



AmericanCoatings  
ASSOCIATION<sup>SM</sup>

September 2, 2022

Matthew Webb  
Minnesota Pollution Control Agency  
520 Lafayette Road N  
Saint Paul, MN 55155  
Submitted via e-mail to: [matthew.webb@state.mn.us](mailto:matthew.webb@state.mn.us)

RE: MPCA's Request for comments on PaintCare's request for a continuance of the Minnesota Architectural Paint Stewardship Assessment at the current levels

Dear Mr. Webb:

The American Coatings Association (ACA) appreciates the opportunity to provide comments on PaintCare's request for continuance of the Minnesota Architectural Paint Stewardship Assessment at the current levels.

ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings producers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. ACA represents more than 95% of the production of architectural paint manufactured in the United States and was instrumental in the development and implementation of the PaintCare program in Minnesota and across the country.

ACA Urges MPCA to Maintain  
the Architectural Paint Stewardship Assessment  
at the Current Level

1. The Requirements of the Paint Stewardship Program Fall on Producers

The requirement to provide a paint stewardship program falls squarely on paint manufacturers or producers that sell architectural paint in the state of Minnesota. Chapter

115A.1415 of the Minnesota Statutes establishes the Paint Stewardship Program and Subd. 2 of the statute clearly states, “producers must, individually or through a stewardship organization, implement and finance a statewide product stewardship program.” Further, in Subd. 3, the statute makes it clear that no producer, wholesaler, or retailer can sell any *producer’s* architectural paint unless the *producer* is participating in such a program (emphasis added).

Paint manufacturers or producers selling paint in Minnesota have opted to fulfill their responsibilities under this statute “through a stewardship organization”, namely PaintCare.<sup>1</sup> PaintCare was specifically created for this purpose – to fulfill the obligations to implement and maintain a paint stewardship program in Minnesota (as well as other jurisdictions which have adopted similar laws across the country). If PaintCare is unable to operate the program due to a lack of funds to pay for transportation services or processors, every paint producer registered in the state of Minnesota would be in violation of Chapter 115A and subject to an enforcement action which could result in an order to cease sale of architectural paint. As such, paint producers have a very strong interest in the viability and sustainability of PaintCare so that producers can continue to sell their architectural paint products into the state.

Although the MPCA has a role in evaluating whether the PaintCare program meets all statutory requirements, it is the architectural paint manufacturers that are responsible for operating and managing the statutorily prescribed stewardship program. The MPCA does not have a role in making business decisions for the paint stewardship organization, which includes the determination of an appropriate reserve policy.

## 2. Producers Recommend a Sufficient Reserve Policy in order to Maintain PaintCare Operations in the Event of Any Disruptive Economic Conditions

Since participating in a stewardship organization to fulfill the Chapter 115A obligations is a mandatory precursor to selling paint within the state, ACA and its producers strongly support PaintCare’s maintenance of a reserve policy that will allow the program to operate in the event of any disruptive economic conditions. The Minnesota program in particular has faced significant challenges since it began operations and was operating at a deficit for four years. Now that this program has eliminated its debt and is finally able to cover all expenses with current revenues, it is premature to consider lowering the fees and risk a reversal of fortune.

As we have seen in recent years, economic conditions can change quickly. The COVID-19 pandemic is only one example of how the economic landscape can change quickly. At the beginning of the pandemic in March of 2020, many states issued emergency and public health orders requiring retail establishments to institute safety measures which

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<sup>1</sup> Since the inception of the program in 2008, the program has grown to 11 jurisdictions across the United States (Oregon, California, Connecticut, Maine, Vermont, Rhode Island, Colorado, Minnesota, Washington, New York, and the District of Columbia). In each of these jurisdictions, every paint producer selling paint in the program states has opted to participate in PaintCare, trusting PaintCare to fulfill their statutory obligations and preserve each producers’ ability to sell paint in these states.

included limiting the number of shoppers, closure of certain non-essential services, development of no-contact sales processes, and in some cases, complete closure of certain types of stores. In the architectural paint industry, distribution and sale of products is heavily dependent upon paint retailers. If conditions change for paint retailers, selling paint to contractors and DIY customers can be challenging and result in a significant loss of sales. A loss of sales translates into a loss of revenue for PaintCare.

In the 11-plus years that PaintCare has been in operation across the country, economic conditions have fluctuated widely. Yet, no matter the state of the economy, PaintCare is required to provide the collection and processing services required by Chapter 115A and PaintCare's program plan. Unlike entrepreneurial commercial entities, PaintCare cannot "pivot" to develop other sources of revenue to respond to economic events because by statute, it has one source of revenue – the sale of new paint. Nor can PaintCare fundamentally alter its suite of services to the residents of Minnesota, as these are set in statute as well. And because PaintCare is carrying out the obligations of paint producers and preserving their ability to sell paint in the state, producers support a sufficient reserve policy that will allow for continued operations in the face of any economic events.

Basic economic principles dictate that making a product more expensive for consumers to purchase will decrease overall sales. As such, paint manufacturers have no interest in the paint stewardship fee in Minnesota being any higher than necessary. Even though imposing fees on products may decrease paint sales, the paint industry have been stalwart supporters of the PaintCare program as an important pillar of the industry's sustainability and social responsibility efforts. Architectural paint manufacturers serve on the Board of Directors of PaintCare and take very seriously their role in managing the organization, including establishing policies that are aimed at preserving the long-term financial health and viability of PaintCare and its non-profit mission.

3. PaintCare is a Non-Governmental Organization and should be allowed to make Business Decisions to Operate, Maintain and Sustain the Program

Although PaintCare's source of revenue and suite of services are spelled out in statute and its program plan, PaintCare is a business organization not unlike other service providers in other industries. And like other independent businesses, PaintCare must be allowed to make business decisions that are appropriate and prudent for PaintCare, given its strengths, weaknesses and limitations. While MPCA should and must evaluate PaintCare's program to ensure that it is fulfilling its statutory obligations, business decisions regarding the program's day to day operations as well as other business functions should be left to the professionals actually working in the program. Determining an appropriate reserves policy is such a business decision.

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ACA appreciates the opportunity to provide these comments to MPCA. ACA urges MPCA to consider these points when making a decision on the paint stewardship assessment.

If you have any questions at all about this issue, please do not hesitate to contact me directly.

Best regards,

A handwritten signature in blue ink, reading "Heidi K. McAuliffe". The signature is written in a cursive, flowing style. The first name "Heidi" is written in a large, looped script. The middle initial "K." is smaller and more compact. The last name "McAuliffe" is written in a similar cursive style, with a prominent "M" and a long, sweeping "e" at the end.

Heidi K. McAuliffe, Esq.  
Vice President, Government Affairs