a more costly and bureaucratic program that DEQ clearly envisions.

Thus, KMPC does not support DEQ's Draft Report nor any changes to the PaintCare program based on its recommendations.

Sincerely,

<<Electronic Signature>>

Robert W. Stetson
Director of Risk Management

City Garbage Service
3412 Hwy 30
La Grande, OR 97850

November 7, 2011

Dear Mrs. Boudouris,

I am writing regarding the draft paint program report for the Oregon legislature.

After reading the D.E.Q. report, I find I agree with every point of changes needed to the paint care program. I found the D.E.Q. arguments are well laid out and represent the gapping holes in the program as a operator of both a waste hauling and household hazardous waste business. At this time we are a collection site for the E-cycle program. I find this system is both fair and equitable. If I can be any further assistance, I would be glad to share my experience with the current paint stewardship program.

Sincerely

Darin Larvik

Concerning the Oregon Paint Care Program

I have two concerns about this program.

First, let's consider economics. The accepted figure for paint available for recycling through this program is 10%. Given the \$0.75 fee for gallons and the \$1.60 fee for fivers, \$0.60/gallon is a reasonable average per gallon fee. Thus, each gallon available for recycling has cost Oregonians \$6.00 in fees.

Assuming that half the paint collected can actually be recycled and sold, for about \$8.00/gallon, each gallon contributes about \$4.00 to the program.

Thus, each gallon of paint recycled costs Oregonians about \$10.00. Obviously, this is an approximate figure, based on several assumptions, but it seems reasonable to me.

The Big Boxes sell Homax paint hardener for \$1.98, good for 2/3 gallon or \$3.00 for a whole gallon, a difference of \$7.00/gallon.

The DEQ PaintCare site hypothesizes that this program will result in "proper" management of over 800,000 gallons of leftover paint each year, which, using the 10% waste factor, implies 8 million gallons of architectural paint sold in Oregon each year. Using my \$0.60/gallon assumption, that means the PaintCare program takes in over \$4.5 million annually.

Second, let's consider the justification for the program, that is, to reduce the amount of Hazardous Household Waste entering our landfills.

After latex paint (the overwhelming majority of the problem) is manufactured, it's shipped to stores by common carrier, where it's opened and tinted by clerks with (typically) absolutely no HazMat training. Then it's sold to average citizens with no HazMat experience, who put it in a car with their children, take it home and spread it all over the inside and outside of their houses, including the rooms of their growing children. Then they put the remainder in their cars and transport it to a PaintCare drop-off facility, where it's accepted by a clerk with minimal HazMat training and placed in a large plastic bin. At that point, it becomes hazardous waste and can only be transported by a licensed Hazardous Waste Hauler, who takes it to the Swan Island facility, where it's sorted, filtered, tinted and packaged. After packaging ...something... happens, the paint is no longer a hazardous waste and may be again handled by ordinary people.

Bob Fankhauser
503 206 9824
blueboxconst@hevanet.com

Received by DEQ October 18, 2011



OREGON REFUSE & RECYCLING ASSOCIATION

July 1, 2011

Abby Boudouris
Household Hazardous Waste Coordinator
Oregon Department of Environmental Quality
811 SW 6th Avenue
Portland, OR 97204

sent via email only to:
boudouris.abby@deq.or.us

Re: Year One Review of Oregon Paint Stewardship Pilot Program

Dear Abby:

Thank you for considering the following comments offered by Oregon Refuse & Recycling Association regarding the Year One Review of the Oregon Paint Stewardship Pilot Program (Program). As you may know, the Oregon Refuse & Recycling Association (ORRA) is the statewide trade association representing the majority of solid waste management companies in Oregon. ORRA members collect and process most of Oregon's residential and commercial refuse and recyclables. Our members operate material recovery facilities as well as many of Oregon's municipal solid waste transfer stations, landfills, and compost facilities. ORRA, and its members, have participated in the Paint Stewardship stakeholder meetings and have submitted informal comments at these meetings, as well as formal comments to the Oregon Paint Stewardship Pilot Program Plan in June 2010.

The Oregon Paint Stewardship Pilot Program was the first paint stewardship program in the country and thus will be seen as a model for future programs. As a result, it is ORRA's primary interest that the Program is an effective solution for all Oregonians wishing to dispose of leftover paint. It is Oregon's responsibility as a leader in paint stewardship to ensure a quality program that can be transferred to other states considering implementation of similar types of programs. The following is a summary of ORRA's observations of the Program's first year that we respectfully request the Department of Environmental Quality (DEQ) to consider during the Year One Review:

1. Convenient and Available Collection: PaintCare's plan does not state a specific standard to determine convenience, rather, PaintCare committed itself to providing "better convenience" than what was available prior to the Program. **As of June 2011, there are six areas of the state with significant populations that do not have permanent collection sites.** While it is understandable that a program of this magnitude would require several months to fully implement, it is unfair that people in areas that are without service or are under serviced are paying for a program they cannot access. ORRA urges DEQ to evaluate whether PaintCare is fulfilling the state law requirement of "convenient and available" service. It is ORRA's

understanding that in some of the underserved areas, facilities are willing to become collection sites if they are reimbursed for the costs of handling leftover paint. If PaintCare is unable to meet the “convenient and available” service requirement that they’ve successfully implemented in many areas of the state, then alternative options, like reimbursement of expenses to collection sites, should and must be considered.

ORRA feels strongly that product stewardship programs, such as Oregon’s Paint Stewardship Pilot Program, should not be run at the expense of retailers and collectors, but rather all costs, including collection, storage and handling, should be reimbursed by the Program.

2. Permitting of Collection Sites: ORRA’s position remains that a solid waste permit is required for collection sites to collect paint. OAR 340-093-0050(3)(e) states that facilities that receive only source-separated recyclable materials are exempt from permitting requirements unless DEQ determines that the nature, amount or location of the materials is such that they constitute a potential threat of adverse impact on the waters of the state or public health. However, there is no such exemption for facilities that collect solid waste for disposal.

Because the Program’s collection sites will be accepting materials destined for solid waste disposal, a solid waste permit is required pursuant to OAR 340-093-0050(2)(f) which requires permits for transfer stations. The Program’s collection sites fall under the definition of “transfer station” in ORS 459.015(27), which defines a transfer station as, “a fixed or mobile facility other than a collection vehicle where solid waste is deposited temporarily after being removed from the site of generation but before being transported to a final disposal location.” ORRA requests that PaintCare and DEQ further review the need for collection sites to obtain solid waste permits.

3. Education & Outreach: ORRA requests a thorough evaluation of the adequacy of PaintCare’s education and outreach plan. Is there adequate education and outreach beyond the Portland Metro region? Are the statewide media campaigns sufficiently reaching the rural areas of the state? We have heard from many of our rural members that there has been no promotional presence of the Paint Care program whatsoever in their service areas, and many of them have taken the task of developing public education and informational materials upon themselves, using their own resources, through radio and print advertising, as well as incorporating information about the program in their customer literature.

Is enough education being provided to paint store employees to educate customers about the program? One of our members recently reported having worked at a county-wide Household Hazardous Waste event surveying participants, and was shocked to find that the great majority of people attending the event had never heard of the Paint Care program. This same member heard a number of complaints from the public about the fact that they buy their paint at a large retailer, are aware that they are paying into a “recycling program,” but did not see a single piece of informational material at the store that would tell them where they could “take back” unused paint. In order to have effective outreach, PaintCare should conduct site visits of all retailers that sell paint to ensure information is posted about local take back locations.

Thank you for taking the time to consider our comments regarding DEQ's Year One Review of the Paint Stewardship Pilot Program.

Sincerely,



Holly Sears
Governmental Affairs Director

c: Dick Pedersen, DEQ Director
Alison Keane, PaintCare Executive Director
Palmer Mason, DEQ Legislative Liaison
ORRA Board of Directors
ORRA Governmental Affairs Committee



July 18, 2011

Holly Sears, Governmental Affairs Director
Oregon Refuse & Recycling Association
680 State Street, Suite 110
P.O. Box 2186
Salem, OR 97308-2186

RE: ORRA's Year One Review of the Paint Stewardship Pilot Program in Oregon

Dear Ms. Sears:

Thank you for copying PaintCare on your letter to the Oregon Department of Environmental Quality (DEQ) with regard to the first year of the Paint Stewardship Pilot Program in Oregon. As you know, PaintCare is the not-for-profit organization, who, in conjunction with the American Coatings Association (ACA), pursued the Oregon pilot legislation. The legislation was established through a multi-state, multi-stakeholder, Memorandum of Understanding (MOU), to which DEQ was a signatory. As you correctly point out, this pilot program and the legislation enacting it, has and will be used as a model for our program going forward, and in fact, we have been successful in passing the PaintCare legislation in California, with the program scheduled to start July 2012 and in Connecticut, with the program scheduled to start in July 2013. Thus, I appreciate the opportunity to respond to ORRA's concerns and to correct some errors and misconceptions in your letter dated July 1, 2011.

Collection Convenience

First, with regard to convenient and available collection, PaintCare does, in fact, state a specific standard for convenient statewide collection. The Program Plan states that:

"The Program will use distance and population as criteria for determining convenient and available statewide collection under the legislation. The Program will use a 15 mile radius as the criteria for distance and incorporated cities and towns. The PaintCare system of collection sites as proposed in the Program Plan would establish paint collection sites within a 15 mile radius of 97.21% of residents who live in all incorporated cities, towns, and Census Designated Places (CDP)¹ in Oregon. Based on the current Oregon population of 3,471,700, as reported by the US Census, 71.88% of the Oregon population will have a collection site within 15 miles of where they live, which PaintCare believes fulfills the intent of a statewide program and provides a baseline for further evaluation." (See page 16 of the PaintCare Oregon Paint Stewardship Pilot Program Plan).

¹ CDP is defined as a statistical entity defined for each decennial census according to Census Bureau guidelines, comprising a densely settled concentration of population that is not within an incorporated place, but is locally identified by a name. CDPs are delineated cooperatively by state and local officials and the Census Bureau, following Census Bureau guidelines. Beginning with Census 2000 there are no size limits.



To date, PaintCare has established 91 collection sites throughout the state and is servicing 96.03% of the Oregon population under the above referenced standard. This translates into 71% of the total Oregon population having a collection site within 15 miles. And, this figure is overly conservative since it assumes that anyone not living in an incorporated city, town or CDP does not live within 15 miles. We believe that this is not truly the case – many people not included in an incorporated city, town or CDP are indeed living within 15 miles of a collection site. Thus, PaintCare has achieved convenient statewide collection under the standard set out in the Program Plan.

Since the ORRA letter does not list the “six areas of the state with significant populations that do not have permanent collection sites,” PaintCare cannot address them specifically; however, we can state that even in areas where we proposed permanent collection sites but have been unable to locate them, we are servicing those residents with collection events – the one exception being Tillamook County upon their request. Furthermore, it is erroneous to state that residents in any part of the state are paying for a service they cannot access, since the PaintCare Recovery Fee placed on all new paint sales in the state, is not tied to any service or service level and residents of Oregon need not purchase new paint and pay the fee to access the program. In fact, the program is open to all residents of the state and any resident can use any collection location – no purchase necessary. The PaintCare Recovery Fee cannot and should not be used to as a criteria for service – it is merely a way to fairly apportion the cost of the program to paint manufacturers – based on market share – without creating competitive advantages and disadvantages to Oregon manufacturers and retailers.

Again, since the ORRA letter does not provide specifics for what it perceives to be “underserved areas,” nor specific “facilities” deem willing to be collection sites for reimbursement of costs, PaintCare can only speak in general terms with regard to our product stewardship program. Product Stewardship, as defined by the Environmental Protection Agency and as used in the MOU precipitating the Oregon legislation means a shared responsibility – “[i]t calls on those in the product lifecycle—manufacturers, retailers, users, and disposers—to share responsibility for reducing the environmental impacts of products.”² Participants in a product’s life cycle with responsibility for stewardship include the manufacturer, distributor, retailer, consumer, waste management company and local government. Product Stewardship is not a principle for merely shifting the cost burden for product end-of-life management to producers. If producers establish end-of-life management programs for their products – they must be able to finance and operate their own privatized and market-based systems – not finance and operate government dictated programs.

Thus, PaintCare is not a reimbursement program, nor would we have agreed to any legislation or pilot that mandated certain costs. Providers under the program, whether for collection or any other service, will be contracted with upon mutually agreeable terms. Currently, many collection sites are local government sites, which would be collecting paint regardless of the program and have chosen to continue to do so with the resources they already have been allocated for such or because of the cost diversion benefits of the program. Similarly, retailers have undertaken collection as part of their own responsibility under a product

² U.S. Environmental Protection Agency, Wastes Program – Product Stewardship - <http://www.epa.gov/osw/partnerships/stewardship/>



stewardship approach and in most cases have seen a business advantage to the increased retail traffic the program brings in. There is no cost to collection locations under the PaintCare program, and we will not increase the cost of the program and therefore the costs to the residents of Oregon by reimbursing “collection costs” to a few potential locations who refuse to “do their part” under the product stewardship approach.

Collection Site Permitting

PaintCare is managing the program according to applicable hazardous waste management requirements found in 40 Code of Federal Regulations (CFR) Parts 260-268 and Oregon Administrative Requirements (OAR) Title 340, Divisions 100-106. As latex paint is non-hazardous and PaintCare is only accepting oil-based paint from households and conditionally exempt small quantity generators, no permitting is necessary at collection locations. As ORRA points out, however, Oregon law prohibits a person from mixing source separated recyclable material with solid waste, and requires that source separated recyclable materials collected or received for recycling be reused or recycled (ORS 459.080(3) and OAR 340-090-0090(2), respectively). The post-consumer architectural paint managed by the PaintCare program, however, does not fall within the jurisdiction of these requirements as the program products do not meet the definition of “recyclable materials” for the purposes of ORS 459A.080(3) or OAR 340-090-0090(2). Recyclable material is defined as “any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material” (*emphasis added*) (OAR 340-090-0010(30)). The post-consumer architectural paint managed by the program cannot be sold – in fact, the program has to pay for these materials to be recycled, where practicable, at a cost greater than the cost to collect and simply dispose. Thus, no revenue can be generated by these paint materials, at a net cost equal to or less than the costs of collection and disposal. Therefore, providers servicing the program with respect to recycling of post-consumer architectural paint would not be subject to the requirements for source separated recyclable materials, nor do PaintCare collection locations require a solid waste permit under Oregon law.

PaintCare Education and Outreach

Once again, the ORRA does not give PaintCare any specifics with which to address the complaints it lodges in its letter regarding education and outreach for the program. Where are these rural areas where members have reported no promotional materials? At what event did an ORRA member take a supposed informal poll on awareness of the PaintCare program? What retail store did ORRA’s member hear complaints about not having informational material? PaintCare cannot be expected to address these reports without actionable information. Furthermore, PaintCare does not represent retailers, nor does it have any control over point of sale materials that retailers use. All PaintCare can do is provide the informational materials to paint retailers, which we have done. PaintCare does not have any power to mandate that retailers actually use the materials. In addition, PaintCare has not received any requests for promotional materials that we have not responded to; thus, if, as you state in your letter, ORRA’s members are developing public education and informational materials using their own resources, it is because they have not contacted PaintCare for our assistance. And, since we have a pending trademark application for the program, PaintCare must approve the use of our name and logo on all materials – so through this



letter we respectfully request that any ORRA members incorporating the PaintCare name and logo into their own material or using it in radio and print advertising without permission from PaintCare immediately cease and desist. Lastly, all PaintCare promotional materials, public relations and advertising has been statewide and has not been concentrated in the Portland Metropolitan area – as will be outlined in PaintCare's annual report due September 1, 2011 to DEQ.

Thank you for the opportunity to respond to ORRA's concerns and to correct some inaccuracies in your July 1, 2011 letter. As ORRA's Board of Directors and Governmental Affairs Committee members are not publically available, please ensure that this response is forwarded to them on PaintCare's behalf.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alison Keane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alison A. Keane, Esq.
Executive Director

Cc: Dick Pedersen, Director, DEQ
Palmer Mason, Legislative Liaison, DEQ
Abby Boudouris, Household Hazardous Waste Coordinator, DEQ

** Sent Electronically **

July 25, 2011

Abby Boudouris
Household Hazardous Waste Coordinator
Oregon Department of Environmental Quality
811 SW 6th Ave
Portland, OR 97204

RE: Oregon's Paint Stewardship Pilot Program

Dear Ms. Boudouris,

The Association of Oregon Counties Solid Waste Subcommittee appreciates the opportunity to inform you of counties' experiences with Oregon's Paint Stewardship Program over the last year. As you are aware, counties are largely responsible for solid waste management in the state. This includes meeting state recycling and material recovery goals, mostly through programs implemented at the county level. With this in mind, counties support product stewardship programs to assist in recycling efforts by putting some of the responsibility on the manufacturers and encouraging consideration of the full life-cycle impacts of products.

Many counties in Oregon have had a positive experience with the Paint Stewardship Program and with Paint Care. Since several counties have been collecting paint for some time at their solid waste facilities, the Paint Program has saved local governments money by covering the costs of collection, transportation, and recycling. This is a huge benefit to counties.

However, as can be expected in the first year of a pilot program, counties have indicated some concerns which are outlined below.

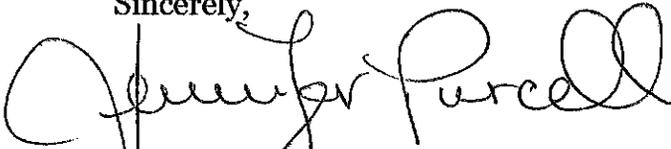
- The definition of "convenient" is unclear. Collection convenience remains a challenge, particularly in rural communities where collection sites are few and far between. In fact there are currently six areas of the state, significant in population size, that do not have permanent collection sites. Furthermore, residents are paying for services they cannot access conveniently, due to both geographic accessibility and the convenience of operating hours;
- There has been limited outreach and education regarding proper purchasing and disposal practices. The Association of Oregon Counties believes that producers and retailers should be required to educate the public to increase awareness of product stewardship programs (including end-of-life management) and inform consumers about the

impacts of products over their life-cycle. Although Paint Care has made some effort toward education, 'statewide' media campaigns to help inform customers are not reaching rural communities, leaving these areas uninformed;

- Small paint retailers participating as collection sites face challenges as well. These sites, largely independently owned small businesses, struggle with designating floor space to non-revenue generating activities and allocating staff time to accepting and managing material. Additionally, since this program is new to businesses, there has been some confusion within individual sites regarding 'in program' and 'outside program' materials. More education is needed at the retail collection level.

If you have any questions please contact Emily Ackland with the Association of Oregon Counties at 503-585-8351 or myself at 503-815-3975.

Sincerely,

A handwritten signature in black ink that reads "Jennifer Purcell". The signature is fluid and cursive, with the first name being more prominent than the last.

Jennifer Purcell
AOC Solid Waste Subcommittee Chair
Tillamook County Solid Waste Coordinator

References

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