

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DIVISION OF MATERIALS MANAGEMENT

625 Broadway

Albany, NY 12233

**6 NYCRR SUBPART 374-3**  
**STANDARDS FOR UNIVERSAL WASTES**

As of July 8, 2023

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**SUBPART 374-3**  
**STANDARDS FOR UNIVERSAL WASTES**  
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## Section 374-3.1 General requirements.

### (a) Scope.

- (1) This Subpart establishes requirements for managing the following:
  - (i) batteries as described in subdivision (b) of this section;
  - (ii) pesticides as described in subdivision (c) of this section;
  - (iii) mercury-containing equipment as described in subdivision (d) of this section;
  - (iv) lamps as described in subdivision (e) of this section;
  - (v) aerosol cans as described in subdivision (f) of this section; and
  - (vi) paint as defined in subdivision (g) of this section.
- (2) This Subpart provides an alternative set of management standards in lieu of regulation under Part 370 through Subpart 374-1, and Part 376 of this Title.

### (b) Applicability—batteries.

- (1) Batteries covered under this Subpart.
  - (i) The requirements of this Subpart apply to persons managing batteries, as described in subdivision (i) of this section, except those listed in paragraph (2) of this subdivision.
  - (ii) Spent lead-acid batteries which are not managed under section 374-1.7 of this Part, are subject to management under this Subpart.
- (2) Batteries not covered under this Subpart. The requirements of this Subpart do not apply to persons managing the following batteries:
  - (i) Spent lead-acid batteries that are managed under section 374-1.7 of this Part.
  - (ii) Batteries, as described in subdivision (i) of this section, that are not yet wastes under Part 371 of this Title, including those that do not meet the criteria for waste generation in paragraph (3) of this subdivision.
  - (iii) Batteries, as described in subdivision (i) of this section, that are not hazardous waste. A battery is a hazardous waste if it exhibits one or more of the characteristics identified in section 371.3 of this Title.
- (3) Generation of waste batteries.
  - (i) A used battery becomes a waste on the date it is discarded (e.g., when sent for reclamation).
  - (ii) An unused battery becomes a waste on the date the handler decides to discard it.

### (c) Applicability—pesticides.

- (1) Pesticides covered under this Subpart. The requirements of this Subpart apply to persons managing pesticides, as described in subdivision (i) of this section, meeting the following conditions, except those listed in paragraph (2) of this subdivision:
  - (i) Recalled pesticides that are:
    - (a) stocks of a suspended and canceled pesticide that are part of a voluntary or mandatory recall under FIFRA section 19(b), incorporated by reference in section 370.1(e) of this Title, including, but not limited to those owned by the registrant responsible for conducting the recall; or

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- (b) stocks of a suspended or canceled pesticide, or a pesticide that is not in compliance with FIFRA, incorporated by reference in section 370.1(e) of this Title, that are part of a voluntary recall by the registrant.
  - (ii) Stocks of other unused pesticide products that are collected and managed as part of a waste pesticide collection program approved by the department, meeting standards set forth in Subpart 362-4 of this Title.
- (2) Pesticides not covered under this Subpart. The requirements of this Subpart do not apply to persons managing the following pesticides:
- (i) recalled pesticides described in subparagraph (1)(i) of this subdivision, and unused pesticide products described in subparagraph (1)(ii) of this subdivision, that are managed by farmers in compliance with section 372.1(e)(3)(i) through (iii) of this Title. (Section 372.1(e)(3)(i) through (iii) of this Title address pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with Part 325 of this Title);
  - (ii) pesticides not meeting the conditions set forth in paragraph (1) of this subdivision. These pesticides must be managed in compliance with the hazardous waste regulations in Part 370 through Subpart 374-1, Subpart 374-4, and Part 376 of this Title, except that an aerosol can as defined in paragraph 374-3.1(i)(1) of this section that contains pesticides may be managed as a universal waste aerosol can under section 374-3.2(d)(5) or 374-3.3(d)(5) of this Subpart;
  - (iii) pesticides that are not wastes under Part 371 of this Title, including those that do not meet the criteria for waste generation in paragraph (3) of this subdivision or those that are not wastes as described in paragraph (4) of this subdivision; and
  - (iv) pesticides that are not hazardous waste. A pesticide is a hazardous waste if it is listed in section 371.4 of this Title or if it exhibits one or more of the characteristics identified in section 371.3 of this Title.
- (3) When a pesticide becomes a waste.
- (i) A recalled pesticide described in subparagraph (1)(i) of this subdivision becomes a waste on the first date on which both of the following conditions apply:
    - (a) The generator of the recalled pesticide agrees to participate in the recall.
    - (b) The person conducting the recall decides to discard (e.g., burn the pesticide for energy recovery).
  - (ii) An unused pesticide product described in subparagraph (1)(ii) of this subdivision becomes a waste on the date the generator decides to discard it.
- (4) Pesticides that are not wastes. The following pesticides are not wastes:
- (i) Recalled pesticides described in subparagraph (1)(i) of this subdivision, provided that the person conducting the recall:
    - (a) has not made a decision to discard (e.g., burn for energy recovery) the pesticide. Until such a decision is made, the pesticide does not meet the definition of solid waste under section 371.1(c) of this Title; thus the pesticide is not a hazardous waste and is not subject to hazardous waste requirements, including this Subpart. This pesticide remains subject to the requirements of FIFRA, incorporated by reference in section 370.1(e) of this Title; or

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(b) has made a decision to use a management option that, under section 371.1(c) of this Title, does not cause the pesticide to be a solid waste (i.e., the selected option is use (other than use constituting disposal) or reuse (other than burning for energy recovery), or reclamation). Such a pesticide is not a solid waste and therefore is not a hazardous waste, and is not subject to the hazardous waste requirements including this Subpart. This pesticide, including a recalled pesticide that is exported to a foreign destination for use or reuse, remains subject to the requirements of FIFRA.

(ii) Unused pesticide products described in paragraph (1)(ii) of this subdivision, if the generator of the unused pesticide product has not decided to discard (e.g., burn for energy recovery) them. These pesticides remain subject to the requirements of FIFRA.

#### (d) **Applicability—mercury-containing equipment.**

- (1) Mercury-containing equipment covered under this Subpart. The requirements of this Subpart apply to persons managing mercury-containing equipment, as described in subdivision (i) of this section, except those listed in paragraph (2) of this subdivision.
- (2) Mercury-containing equipment not covered under this Subpart. The requirements of this Subpart do not apply to persons managing the following mercury-containing equipment:
  - (i) Mercury-containing equipment that is not yet a waste under Part 371 of this Title. Paragraph (3) of this subdivision describes when mercury-containing equipment becomes a waste;
  - (ii) Mercury-containing equipment that is not hazardous waste. Mercury-containing equipment is a hazardous waste if it exhibits one or more of the characteristics identified in section 371.3 of this Title or is listed in section 371.4 of this Title;
  - (iii) Equipment and devices from which the mercury-containing components have been removed.
- (3) Generation of waste mercury-containing equipment.
  - (i) Used mercury-containing equipment becomes a waste on the date it is discarded (e.g., sent for reclamation).
  - (ii) Unused mercury-containing equipment becomes a waste on the date the handler decides to discard it.

#### (e) **Applicability—lamps.**

- (1) Lamps covered under this Subpart. The requirements of this Subpart apply to persons managing lamps as described in subdivision (i) of this section, except those listed in paragraph (2) of this subdivision.
- (2) Lamps not covered under this Subpart. The requirements of this Subpart do not apply to persons managing the following lamps.
  - (i) lamps that are not yet wastes under part 371 of this Title as provided in paragraph (3) of this subdivision; and
  - (ii) lamps that are not hazardous waste. A lamp is a hazardous waste if it exhibits one or more of the characteristics identified in section 371.3 of this Title.
- (3) Generation of waste lamps.
  - (i) A used lamp becomes a waste on the date it is discarded.
  - (ii) An unused lamp becomes a waste on the date the handler decides to discard it.

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#### **(f) Applicability—aerosol cans.**

- (1) Aerosol cans covered under this Subpart. The requirements of this Subpart apply to any person managing one or more aerosol cans, as described in subdivision 374-3.1(i) of this section, except those listed in paragraph (2) of this subdivision.
- (2) Aerosol cans not covered under this Subpart. The requirements of this Subpart do not apply to persons managing the following types of aerosol cans:
  - (i) an aerosol can that is not yet a waste under Part 371 of this Title. Paragraph (3) of this subdivision describes when an aerosol can becomes a waste;
  - (ii) an aerosol can that is not hazardous waste. An aerosol can is a hazardous waste if the aerosol can exhibits one or more of the characteristics identified in section 371.3 of this Title or the aerosol can contains a substance that is listed in section 371.4 of this Title;
  - (iii) an aerosol can that meets the standard for an empty container under section 371.1(h) of this Title;
  - (iv) an aerosol can that is an acute hazardous waste, including F027, as identified in section 371.4 of this Title; and
- (3) Generation of waste aerosol cans.
  - (i) A used aerosol can becomes a waste on the date it is discarded.
  - (ii) An unused aerosol can becomes a waste on the date the handler decides to discard it.

#### **(g) Applicability—paint.**

- (1) Paint covered under this Subpart. The requirements of this Subpart apply to any person managing paint, as described in subdivision 374-3.1(i) of this section, except those listed in paragraph (2) of this subdivision.
- (2) Paint not covered under this Subpart. The requirements of this Subpart do not apply to persons managing the following types of paint:
  - (i) paint that is not yet a waste under Part 371 of this Title. Paragraph (3) of this subdivision describes when paint becomes a waste;
  - (ii) paint that is not hazardous waste. Paint is a hazardous waste if the paint exhibits one or more of the characteristics identified in section 371.3 of this Title or the paint contains a substance that is listed in section 371.4 of this Title;
  - (iii) paint that contains PCBs; and
  - (iv) paint that contains one or more pesticides as defined in ECL 33-0101.
- (3) Generation of waste paint. Paint becomes a waste on the date it is discarded or the date the handler decides to discard it, whichever is earlier.

#### **(h) Applicability—household and conditionally exempt small quantity generator waste.**

- (1) Persons managing the wastes listed in subparagraphs (i) and (ii) of this paragraph may, at their option, manage them under the requirements of this Subpart:
  - (i) Household wastes that are exempt under section 371.1(e)(2)(i) of this Title and are also of the same type as the universal wastes defined at subdivision (i) of this section.

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- (ii) Conditionally exempt small quantity generator wastes that are exempt under section 371.1(f) of this Title and are also of the same type as the universal wastes defined in subdivision (i) of this section.
- (2) Persons who commingle the wastes described in subparagraphs (1)(i) and (ii) of this subdivision together with universal waste regulated under this Subpart must manage the commingled waste under the requirements of this Subpart.

#### (i) Definitions.

- (1) **‘Aerosol can,’** also referred to as a **‘universal waste aerosol can,’** means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas. This definition does not include gas cylinders such as propane or acetylene.
- (2) **‘Ampule’** means an airtight vial made of glass, plastic, metal, or any combination of these materials.
- (3) **‘Architectural coating’** means paint used for homes and commercial buildings.
- (4) **‘Battery’** means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term **‘battery’** also includes an intact, unbroken battery from which the electrolyte has been removed.
- (5) **‘Destination facility’** means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in sections 374-3.2(d)(1), (3) and 374-3.3(d)(1), (3) of this Subpart. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.
- (6) **‘FIFRA’** means the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136-136y), incorporated by reference in section 370.1(e) of this Title.
- (7) **‘Generator’** means any person, by site, whose act or process produces hazardous waste identified or listed in Part 371 of this Title or whose act first causes a hazardous waste to become subject to regulation.
- (8) **‘Lamp,’** also referred to as universal waste lamp, is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.
- (9) **‘Large quantity handler of universal waste’** means a universal waste handler (as defined in this subdivision) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, lamps, aerosol cans or paint, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000 kilogram limit is met or exceeded.
- (10) **‘Mercury-containing equipment’** means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.



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- (11) **'On-site'** as defined in section 370.2(b) of this Title.
- (12) **'Paint,'** also referred to as **'universal waste paint,'** means interior and exterior architectural and structural coatings, including, but not limited to, primers, sealers, resin (single component), epoxy-based flooring paint (single-component), lacquers, latex, water-based paint, oil-based paint, and bridge paint. Paint does not include other industrial, original equipment or specialty coatings, paint thinners, or paint contaminated applicators, debris or personal protective equipment.
  - (i) aerosol cans containing paint that are handled in accordance with this Subpart must meet the standards under section 374-3.2(d)(5) or 374-3.3(d)(5) of this Subpart until the paint has been removed.
  - (ii) paint removed from the aerosol cans may be managed as universal waste paint in accordance with section 374-3.2(d)(6) or 374-3.3(d)(6) of this Subpart.
- (13) **'Pesticide'** means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:
  - (i) is a new animal drug under FFDC A section 201(w), incorporated by reference in section 370.1(e) of this Title;
  - (ii) is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; or
  - (iii) is an animal feed under FFDC A section 201(x), incorporated by reference in section 370.1(e) of this Title, that bears or contains any substances described by subparagraph (i) or (ii) of this paragraph.
- (14) **'Small quantity handler of universal waste'** means a universal waste handler (as defined in this subdivision) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, lamps, aerosol cans or paint, calculated collectively) at any time.
- (15) **'Structural coating'** means paint used for protective or decorative purposes on components that support built structures. Such components include, but are not limited to, bridges, trusses, girders, stringers and bents used to support walkways, roadways, railways or subways.
- (16) **'Thermostat'** means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of section 374-3.2(d)(3)(ii) or 374-3.3(d)(3)(ii) of this Subpart.
- (17) **'Universal waste'** means any of the following hazardous wastes that are subject to the universal waste requirements of this Subpart:
  - (i) batteries as described in subdivision (b) of this section;
  - (ii) pesticides as described in subdivision (c) of this section;
  - (iii) mercury-containing equipment as described in subdivision (d) of this section;
  - (iv) lamps as described in subdivision (e) of this section;
  - (v) aerosol cans as described in subdivision (f) of this section; and
  - (vi) paint as described in subdivision (g) of this section.
- (18) **'Universal waste handler':**
  - (i) Means:

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- (a) a generator (as defined in this subdivision) of universal waste; or
  - (b) the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.
- (ii) Does not mean:
- (a) a person who treats, disposes of, or recycles universal waste (except as provided in 374-3.2(d) and 374-3.3(d)); or
  - (b) a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.
- (19) **‘Universal waste transfer facility’** means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of universal waste are held during the normal course of transportation for ten days or less.
- (20) **‘Universal waste transporter’** means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

## Section 374-3.2 Standards for small quantity handlers of universal waste.

### (a) Applicability.

This section applies to small quantity handlers of universal waste (as defined in section 374-3.1(i) of this Subpart). Any non-hazardous waste generated or managed by a small quantity handler, must comply with all applicable requirements of Part 360 of this Title.

### (b) Prohibitions.

A small quantity handler of universal waste is:

- (1) prohibited from disposing of universal waste; and
- (2) prohibited from diluting or treating universal waste, except by responding to releases as provided in subdivision (h) of this section; or by managing specific wastes as provided in subdivision (d) of this section.

### (c) Notification.

A small quantity handler of universal waste is not required to notify EPA or the department of universal waste handling activities.

### (d) Waste management.

- (1) Universal waste batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
  - (i) A small quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

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- (ii) A small quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):
  - ('a') sorting batteries by type;
  - ('b') mixing battery types in one container;
  - ('c') discharging batteries so as to remove the electric charge;
  - ('d') regenerating used batteries;
  - ('e') disassembling batteries or battery packs into individual batteries or cells;
  - ('f') removing batteries from consumer products; or
  - ('g') removing electrolyte from batteries.
- (iii) A small quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in section 371.3 of this Title.
  - ('a') If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it is subject to all applicable requirements of Parts 370 through Subpart 374-1 and Part 376 of this Title. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Part 372 of this Title.
  - ('b') If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable Federal, State or local solid waste regulations, including Part 360 of this Title.
- (2) Universal waste pesticides. A small quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:
  - (i) a container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions;
  - (ii) a container that does not meet the requirements of subparagraph (i) of this paragraph, provided that the unacceptable container is overpacked in a container that does meet the requirements of subparagraph (i) of this paragraph;
  - (iii) a tank that meets the requirements of section 373-3.10, except for section 373-3.10(h)(3), (k) and (l) of this Title; or
  - (iv) a transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
- (3) Mercury-containing equipment: A small quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
  - (i) A small quantity handler of universal waste must take appropriate steps to prevent the escape of mercury into the environment by volatilization and other means. The handler must place in

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a container any universal waste mercury-containing equipment with non-contained elemental mercury and mercury-containing equipment that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed and closed to prevent the escape of mercury into the environment by volatilization or any other means.

- (ii) A small quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:
  - ('a') removes and manages the ampules in a manner designed to prevent breakage of the ampules;
  - ('b') removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);
  - ('c') ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that is subject to all applicable requirements of Parts 370 through 374 and 376 of this Title;
  - ('d') immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that is subject to all applicable requirements of Parts 370 through 374 and 376 of this Title;
  - ('e') ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury (29 CFR 1910 (Labor) as incorporated by reference in section 370.1(e) of this Title);
  - ('f') ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
  - ('g') stores removed ampules in closed, non-leaking containers that are in good condition; and
  - ('h') packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;
- (iii) A small quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:
  - ('a') Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and
  - ('b') Follows all requirements for removing ampules and managing removed ampules under subparagraph 374-3.2(d)(3)(ii) of this subdivision; and
- (iv)
  - ('a') A small quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in section 371.3 of this Title:

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- (1') mercury or clean-up residues resulting from spills or leaks; and/or
  - (2') other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).
  - (b') If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of Parts 370 through Subpart 374-1 and Part 376 of this Title. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with Part 372 of this Title.
  - (c') If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable Federal, State or local solid waste regulations and Part 360 of this Title.
- (4) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
- (i) A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.
  - (ii) A small quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.
- (5) Aerosol cans. A small quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
- (i) a universal waste aerosol can must be accumulated in a container that is structurally sound, is compatible with the contents of the aerosol can, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat. An aerosol can cannot be stored in the same container with another aerosol can if the contents of the aerosol cans are incompatible with each other.
  - (ii) a universal waste aerosol can that shows evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of subparagraph (5)(iv) or (v) of this paragraph.
  - (iii) a small quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:
    - ('a') sorting aerosol cans by type;
    - ('b') placing intact cans into one larger container; and
    - ('c') removing actuators to reduce the risk of accidental release.
  - (iv) a small quantity handler who receives and punctures aerosol cans from another handler must comply with the large quantity handler requirements of section 374-3.3 of this Subpart; and

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- (v) a small quantity handler of universal waste who only punctures and drains its own aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:
  - ('a') conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.
  - ('b') establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.
  - ('c') ensure that the can is punctured in a manner that is designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes, but is not limited to, locating the puncturing equipment on a solid, flat surface in a well-ventilated area, and only draining aerosol cans with compatible contents into the same container.
  - ('d') immediately transfer the contents from the waste aerosol can or puncturing device, to a container or tank that meets the applicable requirements of sections 371.1(f) (standards applicable to conditionally exempt small quantity generators of hazardous waste) and 372.2 (standards applicable to small and large quantity generators of hazardous waste) of this Title.
  - ('e') conduct a hazardous waste determination on the contents of the emptied aerosol can in accordance with section 372.2(a)(2) of this Title. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of Parts 370 through 374 and 376 of this Title. The handler is considered the generator of the hazardous waste and is subject to the applicable requirements of sections 371.1(f) (standards applicable to conditionally exempt small quantity generators of hazardous waste) and 372.2 (standards applicable to small and large quantity generators of hazardous waste) of this Title.
  - ('f') if the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with Parts 360 through 369 of this Title.
  - ('g') a written procedure must be established before a generator begins handling aerosol cans to address potential spills or leaks and must be implemented in the event of a spill or release. In addition, a spill clean-up kit must be readily accessible on-site. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.
- (6) Paint. A small quantity handler of universal waste must manage universal waste paint in a way that prevents the possibility of a fire, explosion, or unplanned sudden or non-sudden releases of any universal waste or component of a universal waste to the environment, as follows:
  - (i) universal waste paint must be accumulated in containers that are structurally sound, compatible with the paint, lack evidence of leakage, spillage, or damage that could cause

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leakage under reasonably foreseeable conditions, and are protected from sources of heat or ignition.

- (ii) universal waste paint containers that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents.
- (iii) universal waste paint containers must be kept closed when not in use.
- (iv) a small quantity handler of universal waste paint may conduct the following activities as long as each individual paint can is intact:
  - ('a') sorting paint containers by type;
  - ('b') placing intact containers into one larger container; or
  - ('c') consolidating the same types of paints by opening containers and scraping, pouring, pumping, or draining the universal waste paint into another container to collect the paint provided consolidation occurs in an area that meets the secondary containment requirements under section 373-2.9(f)(1) of this Title and the paint is transferred into a container meeting the requirements of subparagraph (6)(i) of this paragraph.

#### (e) Labeling/marketing.

A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

- (1) Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: “universal waste - battery(ies),” or “waste battery(ies),” or “used battery(ies).”
- (2) A container, (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in section 374-3.1(c)(1)(i) of this Subpart are contained must be labeled or marked clearly with:
  - (i) the label that was on or accompanied the product as sold or distributed; and
  - (ii) the words “universal waste - pesticide(s)” or “waste - pesticide(s).”
- (3) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in section 374-3.1(c)(1)(ii) of this Subpart are contained must be labeled or marked clearly with:
  - (i)
    - ('a') the label that was on the product when purchased, if still legible;
    - ('b') if using the labels described in clause ('a') of this subparagraph is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172, incorporated by reference in section 370.1(e) of this Title;
    - ('c') if using the labels described in clauses ('a') and ('b') of this subparagraph is not feasible, another label prescribed or designated by the waste pesticide collection program administered or recognized by the department; and
  - (ii) the words “universal waste - pesticide(s)” or “waste - pesticide(s).”
- (4)
  - (i) universal waste mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: “Universal Waste – Mercury-Containing Equipment,” “Waste Mercury-Containing Equipment,” or “Used Mercury-Containing Equipment.”

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- (ii) a universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: “Universal Waste-Mercury Thermostat(s),” “Waste Mercury Thermostat(s),” or “Used Mercury Thermostat(s).”
- (5) Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: Universal Waste-Lamp(s), or Waste Lamp(s), or Used Lamp(s).
- (6) Each universal waste aerosol can or a container holding a universal waste aerosol can managed pursuant to this Subpart must be labeled or marked clearly with one of the following phrases: “Universal Waste—Aerosol Can(s),” “Waste Aerosol Can(s),” or “Used Aerosol Can(s).”
- (7) Each container of universal waste paint or a container holding universal waste paint cans must be labeled or marked clearly with one of the following phrases: “Universal Waste—Paint(s)” or “Waste Paint(s).”

#### **(f) Accumulation time limits.**

- (1) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (2) of this subdivision are met.
- (2) A small quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.
- (3) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:
  - (i) placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
  - (ii) marking or labeling each individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;
  - (iii) maintaining an inventory system on-site that identifies the date each universal waste became a waste or was received;
  - (iv) maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
  - (v) placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or
  - (vi) any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.



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**(g) Employee training.**

A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.

**(h) Response to releases.**

- (1) A small quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.
- (2) A small quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of Parts 370 through Subpart 374-1 and Part 376 of this Title. The handler is considered the generator of the material resulting from the release, and must manage it in compliance with Part 372 of this Title.

**(i) Off-site shipments.**

- (1)
  - (i) A small quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.
  - (ii) When universal waste is being transported off site, the requirements of Part 364 of this Title must be met.
- (2) If a small quantity handler of universal waste self-transportes universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of section 374-3.4 of this Subpart and Part 364 of this Title while transporting the universal waste.
- (3) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under CFR 49 parts 171-180, incorporated by reference in section 370.1(e) of this Title, a small quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172-180 as incorporated by reference in section 370.1(e) of this Title.
- (4) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.
- (5) If a small quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:
  - (i) receive the waste back when notified that the shipment has been rejected; or
  - (ii) agree with the receiving handler on a destination facility to which the shipment will be sent.
- (6) A small quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that the small quantity handler has received from another handler. If a handler rejects a shipment or a portion of a shipment, the handler must contact

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the originating handler to notify them of the rejection and to discuss reshipment of the load. The handler must:

- (i) send the shipment back to the originating handler; or
  - (ii) if agreed to by both the originating and receiving handler, send the shipment to a destination facility.
- (7) If a small quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the appropriate department regional director of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The department regional director will provide instructions for managing the hazardous waste.
- (8) If a small quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable Federal, State or local solid waste regulations, including Part 360 of this Title.

#### **(j) Tracking universal waste shipments.**

A small quantity handler of universal waste is not required to keep records of shipments of universal waste.

#### **(k) Exports.**

A small quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in section 372.5(h)(1)(i) of this Title (in which case the handler is subject to the requirements of section 372.5(h) of this Title) must:

- (1) comply with the requirements applicable to a primary exporter in section 372.5(c), (f)(1)(i) through (iv) and (vi), (f)(2) and (g) of this Title;
- (2) export such universal waste only upon consent of the receiving country and in conformance with the EPA acknowledgment of consent as defined in section 372.5 of this Title; and
- (3) provide a copy of the EPA acknowledgment of consent for the shipment to the transporter transporting the shipment for export.

### **Section 374-3.3 Standards for large quantity handlers of universal waste.**

#### **(a) Applicability.**

This section applies to large quantity handlers of universal waste (as defined in section 374-3.1(i) of this Subpart). Any non-hazardous waste generated or managed by a large quantity handler, must comply with all applicable requirements of Part 360 of this Title.

#### **(b) Prohibitions.**

A large quantity handler of universal waste is:

- (1) prohibited from disposing of universal waste; and
- (2) prohibited from diluting or treating universal waste, except by responding to releases as provided in subdivision (h) of this section; or by managing specific wastes as provided in subdivision (d) of this section.

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#### (c) Notification.

##### (1)

- (i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, a large quantity handler of universal waste must have sent written notification of universal waste management to the EPA regional administrator, and received an EPA identification number, before meeting or exceeding the 5,000 kilogram storage limit.
- (ii) A large quantity handler of universal waste who has already notified EPA of his hazardous waste management activities and has received an EPA identification number is not required to renotify under this subdivision.
- (iii) A large quantity handler of universal waste who manages recalled universal waste pesticides as described in section 374-3.1(c)(1)(i) of this Subpart and who has sent notification to EPA as required by 40 CFR part 165, as incorporated by reference in section 370.1(e) of this Title, is not required to notify for those recalled universal waste pesticides under this subparagraph.

##### (2) This notification must include:

- (i) the universal waste handler's name and mailing address;
- (ii) the name and business telephone number of the person at the universal waste handler's site who should be contacted regarding universal waste management activities;
- (iii) the address or physical location of the universal waste management activities;
- (iv) a list of all of the types of universal waste managed by the handler (e.g., batteries, pesticides, mercury-containing equipment, lamps, aerosol cans, and paint); and
- (v) a statement indicating that the handler is accumulating more than 5,000 kilograms of universal waste at one time.

#### (d) Waste management.

##### (1) Universal waste batteries. A large quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

- (i) A large quantity handler of universal waste must contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container. The container must be closed, structurally sound, compatible with the contents of the battery, and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
- (ii) A large quantity handler of universal waste may conduct the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but must be immediately closed after removal):
  - ('a') sorting batteries by type;
  - ('b') mixing battery types in one container;
  - ('c') discharging batteries so as to remove the electric charge;
  - ('d') regenerating used batteries;
  - ('e') disassembling batteries or battery packs into individual batteries or cells;
  - ('f') removing batteries from consumer products; or

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- (g') removing electrolyte from batteries.
- (iii) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other solid waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed above, must determine whether the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste identified in section 371.3 of this Title.
  - ('a') If the electrolyte and/or other solid waste exhibit a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of Parts 370 through Subpart 374-1 and Part 376 of this Title. The handler is considered the generator of the hazardous electrolyte and/or other waste and is subject to Part 372 of this Title.
  - ('b') If the electrolyte or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable Federal, State or local solid waste regulations and Part 360 of this Title.
- (2) Universal waste pesticides. A large quantity handler of universal waste must manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides must be contained in one or more of the following:
  - (i) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
  - (ii) A container that does not meet the requirements of subparagraph (i) of this paragraph, provided that the unacceptable container is overpacked in a container that does meet the requirements of subparagraph (i) of this paragraph.
  - (iii) A tank that meets the requirements of section 373-3.10, except for section 373-3.10(h)(3), (k) and (l) of this Title.
  - (iv) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
- (3) Mercury-containing equipment. A large quantity handler of universal waste must manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
  - (i) A large quantity handler of universal waste must prevent the escape of mercury into the environment by volatilization and other means. The handler must place in a container any universal waste mercury-containing equipment with non-contained elemental mercury and mercury-containing equipment that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container must be closed, structurally sound, compatible with the contents of the device, must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and must be reasonably designed and closed to prevent the escape of mercury into the environment by volatilization or any other means.
  - (ii) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler:

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- (a) removes and manages the ampules in a manner designed to prevent breakage of the ampules;
  - (b) removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage);
  - (c) ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from the containment device to a container that is subject to all the applicable requirements of Parts 370 through 374 and 376 of this Title;
  - (d) immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that is subject to all applicable requirements of Parts 370 through 374 and 376 of this Title;
  - (e) ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable OSHA exposure levels for mercury (29 CFR 1910 (Labor) as incorporated by reference in section 370.1(e) of this Title);
  - (f) ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers;
  - (g) stores removed ampules in closed, non-leaking containers that are in good condition; and
  - (h) packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation;
- (iii) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler:
- (a) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment; and
  - (b) Follows all requirements for removing ampules and managing removed ampules under subparagraph 374-3.3(d)(3)(ii) of this subdivision; and
- (iv)
- (a) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in its original housing must determine whether the following exhibit a characteristic of hazardous waste identified in section 371.3 of this Title:
    - (1) mercury or clean-up residues resulting from spills or leaks; and/or
    - (2) other solid waste generated as a result of the removal of mercury-containing ampules or housings (e.g., remaining mercury-containing device).
  - (b) If the mercury, residues, and/or other solid waste exhibits a characteristic of hazardous waste, it must be managed in compliance with all applicable requirements of Parts 370 through Subpart 374-1 and Part 376 of this Title. The handler is considered the generator of the mercury, residues, and/or other waste and must manage it in compliance with Part 372 of this Title.

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- (c) If the mercury, residues, and/or other solid waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable Federal, State or local solid waste regulations, including Part 360 of this Title.
- (4) Lamps. A large quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste component of a universal waste to the environment, as follows:
- (i) A large quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.
  - (ii) A large quantity handler of universal waste must immediately clean up and place in a container any lamp that is broken and must place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers must be closed, structurally sound, compatible with the contents of the lamps and must lack evidence of leakage, spillage or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.
- (5) Aerosol cans. A large quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
- (i) a universal waste aerosol can must be accumulated in a container that is structurally sound, is compatible with the contents of the aerosol can, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat. An aerosol can cannot be stored in the same container with another aerosol can if the contents of the aerosol cans are incompatible with each other.
  - (ii) a universal waste aerosol can that shows evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of subparagraph (5)(iv) of this paragraph.
  - (iii) a large quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:
    - ('a') sorting aerosol cans by type;
    - ('b') placing intact cans into one larger container; and
    - ('c') removing actuators to reduce the risk of accidental release; and
  - (iv) a large quantity handler of universal waste who punctures and drains aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:
    - ('a') conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.
    - ('b') establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and

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instruction on site; and ensure employees operating the device are trained in the proper procedures.

- (c) ensure that the can is punctured in a manner that is designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes, but is not limited to, locating the puncturing equipment on a solid, flat surface in a well-ventilated area, and only draining aerosol cans with compatible contents into the same container.
  - (d) immediately transfer the contents from the waste aerosol can or puncturing device, to a container or tank that meets the applicable requirements of sections 371.1(f) (standards applicable to conditionally exempt small quantity generators of hazardous waste) and 372.2 (standards applicable to small and large quantity generators of hazardous waste) of this Title.
  - (e) conduct a hazardous waste determination on the contents of the emptied aerosol can in accordance with section 372.2(a)(2) of this Title. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of Parts 370 through 374 and 376 of this Title. The handler is considered the generator of the hazardous waste and is subject to sections 371.1(f) (standards applicable to conditionally exempt small quantity generators of hazardous waste) and 372.2 (standards applicable to small and large quantity generators of hazardous waste) of this Title.
  - (f) if the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with Parts 360 through 369 of this Title.
  - (g) a written procedure must be established before a generator begins handling aerosol cans to address potential spills or leaks and must be implemented in the event of a spill or release. In addition, a spill clean-up kit must be readily accessible on-site. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.
- (6) Paint. A large quantity handler of universal waste must manage universal waste paint in a way that prevents the possibility of a fire, explosion, or unplanned sudden or non-sudden releases of any universal waste or component of a universal waste to the environment, as follows:
- (i) universal waste paint must be accumulated in containers that are structurally sound, compatible with the paint, lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions, and are protected from sources of heat or ignition.
  - (ii) universal waste paint containers that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents.
  - (iii) universal waste paint containers must be kept closed when not in use.
  - (iv) a large quantity handler of universal waste paint may conduct the following activities as long as each individual paint can is intact:
    - (a) sorting paint containers by type;
    - (b) placing intact containers into one larger container; or
    - (c) consolidating the same types of paints by opening containers and scraping, pouring, pumping, or draining the universal waste paint into another container to collect the

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paint, provided consolidation occurs in an area that meets the secondary containment requirements under section 373-2.9(f)(1) of this Title and the paint is transferred into a container meeting the requirements of subparagraph (6)(i) of this paragraph.

- (v) containers holding ignitable or reactive universal waste paint, as described in sections 371.3(b) and (d) of this Title, must be located at least 50 feet from the facility's property line unless a written approval is obtained from the authority having jurisdiction over the local fire code allowing universal waste paint accumulation to occur within this restricted area. A record of the written approval must be maintained as long as ignitable or reactive universal waste is accumulated in this area.

### (e) Labeling/marketing.

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

- (1) Universal waste batteries (i.e., each battery), or a container or tank in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: "universal waste - battery(ies)," "waste battery(ies)," or "used battery(ies)."
- (2) A container (or multiple container package unit), tank, transport vehicle or vessel in which recalled universal waste pesticides as described in section 374-3.1(c)(1)(i) of this Subpart are contained must be labeled or marked clearly with:
  - (i) the label that was on or accompanied the product as sold or distributed; and
  - (ii) the words "universal waste - pesticide(s)" or "waste - pesticide(s)."
- (3) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in section 374-3.1(c)(1)(ii) of this Subpart are contained must be labeled or marked clearly with:
  - (i)
    - ('a') the label that was on the product when purchased, if still legible;
    - ('b') if using the labels described in clause ('a') of this subparagraph is not feasible, the appropriate label as required under the Department of Transportation regulation 49 CFR part 172, incorporated by reference in section 370.1(e) of this Title;
    - ('c') if using the labels described in clauses ('a') and ('b') of this subparagraph is not feasible, another label prescribed or designated by the pesticide collection program administered or recognized by the department; and
  - (ii) the words "universal waste - pesticide(s)" or "waste - pesticide(s)."
- (4)
  - (i) universal waste mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste – Mercury-Containing Equipment," "Waste Mercury -Containing Equipment," or "Used Mercury-Containing Equipment."
  - (ii) a universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats may be labeled or marked clearly with any of the following phrases: "Universal Waste - Mercury Thermostat(s)," "Waste Mercury Thermostat(s)," or "Used Mercury Thermostat(s)."



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- (5) Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with any one of the following phrases: Universal Waste-Lamp(s), or Waste Lamp(s), or Used Lamp(s).
- (6) Each universal waste aerosol can or a container holding a universal waste aerosol can managed pursuant to this Subpart must be labeled or marked clearly with one of the following phrases: “Universal Waste—Aerosol Can(s),” “Waste Aerosol Can(s),” or “Used Aerosol Can(s).”
- (7) Each container of universal waste paint or a container holding universal waste paint cans must be labeled or marked clearly with any of the following phrases: “Universal Waste—Paint(s)” or “Waste Paint(s).”

#### **(f) Accumulation time limits.**

- (1) A large quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (2) of this subdivision are met.
- (2) A large quantity handler of universal waste may accumulate universal waste for longer than one year from the date the universal waste is generated, or received from another handler, if such activity is solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal. However, the handler bears the burden of proving that such activity was solely for the purpose of accumulation of such quantities of universal waste as necessary to facilitate proper recovery, treatment, or disposal.
- (3) A large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:
  - (i) placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;
  - (ii) marking or labeling the individual item of universal waste (e.g., each battery or thermostat) with the date it became a waste or was received;
  - (iii) maintaining an inventory system on-site that identifies the date the universal waste being accumulated became a waste or was received;
  - (iv) maintaining an inventory system on-site that identifies the earliest date that any universal waste in a group of universal waste items or a group of containers of universal waste became a waste or was received;
  - (v) placing the universal waste in a specific accumulation area and identifying the earliest date that any universal waste in the area became a waste or was received; or
  - (vi) any other method which clearly demonstrates the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.

#### **(g) Employee training.**

A large quantity handler of universal waste must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relative to their responsibilities during normal facility operations and emergencies.

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#### (h) Response to releases.

- (1) A large quantity handler of universal waste must immediately contain all releases of universal wastes and other residues from universal wastes.
- (2) A large quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of Parts 370 through Subpart 374-1 and Part 376 of this Title. The handler is considered the generator of the material resulting from the release, and is subject to Part 372 of this Title.

#### (i) Off-site shipments.

- (1)
  - (i) A large quantity handler of universal waste is prohibited from sending or taking universal waste to a place other than another universal waste handler, a destination facility, or a foreign destination.
  - (ii) When universal waste is being transported off site, the requirements of Part 364 of this Title must be met.
- (2) If a large quantity handler of universal waste self-transport universal waste off-site, the handler becomes a universal waste transporter for those self-transportation activities and must comply with the transporter requirements of section 374-3.4 of this Subpart and Part 364 of this Title while transporting the universal waste.
- (3) If a universal waste being offered for off-site transportation meets the definition of hazardous materials under 49 CFR 171 through 180, as incorporated by reference in section 370.1(e) of this Title, a large quantity handler of universal waste must package, label, mark and placard the shipment, and prepare the proper shipping papers in accordance with the applicable Department of Transportation regulations under 49 CFR parts 172 through 180, as incorporated by reference in section 370.1(e) of this Title.
- (4) Prior to sending a shipment of universal waste to another universal waste handler, the originating handler must ensure that the receiving handler agrees to receive the shipment.
- (5) If a large quantity handler of universal waste sends a shipment of universal waste to another handler or to a destination facility and the shipment is rejected by the receiving handler or destination facility, the originating handler must either:
  - (i) receive the waste back when notified that the shipment has been rejected; or
  - (ii) agree with the receiving handler on a destination facility to which the shipment will be sent.
- (6) A large quantity handler of universal waste may reject a shipment containing universal waste, or a portion of a shipment containing universal waste that the handler has received from another handler. If a handler rejects a shipment or a portion of a shipment, the handler must contact the originating handler to notify them of the rejection and to discuss reshipment of the load. The handler must:
  - (i) send the shipment back to the originating handler; or
  - (ii) if agreed to by both the originating and receiving handler, send the shipment to a destination facility.
- (7) If a large quantity handler of universal waste receives a shipment containing hazardous waste that is not a universal waste, the handler must immediately notify the appropriate department regional

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director of the illegal shipment, and provide the name, address, and phone number of the originating shipper. The department regional director will provide instructions for managing the hazardous waste.

- (8) If a large quantity handler of universal waste receives a shipment of non-hazardous, non-universal waste, the handler may manage the waste in any way that is in compliance with applicable Federal, State or local solid waste regulations, including Part 360 of this Title.

#### **(j) Tracking universal waste shipments.**

- (1) Receipt of shipments. A large quantity handler of universal waste must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:
  - (i) The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent.
  - (ii) The quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats).
  - (iii) The date of receipt of the shipment of universal waste.
- (2) Shipments off-site. A large quantity handler of universal waste must keep a record of each shipment of universal waste sent from the handler to other facilities. The record may take the form of a log, invoice, manifest, bill of lading or other shipping document. The record for each shipment of universal waste sent must include the following information:
  - (i) The name and address of the universal waste handler, destination facility, or foreign destination to whom the universal waste was sent.
  - (ii) The quantity of each type of universal waste sent (e.g., batteries, pesticides, thermostats).
  - (iii) The date the shipment of universal waste left the facility.
- (3) Record retention.
  - (i) A large quantity handler of universal waste must retain the records described in paragraph (1) of this subdivision for at least three years from the date of receipt of a shipment of universal waste.
  - (ii) A large quantity handler of universal waste must retain the records described in paragraph (2) of this subdivision for at least three years from the date a shipment of universal waste left the facility.

#### **(k) Exports.**

A large quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in section 372.5(h)(1)(i) of this Title (in which case the handler is subject to the requirements of section 372.5(h) of this Title) must:

- (1) comply with the requirements applicable to a primary exporter in section 372.5(c), (f)(1)(i) through (iv) and (vi), (f)(2) and (g) of this Title;
- (2) export such universal waste only upon consent of the receiving country and in conformance with the EPA acknowledgment of consent as defined in section 372.5 of this Title; and
- (3) provide a copy of the EPA acknowledgment of consent for the shipment to the transporter transporting the shipment for export.

### **374-3.4 Standards for universal waste transporters.**

#### **(a) Applicability.**

- (1) This section applies to universal waste transporters (as defined in section 374-3.1(i) of this Subpart).
- (2) Part 364 of this Title also applies to universal waste transporters.

#### **(b) Prohibitions.**

A universal waste transporter is:

- (1) prohibited from disposing of universal waste; and
- (2) prohibited from diluting or treating universal waste, except by responding to releases as provided in subdivision (e) of this section.

#### **(c) Waste management.**

- (1) A universal waste transporter must comply with all applicable U.S. Department of Transportation regulations in 49 CFR parts 171 through 180, incorporated by reference in section 370.1(e) of this Title, for transport of any universal waste that meets the definition of hazardous material in 49 CFR 171.8. For purposes of the Department of Transportation regulations, a material is considered a hazardous waste if it is subject to the hazardous waste manifest requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262. Because universal waste does not require a hazardous waste manifest, it is not considered hazardous waste under the Department of Transportation regulations.
- (2) Some universal waste materials are regulated by the Department of Transportation as hazardous materials because they meet the criteria for one or more hazard classes specified in 49 CFR 173.2. As universal waste shipments do not require a manifest under 40 CFR 262, they may not be described by the DOT proper shipping name “hazardous waste, (l) or (s), n.o.s.,” nor may the hazardous material’s proper shipping name be modified by adding the word “waste.”

#### **(d) Storage time limits.**

- (1) A universal waste transporter may only store the universal waste at a universal waste transfer facility for 10 days or less.
- (2) If a universal waste transporter stores universal waste for more than 10 days, the transporter becomes a universal waste handler and must comply with the applicable requirements of section 374-3.2 or 374-3.3 of this Subpart while storing the universal waste.

#### **(e) Response to releases.**

- (1) A universal waste transporter must immediately contain all releases of universal wastes and other residues from universal wastes.
- (2) A universal waste transporter must determine whether any material resulting from the release is hazardous waste, and if so, it is subject to all applicable requirements of Parts 370 through Subpart 374-1 and Part 376 of this Title. If the waste is determined to be a hazardous waste, the transporter is subject to generator requirements under Part 372 of this Title.

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#### (f) Off-site shipments.

- (1) A universal waste transporter is prohibited from transporting the universal waste to a place other than a universal waste handler, a destination facility, or a foreign destination.
- (2) If the universal waste being shipped off-site meets the Department of Transportation's definition of hazardous materials under 49 CFR 171.8, incorporated by reference in section 370.1(e) of this Title, the shipment must be properly described on a shipping paper in accordance with the applicable Department of Transportation regulations under 49 CFR part 172, incorporated by reference in section 370.1(e) of this Title.

#### (g) Exports.

A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in section 372.5(h)(1)(i) of this Title (in which case the transporter is subject to the requirements of section 372.5(h) of this Title) may not accept a shipment if the transporter knows the shipment does not conform to the EPA acknowledgment of consent. In addition the transporter must ensure that:

- (1) a copy of the EPA acknowledgment of consent accompanies the shipment; and
- (2) the shipment is delivered to the facility designated by the person initiating the shipment.

### Section 374-3.5 Standards for destination facilities.

#### (a) Applicability.

- (1) The owner or operator of a destination facility (as defined in section 374-3.1(i) of this Subpart) is subject to all applicable requirements of Subparts 373-1, 373-2, 373-3, 374-1, Parts 376 and 621 of this Title, and the notification requirement under section 3010 of RCRA.
- (2) The owner or operator of a destination facility that recycles a particular universal waste without storing that universal waste before it is recycled must comply with section 371.1(g)(3)(ii) of this Title.

#### (b) Off-site shipments.

- (1) The owner or operator of a destination facility is prohibited from sending or taking universal waste to a place other than a universal waste handler, another destination facility or foreign destination.
- (2) The owner or operator of a destination facility may reject a shipment containing universal waste, or a portion of a shipment containing universal waste. If the owner or operator of the destination facility rejects a shipment or a portion of a shipment, the owner or operator must contact the shipper to notify the shipper of the rejection and to discuss reshipment of the load. The owner or operator of the destination facility must:
  - (i) send the shipment back to the original shipper; or
  - (ii) if agreed to by both the shipper and the owner or operator of the destination facility, send the shipment to another destination facility.
- (3) If the owner or operator of a destination facility receives a shipment containing hazardous waste that is not a universal waste, the owner or operator of the destination facility must immediately notify the appropriate department regional director of the illegal shipment, and provide the name,

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address, and phone number of the shipper. The department regional director will provide instructions for managing the hazardous waste.

- (4) If the owner or operator of a destination facility receives a shipment of non-hazardous, non-universal waste, the owner or operator may manage the waste in any way that is in compliance with applicable Federal or State solid waste regulations.

#### (c) Tracking universal waste shipments.

- (1) The owner or operator of a destination facility must keep a record of each shipment of universal waste received at the facility. The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:
  - (i) The name and address of the universal waste handler, destination facility, or foreign shipper from whom the universal waste was sent.
  - (ii) The quantity of each type of universal waste received (e.g., batteries, pesticides, thermostats).
  - (iii) The date of receipt of the shipment of universal waste.
- (2) The owner or operator of a destination facility must retain the records described in paragraph (1) of this subdivision for at least three years from the date of receipt of a shipment of universal waste.

### Section 374-3.6 Import requirements.

#### (a) Imports.

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this Subpart, immediately after the waste enters the United States, as indicated in paragraphs (1) through (4) of this subdivision.

- (1) A universal waste transporter is subject to the universal waste transporter requirements of section 374-3.4 of this Subpart.
- (2) A universal waste handler is subject to the small or large quantity handler of universal waste requirements of section 374-3.2 or 374-3.3 of this Subpart, as applicable.
- (3) An owner or operator of a destination facility is subject to the destination facility requirements of section 374-3.5 of this Subpart.
- (4) Persons managing universal waste that is imported from an OECD country as specified in section 372.5(h)(1)(i) of this Title are subject to paragraphs (1) through (3) of this subdivision, in addition to the requirements of section 372.5(h) of this Title.

### Section 374-3.7 Petitions to include other wastes under this Subpart.

#### (a) General.

- (1) Any person seeking to add a hazardous waste or a category of hazardous waste to this Part may petition for a regulatory amendment under this Subpart and section 370.5(a) and (c) of this Title.
- (2) To be successful, the petitioner must demonstrate to the satisfaction of the commissioner that regulation under the universal waste regulations of this Subpart: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information

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required by section 370.5(a)(2) of this Title. The petition should also address as many of the factors listed in subdivision (b) of this section as are appropriate for the waste or waste category addressed in the petition.

- (3) The commissioner will evaluate petitions using the factors listed in subdivision (b) of this section. The commissioner will grant or deny a petition using the factors listed in subdivision (b) of this section. The decision will be based on the weight of evidence showing that regulation under this Subpart is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

#### **(b) Factors for petitions to include other wastes under this Subpart.**

- (1) The waste or category of waste, as generated by a wide variety of generators, is listed in section 371.4 of this Title, or (if not listed) a proportion of the waste stream exhibits one or more characteristics of hazardous waste identified in section 371.3 of this Title. (When a characteristic waste is added to the universal waste regulations of this Subpart by using a generic name to identify the waste category (e.g., batteries), the definition of universal waste in sections 370.2(b) and 374-3.1(i) of this Title will be amended to include only the hazardous waste portion of the waste category (e.g., hazardous waste batteries)). Thus, only the portion of the waste stream that does exhibit one or more characteristics (i.e., is hazardous waste) is subject to the universal waste regulations of this Subpart.
- (2) The waste or category of waste is not exclusive to a specific industry or group of industries, is commonly generated by a wide variety of types of establishments (including, for example, households, retail and commercial businesses, office complexes, conditionally exempt small quantity generators, small businesses, government organizations, as well as large industrial facilities).
- (3) The waste or category of waste is generated by a large number of generators (e.g., more than 1,000 nationally) and is frequently generated in relatively small quantities by each generator.
- (4) Systems to be used for collecting the waste or category of waste (including packaging, marking, and labeling practices) would ensure close stewardship of the waste.
- (5) The risk posed by the waste or category of waste during accumulation and transport is relatively low compared to other hazardous wastes, and specific management standards proposed or referenced by the petitioner (e.g., waste management requirements appropriate to be added to sections 374-3.2(d), 374-3.3(d) and 374-3.4(c) of this Subpart; and/or applicable Department of Transportation requirements) would be protective of human health and the environment during accumulation and transport.
- (6) Regulation of the waste or category of waste under this Subpart will increase the likelihood that the waste will be diverted from non-hazardous waste management systems (e.g., the municipal waste stream, non-hazardous industrial or commercial waste stream, municipal sewer or stormwater systems) to recycling, treatment, or disposal in compliance with ECL, article 27, title 9.
- (7) Regulation of the waste or category of waste under this Subpart will improve implementation of and compliance with the hazardous waste regulatory program.
- (8) Such other factors as may be appropriate.