

REQUEST FOR APPROVAL

To: Mark Leary
Acting Director

From: Howard Levenson
Deputy Director, Materials Management and Local Assistance Division

Request Date: April 4, 2011

Decision Subject: Approval to Formally Notice Proposed Architectural Paint Recovery Program Regulations

Action By: April 12, 2011

Summary of Request: Staff requests approval to begin the formal rulemaking process and formally notice proposed Architectural Paint Recovery Program Regulations needed to implement the paint stewardship law (Chapter 420, Statutes of 2010 [Huffman, AB 1343]).

Recommendation:
Staff recommends approval of the "Proposed Architectural Paint Recovery Program Regulations" so that the regulations may be forwarded to the Office of Administrative Law and the formal regulatory process can begin.

Action:
On the basis of the information and analysis in this Request for Approval and the findings set out above, I hereby approve the "Proposed Architectural Paint Recovery Program Regulations" and direct staff to forward the regulatory packet to the Office of Administrative Law so the formal regulatory process may begin.

Dated: _____

Mark Leary
Acting Director

Attachments: Proposed Architectural Paint Recovery Program Regulations

Background Information, Analysis, and Findings:

To implement Assembly Bill 1343 of 2010, the Department has responsibility to approve or disapprove of stewardship plans submitted by paint manufacturers or their designated product stewardship organization; review annual reports and adopt a finding of compliance or non-compliance, and provide oversight and enforcement to ensure a level playing field among all paint manufacturers. For manufacturers to be in compliance, they or their stewardship organization must have an approved plan on file with CalRecycle. Enforcement is addressed through a combination of civil penalties for non-compliance and transparency that allows all stakeholders and the public to evaluate progress. Additionally, paint manufacturers and/or stewardship organization(s) are required to pay CalRecycle an annual administrative fee sufficient to cover the department's full costs of administering and enforcing the law.

To carry out these responsibilities, the Department seeks to promulgate regulations that add clarity and establish administrative procedures covering: definitions; submittal instructions; stewardship plan approval criteria; annual report acceptance criteria; the establishment of a progressive enforcement approach; record keeping requirements; proprietary, confidential or trade secret information; and a process for CalRecycle to accept payment for its services related to oversight and enforcement activities.

Staff have met with numerous stakeholders and conducted a public workshop on March 10, 2011 to share and solicit feedback and guidance on the Department's informal draft regulatory text. Staff has considered these comments from the public and incorporated appropriate changes into the "Proposed Architectural Paint Recovery Program Regulations" (Attachment 1). The primary concerns expressed by stakeholders about the draft informal regulatory text and staff's response to these concerns are briefly summarized here:

- **Overarching Concerns About Scope of Financial Coverage:** Stakeholders expressed a concern whether CalRecycle would approve a stewardship plan whose financing mechanism does not cover the full costs of the program; specifically, if a stewardship organization does not negotiate payment for collection costs incurred by a local household hazardous waste program. As a result, staff made the following modifications: 1) added definitions for "collection", "operational costs", and "service providers" that clarify that the costs to collect from the consumer must be included in the program's operational costs, and 2) added a requirement for a manufacturer or stewardship organization to state that agreements with service providers address all operational costs. Concerns were raised regarding how the assessment collected in a jurisdiction will be used to provide service in that jurisdiction. Staff is conducting further research into this issue and will provide an update as part of the formal rulemaking process.
- **Definitions:** Stakeholders suggested modification of some definitions to more accurately reflect the intent of the regulation. Subsequently, staff has modified definitions for "assessment" and "brand". The suggestion to define "architectural paint" was not incorporated as this term is already defined in statute. Further, staff does not suggest limiting the scope of this definition, thereby allowing flexibility to cover new products/formulations over time. Consequently, specific references to "water and oil-based paint" were removed from the text.
- **Submittals:** A suggestion to remove the requirement for contact information for individual manufacturers participating in a stewardship organization was considered;

however, staff considers this basic information as necessary for maintaining compliance. Further, this suggestion prompted staff to recommend that this basic contact information be updated in the annual reports.

- **Stewardship Plan Approval Criteria:** Stakeholders suggested adding a description of paint container management. Staff added this criteria. The suggestion to clarify that the baseline for determining goals should indicate the current status of architectural paint management in the state was added. The comment that the posting of compliant manufacturers needs to be updated in a timely manner was acknowledged, and staff is working internally to ensure this occurs. Some stakeholders questioned whether it was appropriate to reference the solid waste management hierarchy. As the statute is consistent with CalRecycle's solid waste management hierarchy, staff considers the reference appropriate. A suggestion to specify that the current level of service provided in a jurisdiction must be maintained was not added, as the department determined that it does not have the statutory basis for this requirement.
- **Annual Report Acceptance Criteria:** Staff added a stakeholder suggestion to include a description of challenges the manufacturer or stewardship organization encountered and how they will be addressed. A requirement to report on the disposition of paint, by estimated volume, including facility names and addresses was added as a means to ensure proper end-of-life management. Staff considered a comment that this information is difficult to obtain from waste contractors, but respectfully disagree, as this requirement may be included via contractual arrangements. Staff did not agree with the request to delete reporting of market development activities, as this is optional and the reporting can include a description of activities that one or more manufacturers may undertake at some point in the future.
- **Retail Participation:** Stakeholders expressed concern regarding the potential for a manufacturer or stewardship organization to limit the number of retail collection points in a stewardship program. Staff added language under the sections on stewardship plans and annual reports to clarify that 1) retailers may participate on a voluntary basis, 2) the agreement must be mutually agreeable and reasonably feasible, and 3) the agreement must address all operational costs.
- **Enforcement:** Staff added "failure to meet record keeping requirements" to both penalty tables. Specific record-keeping requirements were also added.

After the CalRecycle public workshop on March 10, PaintCare publically discussed its work to-date in developing the stewardship program. At both the CalRecycle workshop and the PaintCare stakeholder consultation, stakeholders raised a number of additional issues related to program implementation. These included:

- Will the assessment be taxable?
- If a local Household Hazardous Waste Program participates in the program, does it still maintain liability for the materials in perpetuity or does this get transferred to the manufacturer or stewardship organization with which it contracts?

These are important issues that PaintCare will need to address, both in developing its program and in the stewardship plan it submits to CalRecycle. Depending on comments received from the public during the formal rulemaking process and on CalRecycle's own analyses, CalRecycle

also may need to address some of these issues within the regulations as well or provide guidance to the involved parties. For example, CalRecycle has already begun discussing the tax question with the Board of Equalization, which has informally indicated that the fee is taxable.

Approval of this "Proposed Regulations for Architectural Paint Recovery Program" Request would allow staff to file the regulatory package with the Office of Administrative Law (OAL), and, when that is published by OAL, to initiate the formal rulemaking process. CalRecycle staff anticipates that the formal process will begin in June 2011. The regulatory process is scheduled to be completed in January 2012. The law requires that stewardship plans be submitted by April 1, 2012 and approved by July 1, 2012 or three months after a stewardship plan is approved by CalRecycle. A tight schedule must be maintained to meet this deadline.

Proposed Regulations for Architectural Paint Recovery Program

PROPOSED REGULATIONS

ARCHITECTURAL PAINT RECOVERY PROGRAM

TITLE 14:	NATURAL RESOURCES
DIVISION 7.	DEPARTMENT OF RESOURCES, RECYCLING AND RECOVERY
CHAPTER 11.	PRODUCT STEWARDSHIP
ARTICLE 2.	ARCHITECTURAL PAINT RECOVERY PROGRAM

§18950. Purpose.

The purpose of this Article is to clarify existing statute and establish administrative procedures to efficiently and effectively implement the department's responsibilities under the law and to provide a uniform competitive business environment to all architectural paint manufacturers pursuant to §48700 of the Public Resources Code (PRC).

Authority cited: Sections 40502 and 42970, Public Resources Code, Reference: Section 42970, Public Resources Code.

§18951. Definitions.

(a) Except as otherwise noted, the definitions of this Article supplement and are governed by the definitions set forth in Chapter 5 (commencing with §48700), Part 7, Division 30 of the Public Resources Code:

- (1) "Must" or "shall" means a provision is mandatory.
- (2) "May" means a provision is permissive.

(b) "Administrative fee" means the fee imposed by the department on the architectural paint manufacturer or stewardship organization in order to cover the costs of administering and enforcing the statute.

(c) "Assessment" means the amount added to the purchase price of architectural paint sold in this state necessary to cover the cost of implementing a manufacturer or stewardship organization's paint stewardship program.

- (d) "Brand" means a name, sign, symbol, slogan, or anything that is used to identify and distinguish a specific architectural paint product.
- (e) "Collection" means any method by which a service provider receives postconsumer architectural paint from a consumer.
- (f) "Operational costs" means costs to operate a paint stewardship program, including, but not limited to, collection, transportation, processing, disposal, and education and outreach costs.
- (g) "Reporting period" means a consecutive 12-month period as specified in statute.
- (h) "Service provider" means an entity, including, but not limited to, local household hazardous waste collection programs and retailers, that contracts with a manufacturer or stewardship organization to provide services including, but not limited to, collection, consolidation, transportation or processing of postconsumer architectural paint.
- (i) "Significant or material change" means any modification of the architectural paint stewardship assessment previously approved by the department.

Authority cited: Sections 40502 and 42970, Public Resources Code, Reference: Section 42970, Public Resources Code.

§18952. Submittals.

- (a) A corporate officer, acting on behalf of an architectural paint manufacturer or stewardship organization, shall register with the department according to instructions provided by the department. The registration process shall include, but not be limited to, the following information:
 - (1) Contact information of the corporate officer responsible for submitting stewardship plan and annual report documents to the department and for overseeing paint stewardship program activities, including, but not limited to:
 - (A) Contact Name
 - (B) Title
 - (C) Name and Company or Stewardship Organization
 - (D) Mailing address
 - (E) Phone number

- (F) E-mail address
 - (G) Web address, if applicable
 - (H) Location and custodian of records
- (2) List and contact information for each architectural paint manufacturer participating in the stewardship organization, including, but not limited to:
- (A) Name of Company
 - (B) Mailing address and physical address
 - (C) Web address, if applicable
 - (D) Location and custodian of records
 - (E) Contact Name, Title, Phone Number, and e-mail address of participating architectural paint manufacturers shall be provided to the department upon request.
- (3) List of brands covered under the stewardship plan.
- (b) The stewardship plan should be submitted electronically according to instructions provided by the department. A hard copy, signed by a corporate officer of a manufacturer or stewardship organization under the penalty of perjury, must also be submitted to the department.
- (1) The stewardship plan must be submitted for re-approval upon any significant or material change, as defined. The department shall review the revised stewardship plan within 90 days of receipt and make a determination whether or not to approve the plan.
 - (2) The information submitted in a stewardship plan shall address the criteria for approval in §18953 and be organized according to this standard outline:
 - (A) Contact Information
 - (B) Scope
 - (C) Program Goals and Activities
 - (D) Solid Waste Management Hierarchy
 - (E) Collection Systems
 - (F) Market Development
 - (G) Financing Mechanism
 - (H) Education and Outreach

- (I) Program Performance Measurement
 - (J) Stakeholder Consultation
 - (K) Audits
- (3) The approved stewardship plan shall be a public record, except that financial, production, or sales data reported to the department by a manufacturer or stewardship organization is not a public record under the California Public Records Act, as described in Chapter 3.5 (commencing with § 6250) of Division 7 of Title 1 of the Government Code and shall not be open to public inspection. The department may release financial, production, or sales data in summary form only that cannot be attributable to a specific manufacturer.
- (c) The annual report shall be submitted by a corporate officer acting on behalf of a manufacturer or stewardship organization that is operating an architectural paint stewardship program under a department-approved stewardship plan.
- (1) The annual report should be submitted electronically to the department according to directions provided by the department. A hard copy, signed by a corporate officer of a manufacturer or stewardship organization under the penalty of perjury, must also be submitted.
 - (2) The information submitted in an annual report shall address the criteria for a finding of compliance per §18954 and be organized according to this standard outline:
 - (A) Contact Information
 - (B) Executive Summary
 - (C) Scope
 - (D) Program Outline
 - (E) Description of Goals and Activities Based on the Stewardship Plan
 - (F) Market Development
 - (G) Financing Mechanism
 - (H) Education and Outreach
 - (I) Audits

Authority cited: Sections 40502, 42970, 42972, 42973, and 42974, Public Resources Code, Reference: Section 42970, 42972, 42973, and 42974, Public Resources Code.

§18953. Stewardship Plan Approval Criteria.

- (a) Paint stewardship plans must follow the standard outline per §18942 and contain the following:
- (1) Contact information. Identify the manufacturer or designated stewardship organization responsible for the stewardship plan submittal.
 - (2) Scope. Describe how the stewardship program is designed to accept and manage all applicable architectural paint products, including paint containers. A manufacturer or stewardship organization shall provide an updated list of manufacturers and brands to the department at least every six months.
 - (3) Program Goals and Activities. Include program goals that are specific to and appropriate for California, recognizing the current recycling infrastructure and capacity, estimating changes in market conditions, and anticipating recycling infrastructure and capacity in California. Discussion on goals must include a baseline, to be provided by the manufacturer or stewardship organization, from which the goals will be measured and reported in the manufacturer or stewardship organization's annual reports. The baseline should indicate the status of architectural paint management in the state at the time of plan submission. A methodology for estimating the amount of leftover paint available for collection in California must be provided by the manufacturer or stewardship organization. Describe how the program goals will be achieved to:
 - (A) Reduce the generation of postconsumer paint;
 - (B) Promote the reuse of postconsumer paint; and
 - (C) Properly manage postconsumer paint at end-of-life, including recovery and recycling of postconsumer paint.
 - (4) Solid Waste Management Hierarchy. Describe proposed measures that will enable the management of postconsumer architectural paint in a manner

consistent with the state's solid waste management hierarchy pursuant to PRC §40051:

- (A) Source reduction
 - (B) Recycling
 - (C) Environmentally safe transformation and safe land disposal
- (5) Collection Systems. Describe the system that will be used to collect and properly manage postconsumer architectural paint. This description must include the following:
- (A) Collection methods used for architectural paint, by type.
 - (B) Destination for reuse activities, processing (including recycling) and/or disposal for architectural paint by type.
 - (C) Description of best management practices to be followed by the service providers, including any training that the manufacturer or stewardship organization intends to provide to or require of service providers to ensure proper collection and management of postconsumer architectural paint.
 - (D) Description of convenient collection for California residents to recycle and properly manage their unwanted architectural paint on a state wide basis, including the proposed number, location, and type of collection sites located in each county.
 - (E) Any retailer may participate, on a voluntary basis, as a paint collection site pursuant to the paint stewardship program. A manufacturer or stewardship organization must negotiate with any retailer wanting to participate in their paint stewardship program as a collection site to attempt to establish a mutually agreeable and reasonably feasible agreement with the retailer that addresses all operational costs.
- (6) Market Development. Describe incentives or methods to increase recycling of and develop markets for collected materials, as applicable.
- (7) Financing Mechanism. Include a funding mechanism that provides sufficient funding to recover, but not exceed, the cost of the architectural paint

stewardship program, including the administrative, operational, and capital costs of the program. The funding mechanism includes the following:

- (A) The amount of the assessment per unit of architectural paint sold in the state.
 - (B) A budget for the program that includes revenue estimates from the assessment, full program costs, and administrative costs (including those pursuant to §19858 re: service payment to the department).
 - (C) A statement that any surplus funds will be put back into the program to reduce the costs of the program, including the assessment amount.
 - (D) A statement that the manufacturer or stewardship organization has established a mutually agreeable and reasonably feasible agreement(s) with a service provider(s) that addresses all operational costs.
 - (E) Stewardship organization and manufacturers shall allocate revenues and expenditures applicable to this program in accordance with Generally Acceptable Accounting Principles.
 - (F) The stewardship plan shall include documentation on how the collection and expenditure of assessment funds shall be kept separate from other activities of the stewardship organization.
- (8) Education and Outreach. Include a description of education and outreach efforts to consumers, contractors, and retailers to promote source reduction and recycling of architectural paint. The description shall include how the outreach and education methods will be used and distributed, and how effectiveness of these activities will be measured. Educational information may include, but is not limited to, signage, written materials, advertising or other promotional materials pursuant to PRC §48703(e).
- (9) Program Performance Measurement. Describe how attainment of the goals will be measured per §18953(a)(3). Program data shall be collected for purposes of annual report submittal (see §18954. Annual Report Compliance Criteria). Information to be provided includes, but is not limited to specific information on the measurement methodology, assumptions, conversion factors, if used, and data sources.

- (10) Stakeholder Consultations. A manufacturer or stewardship organization that submits a stewardship plan shall include a process of consultation with existing local household hazardous waste collection programs and other affected stakeholders, and consider the existing infrastructure in the development of the plan. Stakeholders may include, but are not limited to, consumers, retailers, architectural paint recyclers, architectural paint contractors, and haulers.
- (11) Audits.
- (A) Financial Information. Describe the process by which the financial activities of the stewardship organization or individual manufacturer that are related to implementation of the stewardship plan will be subject to an independent financial audit, results of which will be submitted in the manufacturer or stewardship organization's annual report and reviewed by the department.
- (B) Non-Financial Information (optional). Describe the process by which the following non-financial activities of the organization or individual manufacturer that are related to implementation of the stewardship plan will be subject to an independent non-financial audit, which will be submitted in the manufacturer or stewardship organization's annual report and reviewed by the department:
1. A description of how the postconsumer architectural paint was managed in accordance with the stewardship plan.
 2. The total amount of architectural paint sold and collected, and, if applicable, the recovery rate.

Authority cited: Sections 40502, 42970, 42972, and 42973, Public Resources Code,
Reference: Section 42970, 42972, and 42973, Public Resources Code.

§18954. Annual Report Compliance Criteria.

- (a) The annual report must contain the following:

- (1) Contact information. Identify the manufacturer or stewardship organization responsible for the annual report submittal.
- (2) Executive Summary. Provide an evaluation of the effectiveness of the paint stewardship plan, and anticipated steps, if needed, to improve performance. Describe challenges encountered during the reporting period and how they will be addressed.
- (3) Scope. The program described in the stewardship plan accepts and manage all applicable architectural paint products. Include an updated list of participating manufacturers and their respective contact information per §18952(a)(2).
- (4) Program Outline. Describe the paint stewardship program, including information on the following topics:
 - (A) A description of the methods used to collect, transport, and process postconsumer architectural paint, by type, in this state.
 - (B) Description of convenient collection for California residents to recycle and properly manage their unwanted architectural paint on a state wide basis, including the number, location, and type of collection sites located in each county.
 - (C) Description of best management practices followed by service providers, including any training that the manufacturer or stewardship organization provided or required of service providers to ensure proper collection and management of postconsumer paint.
 - (D) Description of how each consumer of architectural paint had an opportunity to properly manage their postconsumer paint.
 - (E) A statement that the manufacturer or stewardship organization negotiated with any retailer that contacted for inclusion in the stewardship program in an attempt to establish a mutually agreeable and reasonably feasible agreement that addresses all operational costs.
- (5) Description of goals and activities based on the stewardship plan. State goals from the approved stewardship plan, the baseline from which goals were measured, and report on achievement during the reporting period. Describe

any adjustments to goals stated in the approved stewardship plan for the upcoming reporting period and accompanying rationale for those changes. The annual report must include, but not be limited to, quantitative information and discussion on the following categories pursuant to PRC §48705(a) and PRC §48703(d):

- (A) The total volume of architectural paint sold, by type, in the state during the preceding reporting period.
- (B) The total volume of postconsumer architectural paint recovered, by type, in the state during the preceding reporting period.
- (C) Disposition of postconsumer paint collected, by type and by estimated volume, including facility name(s) and address(es) for each disposition method.
- (D) The total cost of implementing the architectural paint stewardship program.
- (E) An evaluation of how the architectural paint stewardship program's funding mechanism operated.
- (F) A description of efforts to increase reuse of postconsumer paint.
- (G) A description of efforts to increase recyclability of postconsumer paint.
- (6) Market Development. Include a description of possible market development activities to incentivize the market growth of collected materials, if applicable.
- (7) Financing Mechanism. The annual report shall include a description of the total cost of implementing the architectural paint stewardship program and an evaluation of the program's financing mechanism, including whether or not the funding was sufficient to recover, but not exceed, the full cost of the paint stewardship program. Any proposed change in the amount of the architectural paint stewardship assessment must be submitted to the department for re-approval (see §18952. Submittals). The annual report shall include, but not be limited to, the following, and include any necessary supporting documents:
 - (A) Assessment amount per container
 - (B) Total program cost
 - (C) Capital costs

- (D) Cost(\$)/capita
 - (E) Cost (\$)/gallon collected
 - (F) Education/Outreach (% of total program cost)
 - (G) End-of-life materials management (% of total program cost, with line items for reuse, recycling, fuel incineration, and landfilling)
 - (H) Program administration (% of total program cost, including annual administrative fee for service payments to the department)
 - (I) An evaluation of how the assessment operated
 - (J) Surplus funding, if any, and how it will be applied to reduce program costs
 - (K) Governance (program oversight) (% of total program cost)
- (8) Education and Outreach. Describe educational and outreach activities in context of those identified in the stewardship plan. Provide a description of educational materials that were provided to retailers, consumers, and contractors during the reporting period and provide electronic samples. Identify the method(s) used to determine the effectiveness of educational and outreach surveys (e.g., surveys, hits on specific web pages, number of participants at events, etc). These education and outreach materials may include, but are not limited to, any of the following per PRC §48703(b)(4)(e):
- (A) Signage that is prominently displayed and easily visible to the consumer.
 - (B) Written materials and templates of materials for reproduction by retailers to be provided to contractors and consumers at the time of purchase or delivery or both.
 - (C) Promotional materials or activities, or both, that explains the purpose of paint stewardship and the means by which it is being carried out.
 - (D) Links to website(s) created and maintained by the stewardship organization.
- (9) Audits.
- (A) Financial Information. The annual report shall include an independent financial audit funded from the paint stewardship assessment. The audit shall be conducted in accordance with auditing standards generally accepted in the United States of America, and standards set forth in

Government Auditing Standards issued in July 2007 by the Comptroller General of the United States.

1. The department may investigate further. If the department decides to further review the findings of the independent auditor, the review will be conducted based on same information the individual manufacturer or stewardship organization provided to the independent auditor.
2. Financial audits must be prepared by a Certified Public Accountant.
3. The department may request supplemental information from the individual manufacturer or stewardship organization during the course of review of a manufacturer- or stewardship organization-submitted financial audit, if necessary.
4. The department will inform the individual manufacturer or the stewardship organization within 60 days of the results of its review.

(A) Non-Financial Information (optional). The annual report may include an independent audit on the following information:

1. A description of how the postconsumer architectural paint was managed in accordance with the stewardship plan.
2. The total amount of architectural paint sold and collected, and, if applicable, the recovery rate.

Authority cited: Sections 40502, 42970, 42972, 42975, and 42976, Public Resources Code, Reference: Section 42970, 42972, 42975, and 42976, Public Resources Code.

§18955. Civil Penalties.

A civil penalty may be administratively imposed by the department on any person who is in violation of any provision of this Article. The responsible party or parties shall be determined by the department based on the totality of the circumstances.

(a) Any manufacturer offering architectural paint for sale in California or a manufacturer or stewardship organization submitting a stewardship plan or annual

report to the department is subject to enforcement under this Article. Architectural paint manufacturers are subject to penalties as a result of the failure of their designated stewardship organization to comply with this Article on their behalf.

(b) Notwithstanding paragraph (a), an architectural paint manufacturer is not subject to any penalty for failing to comply if that manufacturer can demonstrate that it provided true and accurate information to the stewardship organization and the stewardship organization failed to properly report this on behalf of the manufacturer.

(c) A stewardship organization is not subject to a penalty for failure to comply as a result of submitting false or misleading information if it can demonstrate that it received false or misleading information from an architectural paint manufacturer that was the direct cause of its failure to comply with this Article.

(d) Any manufacturer or retailer that offers architectural paint for sale in the state is subject to enforcement under this Article.

Authority cited: Sections 40502, 42970, 42972, 42972.5, 42973, 42974, 42975, Public Resources Code, Reference: Section 42970, 42972, 42972.5, 42973, 42974, 42975, and 42978, Public Resources Code.

§18955.1. Amount of Civil Penalties and Administrative Penalty Schedule.

(a) Civil penalties may be imposed administratively in accordance with the following penalty tables:

- (1) Base Penalty Table I is to be used for stewardship organizations and architectural paint manufacturers.
 - (A) Identify what violations have occurred.
 - (B) Identify the severity of the violations.
 - (C) Establish the possible range of the base penalty per violation based on the severity levels described in paragraph (b).

Base Penalty Table I: For Stewardship Organizations and Architectural Paint Manufacturers

Violation	Description of Violation	Severity
PRC 48702(b)(1)	Selling or offering for sale in this state, to any person in this state, architectural paint that is not covered under a department-approved stewardship plan or listed as a compliant product on the department's website.	Level 3
PRC 48702(a) and 48703(a)	Failure to submit, individually or through a stewardship organization, an architectural paint stewardship plan to the department	Level 3
PRC 48703	Stewardship plan does not contain required elements	Level 3
PRC 48704(c)	Failure to implement an architectural paint stewardship program described in a department-approved stewardship plan	Level 3
PRC 48704(e)	Failure to pay an annual administration fee to the department	Level 3
PRC 48705(a)	Failure to submit, individually or through a stewardship organization, an annual report to the department	Level 3
PRC 48705(a)	Annual report does not contain required elements	Level 2
14 CCR 18956	Failure to meet record keeping requirements	Level 2

(2) Base Penalty Table II is to be used for retailers.

(A) Identify what violations have occurred.

(B) Identify the severity of the violations.

(C) Establish the possible range of the base penalty per violation based on the severity levels described in paragraph (b).

Base Penalty Table II: For Retailers		
Violation	Description of Violation	Severity

<p>PRC 48702(b)(1)</p>	<p>Selling or offering for sale in this state, to any person in this state, architectural paint that is not covered under a department-approved stewardship plan or listed as a compliant product on the department's website.</p>	<p>Level 3</p>
<p>14 CCR 18956</p>	<p>Failure to meet record keeping requirements.</p>	<p>Level 2</p>

(b) For the purpose of implementing this [Section/Article], penalty severity levels are described as follows:

- (1) For a violation classified as Level 1, the amount of the base penalty may be up to \$1,000 per day.
- (2) For a violation classified as Level 2, the amount of the base penalty may be up to \$5,000 per day.
- (3) For a violation classified as Level 3, the amount of the base penalty may be up to \$10,000 per day.

(c) The department will set the final penalty amount after considering the criteria set forth in §18955.2. The department may increase the final penalty beyond the penalty range established pursuant to paragraphs (a) and (b), if it determines, after considering the criteria set forth in §18955.2, that such an increase is warranted and appropriate.

Note: Authority cited: Sections 40502 and 42970 and 42978, Public Resources Code. Reference: Sections 42970 and 42978.

§18955.2. Criteria to Impose a Civil Penalty.

In assessing or reviewing the amount of civil penalty imposed for a violation of this chapter, the department or the court shall consider all the following:

- (a) The nature, circumstances, extent, and gravity of the violation(s).
- (b) The number and severity of the violation(s).
- (c) Evidence that the violation was intentional, knowing or negligent.
- (d) The size of the violator.
- (e) History of violation(s) of the same or similar nature.

- (f) The willfulness of the violator's misconduct.
- (g) Whether the violator took good faith measures to comply with this chapter and the period of time over which these measures were taken.
- (h) Evidence of any financial gain resulting from the violation(s).
- (i) The economic effect of the penalty on the violator.
- (j) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.
- (k) Any other factor that justice may require.

Note: Authority cited: Sections 40502 and 42978, Public Resources Code.

Reference: Section 42978, Public Resources Code.

§18955.3 Procedure for Imposing Civil Penalties.

- (a) Civil penalties may be administratively imposed in accordance with the procedures outlined in the Administrative Procedure Act at Chapter 5 (commencing with §11500) of Part 1 of Division 3 of Title 2 of the Government Code with the exception of Government Code §11505(c).
- (b) The accusation or complaint and all accompanying documents may be served on the respondent by the following means:
 - (1) Personal service.
 - (2) Substitute service by using the same service procedures as described in §415.20 of the Code of Civil Procedure.
 - (3) Certified Mail: For respondents who have submitted a stewardship plan, certified mail or registered mail if the letter containing the accusation or complaint and accompanying material is mailed, addressed to the respondent at the latest facility or mailing address(es) provided in the stewardship plan on file with the department. Any address provided in the stewardship plan may be used for service of process. Proof of service of the accusation or complaint shall be the certified mail receipts or registered mail receipts proving the accusation or complaint and accompanying materials were sent to respondent by certified mail or registered mail. For respondents who have not submitted

or are not required to submit a stewardship plan to the department, certified mail or registered mail pursuant to the procedures indicated in the Administrative Procedure Act at §11505(c) of the Government Code applies.

(c) Civil penalties may be imposed pursuant to the Public Resources Code §48704(f) in the discretion of the trier of fact in the civil proceeding.

Note: Authority cited: Sections 40502 and 42970, Public Resources Code.
Reference: Section 11500, Government Code; and Section 42970, Public Resources Code.

§18956. Record Keeping Requirements

Each stewardship organization, manufacturer, or retailer required to comply with Chapter 5 (commencing with §48700, Part 7, Division 30 of the Public Resources Code) shall:

(a) Maintain records to support the requirements in this Article. Stewardship organizations and manufacturers must maintain records to support §18953 and §18954. Retailers must maintain records on all architectural paint sold or offered for sale in the state including:

- (1) The manufacturer of the paint.
- (2) The date(s) the retailer purchased the paint from the manufacturer.
- (3) The date(s) the retailer sold the paint.
- (4) Certification letter(s) from the department if provided by a manufacturer to demonstrate that paint from the manufacturer is or was subject to a department-approved stewardship plan.

(b) Provide the department with immediate access to its facilities, operations, and any relevant records necessary to determine compliance with this Article, upon request.

The records required by this Article shall be accessible for three years;

(c) Make all records required by this Article available for inspection or audit by the department, or its agent and other duly authorized regulatory agencies during normal working hours;

- (d) Submit copies of specified records to the department upon request or at a frequency approved by the department.
- (e) The department may take disciplinary action against any stewardship organization or manufacturer who fails to provide the department with access pursuant to this subdivision including, but not limited to, imposing penalties and the immediate removal from the department's list of manufacturers that are in compliance with Chapter 5 (commencing with §48700), Part 7, Division 30 of the Public Resource Code.

Note: Authority cited: Sections 40502 and 42970, Public Resources Code. Reference: Sections 42970, 42972, 42972.5, 42975, and 42976, Public Resources Code.

§18957. Proprietary, Confidential, or Trade Secret Information.

The public disclosure of records supplied to the department pursuant to this Article that are, at the time of submission, claimed to be proprietary, confidential, or trade secret shall be subject to the disclosure provisions in Title 14, California Code of Regulations, Division 7, Chapter 1, Article 4 (commencing with §17041).

Authority cited: Section 6253, Government Code. Sections 40502 and 42970, Public Resources Code. Reference: Sections 6250 et seq., Government Code. Section 42970, Public Resources Code.

§18958. Service Payments to Department of Resources Recycling and Recovery.

- (a) The department, using information provided in annual reports, its actual program costs for previous years, plans submitted in prior years, information from other sources, and assessing program needs; shall estimate the costs to be incurred by the department in connection with the administration and enforcement of the requirements of this chapter for the next fiscal year.
- (b) The department director, or his/her delegated authority, shall approve the administrative fee charged for each stewardship plan for the full administration and enforcement costs by April 30 each year starting 2012.
- (c) Any department fee shall be prorated, if there is more than one stewardship plan, by the number of plans submitted.

(d) The department will issue invoices for each stewardship plan by May 31 each year. Payment is due annually on July 1. The department's approval of a plan shall be revoked if payment is not received. Stewardship plans revoked for lack of payment may be reinstated upon payment.

Authority cited: Sections 40502, 42970, 42972, 42977, and 42977.1, Public Resources Code, Reference: Section 42970, 42972, 42977, and 42977.1, Public Resources Code.

