

## **NEWMOA Hazardous Waste Conference Call November 18, 2014**

### **Topic: Implementing state paint stewardship programs, focusing on regulation and management of oil-based paints**

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**Participants:** CT DEEP (10 people); ME DEP (3 people); Mass DEP (3 people); NH DES (8 people); NJ DEP (1 person); NYS DEC (4 people); RI DEM (2 people); VT DEC (3 people); EPA Region 1 (2 people); NEWMOA (1 person)

Call leader: Vermont DEC

Note Taker: Connecticut DEEP

#### Background

VT DEC described their state's Paint Stewardship Program. VT DEC has designated post-consumer paint that would otherwise be a hazardous waste as a Universal Waste. In 2013, VT DEC was in the process of changing their hazardous waste regulations and became aware that the VT legislature was considering passing a paint stewardship law. This law is funded by a fee on new paint sales. The legislature defined "architectural coatings" to include water and oil-based paints, stains, and others but does not include industrial or specialty coatings. VT DEC was concerned about oil-based paint coming from non-residential generators because under their rules, even Conditionally Exempt Small Quantity Generators (CESQGSs) are restricted as to where they can take their waste (in particular, the facility has to be permitted to accept CESQG hazardous waste). VT DEC's attorney and Steve Simoes came up with the idea of designating this paint as a Universal Waste. As a result of this decision, VT DEC added a section to the paint stewardship legislation (Section 6680) designating the paint collected under the program as a Universal Waste under Vermont's Hazardous Waste Management Regulations as long as it is collected under an approved Product Stewardship Plan and would otherwise be regulated as a

hazardous waste. Also, the paint must be managed to prevent releases. PaintCare was chosen as the vendor to carry out the stewardship plan. PaintCare is a group that represents the paint manufacturers and works with recycling/disposal contractors to manage the paint that is collected. PaintCare's plan sets up the infrastructure for the collection of paint. Under Vermont's program, only CESQGs can bring paint to the drop-off sites set up under the plan. The program started on May 1, 2014. PaintCare is managing the retailers' collection (58 collection sites so far), as well as household hazardous waste (HHW) collection events. About 40,000 gallons have been collected since May 1. VT DEC's goal is to collect 106,000 gallons in the first 14 months of the program (equates to a 6 percent recovery rate). It looks like VT will reach that goal. The recovery rate prior to the Paint Stewardship Program (using only HHW collections) was about 60,000 gallons per year.

Question: of the 40,000 gallons collected so far, how much is oil-based? Answer: Not sure, but could check and get back to the group with that information.

Question: Is the "no release" requirement the only performance standard that was required under the program? Answer: No, there are also container management standards, standards for leaking containers, and labeling requirements – or the basic Universal Waste Rule requirements.

Question: What about the collection facilities; had there been any problems at these locations? Answer: No, no problems.

Question: How the paint is recycled? Answer: Latex paint is recycled if possible, and oil-based paint is fuel-blended. The recycling of latex paint involves re-blending it for use as new paint.

The states in the northeast that have paint stewardship programs (either in place or under development) took turns describing their programs followed by the states without such programs.

#### Connecticut

The Connecticut Legislature passed a paint stewardship law in 2011 (Public Act 11-24). This law provided for the collection of "architectural coatings," which includes latex and oil-based paints and stains, and others, but does not include specialty or industrial coatings. A copy of the Public Act and other information about CT DEEP's Paint Stewardship Program is available on DEEP's Paint Recycling web page at:

[http://www.ct.gov/deep/cwp/view.asp?a=2708&q=449248&deepNav\\_GID=1645](http://www.ct.gov/deep/cwp/view.asp?a=2708&q=449248&deepNav_GID=1645)

As in Vermont, PaintCare was recognized as the organization to administer the collection program on behalf of the paint manufacturers in Connecticut. MXI and Clean Harbors were selected as the vendors for collections by PaintCare. PaintCare rolled out its collection program on July 1, 2013. Over 100 drop-off locations are available for residents in Connecticut, and residents can visit the PaintCare website to find collection sites in their area. According to the PaintCare Annual Report, 240,798 gallons of used paint were collected in the first year of the program. CT DEEP also had concerns about non-residentially-generated paint, and the implications that the collection of such paint would have under Connecticut's Hazardous Waste Management Regulations. In particular, like Vermont, CT DEEP's regulations restrict the places where CESQGs may bring their waste. However, one of the allowed destinations for CESQG

waste under these regulations is facilities that are authorized by CT DEEP to accept household hazardous waste. This provision was added to Connecticut's regulations in 2001 to allow CESQGs to take their waste to permanent HHW collection centers and one-day collection events. Pursuant to this provision, CT DEEP has issued individual permits to four permanent HHW collection centers in Connecticut, and also issued a general permit for contractors that run one-day HHW collections in the State.

In order to address the retail collection points that would be needed under the Paint Stewardship Program, CT DEEP issued a separate general permit specifically for retail collection points, allowing them to accept CESQG paint and residential paint. This permit mirrored the requirements to participate in the PaintCare program as approved by DEEP in the program plan. A fact sheet concerning this general permit, as well as a copy of the general permit is available at: [http://www.ct.gov/deep/cwp/view.asp?a=2709&q=523894&deepNav\\_GID=1643](http://www.ct.gov/deep/cwp/view.asp?a=2709&q=523894&deepNav_GID=1643).

Some municipalities in Connecticut also collect paint from residents (e.g., at local transfer stations). Most of these facilities are permitted under the DEEP's Municipal Transfer Station General Permit, which has included provisions allowing the collection of latex and oil-based paint from residents for several years.

The latex paint collected under Connecticut's program goes to a recycling facility in Illinois, where approximately 80 percent of it is recycled. Oil-based paint is sent to various out-of-state facilities run by Clean Harbors for fuel blending.

Question: Has CT DEEP documented its state agency costs for the program? Answer: CT DEEP has not attempted to accurately document staff time and other costs, but indicated that it was able to implement the program largely using existing resources. Furthermore, now that the program is set up, it pretty much runs itself.

Question: What kinds of staff time were required during the first year of implementing the program? Answer: There was a significant amount of time needed for the review of PaintCare's plan, outreach, meetings, and writing the General Permit for the retail collection sites – perhaps about one full time equivalent (FTE) altogether.

Question for VT: How much staff time was needed to get the VT program going? Answer: It required about a half FTE for the first year.

Question: What are the CT DEEP requirements for retail collection centers? Answer: The requirements are spelled out in the aforementioned General Permit. CT DEEP further explained that the way that this General Permit works is that PaintCare is the permittee and trains the retailers that host the collection centers. The General Permit also specifically refers to PaintCare's plan, which was reviewed and approved by CT DEEP. Follow-up question: Does CT DEEP do any inspections at the collection centers? Answer: They have not done any such inspections yet.

Question: Are the collection centers subject to treatment, storage, and disposal facility (TSDF) requirements? Answer: These facilities are not subject to TSDF requirements; only to the requirements of the general permit.

Question: Who is collecting the paint at the retail collection centers – staff from PaintCare, or staff from the retailer? Answer: Retail facility staff accept the paint at the collection centers, they are required to be trained by PaintCare as part of the program.

### Maine

ME DEP has proposed to regulate paints that would be hazardous as Universal Waste. They are proposing that retail collection points must obtain an EPA ID Number and operate as central collection points under the Universal Waste Rule. ME DEP's sense is that there may be some fear on the part of retailers about complying with the Universal Waste Rule. ME DEP has concerns with secondary containment and freezing conditions at the collection points. ME DEP put its proposal out for comment, and received a fair number of responses; they are not sure where they will go from here. ME DEP's goal is to have the program in place by the summer of 2015, although this does not leave much time. Their goal for the final adoption of regulations is March 2015. Maine currently has two seasonal permanent HHW facilities that collect oil-based paint, and some one-day collections by towns. Latex paint is not currently collected – only oil-based paint. All businesses are subject to Maine's hazardous waste regulations with respect to any oil-based paint they generate (i.e., they are not allowed to take their paint to a HHW collection).

### Rhode Island

The paint stewardship program in Rhode Island is fairly new, having been started in July of 2014. RI DEM amended their hazardous waste regulations to allow for the PaintCare program. Prior to that, Rhode Island did not recognize the CESQG exemption in the federal regulations. RI DEM chose to do something similar to CT DEEP, except that they did not go with a general permit for the collection points. RI DEM specifically added a provision to their regulations to allow CESQGs to take waste to HHW facilities and PaintCare sites are collection points. 20 paint collection points have registered so far under the program. PaintCare picks up the paint from the collection points and transports it to a TSDF. The collection points each have to file a form 8700-12, notifying as a paint collection facility. No statistics are available yet on the amounts of paint collected.

Question: How are the collection centers registered in RI? Answer: They were initially registered as CESQGs. However, PaintCare argued that the collected paint is not generated as a waste. Therefore, RI DEM worked with Lynn Hanifan at EPA Region 1 to establish this state-specific notification category for paint collection centers. This way, they could get an EPA ID Number, but without being identified as a generator. This also allows RI DEM to know where they are and inspect them. RI DEM preferred this approach because they were not comfortable simply allows PaintCare to oversee the retail collection point on their own.

Question: Does PaintCare fill out the notification form? Answer: Yes, PaintCare fills out the form, but the retailers actually sign it. PaintCare was not particularly happy with this arrangement, but they ultimately agreed to do it.

### Massachusetts

MA does not have a paint stewardship program, or even legislation in the works, but Mass DEP has met with PaintCare. In Massachusetts, the best option currently for residents with paint waste is to take it to a HHW collection day or a permanent collection center. Also, VSQGs in Massachusetts (i.e., federal CESQGs) may take their waste to these HHW collection events/facilities. Paint is not designated as a Universal Waste in Massachusetts.

Question: Do the HHW facilities/events accept latex paint in MA? Answer: In the past, DEP had a grant program for collection sheds for latex paints, so some towns take it and some don't. The collection sheds are usually located at local department of public works (DPW) garages.

Question: Does MA DEP have any idea of the volumes of paint that are recycled in Massachusetts? Answer: They do not have that information at the moment, but that it may exist within the Agency.

### New Hampshire

There is no paint stewardship program in New Hampshire. Under NH DES's regulations, household paint is HHW until collected at a central collection point, then the collection point becomes subject to hazardous waste generator requirements. Latex paint is not allowed to be collected at HHW facilities (it's handled as regular solid waste). Last year a bill was introduced in the New Hampshire Legislature regarding paint stewardship. The legislator behind this bill had a relationship with PaintCare. However, this bill did not pass. There are plans to re-introduce the bill again this year, but DES is not sure if this will happen or not. NH DES provided testimony on the original bill supporting product stewardship in general, but had some concerns with the language of the bill, namely:

- Where would the funding come from to pay for the launch of the program (the legislature was not happy about that)?
- How would the collection facilities be regulated?
- They wanted some sort of financial assurance provision for the vendor operating the program. With only one entity involved – e.g., PaintCare – what would happen if they ran off or went out of business? Who would pick up the cost for the paint that was left behind at the collection centers? In response to this issue, Paint-Care agreed to post some sort of financial assurance.
- Who has liability for any discharges of paint to the environment? The retailers' association was basically neutral on the bill in general, but were particularly interested in this issue. The bill required the retailers to be liable for containment and cleanup, but not monetary penalties.
- There are certain anti-trust provisions in PaintCare's model legislation that NH DES's attorneys were concerned about. Ultimately, these were changed in response to DES's concerns.

To address the program cost issue (see item 1 above), the bill specified that the first application for a program vendor had a fee of \$5000. This would provide funding to review and approve the program plan. The legislature was concerned about the fees charged by Paint-Care (they felt this was under the purview of the legislature, not Paint-Care). As a result, the bill established first

year fees, then a report would be submitted, and the fees would be established by regulation. Although the House was happy with these arrangements, and passed the bill, the Senate did not approve of them, and the bill did not pass.

With respect to the regulatory status of the waste, a paint retailer or municipal collection point that is in compliance with BMPs approved under the program would be able to take hazardous oil-based paint from homeowners or CESQGs businesses, and would be considered exempt from NH DES's hazardous waste regulations. Fully-regulated generators (i.e., those above CESQG status) would not be able to participate in the program, and would have to manage their paints as fully-regulated hazardous waste.

#### New Jersey

NJ DEP has no paint stewardship program. In 2003, NJ DEP added oil-based paint as a state Universal Waste. They also allow CESQGs and households to send oil-based paint to HHW facilities or DPW collection facilities.

#### New York

There is no paint stewardship program in New York. They have considered adding oil-based paint as a state Universal Waste. HHW sites collect oil-based paint, but data was not available concerning the volumes collected.

Question: For VT DEC, RI DEM, and CT DEEP - do any of your programs require financial assurance of any kind? Answer: All three states responded "no." In addition, CT DEEP indicated that, although there is no financial assurance requirement, PaintCare is backed by a number of large paint manufacturers, so conceivably they would all have to fail in order for PaintCare to fail. Also, PaintCare is taking in money to fund the program. PaintCare has to go through an auditing process, and their financials for the first year are solidly in the black. All of these factors lead CT DEEP to conclude that financial assurance is unnecessary.

Comment: Understands CT DEEP's reasoning with respect to PaintCare's manufacturing backers, but pointed out that PaintCare is actually a separate non-profit organization – it's not a corporate extension of the paint manufacturers themselves. As a result, things could still happen that could leave a state exposed to financial liability. NH DES, therefore, feels that they need financial assurance as a part of their program. NH DES also felt strongly that they needed funding to establish the program. In addition to the afore-mentioned \$5000 fee for the first year, NH DES estimates that they will also need funding to hire a part-time person and bill PaintCare directly for this cost.

Reply: There will be a meeting on December 2 and 3, 2014 in Boston with PaintCare regarding harmonization of the various state paint stewardship programs in the region. The meeting will be hosted by the Product Stewardship Institute, probably at their offices in Boston. The meeting will be attended by Minnesota and the northeast states with paint stewardship programs, but not two other states with such programs (i.e., Oregon and California).