

# San Luis Obispo County Integrated Waste Management Authority ORDINANCE NO. 2009-1

## AN ORDINANCE ESTABLISHING A USED REGULATED PAINT MANAGEMENT PROGRAM

The Board of Directors of the San Luis Obispo County Integrated Waste Management Authority ordains as follows:

### Section 1. General Provisions

The San Luis Obispo County Integrated Waste Management Authority (IWMA) finds and declares all of the following:

(a) The purpose of this ordinance is to reduce the likelihood of disposal of used regulated paint in violation of the California Health and Safety Code and to ensure that all costs associated with the proper management of Used Regulated Paint are internalized by the retailers and producers before the point of purchase and not at the point of purchase or discard.

(b) The purpose of this ordinance is shift the financial burden for management of used regulated paint from local government to the producers and retailers of regulated paint. The IWMA in FY 2006-2007 managed 145,750 pounds of used regulated latex paint. Studies indicate that about 10 percent of all paint is discarded.

(c) The purpose of this ordinance is to enact a law that establishes a program that is convenient for consumers and the public to return and ensure the safe and environmentally sound recycling of Used Regulated Paint.

(d) The purpose of this ordinance is to encourage the retailers and producers to establish a Used Regulated Paint take back program that does not rely solely on government funded household hazardous waste facilities.

(e) The purpose of this ordinance is to make the retailers and producers of Regulated Paint ultimately responsible for the proper management and disposal of their product.

(f) The purpose of this ordinance is to recognize that there are significant environmental and human health impacts associated with Regulated Paint that when disposed of improperly can contaminate the IWMA Region's environment.

(g) The purpose of this ordinance is to provide for the safe and convenient collection, reuse, and recycling of 100 percent of the Used Regulated Paint discarded in the IWMA Region.

### Section 2. Definitions

For the purposes of this ordinance, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Consumer" means a purchaser or owner of Regulated Paint. "Consumer" also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity.

(b) "IWMA Region" means the geographic area that includes the unincorporated area of San Luis Obispo County, California and the seven incorporated cities within San Luis Obispo County.

(c) "Regulated Paint" means latex paint (water-based paint) sold in a liquid form in one quart or larger containers. Regulated Paint does not include oil-based paint.

(d) "Retailer" means any entity, including but not limited to, a person or business, of whatever form of organization, which sells Regulated Paint in the IWMA Region to a consumer.

(e) "Used Regulated Paint" means any Regulated Paint which is being discarded by the consumer.

### **Section 3. Retailer Responsibility**

(a) Three months after the effective date of this ordinance, every retailer of regulated paint, sold in this IWMA Region shall establish within the retail outlet a system for the acceptance and collection of used regulated paint for recycling or proper disposal. A retailer who sells regulated paint is required to accept, collect and dispose of regulated paint.

(b) A system established by a retailer for the acceptance and collection of used regulated paint during the retailer's normal hours of operation, for recycling or proper disposal shall, at a minimum, include all of the following elements:

(1) A convenient location within the retail establishment for the "take-back" from the consumer of used regulated paint at no cost to that consumer. While this ordinance prohibits the retailer from charging the consumer to take back used regulated paint, nothing in this ordinance prohibits the retailer from increasing the sales price or adding a recycling surcharge on new paint to fund the cost of taking back used latex paint.

(2) Appropriate signage, prominently displayed within 5 feet of any entrance to the retail establishment and easily visible to the consumer, indicating that the retail establishment accepts and collects used regulated paint from consumers.

(c) A retailer who is required to accept used regulated paint shall at a minimum provide the following take back services:

(1) The take-back from the consumer of used regulated paint that the retailer sold or previously sold to the consumer, at no cost to that consumer. In that event, the retailer may require proof of purchase of the prior sales. In addition, if the retailer sells the brand of paint that the consumer brings to the retailer that shall be considered proof of purchase. The retailer shall only be required to accept regulated paint in an amount not to exceed the amount previously sold to the consumer.

(2) The take-back of used regulated paint from a consumer purchasing regulated paint from the retailer, at no cost to that consumer. In that event, the retailer shall only be required to accept regulated paint in an amount not to exceed the amount being purchased.

(3) The take-back from the consumer of used regulated paint that the retailer did not sell or previously sell to the consumer, at no cost to that consumer. The retailer shall only be required to accept used regulated paint in an amount not to exceed 2 gallons of actual liquid used paint per week per consumer from any consumer who resides in the IWMA Region.

### **Section 4. Enforcement**

(a) The IWMA may enforce the provisions of this Ordinance through a civil action for civil

penalties in the amounts established herein, and any other civil remedy, including prohibitory and mandatory injunctive relief, filed in the Superior Court for the County of San Luis Obispo to compel and enforce the provisions herein against any Retailer who is in violation of this Ordinance. In addition to any relief available to IWMA to enforce this Ordinance, the IWMA shall also be entitled to recover its reasonable attorneys' fees and costs incurred in enforcing this Ordinance.

(b) For any violation of this Ordinance, the IWMA may sue to recover civil penalties in the amount of \$1,000.00 per day for every day on which a violation exists. For purposes of calculating the civil penalties to be established hereunder, each day on which the Retailer fails to comply with the requirements of this Ordinance, after having received a written notice of violation issued by the IWMA, shall constitute a separate offense.

(c) In addition to the civil relief available to the IWMA set forth above, any violation of this Ordinance shall also constitute a misdemeanor punishable under the laws of the State of California. The District Attorney, the County Counsel, or any City Attorney shall be authorized to enforce the provisions of this Ordinance within their respective jurisdictions. In the event of such criminal enforcement, the following criminal penalties apply to violations of this Ordinance:

(1) Violation as Misdemeanor. Violations of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor.

(2) The San Luis Obispo County Sheriff's Department and/or any other police department or law enforcement agencies located within the IWMA's jurisdiction may issue a Notice to Appear Citation for any misdemeanor pursuant to California Penal Code Section 853.6 for any violation of this Ordinance.

(3) Penalty for Misdemeanor. Any retailer found to be in violation of any provision of this Ordinance, or who fails to comply with any of its requirements, shall upon conviction thereof be punished by imprisonment in the county jail for not more than six months, or be fined not more than one thousand dollars (\$1,000.00), or by both. Each day such violation continues shall be considered a separate offense.

(d) To the extent that the County of San Luis Obispo, the incorporated cities, and the districts within said County have adopted code enforcement ordinances applicable to their jurisdictions, this Ordinance shall be enforceable by said governmental entities under said ordinances as land-use or code-enforcement violations consistent with said ordinances.

## **Section 5. CEQA Findings**

The Board of Directors of the IWMA finds that this Ordinance is exempt from the California Environmental Quality Act pursuant to Public Resources Code § 21080(c)(1). The Board of Directors further finds that this Ordinance falls within the activities described in Section 15061(b)(3) of the CEQA Guidelines which are deemed not to be "projects" for the purposes of CEQA, because it can be seen with certainty that the adoption of the Ordinance will not have a significant effect on the environment. The IWMA Manager is directed to prepare and file an appropriate notice of exemption.

## **Section 6. Severance Clause**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the IWMA hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

**Section 7. Effect of Headings in Ordinance**

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

This Ordinance was introduced and the title thereof read at the regular meeting of the IWMA Board of Directors on March 11, 2009 and further reading was waived by a majority vote of those Directors present. This Ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Directors voting for and against the same, said publication to be made in a newspaper of general circulation published in the county of San Luis Obispo.

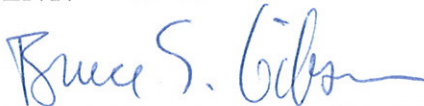
On a motion by Director Patterson, seconded by Director Beraud, the foregoing Ordinance was passed and adopted by the Board of Directors of the San Luis Obispo County Integrated Waste Authority, on May 13, 2009, by the following vote:

AYES: Achadjian, Beraud, Brooks, Borchard, Ehring, Fellows, Hamon, Hill, Marx, Mecham, Mires, Patterson

NOES: None

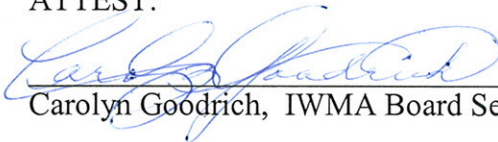
ABSTAIN: None

ABSENT: Gibson



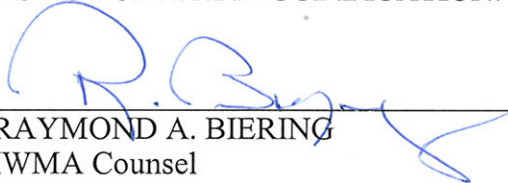
Bruce S. Gibson, President of the San Luis Obispo County Integrated Waste Management Authority

ATTEST:



Carolyn Goodrich, IWMA Board Secretary

ORDINANCE CODE PROVISION APPROVED  
AS TO FORM AND CODIFICATION:



RAYMOND A. BIERING  
IWMA Counsel