

Oregon Paint Stewardship Program Report to the Legislature

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By: Materials Management Program

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Table of Contents

Executive Summary	4
1. Program Overview	5
Background	5
Paint Stewardship Program	5
2. Program Performance	7
Paint Collection.....	7
Disposition of Paint.....	8
Performance Goals.....	9
Cost-Effectiveness Metrics	9
Compliance Oversight	10
Funding, Revenue, and Operations Expenses	10
3. DEQ Administrative Expenditures	12
4. Recommended Legislative Improvements.....	13
Full Program Costs	13
Litigation Costs and Penalties.....	13
Closure of a Stewardship Organization.....	14
5. Looking Forward	15

Executive Summary

This report describes results of Oregon's paint stewardship program and recommendations for modifications to Oregon's Paint Product Stewardship Law, ORS 459A.820-855, to improve the program. Section 18, chapter 677, Oregon Laws 2013 (Note under ORS 459A.845) requires DEQ to submit this report, including the results of any existing paint stewardship programs, recommendations for statute changes that would improve the functioning and efficiency of the programs, and an accounting of the administrative fees paid by stewardship organization to DEQ, to the Oregon Legislature by November 2018.

In 2009, Oregon became the first state to enact a law requiring paint manufacturers to operate a product stewardship program to reduce waste, increase reuse and recycling, and safely dispose of architectural paint remaining after purchase and use. Oregon's 2013 Legislature made the paint stewardship program permanent.

PaintCare operates the only paint stewardship program in Oregon, under a program plan approved by DEQ. This report provides an overview of the paint stewardship program, discusses program performance, provides an accounting of the administrative fees PaintCare has paid DEQ for program administration and recommends legislative changes to improve the operation and efficiency of the program.

The paint stewardship program is a successful and stable product stewardship program. PaintCare, DEQ, manufacturers, local governments, retailers, consumers, and other stakeholders have worked cooperatively to provide convenient, responsible management of leftover paint. The program has shifted responsibility and costs for managing leftover paint from local governments to product manufacturers, sellers, and consumers. Quantities of paint collected have increased each year, with over 4.9 million gallons collected between 2010 and 2017. Over 50 percent of latex paint collected has been recycled. Outreach and service have expanded to provide convenient collection opportunities to over 98 percent of Oregon residents, and PaintCare continues to work with local communities to tailor the most effective service.

Based on its own experience and experience gleaned from maturing product stewardship programs across the U.S. and Canada, DEQ has recommended legislative changes to strengthen the paint stewardship program. Those changes would ensure the stewardship organization pays for the full costs of the program, protect the consumer fee from being used for litigation and penalties, and safeguard the program when a stewardship organization ceases operations.

1. Program Overview

Background

Architectural finishes such as paints, varnishes, and stains have been a large component of materials delivered to household collection programs. When stored or disposed improperly, they can be hazardous to human health, wildlife, and water quality. Managing these wastes is also expensive for local governments.

The Oregon legislature addressed these problems by adopting the Oregon Paint Product Stewardship Law (ORS 459A.820-855) in 2009, making Oregon the first state to require paint manufacturers to operate a paint stewardship program to reduce waste, increase reuse and recycling, and safely dispose of architectural paint remaining after purchase and use. Architectural paint is defined as interior and exterior architectural coatings – including oil-based and latex paint and varnishes – sold in containers of five gallons or less.

Oregon's 2013 Legislature made the paint stewardship program permanent. The 2013 amendments also bolstered customer convenience, the stewardship organization's accountability for meeting program goals, and DEQ's ability to oversee program operations and compliance. The program is paid for by a fee assessed to consumers who buy paint in Oregon. It is managed by a stewardship organization, PaintCare, and overseen by DEQ.

Paint Stewardship Program

Product stewardship is a policy tool intended to ensure that 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. Those parties typically are manufacturers, retailers, consumers, and product stewardship organizations.

Oregon's Paint Stewardship Law requires manufacturers of paint sold in or into Oregon or their stewardship organization to operate a paint stewardship program under a plan approved by DEQ. The stewardship program plan must describe how the organization will provide a convenient, statewide system for the collection, transportation and environmentally sound processing of leftover paint; conduct education and outreach about the program; and establish and implement goals to reduce the generation of leftover paint. The plan must also describe the funding mechanism, fee assessment, and annual operating budget for the program. PaintCare operates the only paint stewardship program in Oregon.

Manufacturers or their stewardship organization must submit an annual report to DEQ describing how the organization implemented its stewardship program plan the previous year, including program operations, volume of paint collected and recycled, level of convenience, and performance of program goals.

Program funding comes from a fee consumers pay when they purchase paint. The fee is added to the cost of each container of architectural paint sold in or into Oregon. The fee must be approved by DEQ and be sufficient to cover the costs of the paint stewardship program. Retailers collect the fee, but manufacturers are responsible for reporting sales and remitting the fee revenue to the stewardship organization.

Retailers selling paint in or into Oregon must ensure they sell paint only from manufacturers that are participating in an approved paint stewardship program. At the time of sale, retailers must also provide consumers with information about collection opportunities for leftover paint.

DEQ is required to supervise the conduct of the stewardship organization. Supervision responsibilities are broad, including approving stewardship program plans, evaluating annual reports and budgets, and overseeing program compliance. Once a year, DEQ also hosts a stakeholder meeting to discuss the stewardship program's annual report and seek stakeholder input about the program. PaintCare's program plan and annual reports are published on both DEQ's and PaintCare's websites.

In 2017, DEQ hired a consultant to conduct a performance audit of PaintCare to provide an independent evaluation of PaintCare's program operations, effectiveness, and internal controls, and to recommend program improvements. The [audit report](#)¹, completed in April 2018, is available on DEQ's website. The audit found PaintCare's operations to be fundamentally sound, but made recommendations for improvements to ensure legislative goals and requirements are being met.

PaintCare is preparing an updated stewardship program plan that incorporates recommendations from the audit report. Until DEQ has approved an updated plan, PaintCare continues to operate under its existing 2015-2017 plan.

¹ PlanB Assurance Services, LLP, "Oregon Department of Environmental Quality Performance Audit of PaintCare and its Oregon Operations," April 2018, <https://www.oregon.gov/deq/FilterDocs/paintcareaudit.pdf>.

2. Program Performance

PaintCare began program operations in 2010. Through 2017, the program has:

- Collected over 4.9 million gallons of leftover paint
- Established over 177 permanent sites and held additional collection events
- Provided over 98 percent of Oregonians with drop-off location within 15 miles of their residence
- Recycled over 50 percent of the latex paint collected back into latex paint
- Shifted much of the cost of paint recycling from local governments to the purchasers of paint.

Paint Collection

PaintCare’s program collects and manages the disposition of latex and oil-based paints. The collection volumes have increased annually for the calendar years 2014-2017, as displayed in table 2.1. Per capita collection volumes have increased almost yearly as well. Latex paint makes up over 75 percent of the paint collected.

Table 2.1: Volume of Paint Collected¹ by Type

Calendar Year	Oil-based Paint		Latex Paint		Total Gallons Collected	Per Capita Volume Collected ³
	Gallons Collected	Percentage of Total Gallons Collected	Gallons Collected	Percentage of Total Gallons Collected		
2014 ²	175,088	26	491,358	74	666,446	0.168
2015 ²	176,438	23	580,263	77	756,701	0.189
2016 ²	161,156	21	602,997	79	764,153	0.187
2017	186,201	23	624,543	77	810,745	0.196

¹ Collection Volume from the 2017 Annual Report submitted by PaintCare

² Adjusted Collection Volumes (see 2017 Annual Report Section A2)

³ Per Capita estimates are based on population estimates made by the Oregon Department of Administrative Services Office of Economic Analysis. See Oregon Department of Administrative Services Office of Economic Analysis, “Appendix C: Population Forecasts by Age and Sex,”

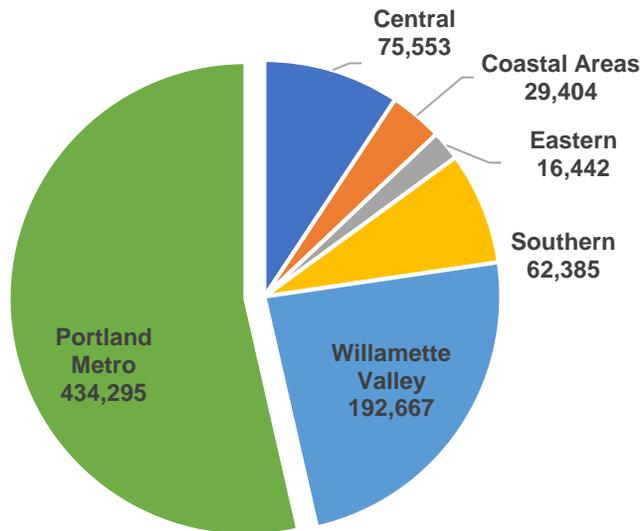
<http://www.oregon.gov/das/OEA/Documents/appendixc.pdf>.

In 2017, PaintCare had 177 permanent drop-off sites which provided 96.6 percent of Oregon residents with a permanent drop-off site within 15 miles of their residence. Paint was collected at an additional 67 household hazardous waste and PaintCare drop-off events in 2017. Through permanent drop-off sites and events, 98.2 percent of Oregon residents had a drop-off location within 15 miles of their residence. Figure 2.1 displays the collection amounts by geographic region for 2017. Based on DEQ’s analysis, approximately:

- 53 percent of paint was collected in the Portland Metro region (Multnomah, Washington, and Clackamas counties)
- 24 percent of paint was collected in Willamette Valley (Benton, Columbia, Lane, Linn, Marion, Polk, and Yamhill counties)
- 9 percent of paint was collected in Central Oregon (Crook, Deschutes, Gilliam, Hood River, Jefferson, Morrow, Sherman, Wasco, and Wheeler counties)

- 8 percent of paint was collected in Southern Oregon (Douglas, Jackson, Josephine, Klamath, and Lake counties)
- 4 percent of paint was collected in Coastal areas (Clatsop, Coos, Curry, Lincoln, and Tillamook counties)
- 2 percent of paint was collected in Eastern Oregon (Baker, Grant, Harney, Malheur, Milton-Freewater, Umatilla, Union, and Wallowa counties)

Figure 2.1: Gallons of paint collected by region



Disposition of Paint

Collected paint was either recycled, reused, sent to landfills for biodegradation, used in energy recovery, or used as a binder in biomass fuel. Over half of the latex paint collected was recycled. See Table 2.2. Most of the remaining latex paint was used for landfill biodegradation, which involves injecting paint into a landfill to improve degradation of landfilled waste. The majority of collected oil-based paint was used for energy recovery. See Table 2.3. In 2017, 27 reuse stores in Oregon provided latex and oil-based paint for reuse.

Table 2.2: Latex Paint Disposition Method by Percentage¹

Calendar Year	Recycling of Paint to Paint	Biodegradation	Reuse	Energy Recovery	Biomass
2014	64	28	3	4	1
2015	60	33	6	0	<1
2016	58	34	7	0	<1
2017	53	40	7	0	<1

¹ Percent disposition from the 2017 Annual Report submitted by PaintCare

Table 2.3: Oil-based Paint Disposition Method by Percentage¹

Calendar Year	Energy Recovery	Reuse
2014	97	3
2015	97	3
2016	94	6
2017	94	6

¹ Percent disposition from the 2017 Annual Report submitted by PaintCare

Performance Goals

The statute requires the stewardship program plan to establish and provide for the development and implementation of goals to reduce the generation of leftover paint, including goals for:

- Reducing the amount of leftover paint that is generated in Oregon
- Increasing the recycling rate for latex paint
- Increasing public awareness of the paint stewardship program.

PaintCare has established a goal and implementation plan to increase the recycling rate for latex paint by at least one percentage point each year, with 65 percent recycling rate in 2014, 66 percent in 2015, 67 percent in 2016 and 68 percent in 2017. As shown in Table 2.2, the goal has not been achieved; paint recycling has declined by about 10 percentage points since 2014. Changes in measurement techniques and demand for recycled paint account for some, but not all of the decline. PaintCare continues to investigate other potential factors. DEQ has requested PaintCare describe actions it is taking to increase recycling in the update of its stewardship program plan.

PaintCare has not established goals for reducing the generation of leftover paint and for increasing public awareness of the paint stewardship program. PaintCare’s 2015-2017 program plan outlined plans for establishing and developing implementation plans for both of these goals. For the paint reduction goal, PaintCare hired a consultant to develop a method to measure leftover paint volumes; the consultant recommended additional research to establish the goal. Similarly, PaintCare conducted a survey to assess public awareness of the program but has not established a public awareness goal. DEQ has requested PaintCare revise its plans to establish and implement both of these goals in its stewardship program plan update.

Cost-Effectiveness Metrics

One of the main objectives of Oregon’s Paint Product Stewardship Law is to ensure the program is cost-effective. Currently, PaintCare reports information to evaluate the total cost of the program per gallon of paint collected and the total cost per capita, as required in the law. While these values help assess the overall cost of the program, they do not support evaluation of the cost-effectiveness of specific aspects of the program to determine opportunities for improvement. PaintCare’s 2015-2017 program plan outlined the development of additional metrics for assessing cost-effectiveness. PaintCare engaged a consultant for this work but has not yet proposed new metrics.

DEQ has recommended two new cost-effectiveness metrics to PaintCare; both would require PaintCare to report additional information. The first metric would assess the cost per gallon of paint collected at different types of collection points, such as rural event, rural retail store, rural transfer station, urban retail store, and urban transfer station. This information would enable the program to identify the most cost-

effective collection venues for particular regions in Oregon. For this measure, PaintCare would need to report both collection volumes and costs associated with collecting, transporting, and processing paint for each collection site and event. The auditors confirmed that the necessary measurements for this metric are feasible.

The second recommended metric would use the cost per gallon by disposition method to compare costs among different methods and determine the most cost-effective options with similar environmental benefits. For this metric, PaintCare would need to report the estimated total cost by disposition method for Oregon. California's paint stewardship program reports this measurement.

DEQ has requested PaintCare include a plan to develop these or other new cost-effectiveness metrics in the update of its stewardship program plan.

Compliance Oversight

To date, DEQ's oversight of the paint stewardship program has focused on PaintCare's compliance with its stewardship program plan, including PaintCare's oversight of its service providers. In addition, DEQ commissioned a third-party audit of the paint stewardship program that was completed April 2018.

DEQ will continue this oversight, and, coordinating with PaintCare, plans to strengthen monitoring of manufacturers and retailers over the next biennium to ensure they comply with their requirements under Oregon's Paint Product Stewardship Law. This effort will minimize free riders, such as manufacturers that do not register with PaintCare and collect and remit consumer fees, and provide a level playing field for all participants. It will also help increase program effectiveness. For example, ensuring retailers provide information to paint buyers about collection opportunities for leftover paint will likely increase consumer awareness and use of the program.

Funding, Revenue, and Operations Expenses

The paint stewardship program is funded with revenue from a fee consumers pay when they purchase paint. The fee is added to the cost of each container of architectural paint sold in or into Oregon. The fee must be approved by DEQ and be sufficient to cover, but not exceed, the costs of the paint stewardship program. Such costs include collection, transportation, and processing of leftover paint for end-of-life management; administrative, education, and promotion costs; and DEQ's administrative costs. Table 2.4 displays PaintCare's revenue and expenses in Oregon since 2014. As can be seen, since 2014, revenue from fees has been insufficient to cover expenses.

Table 2.4: PaintCare Revenue and Expenses

	2014	2015	2016	2017
PaintCare Fees	\$4,199,074	\$4,576,651	\$4,665,094	\$4,744,994
Other Revenue	\$131,980	\$139,530	\$114,137	\$86,429
Total Revenue	\$4,331,054	\$4,716,181	\$4,779,231	\$4,831,423
Operations	\$3,726,229	\$4,449,057	\$4,553,621	\$4,648,281
Communications	\$345,911	\$614,258	\$125,000	\$77,133
DEQ Administrative Fees	\$50,000	\$40,000	\$40,000	\$40,000
PaintCare Administrative Costs	\$466,652	\$460,135	\$445,033	\$447,188
Total Expenses	\$4,588,792	\$5,563,450	\$5,163,654	\$5,212,602
Expenditures below (above) revenue	(\$257,738)	(\$847,269)	(\$384,423)	(\$381,179)

In 2017, PaintCare requested DEQ approval for a fee increase. DEQ approved a new fee structure and amounts, effective May 14, 2018, to retire the debt and generate sufficient revenue to cover future program costs. Before approving the fee increase, DEQ analyzed PaintCare’s past revenue and expenses and used that information to project various future scenarios. This [analysis](#)² is available on DEQ’s website, and indicates that the debt will likely continue to increase without a fee increase. The auditors concurred that a fee increase was warranted. Table 2.5 displays the previous and current fee structure and amounts.

Table 2.5: Former (Pre-Oct. 1) and New Fee Amounts and Structure

Container Size	Prior to Oct. 1, 2018	Current Fee
Half pint or smaller	\$0.00	\$0.00
Larger than half pint to smaller than 1 gallon	\$0.35	\$0.45
1 gallon	\$0.75	n/a
1 gallon up to 2 gallons	n/a	\$0.95
Larger than 1 gallon up to 5 gallons	\$1.60	n/a
Larger than 2 gallons up to 5 gallons	n/a	\$1.95

² Oregon Department of Environmental Quality, “Fee Evaluation Letter,” April 2018, <https://www.oregon.gov/deq/FilterDocs/paint-fee-eval.pdf>.

3. DEQ Administrative Expenditures

By statute, PaintCare must pay DEQ \$40,000 in administrative fees annually, plus an additional \$10,000 in the years it submits an updated stewardship program plan for DEQ review. In 2018, PaintCare paid an additional \$38,200 to reimburse DEQ for the cost of the audit. Table 3.1 displays DEQ’s revenue and administrative expenditures for oversight of the paint stewardship program for fiscal years 2014-2018. As shown, the fees PaintCare paid DEQ cover some, but not all of DEQ’s administrative costs. In years when the administrative fee is insufficient, DEQ covers the deficit from solid waste tipping fees.

Since the fee does not currently cover all of its administrative expenses, DEQ does not expect the fee to keep up with cost increases due to inflation and other factors or to support the additional compliance oversight work planned (see Section 4 for more details).

Table 3.1: DEQ Administrative Revenue and Expenditures

Fiscal Year	2014	2015	2016	2017	2018
PaintCare Fee	\$50,000	\$40,000	\$40,000	\$40,000	\$88,200 ¹
Other	\$60	\$107	(\$16)	\$47	\$726
Total Revenue	\$50,060	\$40,107	\$39,984	\$40,047	\$88,926
Personal Services	\$29,184	\$53,945	\$25,707	\$51,280	\$42,651
Services & Supplies	\$7,665	\$23,019	\$14,598	\$19,792	\$38,397
Agency Indirect	\$5,285	\$9,640	\$4,594	\$10,179	\$8,649
Total Expenditures	\$42,134	\$86,604	\$44,899	\$81,251	\$89,697
Expenditures below (above) revenue	\$7,926	(\$46,497)	(\$4,915)	(\$41,204)	(\$771)

¹ PaintCare paid an additional \$38,200 to reimburse DEQ for the cost of the audit

4. Recommended Legislative Improvements

DEQ believes the program operated by PaintCare continues to provide long-term value to the state in managing the collection, transportation, and disposition of leftover paint. Section 18, Chapter 677, Oregon Laws 2013, which requires this report, directs DEQ to recommend modifications to the statute that “would serve to improve the functioning and efficiency of the programs.” Based on DEQ’s experience overseeing this and the Oregon E-Cycles programs and experiences gleaned from maturing product stewardships across the U.S. and Canada, DEQ recommends the legislature consider the following amendments to Oregon’s Paint Product Stewardship Law to improve functioning of the paint stewardship program. These changes would:

- Ensure payment of full cost of the paint stewardship program
- Protect the consumer fee from being used for litigation and penalties
- Safeguard the program when a stewardship organization ceases operations.

Full Program Costs

Collection Expenses

The consumer fee is intended to cover the full costs of the paint stewardship program, including collection, transportation, and processing of paint for end-of-product-life management. PaintCare covers the costs for transportation and processing paint. PaintCare does not reimburse paint drop-off locations for any of their services, such as labor or storage, although local governments and other collectors have requested such compensation. For comparison, in Oregon’s E-Cycles stewardship program, stewardship organizations reimburse collection sites for their costs on a per-pound basis as negotiated through contracts.

DEQ recommends the legislature consider amending the statute to require stewardship organizations to pay fair compensation to cover collection costs.

DEQ Administrative Costs

As discussed in Section 3 of this report, the fees authorized by Oregon law for DEQ’s supervision of a paint stewardship program are no longer adequate to cover DEQ’s current administrative costs. DEQ expects these costs to increase with inflation and as the agency strengthens its compliance oversight activities. For comparison, California’s architectural paint stewardship law requires a stewardship organization to cover fully the state’s administrative costs.

DEQ recommends the legislature consider amending the statute to allow DEQ to charge fees to a stewardship organization that cover DEQ’s full costs of administering a paint stewardship program.

Litigation Costs and Penalties

Oregon’s Paint Product Stewardship Law does not prohibit a stewardship organization from using revenue from the paint consumer fee to cover litigation costs against the state or to pay penalties. A stewardship organization previously used revenue from consumer fees to pay for costs associated with a lawsuit it brought against California and lost. Prohibiting such usage of consumer fees would strengthen

the state's ability to enforce the law and protect Oregon consumers. California's carpet stewardship law prohibits such usage.

DEQ recommends the legislature consider amending the statute to prohibit a stewardship organization from using consumer fee revenue to cover costs associated with litigation against the state or to pay penalties.

Closure of a Stewardship Organization

Under Oregon's law, a stewardship organization that ceases operating is responsible for closing operations in compliance with its stewardship program plan, including properly managing all materials and accounting for all fee revenue and expenditures. However, the statute does not specifically require closure plans, address how closure is to be managed if a stewardship organization is unable or unwilling to perform those functions, or address how the consumer fee is to be assessed and managed during any period a stewardship organization is not operating under an approved stewardship program plan. The experience of similar programs across the country has shown that providing for closure of operations in the law is important.

Although there are no immediate anticipated closures, DEQ recommends the legislature consider amending the statute to address the issues that would be raised by the closure of a stewardship organization. The agency will work with stakeholders, including PaintCare, manufacturers, local governments, retailers, and consumers, to develop specific recommendations for how to address this issue to ensure that the paint stewardship program would continue to operate effectively during any such stewardship organization transition.

5. Looking Forward

Oregon's paint stewardship program is a successful and stable product stewardship program. PaintCare, DEQ, manufacturers, other government agencies, retailers, consumers, and other stakeholders have worked cooperatively to improve the program and provide convenient, responsible management of leftover architectural paint. The program has shifted responsibility and costs for managing leftover paint from local governments to product manufacturers, sellers, and users of paint. At the same time, it has increased the quantity collected each year and expanded outreach and services to a much broader community of Oregonians. PaintCare continues to work closely with local communities to identify and tailor opportunities that most effectively serve their needs.

DEQ will continue to work with PaintCare and other interested parties to evaluate and improve the paint stewardship program as we collectively gain experience and take advantage of new opportunities to achieve environmental outcomes more effectively. Additionally, the lessons from this and the Oregon E-Cycles program, along with the recommendations in this report, will provide guidance for the path ahead for other product stewardship programs in Oregon.