



AmericanCoatings
ASSOCIATIONSM

TO: The Honorable Brian J. Feldman, Chair
Members, Senate Education, Energy, and the Environment Committee
The Honorable Benjamin Brooks
The Honorable Chris West

FROM: Andrew G. Vetter
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DATE: February 6, 2024

RE: **SUPPORT** – Senate Bill 325 – *Maryland Paint Stewardship*

The American Coatings Association (ACA) is pleased to submit this letter of **support** for Senate Bill 325. ACA is a membership-based trade association of the paint manufacturing industry. ACA established PaintCare in 2009 to handle postconsumer paint products in a more sustainable and responsible manner. PaintCare is a non-profit 501(c)(3) organization that plans and operates paint stewardship programs in U.S. states and jurisdictions that pass paint stewardship laws. PaintCare is now operating in 11 states and the District of Columbia.

Once established, the Maryland Paint Stewardship program will benefit Maryland consumers and county governments in the following ways.

- Consumers will have free and convenient locations to drop off unused latex and oil-based paint.
- Retailers participating in this free and voluntary program will benefit from being able to provide an additional service to their customers and create additional foot traffic into their retail locations.
- County governments will have the option of partnering with PaintCare to process and transport unused paint products and containers, representing a potential significant financial and operational benefit.
- Contractors will benefit from being able to coordinate bulk pick-ups of unused paint from PaintCare, free of charge.
- Millions of gallons of unused paint will be diverted from the waste stream and be re-used or recycled by PaintCare, including used paint containers. This will protect the environment and our waterways.

ACA successfully supported the passage of the nation's first paint stewardship law in Oregon in 2009. Since that time, the program has been replicated in 11 other states and the District of Columbia. The results have been remarkable.

- 70.6 million gallons of un-used paint have been collected.
- PaintCare has provided 9,590 large volume pickups from governments and contractors.
- PaintCare has hosted 356 paint drop-off events.

As referenced above, Counties that are currently responsible for managing postconsumer paint will benefit from this legislation. Postconsumer paint is often the number one product, by volume and cost, coming into Hazardous Household Waste (HHW) programs managed by Counties. If passed, the paint industry, through the PaintCare program, will relieve local governments of this burden by directly processing and transporting unused paint; removing this cost from local governments as a result. PaintCare will reuse, recycle, or otherwise properly dispose of leftover household paint, diverting the vast majority of this paint from the waste stream in the process. The collected material is managed according to the EPA's highest and best use hierarchy and only a very small portion of the paint is unable to be reused, recycled, or repurposed.

The program requires significant outreach to educate consumers on both the purchase of paint and takeback locations; provides for collaborative relationships with local jurisdictions to reduce local taxpayer expenditures; includes programs for free bulk pickup from contractors; and requires the establishment of voluntary takeback locations at paint retail stores to ensure all Maryland residents have easy access to a location where they can take their unused paint. The program includes a sustainable financing structure that engages the manufacturer and the consumer by including a nominal assessment, based on container size that is applied at point of sale.¹

Most importantly, the Maryland Department of the Environment has comprehensive oversight of the program, including annual financial accountability that is required to be verified by an independent auditor selected by the Department, which ensures the program revenues are in line with program costs. If enacted, there will be a program plan developed that will be required to be approved by the Department prior to commencement of the program and an annual report that demonstrates compliance with the program plan will be required to be reviewed and approved by the Department along with the above referenced financial audit. Finally, the volume of paint managed by the program must be accounted for in the annual report that allocates the volume by County, thereby enabling Counties to include the volumes managed in their recycling rates without the expense of managing the paint.

PaintCare has been recognized by a number of awards from notable environmental organizations. In 2018, Sustainable DC designated the program a Community Champion for providing convenient opportunities for residents and businesses to recycle leftover paint. The North East Recycling Coalition, of which Maryland is a member, awarded PaintCare the Northeast Recycling Council's 2018 Environmental Sustainability Leadership Award in recognition of its outstanding program operations in Connecticut, Maine, Rhode Island, and Vermont.

A favorable report is requested.

¹ See attachment for details on the Paint Stewardship Assessment.

About the PaintCare Fee

Updated — January 2024



Paint stewardship laws require retailers to add a fee to architectural paint products and make sure they are not selling unregistered brands of architectural paint.

PaintCare

PaintCare is a nonprofit organization established by the American Coatings Association to implement manufacturer-led paint stewardship programs in states that pass paint stewardship laws. PaintCare currently operates programs in California, Colorado, Connecticut, District of Columbia, Maine, Minnesota, New York, Oregon, Rhode Island, Vermont, and Washington, and is developing a program for Illinois. The main goal of PaintCare is to decrease paint waste and recycle more postconsumer paint by setting up convenient drop-off sites in each state.

What is the recovery fee and how does it work?

The PaintCare program is funded through a paint stewardship fee called the PaintCare fee. The PaintCare fee is applied to the purchase price of architectural paint. The fee funds collection, transportation, and processing of unused

postconsumer (leftover) architectural paint, public education about proper paint management, and administrative costs. The fee is paid to PaintCare by paint manufacturers. This fee is then added to the wholesale and retail purchase price of paint, passing the cost of managing postconsumer paint to everyone who purchases paint. This reduces local and state government costs for paint management and provides a funding source for a more convenient, statewide paint management program.

Do retailers have to pass on the fee?

Yes, each state or jurisdiction's law requires retailers to pass on the fee to consumers, ensuring a level playing field for all parties. This requirement includes paint sold online on any e-commerce websites.

Recommendations for Painting Contractors

Preparing Estimates

When estimating jobs, painting contractors should take the PaintCare fee into account by checking with suppliers to make sure their quotes for paint products include the fee.

Pass Fee to Customers

PaintCare suggests that painting contractors pass on the fee to customers in order to recoup the fee they pay. Tell customers that quotes include the PaintCare fee and that the fee funds a statewide paint recycling program.

How much is the fee?

The PaintCare fee is based on container size and varies from one program to another:

	Larger than half pint up to smaller than 1 gallon	1–2 gallons	Larger than 2 gallons up to 5 gallons
California	\$0.30	\$0.65	\$1.50
Colorado	\$0.35	\$0.75	\$1.60
Connecticut	\$0.35	\$0.75	\$1.60
District of Columbia	\$0.30	\$0.70	\$1.60
Maine	\$0.35	\$0.75	\$1.60
Minnesota	\$0.49	\$0.99	\$1.99
New York	\$0.45	\$0.95	\$1.95
Oregon	\$0.45	\$0.95	\$1.95
Rhode Island	\$0.35	\$0.75	\$1.60
Vermont (through 4/30/24)*	\$0.49	\$0.99	\$1.99
Vermont (starting 5/1/24)	\$0.65	\$1.35	\$2.45
Washington	\$0.45	\$0.95	\$1.95

*A fee increase in Vermont will take effect on May 1, 2024.

How is the fee initially calculated?

When a new program starts, the fee is set to cover the cost of a fully implemented program. PaintCare estimates annual sales of paint in each state and then divides the cost of the program in that state by the number of containers sold in that state. Next, the fee is adjusted based on container size by taking into consideration the typical percentage of unused paint for each size (e.g., the percentage of unused paint from one 5 gallon container is typically less than from five 1 gallon containers).

PaintCare is a nonprofit organization, so the fee may be decreased if set at a level beyond what is needed to cover program expenses. Likewise, the fee may be increased if PaintCare does not collect enough revenue to cover the costs to operate the state program.

Are retailers required to show the fee on receipts?

While it's not required, PaintCare encourages retailers to list the PaintCare fee on purchase receipts to aid in consumer education, and most stores do so. Most states have enacted price accuracy statutes that govern the nature of pricing information that must be disclosed to consumers. Retailers should be mindful that regulators in some states may view their state's laws as requiring retailers to incorporate the PaintCare fee in the product price displayed to consumers, regardless of whether a retailer chooses to break the PaintCare fee out separately on purchase receipts. For more information, visit www.paintcare.org/pricinglaws.

Is the fee taxable?

Yes, the fee is part of the purchase price of paint. Sales tax is collected on the fee in most cases, except in Oregon, a state that does not have a sales tax, and Maine, per supplemental legislation.

Is the fee to be applied to paint sold to customers who are exempt from sales tax?

Yes, government agencies and other organizations that are exempt from sales tax in PaintCare States must still pay the fee, because it is part of the price of paint. However, the fee, like the rest of the product price, should not be taxed for sales tax-exempt organizations.

Is the fee a deposit that is returned to customers when they bring paint to a drop-off site?

No, the fee is not a deposit. The fee is used entirely to cover the cost of running the program.

Do retailers return the fee if someone returns a product?

Yes. The fee should be returned as part of the purchase price.

How does the public know about the fee?

PaintCare provides public education materials to retailers. These materials explain the purpose of the fee, where to take paint for recycling, and other information about the program. When a new state program begins, PaintCare mails a package of materials to retailers. As needed, retailers may order additional free materials from PaintCare at any time. In addition to retailer information, PaintCare works with contractor associations to provide information to trade painters and conducts general outreach including newspaper, radio, television, and online advertising.

How do we as retailers know what products to put the fee on?

Suppliers' invoices should indicate that you are being charged the fee, so you simply pass on the fee for those items. Additionally, PaintCare and each state's oversight agency list all architectural paint manufacturers and brands that are registered for the program on their websites. Retailers may not sell brands that are not registered with the program. If your store sells architectural coatings that are not on the list of registered products, please notify PaintCare so we can contact the manufacturer to get them registered.

What products are covered?

The products accepted at PaintCare drop-off sites are the same products that have a fee when they are sold. PaintCare Products include interior and exterior architectural coatings sold in container sizes of five gallons or less. They do not include aerosol coatings, industrial maintenance (IM), original equipment manufacturer (OEM), or specialty coatings. For a detailed list of PaintCare and non-PaintCare products, please visit www.paintcare.org/products-we-accept.

FOR NEW PROGRAMS

Do we apply the fee to sales on the first day of the program for inventory purchased before the first day of the program, even though we didn't pay a fee for the product to the distributor or manufacturer?

Yes, retailers must add the fee on all covered products sold on or after the first day of the program, regardless of when (before or after program launch) they were purchased from the distributor or manufacturer.