

Recommendations for Business Plan Reporting by PaintCare® Retail Collection facilities

All citations Health and Safety Code unless otherwise noted

Purpose

The Hazardous Material Business Plan Technical Advisory Group (HMBP TAG) received a request for guidance regarding Business Plan reporting by PaintCare® Retail Collection facilities pursuant to Health and Safety Code section 25217.2 (a) (4). Questions posed by PaintCare® are followed by the responses and recommendations of the HMBP TAG in blue.

Definitions

25217 For the purposes of this article, the following definitions shall apply:

- (a) "Conditionally exempt small quantity generator" or "CESQG" means a business concern that meets the criteria for a generator specified in Section 261.5 of Title 40 of the Code of Federal Regulations.
- (b) "Consolidation location" means a location to which recyclable latex paint or oil-based paint initially collected at a collection location is transported.
- (c) "Oil-based paint" means a paint that contains drying oil, oil varnish, or oil-modified resin as the basic vehicle ingredient.
- (d) "Paint" includes both oil-based paint and recyclable latex paint that is collected in accordance with this article.
- (e) "Recyclable latex paint" means any water-based latex paint, still in liquid form, that is transferred for the purposes of being recycled.

Retail Facility Locations

25217.2 (a) **Recyclable latex paint** may be accepted at any location including... if all of the following conditions are met:

- (4) The owner or operator of the location has a business plan that meets the requirements of Section 25504, if required by the administering agency, including, but not limited to, emergency response plans and procedures, as described in subdivision (b) of Section 25504. The plans and procedures shall specifically address recyclable latex paint or meet the department's emergency response and contingency requirements which are applicable to generators of hazardous waste.

25217.2.1 (a) A location that accepts recyclable latex paint pursuant to Section 25217.2 **may also accept oil-based paint** if all of the additional following conditions are met:

- (4) The location manages the oil-based paint in accordance with the requirements in Section 25217.2.

Unified Program Agency (i.e., "Administering Agency") Authority

25404 (c) The unified program shall consolidate the administration of the following requirements...

- (1)(A)... (iv) Persons operating a collection location that has been established under an architectural paint stewardship plan approved by the Department of Resources Recycling and Recovery pursuant to the architectural paint recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code.

Point of Generation/ Recyclable Material vs Waste

25217.2.1 (b) Oil-based paint initially collected at a collection location shall be deemed to be generated at the consolidation location for purposes of this chapter, if all of the following apply:

- (1) The collection location is established under an architectural paint stewardship plan in accordance with the requirements of paragraph (1) of subdivision (a).
- (2) The oil-based paint is subsequently transported to a consolidation location that is operating pursuant to a contract with a manufacturer or paint stewardship organization under an architectural paint stewardship plan that has been approved by the Department of Resources Recycling and Recovery pursuant to the architectural paint recovery program established pursuant to Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code.
- (3) The oil-based paint is non-RCRA hazardous waste, or is otherwise exempt from, or is not otherwise regulated pursuant to, the federal act.

Subsection (b) of section 25217.2.1 states that oil-based paint collected at a collection location shall be deemed to be generated at the consolidation location for purposes of chapter 6.5 of the Health and Safety Code if certain conditions are met. If oil-based paint is deemed to not be generated until it reaches the consolidation location, it would then not yet be a "waste" while stored at the collection location, provided that it meets all of the conditions listed in subsection (b).

If the oil-based paint is "recycled", it would not be classified as a waste. However, if the oil-based paint is classified as a "spent material" and is either burned for energy recovery or "reclaimed", it would be classified as a waste. Oil-based paint that is classified as a waste is likely to be a characteristic RCRA hazardous waste.

There is no analogous provision for point of generation at the consolidation location for recyclable latex paint. Recyclable latex paint may not meet the criteria of a hazardous waste or substance. If recycled, it may also be excluded from classification as a waste, and consequently not be a hazardous waste. As the exemption criteria and requirements for recyclable materials are complex, assistance from the Department of Toxic Substances Control is requested to determine applicability to oil-based and recyclable latex paint.

Question 1: For paint retailers who are not currently required to have a HMBP under the consumer product exemption, will collecting latex and oil based paint "material" now require a HMBP?

Consumer products for direct distribution to, and use by, the general public are generally exempt from business plan requirements. Paint retailers qualify for this exemption in most jurisdictions. Participation in the PaintCare® collection program will subject some previously-exempt retail stores to business plan requirements.

For facilities with existing business plans (i.e., otherwise subject to business plan requirements apart from PaintCare® collection activities) the HMBP TAG recommends that the administering agency consolidate reporting, inspections and fees to the extent possible.

Question 2: If the collection site were to call for a pick up before accumulating 55 gallons of oil-based paint material onsite, therefore never having more than 55 gallons of hazardous material onsite, would a new or revised HMBP be required?

Paragraph (4) of subsection (a) of section 25217.2 does not cite a minimum threshold quantity of waste paint that requires preparation of a business plan (e.g., 55 gallons). The primary purpose for the business plan, if required by the administering agency, is to establish appropriate emergency response

plans and procedures for the collection facility. In this regard the business plan requirement is analogous to that in subsection (b) of section 25143.9 dealing with recyclable materials.

PaintCare® provides each collection facility with guidelines for facility operations, emergency response guidelines and employee training¹. The HMBP TAG finds that these guidelines meet the requirements of paragraph (4) of subsection (a) of section 25217.2. Provided that a collection facility fully implements these guidelines, the HMBP TAG recommends that administrating agencies do not require submission of a business plan if the collection facility does not handle a quantity of waste paint at any one time during the reporting year equal to or greater than a total volume of 55 gallons, or a business plan is not otherwise required by statute or regulation.

PaintCare® program products are collected and stored primarily in reusable cubic yard-size box containers. Each box can hold a combination of 5-gallon, 1-gallon, quart-size, and smaller paint cans with a total liquid content of about 53 gallons per box.² Using these assumptions, a collection facility may accumulate up to one cubic yard-size box containers of waste paint before exceeding the 55 gallon threshold for business plan reporting in section 25503.5.

Question 2 b: Is recyclable latex paint defined as a “hazardous material” for the purposes of the business plan program and therefore need to be counted against the 55-gallon threshold for reporting in section 25503.5?

The definition of “hazardous material” in subsection (p) of section 25501 includes hazardous substances and hazardous wastes as defined in subsections (q) and (r), respectively.

In California, non-excluded latex paint is presumed to be a characteristic hazardous waste unless otherwise determined by testing or generator knowledge. The US EPA has issued a memorandum regarding Alcohol-Content Exclusion for the Ignitability Characteristic³ that may apply to certain latex paints. Due to the variability in formulations, however, application of generator knowledge to a determination of ignitability for aggregated waste latex paint is problematic.

Question 3: What is the required timeframes for HMBP submissions?

New Business Plan

Cal/EPA Policy⁴ issued January 2, 2013, clarifies the timing for annual business plan reporting. For new PaintCare® collection facilities for which a business plan is required, the initial submission date shall be as follows:

25505. (a) (1) ...each handler shall submit its business plan to the administering agency in accordance with the requirements of this article and certify that the business plan meets the requirements of this article.

(d) Unless exempted from the business plan requirements under this chapter, each handler shall annually report its hazardous materials inventory...

¹ Drop-off Site Materials, PaintCare®, <http://www.paintcare.org/california/index.php#dropoff>, viewed January 8, 2013

² *California Architectural Paint Stewardship Program Plan*, Ascent Environmental, Inc. July 19, 2012

³ Alcohol-Content Exclusion for the Ignitability Characteristic, US EPA, July 1992, [http://yosemite.epa.gov/osw/rcra.nsf/ea6e50dc6214725285256bf00063269d/9970CC1BB48CBB078525670F006B CAF6/\\$file/13548.pdf](http://yosemite.epa.gov/osw/rcra.nsf/ea6e50dc6214725285256bf00063269d/9970CC1BB48CBB078525670F006B CAF6/$file/13548.pdf), viewed January 8, 2013.

⁴ Cal/EPA Unified Program Policy for Hazardous Materials Inventory Reporting Timing (UP-13-01), <http://www.calepa.ca.gov/CUPA/Bulletins/2013/Jan02.pdf>, viewed January 8, 2013

The HMBP TAG recommends that the owner, operator, or authorized agent of a new PaintCare® collection location contact the appropriate administering agency to determine whether submission of a business plan is required. A Unified Program Regulator Directory is available at <http://cersapps.calepa.ca.gov/Public/Directory/>.

Existing Business Plan

The following changes require amendment of an existing HMBP within 30 days:

- "substantial change in the handler's operations"
- "100 percent or more increase in the quantity of a previously disclosed material" or
- "handling of a previously undisclosed hazardous material subject to the inventory requirements of this chapter"

Question 4: What are the acceptable formats and content for HMBP submittal elements?

Hazardous Materials Inventory

List the number of containers and potential volumes of recyclable latex and oil-based paint

Contingency/Emergency Response Plan

Include Operations Plan portion of the PaintCare® contract as an attachment (or maintain onsite as per local administering agency requirements)

Training

Include PaintCare® training as an attachment (or maintain onsite as per local administering agency requirements)

Maps

Add PaintCare® container storage locations to maps (or maintain onsite as per local administering agency requirements).

Question 5: How are the names and locations of PaintCare® facilities identified?

Both a listing⁵ and search engine⁶ of facilities are available on the PaintCare® website. Facilities may want to consider notations to the HMBP to further identify it as participating in the PaintCare® program.

Question 6: What are the possibilities for waiving or reducing fees for facilities participating in the PaintCare® program?

At the present time, fees for PaintCare® collection facilities will be determined on a jurisdiction-specific basis. The amount to be paid by a person regulated by the unified program may be adjusted to account for the differing costs of administering the unified program with respect to that person's regulated activities.

Paragraph (b) of section 25508 (requires that "the administering agency shall conduct inspections of every business subject to this article at least once every three years to determine if the business is in compliance with this article (i.e, Article 1 of Chapter 6.95 of the Health and Safety Code governing

⁵ California PaintCare Drop-off Sites (by County), PaintCare, http://www.paintcare.org/docs/ca_site_list.pdf, viewed January 8, 2013

⁶ California PaintCare Drop-off Sites, PaintCare, <http://www.paintcare.org/california/search-ca.php>, viewed January 8, 2013

business plan requirements. If a PaintCare® collection facility is subject to Article 1 of Chapter 6.95 of the Health and Safety Code, the administering agency may judge it necessary to charge a fee to cover the costs of processing business plan submissions and conducting the required inspections.

If the administering agency does not require business plans from or conduct inspections of PaintCare® collection facilities not otherwise subject to Article 1 of Chapter 6.95 of the Health and Safety Code, the costs of administering collection locations established under the architectural paint recovery program will be lower and may be reflected in reduced or waived fees.