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July 12, 2012

Ms. Caroll Mortensen, Director
California Department of Resources Recycling and Recovery (CalRecycle)
PO BOX 4025
Sacramento, CA 95812

Dear Ms. Mortensen:

**COMMENTS ON THE REVISED VERSION OF PAINTCARE'S ARCHITECTURAL
PAINT STEWARDSHIP PROGRAM PLAN DATED JUNE 4, 2012**

The Los Angeles County Solid Waste Management Committee/Integrated Waste Management Task Force, in conjunction with the County of Los Angeles (County), City of Los Angeles (City), and the Sanitation Districts of Los Angeles County, would like to thank you for opportunity to comment to CalRecycle on PaintCare's revised Paint Stewardship Plan (Plan) as submitted for your approval on June 4, 2012, pursuant to Assembly Bill 1343 (AB 1343, 2010 statutes). Because the Plan fails to meet the fundamental goals of AB 1343, we are urging you to disapprove the Plan.

Pursuant to Chapter 3.67 of the Los Angeles County Code and the California Integrated Waste Management Act of 1989 (Assembly Bill 939 [AB 939], as amended), the Task Force is responsible for coordinating the development of all major solid waste planning documents prepared for the County of Los Angeles and the 88 cities in Los Angeles County with a combined population in excess of ten million. Consistent with these responsibilities and to ensure a coordinated, cost-effective, and environmentally sound solid waste management system in Los Angeles County, the Task Force also addresses issues impacting the system on a countywide basis. The Task Force membership includes representatives of the League of California Cities-Los Angeles County Division, County of Los Angeles Board of Supervisors, City of Los Angeles, waste management industry, environmental groups, the public, and a number of other governmental agencies.

AB 1343 shifted the responsibility for the management of post-consumer architectural paint (Paint) including collection, transportation, recycling and proper disposal, from local governments to manufacturers. The revised Plan fails to address the fundamental goals of AB 1343, particularly (1) alleviating the burden on local jurisdictions for the

management of Paint, (2) shifting responsibility to paint manufactures to manage Paint, (3) ensuring the environmentally sound management of Paint, which is currently being disposed at landfills, and (4) coordinating with existing local household hazardous waste (HHW) collection programs.

As you may be aware, the County and the City coordinate to provide HHW collection services at no cost to all ten million residents in Los Angeles County, collecting nearly **five million pounds** (or approximately 600,000 gallons) of architectural paint annually. Unfortunately, PaintCare has asked local governments to sign a Municipal Contract Template (Contract), included as Appendix N of the Plan, that includes onerous and unreasonable provisions, which our jurisdictions cannot agree to. Going forward without a Contract for PaintCare to take responsibility for the Paint currently collected through our programs leaves us with a dilemma: continue to spend millions of dollars each year managing a product that should rightfully be managed by the manufacturers or stop accepting paint through our programs. Neither option is acceptable or consistent with the goals of AB 1343.

Contracts with local HHW programs are a crucial component of the Plan, as identified in the Public Resources Code (PRC) Section 48703 (c), and without including local HHW programs, Phase 1 of the Plan will be a failure. There are a number of significant issues with the Plan and Contract that must be addressed prior to approval of the Plan by CalRecycle, including:

1. **Goals** – PaintCare anticipates collecting approximately 46% of the available Paint in the first year of the Plan's implementation; however, the baseline used to calculate this figure is flawed. The Plan identifies a total of 5.9 million gallons of unused Paint in California; however, CalRecycle's most recent waste characterization study shows over 7.1 million gallons of Paint being improperly disposed in landfills. There is no doubt additional substantial quantities of paint stored in garages or otherwise improperly managed that would add to this figure. Therefore, while we would support an initial goal of recovering 70% of the unused paint generated each year, the baseline quantities must be corrected prior to approval of the Plan.
2. **Resources** – If the quantities of paint requiring proper management are significantly underestimated, we believe the resources identified to meet the goals in year 1, 2, and 3, as listed in Table 7B of the Plan, are similarly underestimated and must be increased. In addition, one of the key objectives of AB 1343 is to reduce the cost to local governments and shift responsibility to the manufacturers and consumers. Under the proposed Plan, local jurisdictions that partner with PaintCare remain responsible for all the cost associated with administering the HHW, of which paint is a major component, and all the cost

associated with the collection, segregation, packaging, and storage of paint. In addition, local jurisdictions will most likely incur increased administrative and collection cost due to increased processing requirements to meet PaintCare's requirements for accepting paint as well as an increase in material being received and added monthly to reporting requirements. Since PRC Section 48700 states the purpose of AB 1343 is to "require paint manufacturers to develop and implement a program to collect, transport, and process postconsumer paint," additional resources should be allocated to cover all of these costs currently borne by local governments.

3. **Liability and Indemnification** – The Contract specifies that local jurisdictions would remain liable for the cradle to grave life cycle of the paint collected. PaintCare and its members do not assume any liability for handling, recycling, or disposal of the paint collected. AB1343 clearly states that manufacturers or their designated stewardship organization are responsible to manage the end-of-life of paint. However, the Contract clearly places all liability associated with collected paint on the "Service Provider," in this case the local HHW Program. It is imperative that this issue be addressed due to potential liabilities including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

As indicated at a recent PaintCare workshop, local jurisdiction will not have the ability to inspect or audit paint processing facilities as they are subcontractors to PaintCare, while the Contracts leave all the liability with the local jurisdictions:

- Article 6, "*Title and Risk of Loss*", of the draft municipal contract, included in the revised plan, states that "The Service Provider shall have title to and risk of loss and liability for any Program Products and Non-Program Products that the Service Provider receives through the Program, including any risk of loss and liability under the federal Comprehensive Environmental Response, Compensation and Liability Act,"
 - Article 9, "*Indemnification*," of the draft contract indicates the local jurisdiction would indemnify PaintCare. However, there is no indemnification of local jurisdictions for PaintCare's role in transporting and processing of paint.
4. **Onerous Provisions for Local Governments** – PaintCare has not worked in good faith with local jurisdictions in developing a mutually agreeable program. The Contract does not provide a reasonable starting point for discussion or negotiation. For example, the Contract allows PaintCare to terminate the agreement without cause, but does not provide a mechanism for local

jurisdictions to be released from the Contract unless PaintCare materially breaches the Contract; provides complete indemnification for PaintCare, but requires local jurisdictions to assume title and all risk of the collected Paint; and prohibits local jurisdiction from seeking changes to PaintCare regulations once they sign the Contract.

5. **Outreach Plan** - The Plan fails to address the concerns raised over partnering with local governments to tailor outreach and education to their residents, which will help enhance collection. To achieve the goal of recovering 70% of the paint available requires significantly increasing participation from households from the current level of approximately 5% and a plan that will reach out to all Californians; therefore, the Outreach Plan should be significantly enhanced.
6. **Maximize Benefits to the Public** - Convenience for residents to dispose their Paint is a key component in ensuring a successful program. As written, the Plan proposes only 750 collection sites throughout California and a 15-mile radius for convenience. This system is inadequate in major urban areas where the density is higher, and the volume of paint is much higher. Based on our experience, achieving the goal of recovering 70% of the Paint available requires a maximum radius of three miles to ensure adequate convenience to residents.

Given the fundamental flaws as noted above, the Plan does not allow for a meaningful review by local jurisdictions. It is our goal to partner with PaintCare and assist them in meeting their requirements to manage Paint. However, the Plan, as currently drafted, may force local jurisdictions to opt out of the program to protect their resources and themselves from future liabilities. Given the Plans' reliance on local jurisdictions' collection programs in the initial phases of the Plan, lack of participation by local jurisdictions will most likely result in inadequate infrastructure for the collection of paint from the public.

We appreciate your consideration of these comments and concerns and acknowledge CalRecycle's effort and hard work in the development of paint stewardship in California. As the agency responsible for enforcement of the provisions of AB 1343, as noted in PRC Section 48704 (e), we urge you to reject the Plan and insist that paint manufacturers, through the stewardship organization they established, live up to their responsibilities as identified in AB 1343.

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If you have any questions, please contact Mr. Mike Mohajer of the Task Force at (909) 592-1147 or MikeMohajer@yahoo.com.

Sincerely,

Margaret Clark

Margaret Clark, Vice-Chair
Los Angeles County Solid Waste Management Committee/
Integrated Waste Management Task Force and
Council Member, City of Rosemead

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cc: Assembly Member Jared Huffman
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League of California Cities
California Product Stewardship Council
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