

**DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

801 K STREET, MS 19-01, SACRAMENTO, CALIFORNIA 95814 • (916) 322-4027 • WWW.CALRECYCLE.CA.GOV

Date: October 7, 2011
TO: Interested Parties
FROM: Cynthia Dunn, Integrated Waste Management Specialist
SUBJECT: **Notice of Changes to Proposed Regulation for Architectural Paint Recovery Program**

A 45-day public comment period for the proposed Architectural Paint Recovery Program Regulation ran from July 22, 2011 through September 5, 2011. The California Department of Resources Recycling and Recovery (CalRecycle) staff held a public hearing on the proposed regulation on September 8, 2011. On October 3, 2011 CalRecycle staff held a public meeting to present potential changes to the proposed regulation based on comments received during the 45-day public comment period and the September 8, 2011 public hearing. After considering comments received during the 45-day comment period and comments made at the public hearing and public meeting, CalRecycle staff revised the proposed Architectural Paint Recovery Program Regulation. These revisions will add clarity to the existing language where needed. On October 10, 2011 CalRecycle will initiate an additional 15-day comment period for the proposed changes.

A copy of the full text of the regulation as originally proposed with the newly proposed changes clearly indicated is available on Paint Stewardship rulemaking website at: <http://calrecycle.ca.gov/Laws/Rulemaking/Paint/>. Text shown in underline (addition) and ~~strikeout~~ (deletion) depict proposed changes made after the 45-day comment period. CalRecycle staff is only required to respond to comments related to the newly proposed changes to the regulation.

The 15-day written public comment period for this rulemaking ends at noon October 25, 2011.

Please submit your written comments to:

Cynthia Dunn
Materials Management and Local Assistance Division
California Department of Resources Recycling and Recovery (CalRecycle)
P.O.Box 4025
Sacramento, CA 95812-4025
FAX: (916) 319-7495
E-mail: paint@calrecycle.ca.gov

Thank you for your interest and participation in this process.



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 ~~48700~~42970, Public Resources Code, Reference: Section ~~48700~~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.

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

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17 Authority cited: Sections 40502 and ~~42970~~48700, Public Resources Code, Reference:
18 Section ~~42970~~48700, Public Resources Code.

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20 **§18952. Submittals.**

21 (a) A corporate officer, acting on behalf of an architectural paint manufacturer or
22 stewardship organization, shall register with the department according to instructions
23 provided by the department. The registration process shall include, but not be limited
24 to, the following information:

- 25 (1) Contact information of the corporate officer responsible for submitting
26 stewardship plan and annual report documents to the department and for
27 overseeing paint stewardship program activities, including, but not limited to:
 - 28 (A) Contact Name
 - 29 (B) Title
 - 30 (C) Name and Company or Stewardship Organization
 - 31 (D) Mailing address

- 1 (E) Phone number
 2 (F) E-mail address
 3 (G) Web address, if applicable
 4 ~~(H) Location and custodian of records~~
- 5 (2) List and contact information for each architectural paint manufacturer
 6 participating in the stewardship organization, including, but not limited to:
 7 (A) Name of Company
 8 (B) Mailing address and physical address
 9 ~~(C) Web address, if applicable~~
 10 ~~(D) Location and custodian of records~~
 11 ~~(E)~~ (C) Physical address, web address (if applicable), Contact Name, Title,
 12 Phone Number, and e-mail address of participating architectural paint
 13 manufacturers shall be provided to the department in a reasonable and timely
 14 manner, as determined by the department, upon request. The department
 15 shall include a reason for any request of this information.
- 16 (3) List of brands covered under the stewardship plan.
- 17 (b) The stewardship plan should be submitted electronically according to instructions
 18 provided by the department. A hard copy, signed by a corporate officer of a
 19 manufacturer or stewardship organization under the penalty of perjury, must also be
 20 submitted to the department.
- 21 ~~(1) The stewardship plan must be submitted for re-approval upon any significant or~~
 22 ~~material change, as defined. The department shall review the revised stewardship~~
 23 ~~plan within 90 days of receipt and make a determination whether or not to approve~~
 24 ~~the plan.~~
- 25 ~~(2)~~ (1) The information submitted in a stewardship plan shall address the criteria
 26 for approval in §18953 and be organized according to this standard outline:
 27 (A) Contact Information
 28 (B) Scope
 29 (C) Program Goals and Activities
 30 ~~(D) Solid Waste Management Hierarchy~~
 31 ~~(E)~~ (D) Collection Systems

- 1 ~~(F)~~ (E) Market Development
- 2 ~~(G)~~ (F) Financing Mechanism
- 3 ~~(H)~~ (G) Education and Outreach
- 4 ~~(I)~~ (H) Program Performance Measurement
- 5 ~~(J)~~ (I) Stakeholder Consultation
- 6 ~~(K)~~ (J) Audits

7 (2) The department may approve, disapprove, or conditionally approve a
8 stewardship plan. If the department finds that the stewardship plan is complete,
9 the department's 90-day review period for consideration of approval of the
10 stewardship plan will commence upon the original date of receipt. If the
11 stewardship plan is not complete, the department will notify the submitting
12 manufacturer or stewardship organization within 30 days that a complete
13 stewardship plan must be resubmitted within 30 days. An incomplete plan will not
14 commence the department's 90-day review period, and would fail to meet the
15 requirements under PRC §48703. A manufacturer or stewardship organization
16 shall resubmit a plan or provide supplemental information requested by the
17 department when a plan is disapproved or conditionally-approved within 60 days of
18 the notice date.

19 (3) The stewardship plan must be submitted for re-approval upon any significant or
20 material change, as defined. The department shall review the revised stewardship
21 plan within 90 days of receipt and make a determination whether or not to approve
22 the plan.

23 ~~(3)~~ (4) The approved stewardship plan shall be a public record, except that
24 financial, production, or sales data reported to the department by a manufacturer
25 or stewardship organization is not a public record under the California Public
26 Records Act, as described in Chapter 3.5 (commencing with § 6250) of Division 7
27 of Title 1 of the Government Code and shall not be open to public inspection. The
28 department may release financial, production, or sales data in summary form only
29 that cannot be attributable to a specific manufacturer.

1 (c) The annual report shall be submitted by a corporate officer acting on behalf of a
2 manufacturer or stewardship organization that is operating an architectural paint
3 stewardship program under a department-approved stewardship plan.

4 (1) The annual report should be submitted electronically to the department
5 according to directions provided by the department. A hard copy, signed by a
6 corporate officer of a manufacturer or stewardship organization under the
7 penalty of perjury, must also be submitted.

8 (2) The information submitted in an annual report shall address the criteria for a
9 finding of compliance per §18954 and be organized according to this standard
10 outline:

11 (A) Contact Information

12 (B) Executive Summary

13 (C) Scope

14 (D) Program Outline

15 (E) Description of Goals and Activities Based on the Stewardship Plan

16 (F) Market Development

17 (G) Financing Mechanism

18 (H) Education and Outreach

19 (I) Audits

20 (3) The department may adopt a finding of compliance or non-compliance for an
21 annual report. If the department finds that the annual report is complete, the
22 department's 90-day review period for consideration of a finding of compliance
23 will commence upon the original date of receipt. If the annual report is not
24 complete, the department will notify the submitting manufacturer or stewardship
25 organization within 30 days that a complete annual report must be resubmitted
26 within 30 days. An incomplete report will not commence the department's 90-day
27 review period, and would fail to meet the requirements under PRC §48705. A
28 manufacturer or stewardship organization shall resubmit an annual report or
29 provide supplemental documentation requested by the department when an
30 annual report is found to be non-compliant within 60 days of the notice date.

1 Authority cited: Sections 40502, ~~4297048700, 4297248703, 4297348704, and~~
2 ~~4297448705, and 48706~~, Public Resources Code, Reference: Section 40502,
3 ~~4297048700, 4297248703, 4297348704, and 4297448705, and 48706~~, Public
4 Resources Code.

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6 **§18953. Stewardship Plan Approval Criteria.**

7 (a) Paint stewardship plans must follow the standard outline per ~~§4894218952~~ and
8 contain the following:

- 9 (1) Contact information. Identify the manufacturer or designated stewardship
10 organization responsible for the stewardship plan submittal.
- 11 (2) Scope. Describe how the stewardship program is designed to accept and
12 manage all applicable architectural paint products, including paint containers.
13 A manufacturer or stewardship organization shall provide updates to the an
14 updated-list of manufacturers and brands to the department at least every six
15 months.
- 16 (3) Program Goals and Activities. Include program goals that are specific to and
17 appropriate for California and describe how the goals were derived. Factors
18 to consider when determining program goals may include, recognizing the
19 current and future recycling infrastructure and capacity, estimating and
20 changes in market conditions, and anticipating recycling infrastructure and
21 capacity in California. Discussion on Description of goals must include a
22 baseline, to be provided by the manufacturer or stewardship organization,
23 from which the goals will be measured and reported in the manufacturer or
24 stewardship organization's annual reports. The baseline should indicate the
25 status of household hazardous waste architectural paint management in
26 California the state at the time of plan submission. A description of the
27 methodology used for estimating the amount of leftover paint available for
28 collection in California must be provided by the manufacturer or stewardship
29 organization. Describe how the program goals will be achieved to:
30 (A) Reduce the generation of postconsumer paint;
31 (B) Promote the reuse of postconsumer paint; and

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(C) Properly manage postconsumer paint at end-of-life in an environmentally sound fashion, 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)~~ (4) 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~~ how each consumer of architectural paint in California will have an opportunity to recycle and properly manage their unwanted architectural paint on a state wide basis, including the proposed number, location, and type of collection ~~sites~~ points located in each county.

(E) Any retailer may participate, on a voluntary basis, as a paint collection point 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 point site to attempt to establish a mutually agreeable and reasonably feasible agreement with the retailer that addresses all operational costs.

1 ~~(6)~~(5) Market Development. Describe incentives or methods used by the
2 manufacturer or stewardship organization pursuant to PRC §48702(a) to
3 promote the reuse of postconsumer architectural paint in an environmentally
4 sound fashion and to increase recycling of and develop markets for collected
5 materials, as if applicable. A manufacturer or stewardship organization that
6 does not participate in or report on the activities in this section will not be
7 subject to penalties for this section.

8 ~~(7)~~(6) Financing Mechanism. Include a funding mechanism that provides sufficient
9 funding to recover, but not exceed, the cost of the architectural paint
10 stewardship program, including the administrative, operational, and capital
11 costs of the program. The funding mechanism includes the following:

12 (A) The amount of the assessment per unit of architectural paint sold in the
13 state.

14 (B) A budget for the program that includes revenue estimates from the
15 assessment, operational costs~~full program costs~~, and administrative
16 costs (including those pursuant to ~~§49858~~§18958 re: service payment to
17 the department).

18 (C) A statement that any surplus funds will be put back into the program to
19 reduce the costs of the program, including the assessment amount.

20 (D) A statement that the manufacturer or stewardship organization has
21 established a mutually agreeable and reasonably feasible agreement(s)
22 with a service provider(s) that addresses all operational costs as relevant
23 to each particular service provider.

24 (E) Stewardship organization and manufacturers shall allocate revenues and
25 expenditures applicable to this program in accordance with Generally
26 Acceptable Accounting Principles.

27 (F) If a manufacturer or stewardship organization conducts activities that are
28 separate from the implementation and management of the California
29 paint stewardship program, then the The stewardship plan shall include
30 documentation on how the collection and expenditure of assessment
31 funds shall be kept separate from other activities of the manufacturer or

1 stewardship organization and the methodology for distribution of shared
2 costs.

3 ~~(8)-(7)~~ Education and Outreach. Include a description of education and outreach
4 efforts to consumers, contractors, and retailers to promote source reduction
5 and recycling of architectural paint. The description shall include how the
6 outreach and education methods will be used and distributed, and how
7 effectiveness of these activities will be measured. Educational information
8 may include, but is not limited to, signage, written materials, advertising or
9 other promotional materials pursuant to PRC §48703(e). A manufacturer or
10 stewardship organization may not advertise a collection point(s) that is not a
11 contracted service provider under the manufacturer or stewardship
12 organization's stewardship program without the consent of the collection
13 point(s).

14 ~~(9)-(8)~~ Program Performance Measurement. Describe how attainment of the goals
15 will be measured per §18953(a)(3). Program data shall be collected for purposes
16 of annual report submittal (see §18954. Annual Report Compliance Criteria).
17 Information to be provided includes, but is not limited to specific information on the
18 measurement methodology, assumptions, conversion factors, if used, and data
19 sources.

20 ~~(10)-(9)~~ Stakeholder Consultations. A manufacturer or stewardship organization
21 that submits a stewardship plan shall include a process of consultation with
22 existing local household hazardous waste collection programs ~~and other~~
23 ~~affected stakeholders~~, and consider the existing infrastructure in the
24 development of the plan. Other stakeholders that may be consulted include,
25 but are not limited to, consumers, retailers, architectural paint recyclers,
26 architectural paint contractors, and haulers.

27 ~~(11)-(10)~~ Audits. ~~(A) Financial Information.~~ Describe the process by which the
28 financial activities of the stewardship organization or individual manufacturer
29 that are related to implementation of the stewardship plan are compliant with
30 program requirements and standard accounting practices. Describe how
31 these activities will be subject to an independent financial audit, results of

1 which will be submitted in the manufacturer or stewardship organization's
2 annual report and reviewed by the department.

3 ~~(B) Non-Financial Information (optional). Describe the process by which the~~
4 ~~following non-financial activities of the organization or individual~~
5 ~~manufacturer that are related to implementation of the stewardship plan~~
6 ~~will be subject to an independent non-financial audit, which will be~~
7 ~~submitted in the manufacturer or stewardship organization's annual report~~
8 ~~and reviewed by the department:~~

9 1. ~~A description of how the postconsumer architectural paint was~~
10 ~~managed in accordance with the stewardship plan.~~

11 2. ~~The total amount of architectural paint sold and collected, and, if~~
12 ~~applicable, the recovery rate.~~

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14 Authority cited: Sections 40502, 4297048700, 4297248703, and 4297348704, Public
15 Resources Code, Reference: Section 4297048700, 4297248703, and 4297348704,
16 Public Resources Code.

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18 **§18954. Annual Report Compliance Criteria.**

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

20 (1) Contact information. Identify the manufacturer or stewardship organization
21 responsible for the annual report submittal.

22 (2) Executive Summary. Provide ~~an evaluation of the effectiveness~~ a description
23 of the manufacturer or stewardship organization's architectural paint recovery
24 efforts of the paint stewardship plan during the reporting period pursuant to
25 PRC §48705(a). ~~This may include~~ and anticipated steps, if needed, to
26 improve performance and a description of. ~~Describe~~ challenges encountered
27 during the reporting period and how they will be addressed.

28 (3) Scope. The program described in the stewardship plan accepts and manage
29 all applicable architectural paint products. Include an updated list of
30 participating manufacturers and their respective contact information per
31 §18952(a)(2).

- 1 (4) Program Outline. Describe the paint stewardship program, including
2 information on the following topics:
- 3 (A) A description of the methods used to collect, transport, and process
4 postconsumer architectural paint, by type, in this state.
- 5 (B) Description of how each consumer of architectural paint in California had
6 an opportunity convenient collection for California residents to recycle and
7 properly manage their ~~unwanted architectural~~ postconsumer paint on a
8 state wide basis, including the number, location, and type of collection
9 points sites located in each county.
- 10 (C) Description of best management practices followed by service providers,
11 including any training that the manufacturer or stewardship organization
12 provided or required of service providers to ensure proper collection and
13 management of postconsumer paint.
- 14 ~~(D) Description of how each consumer of architectural paint had an~~
15 ~~opportunity to properly manage their postconsumer paint.~~
- 16 (E) (D) A statement that the manufacturer or stewardship organization
17 negotiated with any ~~retailer~~ service provider that contacted the
18 manufacturer or stewardship organization for inclusion in the stewardship
19 program as a collection point in an attempt to establish a mutually
20 agreeable and reasonably feasible agreement that addresses all
21 operational costs.
- 22 (5) Description of goals and activities based on the stewardship plan. State goals
23 from the approved stewardship plan, the baseline from which goals were
24 measured, and report on achievement during the reporting period. Describe
25 any adjustments to goals stated in the approved stewardship plan for the
26 upcoming reporting period and accompanying rationale for those changes.
27 The annual report must include, but not be limited to, quantitative information
28 and discussion on the following categories pursuant to PRC §48705(a) and
29 PRC §48703(d):
- 30 (A) The total volume of architectural paint sold, by type, in the state during the
31 preceding reporting period.

1 (B) The total volume of postconsumer architectural paint recovered, by type,
2 in the state during the preceding reporting period.

3 (C) Disposition of postconsumer paint collected, by type and by estimated
4 volume, including facility name(s) and address(es) for each disposition
5 method.

6 ~~(D) The total cost of implementing the architectural paint stewardship
7 program.~~

8 ~~(E) An evaluation of how the architectural paint stewardship program's funding
9 mechanism operated.~~

10 ~~(F) (D) A description of efforts to increase reuse of postconsumer paint.~~

11 ~~(G) (E) A description of efforts to increase recyclability of postconsumer paint.~~

12 (6) Market Development. Include a description of possible market development
13 activities to incentivize the market growth of collected materials, if applicable.

14 A manufacturer or stewardship organization that does not participate in or
15 report on the activities in this section will not be subject to penalties for this
16 section.

17 (7) Financing Mechanism. The annual report shall include a description of the
18 total cost of implementing the architectural paint stewardship program and an
19 evaluation of the program's financing mechanism, including whether or not the
20 funding was sufficient to recover, but not exceed, the full cost of the paint
21 stewardship program. Any proposed change in the amount of the architectural
22 paint stewardship assessment must be submitted to the department for re-
23 approval (see §18952. Submittals). The annual report shall include, but not
24 be limited to, the following, and include any necessary supporting documents:

25 (A) Assessment amount per container

26 (B) Total program cost

27 (C) Capital costs

28 (D) Cost(\$)/capita

29 (E) Cost (\$)/gallon collected

30 (F) Education/Outreach (% of total program cost)

- 1 (G) End-of-life materials management (% of total program cost, with line
2 items for reuse, recycling, fuel incineration, and landfilling)
- 3 (H) Program administration (% of total program cost, including annual
4 administrative fee for service payments to the department)
- 5 (I) An evaluation of how the assessment operated
- 6 (J) Surplus funding, if any, and how it will be applied to reduce program costs
- 7 (K) Governance (program oversight) (% of total program cost)
- 8 (8) Education and Outreach. Describe educational and outreach activities in
9 context of those identified in the stewardship plan. Provide a description of
10 educational materials that were provided to retailers, consumers, and
11 contractors during the reporting period and provide electronic samples.
12 Identify the any method(s) used to determine the effectiveness of educational
13 and outreach surveys (e.g., surveys, hits on specific web pages, number of
14 participants at events, etc.), if applicable. These education and outreach
15 materials may include, but are not limited to, any of the following per PRC
16 §48703(b)(4)(e):
- 17 (A) Signage that is prominently displayed and easily visible to the consumer.
- 18 (B) Written materials and templates of materials for reproduction by retailers
19 to be provided to contractors and consumers at the time of purchase or
20 delivery or both.
- 21 (C) Promotional materials or activities, or both, that explains the purpose of
22 paint stewardship and the means by which it is being carried out.
- 23 (D) Links to website(s) created and maintained by the stewardship
24 organization.
- 25 (9) Audits. ~~(A) Financial Information.~~ The annual report shall include an
26 independent financial audit, ~~related to the implementation of the stewardship~~
27 ~~plan,~~ funded from the paint stewardship assessment. The audit shall be
28 conducted in accordance with ~~the most current~~ auditing standards generally
29 accepted in the United States of America, and standards set forth in
30 Government Auditing Standards issued in ~~July 2007~~ by the Comptroller
31 General of the United States.

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~~2. 1. Financial audits must be prepared by a Certified Public Accountant.~~

~~4. 2. 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 documentation information from the individual manufacturer or stewardship organization during the course of review of a manufacturer- or stewardship organization-submitted financial audit, if necessary. The department may inspect the operations, processes, and records of any entity required to submit a report to the department pursuant to this division to determine the accuracy of the report and compliance with the requirements of this division.~~

~~4. The department will inform the individual manufacturer or the stewardship organization within 60 days of the results of its review.~~

~~(A) (B) 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, 4297048700, 4297248703, 4297548704, 48705, and 4297648706, Public Resources Code, Reference: Section 4297048700, 4297248703, 4297548704, 48705, and 4297648706, Public Resources Code.

§18955. Civil Penalties.

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

4
5 (a) Any manufacturer offering architectural paint for sale in California or a
6 manufacturer or stewardship organization submitting a stewardship plan or annual
7 report to the department is subject to enforcement under this Article. Architectural paint
8 manufacturers are subject to penalties as a result of the failure of their designated
9 stewardship organization to comply with this Article on their behalf.

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

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

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

20
21 Authority cited: Sections ~~40502, 42970, 42972, 42972.5, 42973, 42974, 42975, and~~
22 48704 Public Resources Code, Reference: Section ~~42970, 42972, 42972.5, 42973,~~
23 ~~42974, 42975, and 42978~~48704, Public Resources Code.

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25 **§18955.1. Amount of Civil Penalties and Administrative Penalty Schedule.**

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

28 (1) Base Penalty Table I is to be used for stewardship organizations and
29 architectural paint manufacturers.

30 (A) Identify what violations have occurred.

31 (B) Identify the severity of the violations.

- 1 (C) Establish the possible range of the base penalty per violation based on the
 2 severity levels described in paragraph (b).
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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
14 CCR 18952(b)(2)	<u>Failure to resubmit a stewardship plan or provide supplemental information within 60 days after receiving a notice of disapproval or conditional approval from the department</u>	<u>Level 1</u>
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

- 4
 5 (2) Base Penalty Table II is to be used for retailers.

- 1 (A) Identify what violations have occurred.
- 2 (B) Identify the severity of the violations.
- 3 (C) Establish the possible range of the base penalty per violation based on the
- 4 severity levels described in paragraph (b).
- 5

Base Penalty Table II: For Retailers		
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
14 CCR 18956	Failure to meet record keeping requirements.	Level 2

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7 (b) For the purpose of implementing this ~~[Section/Article]~~, penalty severity levels are

8 described as follows:

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

15 (c) A penalty amount may exceed \$1,000 per day only if a person intentionally,

16 knowingly, or negligently violates this Article.

17 ~~(e)~~(d) The department will set the final penalty amount after considering the criteria set

18 forth in §18955.2. The department may increase the final penalty beyond the penalty

19 range established pursuant to paragraphs (a) and (b), if it determines, after considering

20 the criteria set forth in §18955.2, that such an increase is warranted and appropriate.

21

1 Note: Authority cited: Sections 40502 and ~~42970~~ and 4297848704, Public
2 Resources Code. Reference: Sections ~~4297048704~~ and 4297848705, Public
3 Resources Code; and Section 11506, Government Code.

4

5 **§18955.2. Criteria to Impose a Civil Penalty.**

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

- 8 (a) The nature, circumstances, extent, and gravity of the violation(s).
- 9 (b) The number and severity of the violation(s).
- 10 (c) Evidence that the violation was intentional, knowing or negligent.
- 11 (d) The size of the violator.
- 12 (e) History of violation(s) of the same or similar nature.
- 13 (f) The willfulness of the violator's misconduct.
- 14 (g) Whether the violator took good faith measures to comply with this chapter and
15 the period of time over which these measures were taken.
- 16 (h) Evidence of any financial gain resulting from the violation(s).
- 17 (i) The economic effect of the penalty on the violator.
- 18 (j) The deterrent effect that the imposition of the penalty would have on both the
19 violator and the regulated community.
- 20 (k) Any other factor that justice may require.

21

22 Note: Authority cited: Sections 40502 and 4297848704, Public Resources Code.

23 Reference: Section 4297848704, Public Resources Code.

24

25 **§18955.3 Procedure for Imposing Civil Penalties.**

- 26 (a) Civil penalties may be administratively imposed in accordance with the procedures
27 outlined in the Administrative Procedure Act at Chapter 5 (commencing with §11500) of
28 Part 1 of Division 3 of Title 2 of the Government Code with the exception of Government
29 Code §11505(c).

1 (b) The accusation or complaint and all accompanying documents may be served on
2 the respondent by the following means:

- 3 (1) Personal service.
- 4 (2) Substitute service by using the same service procedures as described in
5 §415.20 of the Code of Civil Procedure.
- 6 (3) Certified Mail: For respondents who have submitted a stewardship plan,
7 certified mail or registered mail if the letter containing the accusation or
8 complaint and accompanying material is mailed, addressed to the respondent
9 at the latest facility or mailing address(es) provided in the stewardship plan on
10 file with the department. Any address provided in the stewardship plan may
11 be used for service of process. Proof of service of the accusation or complaint
12 shall be the certified mail receipts or registered mail receipts proving the
13 accusation or complaint and accompanying materials were sent to respondent
14 by certified mail or registered mail. For respondents who have not submitted
15 or are not required to submit a stewardship plan to the department, certified
16 mail or registered mail pursuant to the procedures indicated in the
17 Administrative Procedure Act at §11505(c) of the Government Code applies.

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

20
21 Note: Authority cited: Sections 40502, 48700 and ~~42970~~48704, Public Resources
22 Code. Reference: Section 11500, Government Code; and Section 48700 and
23 ~~42970~~48704, Public Resources Code.

24
25 **§18956. Record Keeping Requirements**

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

29 (a) Maintain records to support the requirements in this Article. Stewardship
30 organizations and manufacturers must maintain records to support §18953 and §18954.

1 Retailers must ~~maintain~~ provide access to existing records on all architectural paint sold
2 or offered for sale in the state including:

- 3 (1) The manufacturer of the paint.
4 (2) The date(s) the retailer purchased the paint from the manufacturer.
5 (3) The date(s) the retailer sold the paint.
6 (4) Certification letter(s) from the department, if provided by a manufacturer, to
7 demonstrate that paint from the manufacturer is or was subject to a
8 department-approved stewardship plan. A retailer must provide access to a
9 certification letter only if it is being used as proof of compliance, pursuant to
10 PRC §48702(c)(2), that a manufacturer not listed on the department's internet
11 website is in compliance and may sell or offer for sale paint in California.

12 (b) Provide the department with immediate reasonable and timely access, as
13 determined by the department, to its facilities, operations, and any relevant records
14 necessary to determine compliance with this Article, upon request. The records
15 required by this Article shall be accessible for three years;

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

19 (d) Submit copies of specified records to the department upon request or at a
20 frequency approved by the department.

21 (e) The department may take disciplinary action against any stewardship organization
22 or manufacturer who fails to provide the department with access pursuant to this
23 subdivision including, but not limited to, imposing penalties and the immediate removal
24 from the department's list of manufacturers that are in compliance with Chapter 5
25 (commencing with §48700), Part 7, Division 30 of the Public Resource Code.

26
27 Note: Authority cited: Sections 40502 and ~~42970~~48700, Public Resources Code.
28 Reference: Sections ~~42970, 42972, 42972.5, 42975~~48700, 48703, 48705, and
29 48706~~42976~~, Public Resources Code.

30 **§18957. Proprietary, Confidential, or Trade Secret Information.**

1 The public disclosure of records supplied to the department pursuant to this Article that
2 are, at the time of submission, claimed to be proprietary, confidential, or trade secret
3 shall be subject to the disclosure provisions in Title 14, California Code of Regulations,
4 Division 7, Chapter 1, Article 4 (commencing with §17041), and in PRC §48704(b).

5 Authority cited: Section 6253, Government Code. Sections 40502 and ~~42970~~48700,
6 Public Resources Code. Reference: Sections 6250 et seq., Government Code. Section
7 ~~42970~~48700, Public Resources Code.

8 **§18958. Service Payments to Department of Resources Recycling and Recovery.**

9 (a) The department, using information provided in annual reports, its actual program
10 costs for previous years, plans submitted in prior years, information from other sources,
11 and assessing program needs; shall estimate the costs to be incurred by the
12 department in connection with the administration and enforcement of the requirements
13 of this chapter for the next fiscal year.

14 (b) The department director, or his/her delegated authority, shall approve the
15 administrative fee charged for each stewardship plan for the full administration and
16 enforcement costs by April 30 each year starting 2012.

17 (c) Any department fee shall be prorated, if there is more than one stewardship plan,
18 by the number of plans submitted.

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

23

24 Authority cited: Sections 40502, ~~42970, 42972, 42977, 48700, 48703, and
25 ~~42977.~~48704, Public Resources Code, Reference: Section ~~42970, 42972,~~
26 ~~42977, 48700, 48703, and ~~42977.~~48704, Public Resources Code.~~~~

27

