

AMENDED IN SENATE AUGUST 31, 2010

AMENDED IN SENATE JULY 13, 2009

AMENDED IN SENATE JUNE 24, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1343**

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**Introduced by Assembly Member Huffman**  
**(Coauthors: Assembly Members Ma, Salas, and Torlakson)**

February 27, 2009

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An act to add Chapter 5 (commencing with Section 48700) to Part 7 of Division 30 of the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1343, as amended, Huffman. Solid waste: architectural paint: recovery program.

Existing law prohibits the disposal of latex paint in the land or waters of the state and authorizes certain persons to accept latex paint for recycling.

The California Integrated Waste Management Act of 1989, administered by the ~~California Integrated Waste Management Board~~ *Department of Resources Recycling and Recovery*, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.

This bill would create an architectural paint recovery program that would be enforced by the ~~board~~ *department*. On or before ~~January 1, 2011~~ *April 1, 2012*, a manufacturer or designated stewardship

organization would be required to submit to the ~~board~~ *department* an architectural paint stewardship plan to develop and implement a recovery program to reduce the generation of postconsumer paint, promote the reuse of postconsumer architectural paint, and manage the end-of-life of postconsumer architectural paint, in an environmentally sound fashion, including collection, transportation, processing, and disposal. The plan would be required to contain specified elements of an architectural paint stewardship program, including, but not limited to, an architectural paint stewardship assessment, approved by the ~~board~~ *department*, on each container of architectural paint sold in this state. The bill would require the plan to be reviewed and approved by the ~~board~~, and if the ~~board~~ does not act on the plan ~~department~~ within 90 days of receipt, it would be deemed adopted.

This bill would require, on or before July 1, ~~2011~~ 2012, or ~~two~~ 3 months after a plan is approved by the ~~board~~ *department*, the manufacturer or stewardship organization to implement the architectural paint stewardship program described in the approved plan.

The bill would also prohibit a manufacturer or retailer from selling or offering for sale architectural paint to any person in this state, unless the manufacturer is *listed on the department's Internet Web site as being in compliance with this act the bill's requirements*. The prohibition would be in effect on the 120th day after a notice listing the ~~manufacturer as not being~~ *manufacturers that are in compliance is posted on the board's department's Internet Web site and would remain in effect with regard to a noncompliant manufacturer until that manufacturer is listed on the department's Internet Web site or can otherwise demonstrate compliance, as prescribed*.

This bill would authorize the ~~board~~ *department* to administratively impose civil penalties for violations of the act. ~~The~~

*The bill would also require a stewardship organization to pay the department annual administrative fees in the amount that is sufficient to cover the department's full costs of administering and enforcing the program.*

*The bill would establish the Paint Recovery Account in the Integrated Waste Management Fund, would require the fees to be deposited in this account, and would require the department to expend those fees, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions. The bill would also establish the Paint Recovery Penalty Subaccount in the Integrated Waste Management Fund, would require the penalties collected to be deposited in that*

*subaccount, and would authorize the department to expend those funds, upon appropriation by the Legislature, to cover the department's costs to implement the bill's provisions.*

*The bill would require manufacturers to submit a report to the ~~board~~ department by July 1, ~~2012~~ 2013, and each year thereafter, describing their paint recovery efforts.*

*The bill would provide that certain actions taken pursuant to the program established by the bill do not violate the Cartwright Act or the Unfair Practices Act.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) Architectural paint is a priority waste type based on its high  
4 volume, subsequent cost to manage, and high potential for  
5 increased recovery, reuse, and recycling.

6 (b) The Department of Toxic Substances Control has deemed  
7 latex paint as presumed hazardous in California and oil-based paint  
8 is characteristically hazardous, making both latex and oil-based  
9 paints prohibited from disposal in California.

10 ~~(e) The California Integrated Management Waste Board~~  
11 ~~estimates~~

12 (c) *The former California Integrated Waste Management Board*  
13 *estimated* that architectural paint, both latex and oil-based,  
14 comprises the largest volume of waste product collected at publicly  
15 operated household hazardous waste facilities, 35 percent of total  
16 household hazardous waste collected in California in the 2007–08  
17 fiscal year.

18 (d) The Department of Toxic Substances Control estimates that  
19 the cost to manage waste architectural paint in California is the  
20 single largest cost to local governments in the household hazardous  
21 waste system.

22 ~~(e) The board estimates~~ *former board estimated* that for the  
23 2007–08 fiscal year only 5 percent of California households utilized  
24 a household hazardous waste program.

25 (f) Architectural paint is convenient to buy and inconvenient to  
26 recycle or legally dispose of in California.

1 (g) There has been an ongoing debate on how to better manage  
 2 leftover architectural paint since 1989 when the board heard an  
 3 item on options to fund a collection and management system.

4 (h) A national dialogue has been ongoing since 2002, yet has  
 5 not resulted in any architectural paint collection or financial relief  
 6 to California local governments.

7 (i) California has the largest number of latex paint recyclers in  
 8 the country: Amazon Environmental (Riverside), Kelly-Moore  
 9 (Sacramento), and Visions (Sacramento).

10 (j) State procurement of recycled paint is required. The state  
 11 agency “buy recycled” mandates are not being met, and there is  
 12 no enforcement mechanism, resulting in only 2 percent compliance  
 13 reporting to the board.

14 SEC. 2. Chapter 5 (commencing with Section 48700) is added  
 15 to Part 7 of Division 30 of the Public Resources Code, to read:

16

17 CHAPTER 5. ARCHITECTURAL PAINT RECOVERY PROGRAM

18

19 48700. The purpose of the architectural paint recovery program  
 20 established pursuant to this chapter is to require paint  
 21 manufacturers to develop and implement a program to collect,  
 22 transport, and process postconsumer paint to reduce the costs and  
 23 environmental impacts of the disposal of postconsumer paint in  
 24 this state.

25 48701. For purposes of this chapter, the following terms have  
 26 the following meanings:

27 (a) “Architectural paint” means interior and exterior architectural  
 28 coatings, sold in containers of five gallons or less for commercial  
 29 or homeowner use, but does not include aerosol spray paint or  
 30 architectural coatings purchased for industrial or original equipment  
 31 manufacturer use.

32 ~~(b) “Board” means the California Integrated Waste Management~~  
 33 ~~Board.~~

34 (e)

35 (b) “Consumer” means a purchaser or owner of architectural  
 36 paint, including a person, business, corporation, limited partnership,  
 37 nonprofit organization, or governmental entity.

38 (c) “Department” means the Department of Resources Recycling  
 39 and Recovery.

1 (d) “Distributor” means a person that has a contractual  
2 relationship with one or more manufacturers to market and sell  
3 architectural paint to retailers.

4 (e) “Manufacturer” means a manufacturer of architectural paint.

5 (f) “Postconsumer paint” means architectural paint not used by  
6 the purchaser.

7 (g) “Retailer” means a person that sells architectural paint in  
8 the state to a consumer. A sale includes, but is not limited to,  
9 transactions conducted through sales outlets, catalogs, or the  
10 Internet or any other similar electronic means.

11 (h) “Stewardship organization” means a nonprofit organization  
12 created by the manufacturers to implement the architectural paint  
13 stewardship program described in Section 48703.

14 48702. (a) A manufacturer of architectural paint sold in this  
15 state shall, individually or through a stewardship organization,  
16 submit an architectural paint stewardship plan to the ~~board~~  
17 *department* to develop and implement a recovery program to reduce  
18 the generation of postconsumer architectural paint, promote the  
19 reuse of postconsumer architectural paint, and manage the  
20 end-of-life of postconsumer architectural paint, in an  
21 environmentally sound fashion, including collection, transportation,  
22 processing, and disposal.

23 (b) (1) A manufacturer or retailer shall not sell or offer for sale  
24 in this state architectural paint to any person in this state unless  
25 the manufacturer is in compliance with this chapter.

26 ~~(2) The sales prohibition in paragraph (1) shall be effective on~~  
27 ~~the 120th day after the notice described in subdivision (c) lists the~~  
28 ~~manufacturer on the board’s Internet Web site and shall remain in~~  
29 ~~effect until the manufacturer is no longer listed on the board’s~~  
30 ~~Internet Web site.~~

31 ~~(c) (1) On July 1, 2011, and on January 1 and July 1 annually~~  
32 ~~thereafter, the board shall post a notice on its Internet Web site~~  
33 ~~listing manufacturers that are not in compliance with this chapter.~~

34 ~~(2) Manufacturers that have been listed on the board’s Internet~~  
35 ~~Web site pursuant to this section, but can demonstrate to the~~  
36 ~~satisfaction of the board that they are in compliance with this~~  
37 ~~chapter before the next notice is required pursuant to this section,~~  
38 ~~may request a certification letter from the board to that effect. The~~  
39 ~~letter shall constitute compliance with this chapter.~~

1 ~~(d) A wholesaler or a retailer that distributes or sells architectural~~  
2 ~~paint shall monitor the board's Internet Web site to determine if~~  
3 ~~the sale of a manufacturer's architectural paint is in compliance~~  
4 ~~with this chapter.~~

5 ~~48703. (a) On or before January 1, 2011, a manufacturer or~~  
6 ~~designated stewardship organization shall submit an architectural~~  
7 ~~paint stewardship plan to the board.~~

8 ~~(b) (1) The plan shall demonstrate sufficient funding for the~~  
9 ~~architectural paint stewardship program as described in the plan,~~  
10 ~~including a funding mechanism for securing and dispersing funds~~  
11 ~~to cover administrative, operational, and capital costs, including~~  
12 ~~the assessment of charges on architectural paint sold by~~  
13 ~~manufacturers in this state.~~

14 ~~(2) The funding mechanism shall provide for an architectural~~  
15 ~~paint stewardship assessment for each container of architectural~~  
16 ~~paint sold by manufacturers in this state and the assessment shall~~  
17 ~~be remitted to the stewardship organization, if applicable.~~

18 ~~(3) The architectural paint stewardship assessment shall be~~  
19 ~~added to the cost of all architectural paint sold to California~~  
20 ~~retailers and distributors, and each California retailer or distributor~~  
21 ~~shall add the assessment to the purchase price of all architectural~~  
22 ~~paint sold in the state.~~

23 ~~(4) The architectural paint stewardship assessment shall be~~  
24 ~~approved by the board as part of the plan, and shall be sufficient~~  
25 ~~to recover, but not exceed, the cost of the architectural paint~~  
26 ~~stewardship program.~~

27 ~~(e) The plan shall address the coordination of the architectural~~  
28 ~~paint stewardship program with local household hazardous waste~~  
29 ~~programs, including contracting for the costs for architectural paint~~  
30 ~~collected by the household hazardous waste programs, where~~  
31 ~~practical.~~

32 ~~(d) The plan shall include goals established by the manufacturer~~  
33 ~~or stewardship organization to reduce the generation of~~  
34 ~~postconsumer paint, to promote the reuse of postconsumer paint,~~  
35 ~~and for the proper end-of-life management of postconsumer paint,~~  
36 ~~including recovery and recycling of postconsumer paint, as~~  
37 ~~practical, based on current household hazardous waste program~~  
38 ~~information. The goals may be revised by the manufacturer or~~  
39 ~~stewardship organization based on the information collected for~~  
40 ~~the annual report.~~

1 ~~(e) The plan shall include consumer, contractor, and retailer~~  
2 ~~education and outreach efforts to promote the source reduction~~  
3 ~~and recycling of architectural paint. This information may include,~~  
4 ~~but is not limited to, developing, and updating as necessary,~~  
5 ~~educational and other outreach materials aimed at retailers of~~  
6 ~~architectural paint. These materials shall be made available to the~~  
7 ~~retailers. These materials may include, but are not limited to, one~~  
8 ~~or more of the following:~~

9 ~~(1) Signage that is prominently displayed and easily visible to~~  
10 ~~the consumer.~~

11 ~~(2) Written materials and templates of materials for reproduction~~  
12 ~~by retailers to be provided to the consumer at the time of purchase~~  
13 ~~or delivery, or both. Written materials shall include information~~  
14 ~~on the prohibition of improper disposal of architectural paint.~~

15 ~~(3) Advertising or other promotional materials, or both, that~~  
16 ~~include references to architectural paint recycling opportunities.~~

17 ~~(f) On or before July 1, 2011, or two months after a plan is~~  
18 ~~approved pursuant to Section 48704, the manufacturer or~~  
19 ~~stewardship organization shall implement the architectural paint~~  
20 ~~stewardship program described in the approved plan.~~

21 ~~48704. (a) The board shall review and approve the architectural~~  
22 ~~paint stewardship plan within 90 days of receipt. A plan not acted~~  
23 ~~upon by the board within 90 days shall be deemed adopted.~~

24 ~~(b) The board shall review the annual report required pursuant~~  
25 ~~to Section 48705 and within 90 days of receipt shall adopt a finding~~  
26 ~~of compliance or noncompliance with the provisions of this act.~~

27 ~~(c) The board shall enforce this chapter.~~

28 ~~(d) The stewardship organization shall pay the board~~  
29 ~~administrative fees in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) when~~  
30 ~~the plan is submitted for review and approval and thereafter an~~  
31 ~~annual administrative fee of 0.05 percent of the architectural paint~~  
32 ~~stewardship program costs as reported under Section 48705.~~

33 ~~(e) (1) A civil penalty may be administratively imposed by the~~  
34 ~~board on any person who violates this chapter in an amount of one~~  
35 ~~thousand dollars (\$1,000) for each violation.~~

36 ~~(2) Any person who intentionally, knowingly, or negligently~~  
37 ~~violates this chapter may be assessed a civil penalty by the board~~  
38 ~~of up to ten thousand dollars (\$10,000) for each violation.~~

1     ~~(3) Any penalties collected by the board shall be used to offset~~  
 2 ~~the cost of the review and approval architectural paint stewardship~~  
 3 ~~plans and annual reports and of enforcement activities.~~  
 4     ~~48705. By July 1, 2012, and each year thereafter, a manufacturer~~  
 5 ~~of architectural paint sold in this state shall, individually or through~~  
 6 ~~a representative stewardship organization, submit a report to the~~  
 7 ~~board describing its architectural paint recovery efforts. At a~~  
 8 ~~minimum, the report shall include all of the following:~~  
 9     ~~(a) The total volume of architectural paint sold in this state~~  
 10 ~~during the preceding calendar year.~~  
 11     ~~(b) The total volume of postconsumer architectural paint~~  
 12 ~~recovered in this state during the preceding calendar year.~~  
 13     ~~(c) A description of methods used to collect, transport, and~~  
 14 ~~process postconsumer architectural paint in this state.~~  
 15     ~~(d) The total cost of implementing the architectural paint~~  
 16 ~~stewardship program.~~  
 17     ~~(e) An evaluation of how the architectural paint stewardship~~  
 18 ~~program's funding mechanism operated.~~  
 19     ~~(f) Examples of educational materials that were provided to~~  
 20 ~~consumers the first year and any changes to those materials in~~  
 21 ~~subsequent years.~~  
 22     ~~(2) The sales prohibition in paragraph (1) shall be effective on~~  
 23 ~~the 120th day after the notice described in subdivision (c) is posted~~  
 24 ~~on the department's Internet Web site, and shall apply to any~~  
 25 ~~manufacturer that is not listed on the department's Internet Web~~  
 26 ~~site, and shall remain in effect until the manufacturer is listed on~~  
 27 ~~the department's Internet Web site or can demonstrate compliance~~  
 28 ~~as described in paragraph (2) of subdivision (c).~~  
 29     ~~(c) (1) On July 1, 2012, or upon the date the first plan is~~  
 30 ~~approved, whichever date is earlier, the department shall post on~~  
 31 ~~its Internet Web site a list of manufacturers for which the~~  
 32 ~~department has approved a plan pursuant to subdivision (a) of~~  
 33 ~~Section 48704. The department shall update this posting no less~~  
 34 ~~than once every six months thereafter. On and after April 1, 2013,~~  
 35 ~~the department shall post a notice on its Internet Web site listing~~  
 36 ~~manufacturers that are in compliance with this chapter pursuant~~  
 37 ~~to subdivision (b) of Section 48705 and shall update this posting~~  
 38 ~~no less than once every six months.~~  
 39     ~~(2) A manufacturer that is not listed on the department's Internet~~  
 40 ~~Web site pursuant to this section, but demonstrates to the~~

1 satisfaction of the department that it is in compliance with this  
2 chapter before the next notice is required to be posted pursuant  
3 to this section, may request a certification letter from the  
4 department stating that the manufacturer is in compliance. The  
5 manufacturer who receives that letter shall be deemed to be in  
6 compliance with this chapter.

7 (d) A wholesaler or a retailer that distributes or sells  
8 architectural paint shall monitor the department's Internet Web  
9 site to determine if the sale of a manufacturer's architectural paint  
10 is in compliance with this chapter.

11 48703. (a) On or before April 1, 2012, a manufacturer or  
12 designated stewardship organization shall submit an architectural  
13 paint stewardship plan to the department.

14 (b) (1) The plan shall demonstrate sufficient funding for the  
15 architectural paint stewardship program as described in the plan,  
16 including a funding mechanism for securing and dispersing funds  
17 to cover administrative, operational, and capital costs, including  
18 the assessment of charges on architectural paint sold by  
19 manufacturers in this state.

20 (2) The funding mechanism shall provide for an architectural  
21 paint stewardship assessment for each container of architectural  
22 paint sold by manufacturers in this state and the assessment shall  
23 be remitted to the stewardship organization, if applicable.

24 (3) The architectural paint stewardship assessment shall be  
25 added to the cost of all architectural paint sold to California  
26 retailers and distributors, and each California retailer or  
27 distributor shall add the assessment to the purchase price of all  
28 architectural paint sold in the state.

29 (4) The architectural paint stewardship assessment shall be  
30 approved by the department as part of the plan, and shall be  
31 sufficient to recover, but not exceed, the cost of the architectural  
32 paint stewardship program. The plan shall require that any surplus  
33 funds be put back into the program to reduce the costs of the  
34 program, including the assessment amount.

35 (c) The plan shall address the coordination of the architectural  
36 paint stewardship program with existing local household hazardous  
37 waste collection programs as much as this is reasonably feasible  
38 and is mutually agreeable between those programs.

39 (d) The plan shall include goals established by the manufacturer  
40 or stewardship organization to reduce the generation of

1 *postconsumer paint, to promote the reuse of postconsumer paint,*  
2 *and for the proper end-of-life management of postconsumer paint,*  
3 *including recovery and recycling of postconsumer paint, as*  
4 *practical, based on current household hazardous waste program*  
5 *information. The goals may be revised by the manufacturer or*  
6 *stewardship organization based on the information collected for*  
7 *the annual report.*

8 *(e) The plan shall include consumer, contractor, and retailer*  
9 *education and outreach efforts to promote the source reduction*  
10 *and recycling of architectural paint. This information may include,*  
11 *but is not limited to, developing, and updating as necessary,*  
12 *educational and other outreach materials aimed at retailers of*  
13 *architectural paint. These materials shall be made available to*  
14 *the retailers. These materials may include, but are not limited to,*  
15 *one or more of the following:*

16 *(1) Signage that is prominently displayed and easily visible to*  
17 *the consumer.*

18 *(2) Written materials and templates of materials for*  
19 *reproduction by retailers to be provided to the consumer at the*  
20 *time of purchase or delivery, or both. Written materials shall*  
21 *include information on the prohibition of improper disposal of*  
22 *architectural paint.*

23 *(3) Advertising or other promotional materials, or both, that*  
24 *include references to architectural paint recycling opportunities.*

25 *(f) Any retailer may participate, on a voluntary basis, as a paint*  
26 *collection point pursuant to the paint stewardship program.*

27 *48704. (a) The department shall review the plan within 90*  
28 *days of receipt, and make a determination whether or not to*  
29 *approve the plan. The department shall approve the plan if it*  
30 *provides for the establishment of a paint stewardship program*  
31 *that meets the requirements of Section 48703.*

32 *(b) (1) The approved plan shall be a public record, except that*  
33 *financial, production, or sales data reported to the department by*  
34 *a manufacturer or the stewardship organization is not a public*  
35 *record under the California Public Records Act, as described in*  
36 *Chapter 3.5 (commencing with Section 6250) of Division 7 of Title*  
37 *1 of the Government Code and shall not be open to public*  
38 *inspection.*

39 *(2) Notwithstanding paragraph (1), the department may release*  
40 *a summary form of financial, production, or sales data if it does*

1 *not disclose financial, production, or sales data of a manufacturer*  
2 *or stewardship organization.*

3 *(c) On or before July 1, 2012, or three months after a plan is*  
4 *approved pursuant to subdivision (a), whichever date is later, the*  
5 *manufacturer or stewardship organization shall implement the*  
6 *architectural paint stewardship program described in the approved*  
7 *plan.*

8 *(d) The department shall enforce this chapter.*

9 *(e) (1) The stewardship organization shall pay the department*  
10 *an annual administrative fee pursuant to paragraph (2).*

11 *(2) The department shall impose fees in an amount that is*  
12 *sufficient to cover the department's full costs of administering and*  
13 *enforcing this chapter, including any program development costs*  
14 *or regulatory costs incurred by the department prior to the*  
15 *submittal of the stewardship plans. Fee revenues collected under*  
16 *this section shall only be used to administer and enforce this*  
17 *chapter.*

18 *(f) (1) A civil penalty may be administratively imposed by the*  
19 *department on any person who violates this chapter in an amount*  
20 *of up to one thousand dollars (\$1,000) per violation per day.*

21 *(2) A person who intentionally, knowingly, or negligently*  
22 *violates this chapter may be assessed a civil penalty by the*  
23 *department of up to ten thousand dollars (\$10,000) per violation*  
24 *per day.*

25 *48705. (a) On or before July 1, 2013, and each year thereafter,*  
26 *a manufacturer of architectural paint sold in this state shall,*  
27 *individually or through a representative stewardship organization,*  
28 *submit a report to the department describing its architectural paint*  
29 *recovery efforts. At a minimum, the report shall include all of the*  
30 *following:*

31 *(1) The total volume of architectural paint sold in this state*  
32 *during the preceding calendar year.*

33 *(2) The total volume of postconsumer architectural paint*  
34 *recovered in this state during the preceding calendar year.*

35 *(3) A description of methods used to collect, transport, and*  
36 *process postconsumer architectural paint in this state.*

37 *(4) The total cost of implementing the architectural paint*  
38 *stewardship program.*

39 *(5) An evaluation of how the architectural paint stewardship*  
40 *program's funding mechanism operated.*

1 (6) *An independent financial audit funded from the paint*  
2 *stewardship assessment.*

3 (7) *Examples of educational materials that were provided to*  
4 *consumers the first year and any changes to those materials in*  
5 *subsequent years.*

6 (b) *The department shall review the annual report required*  
7 *pursuant to this section and within 90 days of receipt shall adopt*  
8 *a finding of compliance or noncompliance with this chapter.*

9 48706. (a) *Except as provided in subdivision (c), an action*  
10 *solely to increase the recycling of architectural paint by a*  
11 *producer, stewardship organization, or retailer that affects the*  
12 *types or quantities being recycled, or the cost and structure of any*  
13 *return program, is not a violation of the statutes specified in*  
14 *subdivision (b).*

15 (b) *The following statutes are not violated by an action specified*  
16 *in subdivision (a):*

17 (1) *The Cartwright Act (Chapter 2 (commencing with Section*  
18 *16700) of Part 2 of Division 7 of the Business and Professions*  
19 *Code).*

20 (2) *The Unfair Practices Act (Chapter 4 (commencing with*  
21 *Section 17000) of Part 2 of Division 7 of the Business and*  
22 *Professions Code).*

23 (c) *Subdivision (a) shall not apply to any agreement establishing*  
24 *or affecting the price of paint, except for the architectural paint*  
25 *stewardship assessment, or the output or production of paint, or*  
26 *any agreement restricting the geographic area or customers to*  
27 *which paint will be sold.*