

WEBINAR 2: PAINT STEWARDSHIP IN CALIFORNIA – NEXT STEPS



Wednesday, February 23, 2011

NOTES

Introductions:

Heidi Sanborn, Executive Director of the California Product Stewardship Council (CPSC), welcomed webinar participants, discussed the purpose of the webinar and introduced the speakers.

Ms. Sanborn also gave an update on the paint infrastructure survey that CPSC is conducting.

Presentations:

[A Manufacturing Retailer's Perspective](#)

Presented by: Bill Blankenship, Miller Paint

Mr. Blankenship gave a brief introduction to his company, Miller Paint, a paint manufacturer and retail company based in Oregon with 38 stores in both Oregon and Washington. Currently, six of the 23 Oregon stores serve as paint collection locations. He also reviewed some key provisions of the paint stewardship law in Oregon, including the establishment of a paint stewardship assessment fee charged to consumers to cover the costs of the program.

Mr. Blankenship discussed the benefits of the paint program to painting contractor, including the benefit of now being able to take leftover paint to an Oregon HHW facility or small amounts to a retail collection site at no cost. He also discussed the benefits to consumers, including how more paint being recycled ultimately means more recycled content paint being available for purchase.

While the paint collection program is free to consumers at the time they drop off paint, consumers are charged a recovery fee when they purchase paint or pay a contractor to paint their house or building. According to Mr. Blankenship, customers have been embracing this new law and the recovery fee has not been a problem, as it is such a relatively insignificant cost to pay in exchange for the benefits of this service.

Mr. Blankenship also discussed how the Oregon stewardship program has impacted his business as a paint manufacturer. He said the most significant struggle has been determining when to charge the recovery fee and keeping a thorough audit trail. He explained some of the nuances about what types of products are eligible and who should be charged a fee. For example, a Washington customer ordering paint to be shipped to a location in Washington would not be charged the fee, but a Washington resident purchasing paint from an Oregon store in person would be charged a fee. Mr. Blankenship also discussed the need for developing an accounting plan for tracking fee collection and making sure that this fee definition was clear to customers, and that there was a level playing field to ensure all companies put the recovery fee line item on purchase invoices.

[A Small County Government Perspective](#)

Presented by: Roy Weedman, Columbia County Oregon

Mr. Weedman first gave a brief overview of the jurisdiction he represents, Columbia County, a small rural county in Northern Oregon with a small HHW program. Before the paint stewardship program began, the HHW program actually stopped collecting latex paint in 2009 because of its high costs.

Since the roll out of the PaintCare program, the County has experienced a dramatic increase in customers and paint related materials, jumping from 29% to 59% in 2010. In the six events it held in 2010, they collected almost 30,000 pounds of latex paint. Mr. Weedman discussed how participating in the PaintCare program has helped reduce the County's paint management costs by an estimated 25%. He also said that because of the program, they have found customers also bring in other items to dispose at the HHW facility as a result.

A Large County Government Perspective

Presented by: Larry Gibbs, Lane County Oregon

Mr. Gibbs gave a brief background on Lane County and their existing HHW program, which consists of one HHW facility and mobile events throughout the year.

Lane County currently has five paint collection sites. Mr. Gibbs showed how the PaintCare program is implemented in two different types of stores: one where the paint is collected and unloaded directly into the totes into a back area; another where customers must drop off paint inside the store, which can be a problem if cans are leaking. Mr. Gibbs estimates the totes provided to them by PaintCare can hold up to 115 gallons of paint.

Mr. Gibbs also shared his perspective on the pros, cons and lessons learned since the beginning of the program. Some pros include savings in terms of costs and labor time (they don't have to bulk paint and crush paint cans anymore, but they do still sort between latex and alkyd), and providing more convenient recycling opportunities for consumers. As for cons, Mr. Gibbs mentioned that the program got off to a slow start, with only one site set up when the program launched, resulting in that particular store being overwhelmed initially. He also mentioned that advertising has been somewhat lacking. Lessons learned included planning for sufficient time to set up the contracts well in advance of the program start date to give adequate time for legal review and the government contracting process. Overall, Lane County is not yet seeing a significant increase in the amount of paint collected county-wide, but that may change as the program matures.

Update on California Paint Stewardship Roll Out

Presented by: Alison Keane, PaintCare

Ms. Keane addressed some of the issues raised during the presentations by the Oregon Counties. She mentioned that PaintCare's advertising has been on a statewide level including in newspapers, television and tradeshow. She also mentioned that, in addition to the sites already set up to collect paint in Oregon, there are seven locations in rural Oregon that PaintCare has identified as needing collection sites. Until those sites can be established, PaintCare may hold annual events in those areas, pending approval by the Oregon Department of Environmental Quality.

She mentioned that the Oregon experience has been useful in learning about how to roll out a program in California and they are using those lessons learned now. This includes visiting and meeting with existing HHW facilities to see how programs are currently run and answering questions and learning their expectations. So far, Ms. Keane said she has visited six or seven counties in Northern California and seven locations in Southern California, with a few more scheduled in March. Mark Kurschner of Product Care will visit a few more in April and CPSC is helping them facilitate conference calls in March with the more rural counties as part of the San Joaquin HD17 grant.

Ms. Keane expects an RFP for paint collection to be released by June or July, 2011. They know that there will not be a "one size fits all" approach for California and the RFP will reflect that, including the ability to bid for portions of the state in terms of processing and transportation. The RFP will be open for two to three months, with a full year to set up the contracts. With lessons learned from Oregon, a year should be enough time, knowing that there will probably be more contracts to set in place in California than there were in

Oregon. In Oregon, PaintCare set up contracts with fifteen HHW facilities and has two contracts for paint transportation and processing.

With regards to Proposition 26, there has been no clarification about how this impacts AB 1343. However, because potential challenges are still unknown, PaintCare has not yet hired staff for California.

CalRecycle Regulatory Process and Next Steps

Presented by: Cynthia Dunn, CalRecycle

Ms. Dunn reviewed the responsibility of CalRecycle with respect to the paint stewardship law, including reviewing and approving stewardship plans and annual reports. She explained that the current draft outline of CalRecycle's paint regulations is focusing on stewardship plan approval criteria, annual reports compliance criteria, and enforcement.

Ms. Dunn encouraged the public to follow the rulemaking process, which can be done by bookmarking the following webpage: <http://www.calrecycle.ca.gov/EPR/PolicyLaw/Paint.htm>. The webpage will have all rulemaking documents and will be kept up-to-date of the entire rulemaking process. The first informal rulemaking workshop is scheduled for March 10, 2011.

Ms. Dunn also mentioned that CalRecycle continues to meet with stakeholders to discuss the rule making progress.

What is DTSC's Role in the Stewardship Program?

Presented by: Kevin Sanchez, Department of Toxics Substances Control (DTSC)

Mr. Sanchez gave a brief history of paint rules that have been adopted in California. He also explained the requirements to collect paint, whether it is through HHW facilities, businesses or retail locations. He went into detail on the necessary requirements retail locations in particular need, including an EPA ID Number, being able to properly identify latex paint, proper storage, and having a bill of lading for paint pickups.

Mr. Sanchez also briefly described the role of a Certified Unified Program Agency (CUPA) in the collection of paint, including making sure the retail establishment's hazardous materials business plan includes "recyclable latex paint."

Questions & Answers

1. Q: For Lane County: If the labor cost Larry Gibbs mentioned is minimal, is the labor force non-union in its program?

A: The labor to accept paint and sort for disposal is minimal for our operation. Previously, we had a paint can crusher and bulked paint into 300 gallon totes, which would give us the best price for disposal of paint. We felt that sending bulk containers was better than paying to ship cans of paint that may be almost empty. The labor savings comes from no longer having to bulk paint.

2. Q: For Columbia County: What percent of increase have you seen in the other HHW collected since Paint Care's program started?

A: By percentage, all other HHW categories have been fairly consistent. Due to increased participation, we have seen an increase in volume of other wastes, but in terms of percentage, there has not been much of a change.

3. Q: For Lane County: How much contamination (i.e., people dropping off other HHW) are the paint retailers getting? How do they deal with it?

A: We have not had any of the retailers call us for HW that does not fit into the program. If we did,

we would take the waste and dispose as HHW. Some retailers will take the material and ship it to PSC because they know that they can have a few mistakes per container or tote that doesn't fit into the program.

4. Q: For Columbia and Lane Counties: In Oregon, how is funding provided to HHW collection sites for the collection of paint?

A: Lane County Response: Lane County Waste Management is funded solely by tipping fees, included in that is money to run special waste and recycling programs. PaintCare does not pay anyone for collection of paint – just for transportation and disposal. So for HHW facilities like ours, it relieves us of the financial burden of transport and disposal of paint, which is about 50-60% of what we collect. We have already made the decision to collect HW from businesses and households to protect our landfill but for retail businesses taking back paint the main incentive is the potential of increased business and providing safe disposal of the product that you sell. Even so, not everyone feels that is a big enough incentive to become a paint collector for PaintCare.

Columbia County Response: Columbia County's HHW program is funded through our Solid Waste Fund. Our Solid Waste Fund is 100% supported by tip fees generated at our Transfer Station.

5. Q: For PaintCare: How much are HHW facilities reimbursed –either on a per pound or per gallon basis– in the Oregon program?

A: The PaintCare program is not a reimbursement program for current services. PaintCare would like to partner with existing collection locations and will pay for the transportation, reuse and processing of the paint collected in those programs, but this does not mean all program costs will be covered. HHW programs can contract with PaintCare if it is mutually agreeable, but are not required to do so. In Oregon, there are contracts for service with almost all of their HHW programs.

6. Q: For PaintCare or CalRecycle: Do you know how much HHW facilities in California are going to be reimbursed and how that process is going to work?

A: (Answered by PaintCare) The PaintCare program is not a reimbursement program for current costs. There is no payment for collection; however, PaintCare will pay contractors directly for the cost of transportation, processing and proper disposal for program products, thereby reducing current HHW facilities costs for those services.

7. Q: For Lane County: What size are the plastic totes provided by PaintCare?

A: They are roughly one cubic yard.

8. Q: For Lane County: What is the maximum you can safely stack the totes?

A: They fit in the truck 3 high and that is as high as we stack them and is probably the maximum that they should be stacked.

9. Q: For DTSC: What is a CUPA for those that don't know?

A: CUPA is the acronym for Certified Unified Program Agency. Typically CUPAs are established as one function of local environmental health or fire departments. The CUPAs may implement all or some of the following programs: the Hazardous Waste Generator/Tiered Permitting program, Hazardous Materials Release and Inventories (Business Plan) program, Underground Storage Tanks, Spill Prevention, Control and Countermeasure for Aboveground Petroleum Storage Tanks (SPCC), California Accidental Release Program (CALARP), and the Uniform Fire Code Hazardous Materials Management Plan.

10. Q: For DTSC: How can a retailer that collects paint know if the paint a customer drops off is "recyclable"?

A: By using acceptance criteria provided (to the retailer) by the recycler consistent with the method of recycling. There is no requirement that a retailer determine this. However, if a retailer does use such criteria, any recyclable latex paint that the retailer accepts and then determines is not recyclable (i.e., does not satisfy the criteria), would be deemed to be generated at the retailer's location.

11. Q: For DTSC: How can a retailer know the latex paint collected is liquid?

A: By conducting a visual examination or by using the paint filer test. Other methods may work as well; e.g., having the customer attest that he opened the cans and looked at it, or pouring the cans into a common container upon acceptance and rejecting all non-liquids (and all non-water-based & non-latex paints).

12. Q: For DTSC: Even if the paint is liquid, what if it's not usable?

A: Presuming “usable” means recyclable; see the response above.

13. Q: For DTSC: Is the store clerk supposed to open every can?

A: There is no requirement to do this. A store clerk may use any method he or she chooses to ensure that only liquid, water-based latex paint is accepted for recycling.

14. Q: For Columbia or Lane Counties: For those entities paying for their Paint HHW collection via landfill fees: that seems shortsighted, as we move to zero-waste. What are your follow-up plans for funding when the landfill fees can't pay for the services? Are you moving forward with any alternatives or waiting until it is a crisis

A: Columbia County Response: Columbia County’s HHW is supported by tip fees at the Transfer Station. As we move to zero-waste (or at least close to zero-waste) we are brainstorming many options for alternative funding mechanisms, but do not see that need for the near future. We are in the planning stages of a reuse/recycling store where we would generate revenue via recycled commodities (single stream) and selling of reusable items (appliances, books, etc).

Lane County Response: With the economy where it is currently, we have expanded our recycling services and will decrease our work force with reduction of garbage. The overall mission of a solid waste district is to provide services for disposal and recycling, so that will not change. But we are looking into our old landfill being an energy park and hydroponics, too. There are new technologies that will turn plastics back to oil, and there are a lot of new opportunities to be found. When we get closer to zero waste we will make adjustments, but I’m not quite sure what this question has to do with collection of paint.

15. Q: For DTSC: Are paint recyclers who accept paint who then become the generators of Household Hazardous Waste (HHW), legally allowed to take these items to HHW temporary collection events even though HHW programs do not accept waste from businesses other than CESQGs?

A: Per Health and Safety Code section 25217.2 any hazardous latex paint that is accepted as “recyclable latex paint,” but that later is found to be non-recyclable (or that is not recycled) becomes a hazardous waste subject to full regulation. Such (non-recyclable) paint is deemed to be generated at that location where the paint is discovered to be non-recyclable. As that location is not a residence, the hazardous waste paint deemed to be generated at that location is not household hazardous waste. However, such (non-recyclable) paint may be eligible for transfer to a CESQG waste collection program in some instances.

16. Q: For Lane County: Has your cost to dispose other HHW increased since the PaintCare program started?

A: No. We were concerned that there might be an increase in our contract costs due to the decreased disposal volumes that we would be sending for HW disposal, but that wasn’t the case. We just signed a new HW contract in August of 2010.

17. Q: For PaintCare: What steps are in place for preventing illegal haulers or uninformed home owners from dropping off all waste at unmanned sites?

A: We do not have unmanned sites. Illegal dumping at any site after hours is difficult to prevent –it happens now, it will probably continue to happen– our budget in Oregon has a 5% line item for non-program product disposal.

18. Q: For PaintCare: Are the retailers receiving much contamination?

A: We have had no reports of contamination from retailers.

19. Q: For PaintCare: Is PaintCare responsible for waste left at retailers that is not paint?

A: The Oregon budget has a 5% line item for non-program material disposal; however, we are seeing less than 1% in the Oregon program. Sites that routinely place non-program products in the PaintCare bins will be removed from the program.

20. Q: For Lane County: What was the outcome of the 15 totes that had no program accepted paint? Were they shipped back to the HHWTF?

A: The point I was trying to make is that since the PaintCare program started, we have collected roughly 15 totes of other non-program paint materials at our HHW facility. This includes things like stains, lacquers and non-architectural paints. That's typical for what we would usually collect during the same time period with perhaps only a slight increase.

21. Q: For CalRecycle and DTSC: Under the proposed rules, can a HHW facility still charge a business for handling paint if they charge for CESQGs, even if that business is now paying for disposal at the time the paint is purchased?

A: CalRecycle Response: The purpose of the rulemaking that CalRecycle is about to formally begin is to clarify existing statute as set forth in AB 1343 and to establish administrative procedures that will allow the department to implement its responsibilities under the law. The regulations will not cover or clarify hazardous waste law as that is DTSC's purview.

DTSC Response: DTSC has not seen any proposed rules. If per a future regulation a fee is collected at the point of sale from the purchaser, this would not preclude an HHWCF from accepting hazardous waste paint from one or more CESQGs, nor would/could such a regulation remove any current statutory authority which authorizes such facilities to charge such generators fees. Of course, CESQGs may elect to use paint collection locations other than HHWCFs if such locations exist.

22. Q: For DTSC: If a retailer that is not required to have a PBR would like to start collecting latex paint only, do they now need to apply for a PBR?

A: No, if a retailer collects only liquid latex paint for recycling (defined in the law as "recyclable latex paint"), the retailer does not need a permit or other form of authorization provided the retailer complies with the conditions in Health and Safety Code section 25217.2.

23. Q: For CalRecycle or DTSC: If oil-based paint will still be considered HW, will CalRecycle and/or DTSC draft some language under this new Paint EPR legislation to include the oil-based paint collection at the retail collection site as an exempted waste like recyclable latex paint?

A: CalRecycle response: Please see response to question #21 above.

DTSC response: No, neither DTSC nor CalRecycle can draft legislation.

24. Q: For DTSC: What would it take to allow collection of oil-based paint at retail stores (could they operate under a PBR similar to an HHW or ABOP facility?)

A: Under current law, for oil-based and alkyd paints that are hazardous wastes, a permit or other form of authorization, or a variance from DTSC is required.

25. Q: For PaintCare: Will you be assisting retailers with the separation of oil (HW) and latex paint (recyclable) or will the stores simply deal with all materials collected as HW?

A: There will be no separation at retail collection locations – all program products that are collected will be placed in the bin. They will not be sorted until they are picked up by our transportation hauler and/or processor. We are pursuing legislation that would enable sites to accept household and conditionally exempt small quantity generator oil-based paint as non-hazardous waste, pursuant to federal regulations.

26. Q: For DTSC: Can retail locations collect alkyd paint under current regulations, and if so, what are the requirements?

A: Yes, under current DTSC regulations retailers may collect hazardous waste alkyd paints if they have either a permit or variance from DTSC or some other form of authorization appropriate for the activities.

27. Q: For DTSC: Is there any possibility of getting a Health & Safety Code exemption similar to that for latex paint to encourage collection of alkyd paint under the new stewardship program?

A: DTSC is unable to predict the future actions of the California Legislature, but it is possible for oil-based and alkyd paints that are non-RCRA hazardous wastes. However, it is unlikely (i.e., not possible) for paints that are RCRA hazardous wastes produced by generators other than RCRA CESQGs.

28. Q: For DTSC: Some businesses are exploring the possibility of recycling alkyd paint to keep the commodity in CA and avoid shipping it off for incineration. What are the requirements for establishing a recycling facility to recycle/remanufacture paint in California?

A: Under current law, a permit or variance from DTSC is required for recycling hazardous waste alkyd paints.

29. Q: For DTSC and CalRecycle: Ideally, we would have consistent collection procedures of both latex and alkyd paints for non-HHW sites to follow across the state – will the state authorities (CalRecycle, DTSC and/or CalCUPA) be supplying local jurisdictions and the stewardship organization with some sort of guidance document, particularly for retail collection of paint?

A: CalRecycle Response: While we recognize this is a significant issue, implementation, enforcement, and guidance regarding hazardous waste law is outside CalRecycle's purview. CalRecycle has and will continue to work with DTSC and all other stakeholders, to the extent of its authority, toward the successful implementation of AB 1343.

DTSC Response: DTSC will prepare one or more guidance documents if it determines that there is in fact a need for such guidance. DTSC does not necessarily agree with the assertion that moderately toxic hazardous wastes (e.g., some latex paints) and ignitable hazardous wastes (e.g., some alkyd paints) warrant the same handling controls and procedures, if that is what “consistent collection procedures” implies.

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