

TOWN OF DARIEN  
DEPARTMENT OF PUBLIC WORKS  
2 RENSRAW ROAD - TOWN HALL  
DARIEN, CT 06820-5397  
TELEPHONE (203) 656-7346



EDWARD L. GENTILE JR., P.E.  
DIRECTOR OF PUBLIC WORKS

DARREN OUSTAFINE, P.E.  
ASSISTANT DIRECTOR OF PUBLIC WORKS

July 6, 2015

PaintCare Inc.  
1500 Rhode Island Avenue, NW  
Washington DC 20005

Attn: Alison Keane, Esq., General Counsel

Re: Connecticut Architectural Paint Recovery Program  
Non-HHW Collection Facility and Waste Paint  
Management Services Agreement, between  
PaintCare Inc. and Town of Darien (Connecticut)

Dear Attorney Keane:

Please find herewith one original fully executed agreement as captioned above, for your records and use. We have retained one fully executed agreement.

Thank you.

Sincerely,

Darren Oustafine, P.E.  
Assistant Director of Public Works

C (electronic only): Gena L. Thomas, PaintCare Counsel  
Jeff Wasikowski, Esq., PaintCare Assistant General Counsel  
Ms. Laura Honis, PaintCare CT/RI Program Manager  
Mr. Edward L. Gentile, P.E., Director, Darien Department of Public Works  
Edward F. Schmidt, Esq., Curtis Brinkerhoff & Barrett, PC, (Darien Counsel)



CONNECTICUT ARCHITECTURAL PAINT RECOVERY PROGRAM

1500 Rhode Island Ave, NW

Washington DC 20005

(855) 724-6809

Fax: (855) 385-2020

[www.paintcare.org](http://www.paintcare.org)

**Connecticut Architectural Paint Recovery Program  
Non-HHW Collection Facility and Waste Paint  
Management Services Agreement**

**Between**

**PaintCare Inc.**

**and**

**Town of Darien**

**Connecticut Architectural Paint Recovery Program**  
**Non-HHW Collection Facility and Waste Paint Management Agreement**

This Agreement is made on this 29th day of June 2015 ("Agreement") by and between The Town of Darien located at 2 Renshaw Road – Town Hall, Darien, CT 06820 (the "Service Provider") and PaintCare Inc., a Delaware corporation having its office at 1500 Rhode Island Ave., N.W., Washington, D.C. 20005. ("PaintCare").

**RECITALS**

**Whereas**, PaintCare is the representative organization of the Connecticut Architectural Paint Recovery Program (the "Program"), as set forth by Conn. Gen. Stat. §§ 22a-904, that is organized to develop and implement a recovery program to reduce the generation of post-consumer architectural paint, to promote the direct reuse of post-consumer architectural paint, and to negotiate and execute agreements to collect, transport, directly reuse, recycle, and dispose of paint using environmentally sound management practices;

**Whereas**, PaintCare desires to enter into agreements with hazardous waste and paint collection facilities for the purposes of collecting Program Products (as defined below);

**Whereas**, the Service Provider operates one site in Connecticut that serve the waste and paint management needs of its; and

**Whereas**, the parties wish to enter into this Agreement, which describes the terms and conditions under which the Service Provider will act as an authorized Collection Facility for the Program;

**Now, therefore**, for and in consideration of the terms of this Agreement and the mutual promises and covenants contained herein, the parties hereto agree as follows.

**ARTICLE 1 – DEFINITIONS**

- 1.1 "Collect/Collected/Collection" means accepting from the public, and properly identifying and packing for transportation, Program Products at Collection Facilities.
- 1.2 "Collection Containers" are containers provided by or approved for use by PaintCare or its contractors to hold and transport Program Products, and include totes, boxes, drums and roll-off containers.
- 1.3 "Collection Facility(ies)" means all permanent collection facilities that are owned, leased, subleased, or otherwise controlled by the Service Provider as generally described in the Section entitled "Who Can Be a Collection Site" in Attachment D

(the "Connecticut Architectural Paint Recovery Program Collection Facility Guidelines"), and as specifically identified in Attachment C ("Collection Facility Information).

- 1.4 "Direct Reuse" or "Direct Reusing" means selling or giving away of Collected paint to the public without combining it with the paint from other cans and without removing it from its original container.
- 1.5 "Effective Date" means the date that the parties' obligations begin under this Agreement. The Effective Date is the date of the later signature below.
- 1.6 "Force Majeure" is defined in 14.2.
- 1.7 "Including" means "including but not limited to."
- 1.8 "Initial Term" is defined in Article 2.1.
- 1.9 "Law" means all existing and future federal, state, and local statutes, laws, codes, ordinances, decrees, rules, regulations, requirements, and orders, of any governmental authority, entity, or agency whether federal, state, municipal, local, or other government body or subdivision, including those relating to unemployment compensation, worker's compensation, disability, taxes, worker and public health and safety, the environment, and the Program.
- 1.10 "Loose Packing/Loose Packed" means placing acceptable Program Products into Collection Containers provided by or approved for use by PaintCare in a manner that is conducive to safe and efficient transport.
- 1.11 "Materials and Activities" mean materials, supplies, tools, vehicles, equipment, labor, water, light, power, facilities, construction of any nature, supervision, and all other services, acts, activities, resources, and goods, but not Collection Containers, necessary for or otherwise used by the Service Provider to comply with and fully perform its obligations under the Agreement.
- 1.12 "Non-Program Products" mean products not covered by the Program that are collected and/or managed by the Service Provider.
- 1.13 "Program Products" mean the materials described in Section 3 of Attachment D (the "Connecticut Architectural Paint Recovery Program Collection Facility Guidelines").
- 1.14 "Services" mean all services for which Service Provider is responsible, as described in this Agreement and in the Attachments hereto, including any and all Materials and Activities.
- 1.15 "State" means the State of Connecticut.

- 1.16 "Transportation Providers" mean independent contractors hired by PaintCare to transport Program Products from the Collection Facilities.

## **ARTICLE 2 – TERM OF AGREEMENT**

- 2.1 This Agreement will commence upon the Effective Date and will remain in full force and effect for a period of two (2) years (such two-year period, the "Initial Term").
- 2.2 Immediately after the expiration of the Initial Term, this Agreement will automatically renew for additional successive one (1) year terms, unless either party notifies the other in writing at least sixty (60) days in advance of the renewal term commencement date that the Agreement will not be renewed. The consideration of each option year will be the same as the consideration during the previous contract period, unless otherwise agreed to in writing by PaintCare.
- 2.3 If either party provides notice that the Agreement will not be renewed, unless otherwise instructed by PaintCare, the Service Provider, before the end of the term of the Agreement, shall assemble all Collection Containers supplied by PaintCare whether or not full, and shall make them available for pick up by a Transportation Provider at the Collection Facilities. In addition, the Service Provider, at no additional cost to PaintCare, shall: (a) cooperate fully at the direction of PaintCare in the orderly transition of the Services to its successor, and (b) undertake the orderly cessation of the Services.

## **ARTICLE 3 – GENERAL OBLIGATIONS OF THE SERVICE PROVIDER**

- 3.1 In consideration of payments, if any, to the Service Provider for any Direct Reuse, or for activities undertaken at the expense of PaintCare, the Service Provider shall perform the Services provided for in Attachment A ("Scope of Work") in conformity with Attachment D ("the Connecticut Architectural Paint Recovery Program Collection Facility Guidelines").
- 3.2 The Service Provider shall manage all Program Products Collected at the Collection Facilities only in accordance with Attachment A ("Scope of Work") and not dispose of Program Products in any other method without the prior written approval of PaintCare.
- 3.3 The Service Provider may amend Attachment B ("Collection Facility Information") to add or delete sites, subject to PaintCare's prior written approval for each such addition/deletion.
- 3.4 The Service Provider be responsible for:
- a. making day-to-day and critical decisions regarding the Services, including the management and supervision of all activities comprising the Services;
  - b. complying with all applicable Law; and

- c. securing and locking the Collection Facilities at all times when the facilities are closed or not attended.
- 3.5 The Service Provider is responsible for and will manage at its sole expense any and all Non-Program Products it collects at the Collection Facilities. PaintCare in no way accepts responsibility for such Non-Program Products.
- 3.6 The Service Provider shall not charge fees on a per-unit basis to a consumer or customer for dropping off Program Products. Notwithstanding the foregoing, the Service Provider may charge a per-visit administrative fee according to its usual practice to any consumer or customer dropping off Program Products and/or Non-Program Products.
- 3.7 The Service Provider shall provide the Services at its own risk and take every precaution to protect all public and private property during the performance of the Services. If the Service Provider's personnel or equipment cause any damage to PaintCare's or one of its contractor's property, the Service Provider, at its sole expense, shall promptly replace the damaged property or repair it to the condition existing before the damage.
- 3.8 The Service Provider shall thoroughly familiarize itself with the nature and scope of the Services under this Agreement and with matters that may affect the Services, including the Law governing the Services and this Agreement. Any failure by the Service Provider to thoroughly familiarize itself with such matters does not relieve the Service Provider of its obligations under this Agreement.
- 3.9 Work under this Agreement shall be performed only by competent personnel under the management, supervision, and direction of, or in the employment of, the Service Provider. All personnel working for or at the direction of Service Provider must be managed, supervised, and directed by the Service Provider.
- 3.10 The Service Provider shall commit adequate resources to participate in the Program and meet its obligations under this Agreement, including providing, at its sole expense, any and all Materials and Activities.
- 3.11 The reporting and notification requirements identified in Attachment A ("Scope of Work") and elsewhere in this Agreement are an integral part of the Services. The Service Provider shall comply with all reasonable requests from PaintCare for preparation, access, review, and/or adjustment of these deliverables throughout the term of this Agreement.
- 3.12 The Service Provider shall inspect the Collection Containers upon arrival and determine whether they are in proper condition for use. PaintCare is responsible for replacing any defective Collection Containers and repairing normal wear-and-tear to the Collection Containers. The Service Provider shall immediately notify PaintCare if at any point during the term of the Agreement a Collection Container(s) is not in proper condition for use and shall not use any such defective Collection Containers until they are repaired or replaced by PaintCare.

## **ARTICLE 4 – SERVICE PROVIDER REPRESENTATIONS AND WARRANTIES**

- 4.1 The Service Provider represents, covenants, and warrants that:
- a. it is a municipality, in good standing and qualified to carry on business in Connecticut and has all necessary approval, capacity, and authority to enter into this Agreement and fully perform its obligations under this Agreement;
  - b. this Agreement does not in any way conflict with any other agreements of the Service Provider;
  - c. it possesses the business, professional, and technical expertise, training, and Materials and Activities required to perform the Services;
  - d. it will perform the Services in a diligent, safe, and workmanlike manner that conforms with generally accepted industry and professional practices, and the care and skill ordinarily exercised, for such Services; and
  - e. it and/or its facilities, employees, or agents, have been issued, as of the date of this Agreement and throughout the term of the Agreement, all permits, licenses, certificates, or approvals required by applicable statutes, ordinances, orders, rules and regulations necessary to perform the Services.

## **ARTICLE 5 – PAINTCARE OBLIGATIONS**

- 5.1 Upon receiving a request by Service Provider, PaintCare shall arrange for timely pick-up by a Transportation Provider of Program Products Collected and Loose Packed by the Service Provider. PaintCare shall, at its expense, arrange for the Transportation Provider to transport such Program Products after pick-up to intermediary locations, processors, or other final destination that are part of the Program.
- 5.2 PaintCare shall make available to Service Provider a spill kit for each Collection Facility, as well as consumer brochures and signage.
- 5.3 PaintCare shall provide Collection Containers to the Service Provider, or approve the Service Provider's containers as Collection Containers, for each of the Collection Facilities. All Collection Containers supplied by PaintCare will remain the property of PaintCare.
- 5.4 PaintCare has no authority to manage, direct, or supervise employees, representatives, or agents of the Service Provider, including how they perform the work and achieve compliance with applicable Law. PaintCare does not have responsibility for making day-to-day and critical decisions regarding the Services, including the management or supervision of any activities comprising the Services.

- 5.5 Nothing herein creates an exclusive arrangement between PaintCare and the Service Provider. The Service Provider may not restrict PaintCare from contracting with other entities under the Program.

## **ARTICLE 6 – COVENANTS OF PAINTCARE**

- 6.1 PaintCare covenants, represents, and warrants that:
- a. it is a non-profit corporation validly existing under the laws of Delaware;
  - b. it has the corporate power, capacity and authority to enter into and complete this Agreement; and
  - c. the execution and delivery of this Agreement has been validly authorized by all necessary corporate action by PaintCare.

## **ARTICLE 7 – AGREEMENT TERMINATION**

- 7.1 The Service Provider acknowledges that, except for any payments for Direct Reuse of Collected Program Products as specifically provided for in this Agreement, it will not receive any monetary payments from paintcare for rendering the Services or otherwise fulfilling its obligations under this Agreement.
- 7.2 PaintCare or the Service Provider may terminate this Agreement at any time without cause upon sixty (60) days' written notice to the other party.
- 7.3 Either party may terminate this Agreement or any Services under this Agreement upon prior written notice if the other party:
- a) has breached any material provision of this Agreement, and has failed to cure such breach within thirty (30) days of receiving written notification of such breach; or
  - b) has violated applicable Law.

## **ARTICLE 8 – TITLE AND RISK OF LOSS**

- 8.1 The Service Provider (and not PaintCare) has title to and risk of loss and liability for any and all Program Products and Non-Program Products that the Service Provider receives. Notwithstanding the foregoing, once a Transportation Provider accepts for transportation any Program Products Collected by the Service Provider under this Agreement, title to and risk of loss, including any risk of loss and liability under the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, or Chapter 445 of the Connecticut General Statutes, Conn. Gen. Stat. § 22a-114 *et seq.*, or Chapter 446k of the Connecticut General Statutes, Conn. Gen. Stat. § 22a-451, for those Program Products will



transfer to that Transportation Provider. PaintCare at no time takes title to or assumes liability for Program Products or Non-Program Products; however, PaintCare shall require in its contracts with its Transportation Providers that the Transportation Providers accept such title and risk of loss immediately upon accepting any Program Products for transportation from a Collection Facility.

- 8.2 PaintCare is not responsible for any damage to persons or property resulting from the use, misuse, or failure of any equipment used by the Service Provider, or by any of its employees or contractors, including the Collection Containers, even if such equipment is furnished, rented, or loaned to the Service Provider by PaintCare.

## **ARTICLE 9 – CONSIDERATION AND PAYMENT**

- 9.1 As consideration under this Agreement, PaintCare will (i) provide the Service Provider with Collection Containers and spill kits, (ii) facilitate the transportation and processing of Program Products by Transportation Providers as set forth in this Agreement, (iii) pay the Service Provider as set forth in this Agreement for any Direct Reuse of Program Products, and (iv) perform other services incident to the management of the Program.
- 9.2 PaintCare's payment to Service Provider for any Direct Reuse of Program Products will be made in U.S. currency and in the manner set forth in Attachment A ("Scope of Work"). Other than payments for any Direct Reuse of Program Products as specified in this Agreement, PaintCare will not provide the Service Provider with any monetary compensation or reimbursement for the Service Provider's Collection of Program Products, furnishing of the Materials and Services, or its performance of the Services.
- 9.3 The Service Provider shall invoice PaintCare on a monthly basis, either by hardcopy or electronically, as determined by PaintCare. Invoices furnished by the Service Provider under this Agreement must be in a form acceptable to PaintCare. PaintCare reserves the right to refuse payment of any invoice or portion thereof that is not received in an acceptable form.
- a. Each invoice must include the information included in Attachment C ("Model Invoice"), and must state:
    - i. the unique, identifying invoice number;
    - ii. the specific work categories of Services provided for under the Agreement;
    - iii. the specific quantity of units invoiced under each category, as appropriate; and
    - iv. any additional information as agreed to in writing by the parties that is unique to the Services being performed by the Service Provider.

- b. Each invoice must include the signature of the Service Provider employee responsible for submitting the invoice and a certification that the invoice accurately reflects the work performed.
- 9.4 All amounts paid by PaintCare to the Service Provider are subject to audit by PaintCare.
- 9.5 The Service Provider shall submit all invoices to PaintCare by the method directed by PaintCare and/or at the address specified below. PaintCare shall send all payments due to the Service Provider to the address specified below.

To: PaintCare Inc.  
Attn: PaintCare Accounting  
Fax: (855) 385-2020  
E-mail: [paintcare@bill.com](mailto:paintcare@bill.com)  
Address: 1500 Rhode Island Avenue, NW  
Washington, DC 20005

To: Town of Darien  
Attn: Darren Oustafine  
Fax: 203-656-7485  
E-mail: [doustafine@darienct.gov](mailto:doustafine@darienct.gov)  
Address: Town of Darien Department of Public Works  
2 Renshaw Road – Town Hall  
Darien, CT 06820

- 9.6 Provided that the Service Provider has supplied the required information and otherwise performed its obligations under this Agreement, PaintCare shall pay such invoice within forty-five (45) days of the date that PaintCare receives the invoice. In the event PaintCare has a good-faith objection to an invoice, PaintCare shall pay the undisputed amount pursuant to the terms of this Agreement and notify in writing the Service Provider of said objections and describe in reasonable detail the basis for the objections. The Dispute Resolution provisions in ARTICLE 17 - DISPUTE RESOLUTION will be used to resolve such disputed portion of an invoice. During any such dispute, the Service Provider shall continue with its responsibilities under this Agreement and shall not stop providing the Services or terminate the Agreement; and PaintCare shall make all payments due to the Service Provider over which there is no good-faith dispute.
- 9.7 PaintCare's payment of all or a part of an invoice neither relieves the Service Provider of any of its obligations under this Agreement nor constitutes a waiver of any claims by PaintCare.
- 9.8 The Service Provider warrants that, to the best of its knowledge, all documents, including invoices, billings, back-up information for invoices, and reports,

submitted by the Service Provider to PaintCare to support amounts invoiced in connection with the Services truly reflect the facts about the activities and transactions to which they pertain. The Service Provider warrants that PaintCare, for whatever purpose, may rely upon all such documents and the data therein as being complete and accurate. The Service Provider shall promptly notify PaintCare upon discovery of any instances where the Service Provider becomes aware of any discrepancies in relation to documents under this Article.

#### **ARTICLE 10 – AUDIT AND INSPECTION RIGHTS OF PAINTCARE**

- 10.1 PaintCare and its representatives may (a) monitor and verify that the Service Provider has complied with this Agreement and the applicable Law; and (b) consult with the Service Provider about such compliance; provided, however, that PaintCare shall not, and affirmatively disclaims any ability to, control, supervise or manage (1) the employees of the Service Provider; (2) the activities undertaken by the Service Provider in the performance of this Agreement; and (3) the means by which the Service Provider meets all requirements, including applicable Law.
- 10.2 PaintCare may audit and inspect, with full access, the Service Provider's Collection Facilities during the Collection Facilities' hours of operation, as well as any other site at which the Service Provider performs the Services. PaintCare will provide the Service Provider with at least twenty-four (24) hours' notice before any such audit or inspection.
- 10.3 The Service Provider will maintain and make available to PaintCare, during regular business hours, accurate books and accounting records relating to its Services under this Agreement. The Service Provider will permit PaintCare to audit, examine, and make excerpts and transcripts, for any books or records, and to make audits of any invoices, materials, records, and other data related to all other matters covered by this Agreement. The Service Provider shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date produced under this Agreement or until after final audit has been resolved, whichever is later. The Service Provider will include this requirement in any subcontract for the performance of any of the Services under this Agreement.
- 10.4 In addition to those reports detailed in Attachment A ("Scope of Work"), the Service Provider shall maintain the following records:
  - a. for each pick-up of Program Products by a Transportation Provider from a Collection Facility, a Bill of Lading or equivalent shipping documentation specifying the following:
    - i. the name, address, and telephone number of both the originating Collection Facility and the Transportation Provider;

- ii. the destination of the Program Products;
  - iii. the quantity of Program Products being transported;
  - iv. the date on which the Transportation Provider accepted the Program Products from the originating location; and
  - v. the signatures of both the Transportation Provider and a representative of the originating Collection Facility.
- b. The quantity of paint managed through Direct Reuse at each Collection Facility;
- c. Records of any inspections required by Law;
- d. CESQG Certifications, as set forth in Appendix A of Attachment D (the "Connecticut Architectural Paint Recovery Program Collection Facility Guidelines"). The Service Provider may adopt its own version of the CESQG Certification, but any such certification must specifically waive, release and hold harmless PaintCare and its sole member (as identified in PaintCare's Certificate of Incorporation), and their member companies, officers, directors, employees, successors, assigns, agents, and invitees from any and all liability and claims, and otherwise give protection to PaintCare's interests equal to the CESQG Certification in Appendix A to Attachment D;
- e. "Direct Reuse Paint Waivers," as set forth in Appendix B to Attachment D. Service Provider may adopt its own version of the Direct Reuse Paint Waiver, but any such waiver must specifically waive, release, and hold harmless PaintCare and its sole member (as identified in PaintCare's Certificate of Incorporation), and their member companies, officers, directors, employees, successors, assigns, agents, and invitees from any and all liability and claims, and otherwise give protection to PaintCare's interests equal to the Direct Reuse Paint Waiver in Appendix B to Attachment D. If the Collection Facility does not use a waiver form, Service Provider, and not PaintCare, accepts any risk and liability for the materials provided to others through Direct Reuse; and
- f. Employee Training records, as described in and required by Appendix C of Attachment D.

## **ARTICLE 11 – INDEMNIFICATION**

- 11.1 The Service Provider, and its successors and assigns, shall defend, indemnify, and hold harmless PaintCare and its sole member (as identified under PaintCare's Certificate of Incorporation), and their member companies, officers, directors, stockholders, employees, successors, assigns, attorneys, agents, and invitees

(collectively, "Indemnified Parties") from and against all claims, suits, demands, obligations, losses, damages (including punitive or exemplary damages), liabilities, expenses (including legal fees, expenses of litigation, court costs, and reasonable costs of investigation), and causes of action of every kind whatsoever, whether based in contract, tort, statute, common law, or strict liability, which are claimed in any way to result from, arise out of, or be connected with the performance of the Services, the Service Provider's operations, or the Service Provider's performance of its obligations under this Agreement. This indemnification obligation does not apply to the extent any claims, suits, demands, obligations, losses, damages, liabilities, expenses, or causes of action are proven to result from the negligence, willful misconduct, or breach of this Agreement attributable to PaintCare. The foregoing indemnity includes reasonable fees of attorneys, consultants, and experts, any related costs, and the costs of investigating any claims made against an Indemnified Party.

- 11.2 PAINTCARE WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF SUCH POTENTIAL DAMAGES. NOTHING IN THIS AGREEMENT CONSTITUTES A WAIVER OR LIMITATION OF ANY RIGHTS THAT PAINTCARE MAY HAVE UNDER THE APPLICABLE LAW.

## **ARTICLE 12 – INSURANCE**

- 12.1 The Service Provider at its own expense shall provide all appropriate environmental and commercial general liability insurance with limits for each of not less than \$1 Million for each occurrence, as well as any other insurance, such as, for example and without limitation, worker's compensation and automobile insurance, to the extent and in the amounts required by applicable law.

## **ARTICLE 13 – ASSIGNMENT AND SUBCONTRACTING**

- 13.1 The Service Provider may not assign, novate, or otherwise transfer (including transfer by operation of law) this Agreement or the obligations and rights hereunder without the express written consent of PaintCare, which consent shall not be unreasonably withheld. Any change of control by the Service Provider, constitutes an assignment that requires prior written consent. A "change of control" includes, among other items, any merger, consolidation, sale of all or substantially all of the assets, or sale of a substantial block of stock of the Service Provider. Any attempted assignment, novation, or other transfer made in violation of this Article is void and has no effect.
- 13.2 The Service Provider may subcontract any part of the Services. As part of any subcontract relating to this Agreement, the Service Provider must include the following Articles and Attachments to the extent applicable for the Services being provided by the Subcontractor: ARTICLE 18 – COMPLIANCE WITH LAW,

ARTICLE 19 – SAFETY, HEALTH, AND ENVIRONMENTAL PROTECTION; RELEASES OF HAZARDOUS SUBSTANCES; EMERGENCY RESPONSE, and Attachments A ("Scope of Work") and E (the "Connecticut Architectural Paint Recovery Program Collection Facility Guidelines"). Nothing contained in this Agreement or otherwise creates any contractual relationship between PaintCare and any subcontractor of the Service Provider. A subcontract does not relieve the Service Provider of its responsibilities and obligations hereunder. The Service Provider is as fully responsible to PaintCare for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Service Provider.

- 13.3 The Service Provider's obligation to pay its subcontractors is an obligation independent from PaintCare's obligation to make payments to the Service Provider. As a result, PaintCare has no obligation to pay or to enforce the payment of any moneys to any subcontractor of the Service Provider.

#### **ARTICLE 14 – FORCE MAJEURE**

- 14.1 Any delay or failure of either party to perform its obligations hereunder shall be suspended if, and to the extent, caused by the occurrence of a Force Majeure. In the event that either party intends to rely upon the occurrence of a Force Majeure to suspend or to terminate its obligations, such party shall notify the other party in writing immediately, or as soon as reasonably possible, setting forth the particulars of the circumstances. Written notices shall likewise be given after the effect of such occurrence has ceased.
- 14.2 An occurrence of a "Force Majeure" means riots, wars, civil disturbances, insurrections, acts of terrorism, epidemics, acts of nature (or any threat of such occurrences) whose effects prevent safe passage of vehicles upon state or federal highways for a continuing period of not less than fourteen (14) days and federal or state government orders, any of which is beyond the reasonable anticipation of the applicable party and which prevents performance of this Agreement, but only to the extent that due diligence is being exerted by the applicable party to resume performance at the earliest possible time.

#### **ARTICLE 15 – NOTICES**

- 15.1 Except where otherwise expressly authorized, notice will be by, facsimile, first class certified or registered mail, or by commercial delivery service issuing a receipt for delivery. Notices will be addressed as set forth below. Either party may change the address information below by providing written notice to the other party. Notice is effective upon delivery, or if delivery is refused, when delivery is attempted.

To: PaintCare Inc.  
Attn: PaintCare General Counsel  
Fax: (855) 385-2020  
Address: 1500 Rhode Island Avenue, NW  
Washington, DC 20005

To: Town of Darien Department of Public Works  
Attn: Darren Oustafine, Assistant Director of Public Works  
Fax: 203-656-7485  
Address: 2 Renshaw Road – Town Hall  
Darien, CT 06820

#### **ARTICLE 16 – INDEPENDENT CONTRACTOR STATUS**

- 16.1 The parties intend that the Service Provider, in performing the Services specified herein, is acting as an independent contractor and that the Service Provider will control the work and the manner in which it is performed. This Agreement is not intended and may not be construed to create the relationship between the parties of agent, servant, employee, partnership, joint venture, or association.
- 16.2 Each party, or its subcontractors, as appropriate, is solely liable and responsible for providing all compensation and benefits due to, or on behalf of, all persons performing work on its behalf in connection with this Agreement. Neither party has any liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the other party.
- 16.3 Each party understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of that party and not employees of the other party. Each party is solely liable and responsible for furnishing any and all Workers' Compensation benefits to its employees as a result of any injuries arising from or connected with any work performed by or on behalf of that party pursuant to this Agreement.
- 16.4 The Transportation Providers are independent third-party contractors and are not employees, partners, or agents of either party. Neither party is liable for the acts or omissions of the Transportation Providers under this Agreement.

#### **ARTICLE 17 - DISPUTE RESOLUTION**

- 17.1 Both parties shall, in good faith, attempt to negotiate resolutions to all disputes arising out of this Agreement.

- 17.2 Subject to the conditions and limitations of this Article, any controversy or claim arising out of or relating to this Agreement will be exclusively settled by arbitration under the laws of the State of Connecticut, in accordance with the rules of the American Arbitration Association.
- 17.3 The parties agree to consolidation of any arbitration between them with any other arbitration involving, arising from, or relating to this Agreement.
- 17.4 Each party hereto accepts the jurisdiction of the courts of the State of Connecticut for the purposes of commencing, conducting, and enforcing an arbitration proceeding pursuant to this Article. Each party will accept service of notice of the other party's intent to proceed with arbitration, and of any other step in connection therewith or enforcement thereof, if such notice is in writing and sent by certified letter addressed to said party according to Article 15.1, and such notice will have the same effect as if the party had been personally served within the State of Connecticut.
- 17.5 Any decision of an arbitrator engaged under this Article is final, binding, and enforceable upon both parties.
- 17.6 The Service Provider shall continue with its responsibilities under this Agreement during any dispute.
- 17.7 The parties shall continue to work during the dispute resolution process in a diligent and timely manner in accordance with all applicable provisions of this Agreement.
- 17.8 Each party hereto shall bear the costs and expenses incurred by it in connection with such arbitration processes. The cost of any independent decision maker shall be shared equally between the parties.

#### **ARTICLE 18 – COMPLIANCE WITH LAW**

- 18.1 Each party shall comply with all Law applicable to this Agreement.
- 18.2 The Service Provider shall promptly notify PaintCare in writing upon discovery of any failure, or any allegation of any failure, of the Service Provider or other persons or entities to comply with any applicable Law relevant to the performance of Services or any requirement of this Agreement.
- 18.3 Duties and obligations imposed by the Agreement, and rights and remedies available thereunder, are in addition to (and not a limitation of) duties, obligations, rights, and remedies otherwise imposed or afforded by applicable Law.

#### **ARTICLE 19 – SAFETY, HEALTH, AND ENVIRONMENTAL PROTECTION; RELEASES OF HAZARDOUS SUBSTANCES; EMERGENCY RESPONSE**



- 19.1 The Service Provider shall place the greatest importance and priority on safety, health, and environmental protection during performance of the Services.
- 19.2 The Service Provider is responsible for safety, health, and environmental protection related to its performance of the Services and shall take appropriate measures necessary to ensure that it:
- a. provides and maintains safe, health-protective, and environmental-protective working areas at or in proximity to where the Services are performed, including adjacent areas;
  - b. protects and safeguards (i) all persons at or in proximity to the Services, including those in adjacent areas, from risk or injury and danger to health, and (ii) all property and equipment from damage or loss;
  - c. complies with all applicable Law governing the Services and its performance under this Agreement, including all health, safety, and environmental Law relating to the generation, handling, management, treatment, storage, or disposal of hazardous and non-hazardous wastes.
- 19.3 The Service Provider shall not allow the release of hazardous substances, hazardous wastes, or hazardous materials that require a notification, cleanup, or response action under any applicable permit or Law, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., or applicable state law, including Chapter 445 of the Connecticut General Statutes, Conn. Gen. Stat. § 22a-114 et seq., Chapter 446l of the Connecticut General Statutes, Conn. Gen. Stat. § 22a-608, and Chapter 446k of the Connecticut General Statutes, Conn. Gen. Stat. § 22a-451.
- 19.4 The Service Provider shall notify PaintCare within twenty-four (24) hours of any circumstance or occurrence during the performance of the Services that requires reporting to any governmental authority under any applicable permit or Law, including reporting to the National Response Center because of the release of a reportable quantity of hazardous substances pursuant to 42 U.S.C. § 9603 or under applicable state law, including Chapter 446l of the Connecticut General Statutes, Conn. Gen. Stat. § 22a-608. The Service Provider shall ensure that any such reports are made within the applicable time limits and shall not delay making such reports because of any inability to notify PaintCare.
- 19.5 In the event of any action or occurrence during the performance of the Services which causes or threatens a release of a hazardous substance, hazardous waste, or hazardous material waste into the environment which presents or may present an imminent and substantial endangerment to public health or welfare or the environment and/or requires cleanup or a response action under applicable Law, the Service Provider shall (i) immediately take all appropriate action to prevent,

abate, minimize, and cleanup such release and endangerment in conformance with applicable Law and cleanup standards, and (ii) notify PaintCare of the incident within twenty-four (24) hours. The Service Provider (and not PaintCare) is responsible for the costs of such action and any liability and damages of any type, including actual, incidental, consequential, and punitive damages, arising from any action or occurrence identified in this Article. The Service Provider shall not delay the undertaking of appropriate action because of any inability to notify PaintCare.

## **ARTICLE 20 – CONFIDENTIALITY/PUBLICITY**

- 20.1 The Service Provider shall not disclose any details in connection with this Agreement to any person or entity without PaintCare's prior written authorization, except as may be otherwise provided hereunder or required by the Connecticut Freedom of Information Act (FOIA). However, in recognizing the Service Provider's need to identify its services and related clients to sustain it, PaintCare shall not inhibit the Service Provider from publishing its role in the Program within the following conditions:
- a. The Service Provider may utilize and develop publicity material regarding the PaintCare Program only upon the prior written consent of PaintCare, which consent will not be unreasonably withheld; and
  - b. During the term of the Agreement, the Service Provider shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of PaintCare without the prior written consent of PaintCare, which consent will not be unreasonably withheld.
- 20.2 The Collection Facilities may be listed, referenced, or advertised as a collection sites by PaintCare for the Program during the term of this Agreement in accordance with Attachment D (the "Connecticut Architectural Paint Recovery Program Collection Facility Guidelines").
- 20.3 To the extent that the Service Provider is subject to disclosure requirements under the Connecticut Freedom of Information Act (Conn. Gen. Stat. § 1-200 *et seq.*) and/or other applicable federal, state, and local public record laws (collectively, "the Disclosure Laws"), the following additional terms apply:
- a. In the event the Service Provider receives a request under the Disclosure Laws for disclosure of this Agreement or any portion thereof, the Service Provider may comply with the request as required under the Disclosure Laws. The Service Provider must notify PaintCare in writing within five (5) business days of making any such disclosure, such notification to include the identity of the requestor and a copy of what information was disclosed.

## ARTICLE 21 – MISCELLANEOUS PROVISIONS

- 21.1 **No Waiver.** The failure at any time to enforce any provision of this Agreement or failure to exercise any right herein granted does not constitute a waiver of such provision or of such right thereafter to enforce any or all of the provisions of this Agreement.
- 21.2 **Selective Waiver.** Either party may waive any default by the other party under this Agreement by an instrument in writing to that effect and no such waiver will extend to any subsequent or other default by the other party. No failure or delay on the part of either party to exercise any right hereunder operates as a waiver thereof. Either party may elect to selectively and successively enforce its rights hereunder, such rights being cumulative and not alternative.
- 21.3 **Entire Contract/Order of Precedence.** This Agreement and all Attachments and exhibits hereto, and all referenced documents, including Attachment D (the "Connecticut Architectural Paint Recovery Program Collection Facility Guidelines"), constitute the entire agreement between the parties with respect to the matters herein, and integrates, merges, and supersedes all prior negotiations, representations, or agreements relating thereto, whether written or oral, except to the extent they are expressly incorporated herein. The provisions of this Agreement and the accompanying document are to be construed and interpreted as consistent whenever possible. Any conflicts in this Agreement and the accompanying documents shall be resolved in accordance with the following descending order of precedence:
- a. Attachment A ("Scope of Work");
  - b. The terms of this Agreement;
  - c. Attachment D ("the Connecticut Architectural Paint Recovery Program Collection Facility Guidelines");
  - d. Attachment B ("Collection Facility Information"); and
  - e. Attachment C ("Model Invoice")
- 21.4 **Amendment or Modification.** Unless otherwise provided herein, no amendments, changes, alterations, variations, or modifications to this Agreement will be effective unless in writing and signed by the respective duly authorized officers of the parties hereto.
- 21.5 **Governing Law/Venue.** This Agreement is executed and intended to be performed in the State of Connecticut, and the laws of that State shall govern its interpretation and effect. Any legal proceedings regarding this Agreement initially shall be brought before a court of jurisdiction prescribed by law in the State of Connecticut.

- 21.6 **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof will remain in full force and effect and will in no way be affected, impaired, or invalidated thereby.
- 21.7 **Calendar Days.** Any reference to the word “day” or “days” herein shall mean calendar day or calendars days, respectively, including weekends and Federal Holidays, unless otherwise expressly provided. If a deadline falls on a weekend or Federal Holiday, the next business day will be the applicable deadline.
- 21.8 **No Third-Party Beneficiary.** This Agreement is intended solely for the benefit of the parties hereto, and no third party has any right or interest in any provision of this Agreement or as a result of any action or inaction by any party in connection therewith.
- 21.9 **Authorization.** The Service Provider represents and warrants that it has full power and authority to enter into this Agreement and to perform the obligations set forth herein, and that the representative signing this Agreement on its behalf, has the authority to execute this Agreement on behalf of the Service Provider and to bind the Service Provider to its contractual obligations hereunder.
- 21.10 **Survivability.** All continuing obligations, rights, and remedies of the parties under this Agreement will survive the expiration or termination of this Agreement, including: ARTICLE 4 – SERVICE PROVIDER REPRESENTATIONS AND WARRANTIES; ARTICLE 8 – TITLE AND RISK OF LOSS; ARTICLE 10 – AUDIT AND INSPECTION RIGHTS OF PAINTCARE; ARTICLE 11 – INDEMNIFICATION; ARTICLE 12 – INSURANCE; ARTICLE 16 – INDEPENDENT CONTRACTOR STATUS; ARTICLE 17 - DISPUTE RESOLUTION; ARTICLE 18 – COMPLIANCE WITH LAW; ARTICLE 19 – SAFETY, HEALTH, AND ENVIRONMENTAL PROTECTION; RELEASES OF HAZARDOUS SUBSTANCES; EMERGENCY RESPONSE; and ARTICLE 20 – CONFIDENTIALITY/PUBLICITY.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed by its duly authorized representative on the day and year set forth below.

By:

  
\_\_\_\_\_  
Authorized Signatory  
PaintCare Inc.

  
\_\_\_\_\_  
Authorized Signatory  
Town of Darien

Alison Keane  
Print Name

Honorable, Jayme J. Stevenson  
Print Name

General Counsel  
Print Title

First Selectman  
Print Title

Date: 06/30/15

Date: 7/2/15

## ATTACHMENT A: SCOPE OF WORK

As part of the Services under this Agreement, the Service Provider shall do the following:

- 1) Collect Program Products and Loose Pack them into Collection Containers to be picked up by Transportation Providers.
- 2) Notify PaintCare when there are at least five (5) Collection Containers full of Program Products ready for pick up by a Transportation Provider, or sooner if more immediate pickups are necessary to comply with storage limits or other applicable law.
- 3) Manage all collected Program Products gathered through the Collection Facilities only in the following ways and not dispose of Program Products in any other method without the written approval of PaintCare.
  - a. By Loose Packing; or
  - b. By placing suitable latex or oil-based) Program Products "as is" out for Direct Reuse (pricing specified below).
- 4) Report directly to PaintCare any spills or health or safety incidents, as provided in the Agreement.

### DIRECT REUSE PRICING\*\*

Service	Description	Unit Price
Direct Reuse Rate	PaintCare will pay to the Service Provider for each container of Program Product that is actually taken by a public consumer from a Direct Reuse program, whether sold or given away without charge.	\$ <u>N/A</u> per container

\*\* PaintCare will reimburse the Service Provider solely for Direct Reuse and not for the mere Collection of Program Products.



## Attachment B: Collection Facility/Event Information

*Provide all applicable information.*

### Site 1

1. Type of site/event	Darien Transfer Station and Recycling Center
2. Name of site/event	Darien Transfer Station and Recycling Center
3. Street address for site or event	126 Ledge Road
4. City, State, Zip Code for site or event	Darien, CT 06820
5. Permit holder	Town of Darien
6. Phone # for general public	203-656-7346 (office) or 203-656-7340 (scalehouse)
7. HHW/CESQG program website	No waste from commercial entities accepted.
8. Days/hours for households	Monday through Saturday, 7:00 AM to 2:45 PM
9. Days/hours for CESQGs	No waste from commercial entities accepted.
10. Drop off limits (self-imposed)	20 gallons per day per household
11. HHW service area (cities/towns)	Town of Darien only
12. Special site/event notes	Must have valid credentials to enter site. Not accepted from commercial accounts. Residential only.
13. Contact person's name and title	Darren Oustafine
14. Contact person's agency/company	Town of Darien Department of Public Works
15. Contact person's phone	203-656-7365
16. Contact person's email	doustafine@darienct.gov
17. Promote site/event on PaintCare.org site locator? (yes/no)	No
18. Advertise site in PaintCare newspaper ads? (yes/no)	No
19. Best newspapers and radio stations for promoting this site/event?	Darien Website: <a href="http://www.darienct.gov">www.darienct.gov</a> . Darien times. Darien News.
20. Additional information	None.

### Site 2

1. Type of site/event	N/A. Only one site.
2. Name of site/event	
3. Street address for site or event	
4. City, State, Zip Code for site or event	
5. Permit holder	
6. Phone # for general public	
7. HHW/CESQG program website	
8. Days/hours for households	
9. Days/hours for CESQGs	
10. Drop off limits (self-imposed)	
11. HHW service area (cities/towns)	
12. Special site/event notes	
13. Contact person's name and title	
14. Contact person's agency/company	

15. Contact person's phone
16. Contact person's email
17. Promote site/event on PaintCare.org  
site locator? (yes/no)
18. Advertise site in PaintCare  
newspaper ads? (yes/no)
19. Best newspapers and radio stations  
for promoting this site/event?
20. Additional information


**Site 3**

1. Type of site/event
2. Name of site/event
3. Street address for site or event
4. City, State, Zip Code for site or event
5. Permit holder
6. Phone # for general public
7. HHW/CESQG program website
8. Days/hours for households
9. Days/hours for CESQGs
10. Drop off limits (self-imposed)
11. HHW service area (cities/towns)
12. Special site/event notes
13. Contact person's name and title
14. Contact person's agency/company
15. Contact person's phone
16. Contact person's email
17. Promote site/event on PaintCare.org  
site locator? (yes/no)
18. Advertise site in PaintCare  
newspaper ads? (yes/no)
19. Best newspapers and radio stations  
for promoting this site/event?
20. Additional information

N/A. Only one site.

N/A. Only one site.



## ATTACHMENT C: MODEL INVOICE

**Service Provider:**

Town of Darien Department of Public Works

2 Renshaw Road – Town Hall, Darien, CT 06820

**Collection Facility Location:**

126 Ledge Road, Darien, CT 06820

**Unique Identifying Invoice Number:**

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**Make checks payable to:**

Town of Darien

**Mail Payment to:**

Town of Darien Department of Public Works

2 Renshaw Road – Town Hall, Darien, CT 06820

**Collection Facility Location or Temporary Event Location/Date:**

126 Ledge Road, Darien, CT 06820

Service	Quantity of Units Included	Unit Price	Total Invoiced Amount
Direct Reuse		\$___ per container	

The above invoice represents, to the best of my knowledge, complete and accurate information regarding the Services rendered and for which the Service Provider seeks compensation through the Program. I hereby certify on behalf of the Service Provider that the attached back-up documentation is accurate.

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**Name:****Company Title:****Date:**

**ATTACHMENT D: CONNECTICUT ARCHITECTURAL PAINT PROGRAM  
COLLECTION FACILITY GUIDELINES**



CONNECTICUT ARCHITECTURAL PAINT RECOVERY PROGRAM

1500 Rhode Island Ave, NW

Washington DC 20005

(855) 724-6809

Fax: (855) 385-2020

[www.PaintCare.org](http://www.PaintCare.org)

## Non-HHW Collection Facility Guidelines

Jan. 2, 2014

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## Section 1

# PaintCare® Collection Facilities

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### Legislation

In June 2011, Governor Malloy signed Public Act 11-24, creating the Connecticut Paint Stewardship Program, which is codified in Sections 22a-904 and 22a-904a of the Connecticut General Statutes. The new law requires paint manufacturers to develop and implement a program to collect, transport, and process post-consumer paint and other architectural coatings to reduce the costs and environmental impacts of their disposal in Connecticut. The program's primary goals are to: (1) reduce the generation of post-consumer architectural coatings; (2) promote direct reuse and recycling of post-consumer architectural coatings; and (3) negotiate and execute contracts to collect, transport, directly reuse, recycle, burn for energy and dispose of post-consumer architectural coatings using environmentally sound management practices.

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### About PaintCare and Post- consumer Paint Management Programs

The law allows for the formation of a non-profit stewardship organization to implement the program. To serve this purpose, PaintCare Inc. was formed by the American Coatings Association (ACA), the non-profit trade association for the paint and coatings industry. PaintCare submitted a management plan to the Connecticut Department of Energy and Environmental Protection (DEEP) on behalf of paint manufacturers on March 1, 2013. The Department approved the Plan on May 1, 2013. The Connecticut program must begin 60 days after the plan approval – on July 1, 2013.

Various studies have demonstrated that between 3 and 10% of all paint purchased is "leftover" – goes unused. To capture this paint, PaintCare will pay for storage containers, transportation and recycling/proper disposal for leftover paint delivered to contracted collection locations like yours. PaintCare will also conduct extensive public outreach about the Program, and promote your site as a Collection Facility.

Before the PaintCare Program ("Program"), Connecticut residents and businesses recycled or disposed of oil-based paint primarily through government-sponsored household hazardous waste (HHW) programs or through private hazardous waste management companies. Residents were advised to dry and dispose of water-based paint in the trash. The PaintCare Program will accept and recycle both oil-based and water-based paint, and significantly increases recycling opportunities for Connecticut consumers by partnering with retail and reuse stores throughout the state to serve as paint Collection Facilities, as well as by partnering with municipal programs.

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### PaintCare Provides

Once a contract is established between PaintCare and the Collection Facility, the Program will provide the following:

- Paint storage Collection Containers (e.g. cubic yard containers, 55 gallon drums, etc.)
  - Labels for paint Collection Containers
  - Spill kit (upon request)
  - Recordkeeping forms and/or log book
  - Poster identifying your site as a PaintCare Collection Facility
  - Educational print materials for your customers
-

**PaintCare  
Does Not  
Provide**

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The Program does not provide personal protective equipment (PPE) or gear that may be required by the U.S. Occupational Safety and Health Administration (OSHA) or Connecticut occupational and safety regulations for your place of work. It is your site's responsibility to provide appropriate PPE for your workplace.

PaintCare has no authority and disclaims any responsibility to manage, direct, or supervise your employees, representatives, or agents, including how they perform the work and achieve compliance with applicable Law. PaintCare does not have responsibility for making day-to-day and critical decisions regarding the Services that you provide.

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**Who Can Be  
a Collection  
Facility**

PaintCare Collection Facilities may be any of the following, provided they obtain appropriate permitting:

- Municipal household hazardous waste collection facilities (permanent and temporary). These facilities must have the appropriate DEEP permits.
  - Paint retailers including paint, hardware and home improvement stores, and reuse stores (i.e., stores that sell salvaged or excess building materials). These Collection Facilities must be registered under Connecticut's General Permit for the Collection and Storage of Post-Consumer Paint.
  - Municipal and private transfer stations, landfills, public works yards, and other appropriate, publicly accessible facilities. These facilities must have the appropriate DEEP permits.
-

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**General  
Guidelines  
for  
Collection  
Facilities**

You must comply with the requirements of your DEEP site permit. Thus, you should carefully review and comply with your DEEP permit and all other applicable Law.

Below are some general guidelines for a typical Collection Facility. However, we recognize that each location will have unique logistical and operational considerations. PaintCare Collection Facilities must make their own decisions and use their best judgment to exercise due care and operate in accordance with DEEP permit requirements and all other applicable Law. To be a Collection Facility, you must:

- Register your facility under the appropriate DEEP permit
  - Accept Program Products (see Section 3 for a list of Program Products) from participants during your regular advertised or posted operating hours
  - Have appropriate signage that informs the public of the hours of operation
  - Display the PaintCare poster to identify you as a Collection Facility. This poster should be posted in a highly visible area, preferably at the entrance
  - Have adequate space, staffing and training to collect and store Program Products and consolidate them only in Collection Containers provided by or approved for use by PaintCare or its contractors to hold and transport Program Products
  - Provide a secure space for empty and full Collection Containers
  - Pack only Program Products into Collection Containers
  - Schedule shipments of Program Products from your Collection Facility
  - Do not accept, handle, pack, or ship Non-Program Products, including unacceptable containers (see Section 3 for list of Non-Program Products and unacceptable containers) because the Collection Facility may assume liability under Section 22a-451 of the Connecticut General Statutes if it engages in these activities
  - Maintain records
  - Train staff to be familiar with the requirements and practices of this guide
  - Have adequate comprehensive liability, commercial general liability and/or environmental pollution liability insurance to cover potential risks and liability associated with activities on premises
  - Know and comply with applicable federal, state and local laws as they pertain to your Collection Facility and train staff accordingly. These laws may include zoning requirements for your activities, state permit requirements (air, hazardous waste, regulated waste, water quality, solid waste, storm water) and OSHA requirements
-

**Storage Area  
for Collection  
Containers**

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Establish a sufficient, dedicated storage area for Collection Containers and Program Products.

Collection Containers must include secondary containment to contain liquids in the event a can leaks while in storage and should also be elevated above an epoxy-coated impermeable surface (e.g., concrete, asphalt, sealed wood floor) resistant to Architectural Paint.

Store Collection Containers at least 50 feet from any heat source.

Place Collection Containers away from storm drains and floor drains.

Protect Collection Containers from temperature extremes by storing them inside or under cover if possible.

Collection Containers should be labeled "Waste Latex Paint" and "Waste Oil-Based Paint", etc. and should be marked with the date the first Program Product is placed in it.

A Collection Facility may store up to its permit limits of Architectural Paint at one time.

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**Security**

The Collection Facility should be secured and locked when it is closed or not attended.

Only Collection Facility staff should have access to the Collection Containers and storage area.

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**Use and  
Maintenance  
of Collection  
Containers**

Keep Collection Containers closed except when adding Program Products.

Maintain enough space around Collection Containers to inspect for leakage and emergency access.

Do not overfill Collection Containers.

Pack 5-gallon buckets on the bottom layer of the Collection Containers for stability.

Pack all Program Products (cans, buckets, bottles) upright and as tight as possible in the Collection Containers to protect contents from shifting and leaking in transit. Use safe practices for handling, storage and management of Program Products.

Use good housekeeping standards; keep paint storage areas clean and orderly.

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## Accepting Program Products

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### What Is Architectural Paint

It is an important responsibility for PaintCare Collection Facilities to only accept Program Products for management under the PaintCare partnership. Section 3 includes the primary examples of architectural paint products accepted by the PaintCare Program ("Program Products") and paint or paint-related products not accepted by the PaintCare Program ("Non-Program Products"). Collection Facilities that accept Non-Program Products will be responsible for managing all Non-Program Products at the Collection Facilities' expense.

Generally, architectural paints include latex and oil-based house paint, stains and clear coatings. The Program excludes (a) industrial maintenance coatings, labeled "for industrial use," or other appropriate wording; (b) Original Equipment Manufacturer coatings or coatings used for OEM applications; and (c) specifically excluded Specialty coatings.

Architectural paint is classified as either latex (water-based) or oil-based (alkyd) and the classification is important in order to decide how the product should be handled and recycled.

---

### Who Can Drop Off Program Products

The Program accepts paint from the following:

**Households.** Residents may drop off any Program Product.

**CESQG Businesses.** These are businesses that generate less than 100 kilograms (220 pounds or about 26 gallons) of hazardous wastes per month. These businesses are called Conditionally Exempt Small Quantity Generators" (CESQG). They are often small painting contractors or commercial property owners, but they can be any type of business as long as they do not generate more than 220 pounds of hazardous waste per month. CESQG businesses may drop off any Program Product.

**SQG and LQG Businesses.** These are businesses that generate more than 220 pounds of hazardous waste per month. A Small Quantity Generators (SQG) generates 220-2,200 pounds of hazardous waste per month. A Large Quantity Generators (LQG) generates more than 2,200 pounds of hazardous waste per month. SQGs and LQGs are typically larger painting contractors or big manufacturing businesses. These businesses are more heavily regulated and they must use a hazardous waste management company to manage their hazardous waste, including oil-based paint. They may, however, use the PaintCare Program to recycle their latex-based Program Product.

**Latex Paint is Special.** In Connecticut, latex paint is considered a "non-RCRA" regulated waste and is regulated differently than hazardous wastes. Therefore SQG and LQG businesses may drop off latex paint at retailer Collection Facilities, even though they may not drop off oil-based paint.

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**How to Know  
If a Business  
Qualifies**

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Each business is responsible for determining its own generator status under the applicable Law. The Program does not require Municipal Collection Facilities to accept waste from CESQGs.

Some DEEP permits allow for CESQGs to drop off Program Products to municipal Collection Facilities. Your site must comply with the applicable permit requirements for accepting waste from CESQGs and other businesses.

Each business dropping off Program Products must sign the CESQG Certification log, included in Appendix A, to verify that they are CESQGs and therefore qualified to use the Program. The log includes an explanation of what types of businesses qualify to use the Program.

Once signed, you may accept up to 220 pounds (about 26 gallons) of oil-based paint from a CESQG.

Certification logs may be reviewed by PaintCare or government agencies and compared with a list of registered hazardous waste generators to verify that only CESQG businesses are using the Program.

**Can Facilities  
Charge Fees**

---

Program participants should never be charged a per-unit fee for dropping off Program Products. However a site may charge an administrative fee for collection operations and services.

---

# What Is Acceptable

Before accepting products from participants for management under the PaintCare program, Collection Facility staff must (1) check the product label to verify that it contains a Program Product, and (2) check the condition of the container for acceptance in the Program.

## Acceptable Containers and Unacceptable Containers

### Acceptable

- The Program Product must be in its original container
- The container must be labeled as containing one of the designated Program Products listed below
- The container must be in good condition and not leaking
- The container must be 5 gallons in size or smaller

### Not Acceptable

- The container is not original (e.g., paint was transferred into a jar)
- The container does not have an original label
- The container is leaking or has no lid
- The container is larger than 5 gallon
- The container is empty

## Program Products and Non-Program Products

### Acceptable Products (Program Products)

- Interior and exterior paints: latex, acrylic, water-based, alkyd, oil-based, enamel (including textured coatings)
- Deck coatings and floor paints (including elastomeric)
- Primers, sealers, undercoaters
- Stains
- Shellacs, lacquers, varnishes, urethanes (single component)
- Waterproofing concrete/masonry/wood sealers and repellents (not tar or bitumen-based)
- Metal coatings, rust preventatives
- Field and lawn paints

### Unacceptable Products (Non-Program Products)

- Paint thinner, mineral spirits, solvents
- Aerosol paints (spray cans)
- Auto and marine paints
- Art and craft paints
- Caulking compounds, epoxies, glues, adhesives
- Paint additives, colorants, tints, resins
- Wood preservatives (containing pesticides)
- Roof patch and repair
- Tar and bitumen-based products
- 2-component coatings
- Deck cleaners
- Traffic and road marking paints
- Industrial Maintenance (IM) coatings
- Original Equipment Manufacturer (OEM) (shop application) paints and finishes

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**Greet the Consumer**

Participants must be assisted and supervised when they come to drop off Program Products. Collection Facility staff should greet participants and verify eligibility of the participant and their leftover paint products as Program Products.

---

**Examine the Product**

Screen products to ensure that only the following are accepted:

- Container is 5 gallons in size or smaller
  - Container has label that is readable
  - Container had a lid and is not leaking
  - Latex paint from anyone
  - Oil-based paint from households and CESQG businesses (if your site accepts waste from businesses)
  - **IMPORTANT:** Never allow the participant to open a Program Product container
  - Screen products to ensure that the following are not accepted:
  - Non-Program Products
  - Oil-based paint from SQG or LQG businesses
- 

**Collection Facility Limits**

While the PaintCare Program intends to collect as much Program Product as is available, we recognize that your Collection Facility may have storage limitations. PaintCare Collection Facilities, in agreement with PaintCare, may limit the amount of Program Products they accept from a customer.

If your Collection Containers are completely full, inform the participant that you are temporarily unable to accept Program Products and redirect them to the nearest alternative PaintCare Collection Facility (see: [www.paintcare.org](http://www.paintcare.org)) or ask them to come back at a later date. Contact the PaintCare transporter immediately to have your Collection Containers picked-up and replaced with empties.

If you have a participant with a significant amount of Program Products that your location cannot manage, contact PaintCare directly for additional assistance. We may direct the participant to another PaintCare Collection Facility that can manage the large load or offer a direct pickup.

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**Refusing an  
Unacceptable  
Product**

Do not accept into the PaintCare program any containers that are larger than 5 gallons, empty, unlabeled or leaking, and do not accept Non-Program Products from any participant.

When refusing a Program Product, Collection Facility staff must: explain why the Program Product cannot be accepted (not part of Program, leaking, from SQG/LQG, etc.).

---

**Storing and  
Packing  
Collection  
Containers**

Place Program Products into Collection Containers immediately upon acceptance to minimize the possibility of spills.

Place 5-gallon containers at the bottom of Collection Containers to provide stability for second layer of 1-gallon and smaller cans.

Place all Collection Containers upright to prevent leaks or spills.

Pack the Program Products as tightly as possible inside the Collection Containers. This helps to keep paint products from shifting during transit.

Make sure the Collection Container lid sits flat on top the Collection Container.

All Program Products must be stored in Collection Containers at all times.

Never overfill Collection Containers.

---

**Closing a  
Collection  
Facility**

Please notify PaintCare in writing at least 60-days before stopping collection services to give us adequate time to remove your information from Program promotional materials.

As soon as possible, remove the poster ("Recycle Your Paint Here") from the Collection Facility and post a new sign at the entrance to the site to notify the public that you will no longer be accepting Program Products.

Before your last pick-up, verify that all Program Products and Collection Containers are returned to PaintCare.

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## **Direct Reuse**

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**Requirements for  
Direct Reuse**

PaintCare encourages reuse of leftover paint through Direct Reuse (also known as a “paint exchange” or “swap shop”). These programs return good quality unused paint to the local community at low or no cost.

When selecting products to place in the direct reuse area, containers must be labeled, more than half full, and in good physical and aesthetic condition. Contents must be liquid and relatively new. The container should be closed securely before placing it in the reuse storage area. Containers must never be opened by customer at the Collection Facility. Direct Reuse products must be displayed in a separate storage area by Collection Facility staff.

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**Customer Waiver**

Customers must sign the Direct Reuse Waiver log included in Appendix B explaining that the paint is taken “as is” with no guarantee of quality or contents. The customer is required to read, complete and sign the form and the staff is required to verify what has been taken by the customer.

If the facility does not use a waiver form, the facility, and not PaintCare, accepts the risks and liability for the materials. The staff must record the number of containers taken by each customer and the total estimated volume on the log. Customers may return paint to the site if does not meet their expectations.

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## Section 6

# Working with Transporters

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PaintCare contracts with public and private transporters for the delivery of supplies, empty Collection Containers and pick-up of full Collection Containers.

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### Scheduling the Transporter to Pick Up Collection Containers

When half of your Collection Containers are full or you anticipate that your Collection Containers will be full within five (5) days, contact your Transportation Service Provider to schedule a pickup. The name and contact information for your Transportation Service Provider is provided on the front page of this guide.

When establishing an appointment for pick-up, please indicate:

- That your facility is a PaintCare Collection Facility
- Name of Collection Facility and address
- Your name
- Your phone number
- Number of full Collection Containers to be picked up and the number of empty Collection Containers needed for replacement

Allow a minimum of five (5) days from the time you request a pick up to the day of service.

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### Preparing Collection Containers for Removal

On the scheduled pickup day, Collection Containers should be readily accessible to the transporter for quick and efficient loading. The transporter will bring shipping documents, replacement Collection Containers, and Collection Container labels. Please assist the transporter with Collection Container loading and off-loading and keep a copy of the shipping documents for your records.

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## Section 7

# Inspections and Records

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### Inspections

At the end of each day, staff should:

- Inspect the Collection Facility and storage area to ensure Collection Containers are closed properly and the area is secured
  - Inspect Collection Containers for damage and report any damaged Collection Containers to PaintCare for replacement or repair
  - Inspect Collection Container for damaged or missing labels and correct as necessary
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### Record Keeping

The following records are to be maintained for a minimum of 3 years:

- Inspection records
  - CESQG Certification log (see: Appendix A)
  - Direct Reuse Waiver (see: Appendix B)
  - Employee training records (see: Appendix C)
  - Bills of Lading and/or other documentation required by applicable Law for outgoing shipments of Program Products
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**Training**

All employees handling Program Products must receive training in product identification, acceptance, handling, packaging, inspection and emergency response procedures before collecting Program Products or engaging in any PaintCare Program activities.

Ensure that employees conduct Program Products collection activities in a safe manner that protects workers and the environment.

Ensure Program Products collection activities follow general safety practices including proper lifting techniques.

Ensure Collection Facility employees are equipped for and understand hazards associated with Program Products.

Maintain training plans and records for each employee.

A form for recording staff training is included in Appendix C.

All employees must receive annual training by the municipality in safety and emergency issues, as well as proper facility management and management of all wastes and materials received on-site, including inadvertently received unauthorized wastes.

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**Safety**

Store personal protective equipment (PPE) and spill response equipment in an accessible location adjacent to the Collection Containers.

Ensure the Collection Facility is equipped with appropriate emergency response equipment including a fire extinguisher, spill kit and PPE. Monthly inspections of equipment are recommended.

Ensure spill kit contains at a minimum safety goggles, gloves, absorbent, duct tape and plastic bags.

Ensure emergency procedures and emergency contact numbers including police, fire department and emergency services are posted by phone near the Collection Facility area.

If applicable, develop and maintain emergency action plan as required by OSHA.

If required by federal, state or local law, familiarize police, fire departments and emergency response teams with the layout of your facility, properties of Program Product handled at your facility and evacuation routes.

A form for recording emergency contacts is included in Appendix D.

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