

MPCA responses to questions re: proposed PaintCare fee increase

Question	Response
Morrison County	
Has there been a State audit at this point of the PaintCare operations in MN?	The MPCA has not conducted an audit of PaintCare's operations. As required by statute, PaintCare did submit an independent audit by Rogers & Company PLLC in the Annual Report for 2016 (https://www.paintcare.org/wp-content/uploads/docs/mn-annual-report-2016.pdf)
Solid Waste Management Coordinating Board (SWMCB)	
Can the MPCA explain the mechanism that will be used to reduce the assessment once the deficit is corrected which PaintCare estimates will occur in approximately two years?	<p>If the future annual reports and subsequent state reviews demonstrate the need to adjust, the fee assessment – either up or down – PaintCare staff will submit a formal proposal to MPCA for its approval.</p> <p>The fee assessment intends to cover both the costs of operating the program, as well as create a necessary buffer to ensure the long-term sustainability and financing of the program. PaintCare's policy on financial reserves sets a goal of 50% reserves and allows a range from a minimum of 16% to a maximum of 75% of total annual operating expenses, which is a typical range for non-profit organizations.</p>
What accounting principles will be used to determine a proper surplus level to be maintained for operational needs?	The reserve is intended to ensure the stability of the program and allow it to continue to operate in times of either higher than expected paint collection (higher costs) or lower than expected paint sales (lower revenue) – or a combination of both. To date, PaintCare has accumulated zero reserves for the program operating in Minnesota.
Does the state feel it has sufficient information to make a determination whether or not the increased assessment has merit?	With the information that PaintCare provided in the Annual Report, the document submitted with the request to increase the assessment and through discussions with key stakeholders, the MPCA does have sufficient information to make a determination regarding the proposed increase in the assessment.

	<p>PaintCare submits an Annual Report to the MPCA covering all operating revenues, expenses, and assets in Minnesota, and includes an independent financial audit as a part of its report. The annual report is reviewed by MPCA and subsequently discussed with PaintCare staff.</p>
<p>Has the independent audit performed by PaintCare at a national level met the State's standards for auditing Minnesota's involvement and evaluating whether or not the increased assessment amount "does not exceed the costs of the...program"?</p>	<p>The MPCA is not aware of an audit that has been conducted at the national level. PaintCare submits an audit with the annual reports for each of the eight states in which PaintCare operates.</p>
<p>Shouldn't an auditor review a detailed accounting of what is included in PaintCare's claimed Pre-Program Costs and whether or not those expenses totaling \$647,114 are solely a result of PaintCare's direct expenses (site recruitment, contracting, program promotion and MPCA administration in Minnesota)? Does this mean prospective operating costs for purposes of the assessment calculation? Is it fair for PaintCare to recover Pre-Program costs when the State and Counties and SWMCB incurred significant pre-program costs as well?</p>	<p>The pre-program expenses resulted from the launch of the program following the enactment of the state paint stewardship law in 2013. The pre-program expenses included initial site visits to recruit retailers, retailer training and set-up, communications and outreach activities to promote program launch, travel expenses for staff, legal expenses incurred to administer contracts with paint retailers acting as drop-off sites, legal expenses related to negotiations for incorporating existing HHW programs into the PaintCare program, staff salaries and benefits, administrative fees paid directly to the MPCA, and allocation of corporate expense activity.</p> <p>The pre-program expenses were incurred before any revenue was generated by the paint stewardship assessment. Without revenue from the stewardship assessment, PaintCare Inc. was responsible for financing these pre-program costs. PaintCare Inc. holds its cash centrally for all non-LLC state programs in a non-interest bearing checking account and maintains investments for all non-LLC programs in a single portfolio. The claim of ownership is shared by all non-LLC state programs and based on relative net asset balances.</p> <p>Since the pre-program expenses generated a negative net asset balance, this caused the program to carry a liability representing an amount due to PaintCare Inc.</p> <p>The proposed fee increase, and projected future revenues, will cover program debts and liabilities accrued from the initial start-up period</p>

	<p>(pre-program expenses) through Fiscal Year 2017 (budget shortfall resulting from lower revenue and higher operations expenses) as detailed in the program plan amendment proposal dated November 14, 2016. It is anticipated that all debts will be completely repaid sometime during Fiscal Year 2020 (July 2019 – June 2020) if the new fee assessment goes into effect as proposed.</p>
<p>Is it appropriate for the assessment to increase, when much of the shortfall is due to PaintCare’s own consultant miscalculating the sales and paint collection volumes? County staff want to remind the State that prior to setting the initial assessment, Counties provided to PaintCare collection data for their HHW programs and PaintCare knew that significant quantities of paint were being collected through these existing HHW programs. Given the information PaintCare had from Minnesota’s already robust paint collection system, should the miscalculation fall solely on Minnesota paint users?</p>	<p>As stated in the request for an increase in the assessment, PaintCare cites that the projections for paint sales in the state were overly optimistic. The lower than projected sales translates into less revenue than projected when the initial assessment was set. This dynamic, combined with the greater than anticipated volume of paint that is entering the paint program, is illustrated by the projected program deficits slated to occur with the current level of the assessment.</p> <p>The anticipated volume of paint sales was based on a PaintCare commissioned industry study by outside consultants. Projected paint collection volumes were based on previous government studies, consultants, and state level data. These sources offered the best snapshot of information available at the time the program plan was developed. The PaintCare program plan addresses the potential for a program deficit, as while the amount of post-consumer paint received through existing collection programs is measurable it is difficult to determine the total quantity of post-consumer paint that is leftover, unwanted, and available for collection.</p>
<p>Is there specific language in the statute or contract that PaintCare is relying on when seeking an increased assessment? It would appear that the stewardship assessment should be considered as an amendment to the Stewardship Plan pursuant to Minn. Stat. Section 115A.1415 Subd 5 (9). Can you advise us if PaintCare is relying on some other language for this request?</p>	<p>The request from PaintCare to increase the assessment is being considered as an amendment to the PaintCare stewardship plan approved on July 20, 2015.</p>

As the assessment change is considered, will the MPCA consider some additional Plan changes, including:

- a) PaintCare or the American Coatings Association researching alternative uses for recycled paint collected through PaintCare programs. Minnesota counties have collected paint for many years and have followed a long standing practice of not landfilling latex paint. The Counties are very concerned that large quantities of recycled paint collected in Minnesota are being used as landfill cover in Oklahoma. The environmental impact of collection and transportation is of significant concern. It also does not follow the State's hierarchy where reuse and recycling are preferred methods of management.
- b) PaintCare and the American Coating Association taking affirmative action to help promote reuse locations at County facilities and assist in the development and expansion of reuse opportunities.
- c) PaintCare working with Amazon to recycle more than 61% of the paint containers.
- d) PaintCare considering increasing program cost savings by implementing a reusable tote program in its stores and in county HHW programs. This will further reduce PaintCare's environmental footprint. Currently, cardboard boxes are being used and PaintCare does not want stores to have to reuse them. it is our understanding Amazon sells them for limited reuse. Our estimates show a \$40 cost for box and pallet liner. Reusable totes will quickly pay for themselves and result in program savings with the added benefit of conserving environmental resources. if PaintCare would like to try a pilot using reusable totes, SWMCB counties are open to discussing a pilot. In addition, SWMCB counties would welcome more dialogue

The comment is noted. The comment is germane for a PaintCare revision of the stewardship plan. The statute provides for an amendment to the plan, if determined necessary by the commissioner, to be submitted every five years.

with PaintCare to share information and ideas about paint recycling.

e) PaintCare considering a program change and lowering the minimum volume pick up amount which is currently set at a minimum of 300 gallons. Consideration could be given to a minimum of 50 gallons but we also are open to PaintCare identifying a lower amount than 300 that is reasonable and works for PaintCare while improving services to businesses.

f) PaintCare evaluating their role in including for recovery aerosol paint cans.

g) PaintCare reconsidering LQG and SQG services for paint recycling.

Minnesota Retailers Association

Our analysis of the proposed Minnesota fees compared to the fees in other PaintCare-served states puts Minnesota at the top. As an example, the majority of PaintCare states have fees of \$.35 for “larger than a half pint/smaller than a gallon” compared to the proposed Minnesota rate of \$.49. Under the increase, Minnesota will be at the top in every category (acknowledging the exception of a consumer buying a 2-gallon pail under the new proposed 1-2 gallon fee). It appears that proposed increases in Oregon are \$.04 less than Minnesota, making our new fee structure the highest among all the PaintCare states even if the Oregon increase is adopted.

The proposed new fee assessment in Minnesota is nearly identical to the increase recently approved in Vermont, and \$0.04 more per product category than the proposed fee assessment in Oregon and in place in the District of Columbia. As state programs evolve across the country, they will naturally diverge in terms of paint collection volumes, available management options, processing and transportation costs, paint sales and revenue generation. Over time, this will necessitate that fees in some states differ from others.

In Minnesota, the cost per gallon recovered/processed is lower than all other states, however the amount of paint collected per capita is much higher than most other states.

Please see the following charts for comparisons

FY16/ CY15	Gallons Recovered Per Capita
OR*	0.20
MN	0.19
VT	0.17
CT	0.09
CA	0.08
RI	0.08
ME	0.07
CO	0.05

* Calendar year

FY16/ CY15	Gallons Sold Per Capita
CO	2.37
OR*	2.26
CA	1.86
CT	1.73
VT	1.7
ME	1.68
MN	1.67
RI	1.43

<p>Administratively the new fee structure will present challenges. We would appreciate guidance on how retailers would account for the fee change on April 1, 2017, given retailers will be holding paint stock on March 30 where the current fee structure has been assessed. On a gallon purchased under the proposed increase a retailer will be collecting \$.99 from a consumer on April 1, where only \$.75 has been accounted for at the wholesale/distribution level.</p>	<p>Paint bought at wholesale based on a \$.75 fee structure that is already in retail inventory on April 1 and sold thereafter at retail with a higher fee should offer no harm to retailers. In effect, the increased fee will amount to a bonus to retailers in possession of existing inventory purchased under the \$.75 structure and sold under the \$.99 structure.</p>
<p>The 7-year projected surplus is double the minimum reserve policy. PaintCare's projection under the new fee structure shows an anticipated surplus of over \$2.3 million, greatly exceeding their minimum operational reserve policy of 16 percent. (We understand PaintCare's reserve policy includes a maximum of 75 percent.) This large reserve comes at cost to Minnesota's consumers.</p>	<p>Please refer to the MPCA response to question 3.</p>

<p>No other state touching Minnesota has a paint stewardship fee impacting consumers, with increased fees potentially driving purchasers to surrounding states. This concern is heightened relating to large volume purchasers, including professional painters, when considering increased fees.</p>	<p>PaintCare has no data on an increase in sales in Wisconsin, Iowa, North Dakota or South Dakota, and has received minimal anecdotal evidence that the fee has led to a sales decrease for Minnesota retailers located near the state border.</p> <p>Regarding the proposed fee increase itself, at this time there is no research available that indicates a fee increase of this magnitude will affect the sales of retailers located near the state border.</p>
<p>Minnesota Product Stewardship Council</p>	
<p>Product component and packaging recovery systems should demonstrate an adherence to the MN Waste Management Hierarchy along with stated plans to move product components and packaging recovery up the hierarchy.</p> <ul style="list-style-type: none"> - PaintCare's annual report indicates that a substantial portion of latex paint is being used as landfill daily cover in Oklahoma. This demonstrates a decrease in paint recycling since the PaintCare plan was implemented. - 39% of paint containers are not being recycled. - There are no apparent plans for hierarchy improvement in the PaintCare plan. 	<p>The comment is noted. The comment is germane for a PaintCare revision of the stewardship plan.</p>

<p>Producers should bear responsibility for costs associated with product component and packaging recovery systems and environmental protection should be incentivized.</p> <p>The current PaintCare program is funded by consumer fees on new paint sales.</p> <p>PaintCare reimburses government for some paint collection costs with the consumer fees collected, and government subsidizes its remaining costs with tax dollars. PaintCare costs are not currently born by paint producers.</p> <p>There are no program price incentives to support an increase in reuse or recycling.</p>	<p>The comment is noted and most effectively addressed in future legislative considerations of changes to the statutory requirements for the program's financing.</p>
<p>Definitive, measurable goals and dates should be set by government to achieve the above priorities.</p> <p>Currently, the performance goals have been established by PaintCare and focused on recovery rate. Enforceable, date-certain goals for recycling and reuse established by the State would be more effective</p> <p>Producer's program costs should be dedicated to a plan which improves environmental outcomes, not to maintaining a status quo in paint management, nor a reduction in reuse and/or recycling rates.</p>	<p>The comment is noted. There are no performance goals for the amount of discarded paint to be reused or recycled specified in the statute or authority provided to the MPCA to establish goals. The paint stewardship plan submitted by PaintCare serves as the most effective vehicle to determine particular goals for the program and this topic will be addressed in any amendments considered for the plan.</p>

<p>Producers must be fully responsible for the product component and packaging recovery program, the State must enforce the law, a third party financial and environmental audit should be conducted to provide data and evidence, and all product categories should be included in the program. It is PaintCare's task to manage program finances responsibly and for the State to ensure that this is occurring through independent audits and enforcement. Aerosol architectural coatings should be included in the PaintCare program.</p>	<p>The comment is noted. The comment is germane for a PaintCare revision of the stewardship plan.</p>
<p>NAIOP Minnesota (Commercial Real Estate Development Association)</p>	
<p>As you deliberate fee increases, we urge you to strongly consider the cumulative impact that fees have on the cost of doing business in Minnesota in the context of higher fee proposals across multiple programs. Businesses large and small must remain competitive in a constantly changing marketplace to maintain healthy economic activity, including support for new and existing jobs. Fees and taxes already comprise a significant percentage of business costs; increases can easily threaten broader economic activity in our state.</p>	<p>It is important to note that the fee paid by consumers of architectural paint intends to shift the burden of financing paint management programs to those who purchase and use paint.</p>