



February 19, 2019

Yolanda Letnes
Minnesota Pollution Control Agency
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RE: PaintCare Comments on Planned Amendments to Minnesota Rules Chapters 7000, 7001, 7035, 7045, 9210 and 9215; Revisor's ID Number 04155

Dear Ms. Letnes:

PaintCare, a 501(c)(3) non-profit entity, operates the state's paint product stewardship program for architectural coatings, as authorized under Minnesota Statutes 115A.1415. Six months prior to its official launch in November 2014, PaintCare engaged in initial recruitment and training of voluntary retail drop-off sites. Trainings and all subsequent operations conform to both PaintCare's program plan, as well as an agreed upon process developed with the Minnesota Pollution Control Agency (MPCA) to ensure compliance with existing rules and regulations by retail sites (letter from K. Koelfgen to A. Keane dated April 15, 2014).

PaintCare continues to work closely with MPCA staff to enhance compliance efforts. Since 2014, cooperation has included the development of a receipt book system for businesses dropping off oil-based paint products, working with contracted environmental services companies to ensure adequate collection supplies are on site, improvements to the paint collection site licensing process, and ongoing yearly site visits focused on overall program compliance with standards and regulations. We also work with counties and MPCA to assist retailers and their customers with referrals to appropriate entities for management of non-PaintCare products and even non-paint related wastes.

For over four years, this public-private partnership has worked extremely well. Consequently, PaintCare was surprised that we were not further consulted about the Land Housekeeping Rulemaking process begun in October 2013, with preliminary draft rule language released in June 2014, given our significant program experience since that time. Certain aspects of this rulemaking will undoubtedly impact our product stewardship program and will make it more difficult to retain and recruit retail drop-off sites in the future. The rule changes will not appreciably improve workplace safety or environmental protection, which are already comprehensively addressed by current program operations and guidance. Instead, they will increase the regulatory burden on participating retailers and jeopardize the overall effectiveness of paint stewardship in Minnesota. These potentially detrimental changes are discussed further below.

A. Changes to M.R. 7045.0310 *SPECIAL REQUIREMENTS FOR WASTE COLLECTED AS RESULT OF HOUSEHOLD HAZARDOUS WASTE MANAGEMENT PROGRAM.*

The rule changes codify some of the ways in which the paint product stewardship program is currently allowed to operate and licensed by MPCA – such as eliminating the need to submit hazardous waste manifests, removing the 90-day time limit for storage of hazardous paint wastes on-site and changing it

to the currently allowed 180 days and accumulation limits applicable to small quantity generators (SQGs), and an allowance to transport or accept paint waste from other collection programs authorized under 7045.310 and 7045.320.

However, the impact of the proposed rule is to explicitly add retail drop-off sites to the list of household hazardous waste (HHW) programs, resulting in additional regulatory requirements that were not previously in effect or enforced by the state, or included in the development of the PaintCare program plan as approved by MPCA. The proposed rule changes requiring that all architectural waste paint collection points meet standards applicable to SQGs in 7045.0205 to 7045.325 would create specific additional burdens on retailers participating in a paint product stewardship program, including:

1. Requiring weekly inspection logs for paint storage containers not in the immediate working area (7045.0292.8.C.2).
2. “All personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device” whenever handling hazardous waste (7045.0566.5).
3. “The owner or operator shall attempt to make the following arrangements...to familiarize the police, fire departments, and emergency response teams with the location of storage and accumulation areas within the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to and roads inside the facility, and possible evacuation routes” and other related emergency responder requirements (7045.0568).

B. Changes to M.R. 7045.0320 VERY SMALL QUANTITY GENERATOR HAZARDOUS WASTE COLLECTION PROGRAMS

PaintCare agrees with changes to the receipt that a site operator must provide to a Very Small Quantity Generator (VSQG) and has already implemented a state-wide receipt book system at all retail paint drop-off sites participating in the PaintCare program. In addition, we improved labeling to demonstrate the potential presence of hazardous waste in paint collection containers, required haulers and retailers to ensure accumulation dates are listed prominently on containers, and conducted yearly site visits to all participating sites to review policies and procedures. Though, once again, the rule changes would apply the same SQG standards noted above.

These rule changes will have significant negative consequences for retailers that wish to participate in a paint product stewardship program and will undermine PaintCare’s effectiveness. They would fundamentally alter our mutually agreed upon process for recruiting, training, and retaining retail drop off-sites – a process that has functioned incredibly well and enabled PaintCare to enlist the participation of nearly 200 retail drop-off sites across the state. This robust network of retailers has greatly increased convenience for the Minnesota consumer needing to dispose leftover architectural coatings, with 89.1% of Minnesotans live within 15 miles of a retail drop-off site. Our retail partners also cover a wide geography, including many rural areas, and are open year-round in parts of the state where local government facilities shut down seasonally. In return we promote these businesses – many of which are family or locally owned – through our website, local advertising, and other media outreach. This raises awareness about these businesses and contributes to their success in our communities. The rules changes will disrupt these cultivated relationships, add increased regulatory and administrative burdens, and could ultimately impact our effectiveness in recruiting and retaining retail participation as paint drop-off sites.

Furthermore, some retailers would be unwilling or unable to meet additional requirements that have heretofore not been imposed on participating drop-off sites. Several retailers left the program early-on due

to the burden of inspections and compliance requirements imposed by local and state rules. Additional requirements will not only deter new retailers from participating but also may also lead to an exodus of current drop-off sites. Since retailers participate as drop-off sites voluntarily, without any financial consideration for their efforts, any increase in administrative or regulatory burdens will likely result in site losses that would undermine the program's convenience as well its popularity, particularly in areas not currently served by year-round HHW facilities. Even if retailers are willing to remain in the program with these rule changes, it is not clear how drop-off sites would demonstrate compliance with the preparedness, emergency communications, and informing local authorities standards. These seemingly well-intentioned rule changes will create an extraordinary imposition of additional time, cost, and effort that outweighs any intended incremental benefit. It may also lead to substantial delays in licensing, re-licensing, and other administration hurdles.

Finally, based on the scope and nature of the materials collected through the paint product stewardship program, as well as the follow up roles of PaintCare and MPCA with retail drop-off sites, the proposed changes are unlikely to increase the level of safety for workers or provide any added protection for the environment beyond those rigorous measures already in place. PaintCare provides a variety of standardized collection supplies, ongoing onsite training and visits, guidance, and support to maximize the safe operation of the program at participating retail sites. Leftover architectural coatings brought to retail drop-off sites are stored in plastic-lined cardboard boxes with lids and appropriate waste labeling, which are then placed on impervious surfaces in areas inaccessible to the public. Emergency contact information sheets and spill kits are also provided by PaintCare. In addition, staff are trained to segregate acceptable products from unacceptable, to inform the customer where they can take the unacceptable products and provided feedback through yearly site visits as well as ongoing e-mails and phone calls. MPCA oversees this process and approved PaintCare's program plan which guide these operations. Consequently, the proposed rule changes are both unnecessary and overburdensome, and puts the future of a program that has operated safely and successful for four years in jeopardy.

This massive effort by MPCA is undertaken to manage a relatively small volume of oil-based paint that may be present in collection bins at drop-off sites. Onsite storage consists of two (2) cubic yard size lined cardboard boxes for PaintCare products, each capable of holding roughly 100 gallons of paint. According to our last annual report submitted to MPCA, only 19% of all paint processed by the program, which also includes HHW facilities, is oil-based (see <https://www.paintcare.org/wp-content/uploads/docs/mn-annual-report-2018.pdf>). This translates to approximately 40 gallons worth of potentially flammable liquid by container size amongst the standard two collection bins. In addition, according to Exhibit C of PaintCare's income agreement with MPCA, the average container fullness for oil-based paint entering HHW facilities is 65%, which when applied to retail drop off sites translates to an average of 26 gallons of oil-based paint at any given time (see Exhibit C, MPCA SWIFT Contract No. 134167). Program guidance and training provided by PaintCare, and approved by MPCA, instructs retail drop-off sites to accept only VSQG monthly amounts of flammable leftover paint waste from businesses, and to refer any questionable items or amounts from businesses or homeowners to licensed HHW and VSQG county facilities, or to PaintCare directly for large volume pickup. This training, when combined with collection supplies, continuous feedback and MPCA oversight, is more than sufficient to ensure that materials are properly managed at any retail drop-off site.

PaintCare eligible oil-based architectural coatings are not only effectively and safely managed at retail drop off sites, but in far lower amounts than that received by many local government HHW/VSQG facilities in the state given the small storage capacity at retail sites. Applying substantially similar standards to retailers participating in a paint product stewardship program as those affecting large volume collection facilities (with a much greater variety of chemical hazards present) is unnecessary and does not genuinely comport with the scale or nature of the concerns at retail drop-off sites. PaintCare remains committed to working with MPCA

on these issues, and requests that the rulemaking language allow for additional considerations for our retail drop-off sites so that they may be allowed to continue to operate as is – safely, effectively, and efficiently.

Sincerely,



Marjaneh Zarrehparvar, PaintCare, Executive Director



Steve Pincuspy, PaintCare, Minnesota Program Manger

CC:

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