

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Energy and Environment

July 29, 2016

Re: Response to Comments; Proposed Rulemaking: Draft DCMR Title 20 Environment; Chapter 40 Paint Stewardship

The following are the Department of Energy and Environment's (DOEE) responses to comments on the proposed rulemaking for the Paint Stewardship Program, published in the January 29, 2016 issue of the DC Register (63 DCR 1083). The comment period began on January 29, 2016, and closed on February 29, 2016. DOEE appreciates the time and effort taken by all parties who reviewed and commented on the proposed rulemaking. DOEE received comments from the American Coatings Association (ACA). Below are the four points raised by the ACA and DOEE's response to the comments.

1) ACA Comment:

ACA suggests removing the requirements of §4001.1(c) "a five-year projected budget, or a narrative discussion of how the paint stewardship program will seek to achieve desired financial reserves within five years of program launch" as this is an inappropriate requirement for the paint stewardship plan. Per §4001.1 (a) and (b), the program plan will include a program budget and a policy regarding financial reserves, but it should be noted that PaintCare does not intentionally build a surplus in any year of the program. If the DC PaintCare program were to accumulate a surplus it would be placed in a reserve fund, per the financial reserves policy. Rather than project five years of the DC program ACA suggest that a 1 year projected budget appear in the program plan and thereafter in the annual report (as required by §4002.1(f)).

DOEE Response:

§4001.1(c) is removed in the final rulemaking and DOEE will only request a program budget and policy regarding financial reserves in the program plan.

2) ACA Comment:

Further, the requirements of §4001.3 were taken from the law establishing the Oregon PaintCare program, which served as a pilot of the program beginning in 2010 and is inappropriate for the DC program. The specific percentages were based on 3 years of experience under the pilot program in Oregon and may not be appropriate for DC. ACA suggest §4001.3 be amended to read as follows:

"Four years after the approval of the first paint stewardship plan and anytime thereafter, the Department may request an amendment to the paint stewardship plan in order to address:

- a. The administrative costs to the producer or representative organization for the paint stewardship program;
- b. The cost per gallon of the program;
- c. The unallocated reserve funds held by the producer or representative organization for the program;
- d. The total volume, in gallons, of postconsumer paint collected as part of the program;
- e. The recycling rate for the program."

Alternatively, the Department could amend the regulations in the future based on actual data specific to the DC program.

DOEE Response:

§4001.3 is removed in the final rulemaking and DOEE will utilize the procedures in D.C. Official Code §8-233.04 to request modifications to the stewardship program plan.

3) ACA Comment:

ACA urges DOEE to consider the streamlined annual report requirements agreed upon by a multi-state stakeholder group. This uniform annual report will allow the comparison of the DC PaintCare program to other state programs and will save time and money for the program. A number of the problematic elements included in §4002 come from other state laws or regulations that have either been addressed and modified through the program plan or are in the process of being amended by PaintCare and the relevant state agency. ACA suggests that the following elements of the uniform annual report be considered for incorporation into the regulations or for approval in the program plan:

1. Paint Collection
 - a. Collection Sites, Events and Services
 - b. Paint Collection Procedures
 - c. Convenience Criteria
 - d. Collection Volume and Recovery Rate
2. Transportation and Processing
3. Independent Audit and Financial Summary
 - a. Paint Sales
 - b. Independent Financial Audit
 - c. Financial Summary and Discussion
 - d. Expense Categories
 - e. Evaluation of the Program's Funding Mechanism
4. Outreach
 - a. Outreach Activities
 - b. Awareness Survey
 - c. Recommendations

DOEE Response:

The rulemaking does not prevent the use of a standard annual report by a manufacturer or paint stewardship organization. Furthermore, §4002 does not preclude a manufacturer or paint stewardship organization from including additional information in their annual reports. The final rulemaking clarifies some of the annual reporting requirements.

4) ACA Comment:

Lastly, ACA suggests that §4002.1(b) be moved to §4001 Paint Stewardship Program Plan. PaintCare's training and collection site guidelines are mandatory for all drop off locations and should be reviewed by the Department as part of the program plan approval.

DOEE Response:

§4002.1(b) does not prevent a manufacturer or paint stewardship organization from including this information in the program plan. The final rulemaking clarifies the information that is requested in §4002.1(b).