

Assessment of Public Comment
for revisions to
6 NYCRR PARTS 370, 371, 373, 374, AND 376

Comments received during 2:00 PM - January 11, 2023 through
5:00 PM - January, 17, 2023

General Comments:

Comment: Several commenters thought that these regulations set up one mandatory management system for aerosol cans and paint or established more stringent requirements for these materials. (Commenters 3, 5, 6)

Response: This rule did not intentionally impose requirements that are more stringent than current regulations. This rule established alternative regulatory standards that may be used in lieu of existing hazardous waste regulatory standards.

Comment: Two commenters raised questions concerning the 50-foot setback for small quantity handlers, which they claimed was more than stringent than the setback requirement for small quantity generators. (Commenters 1, 6)

Response: The 50-foot setback requirement for ignitable paint by large quantity handlers is an equivalent requirement to the 50-foot setback requirement for large quantity handlers of hazardous waste. The 50-foot setback was inadvertently added as a requirement for small quantity handlers of universal waste. The Department will amend the express terms to remove this provision.

Universal Waste Aerosol Cans:

Comment 1: One Commenter had a concern that the universal aerosol can rule does not apply to households but on behalf of New Yorkers concerned about the climate crisis, I would like your help in establishing a system for Very Small Quantity Generators like me to safely dispose of HFC-containing products in our homes. This commenter asked DEC to help establish a simpler system for ordinary New Yorkers to responsibly dispose of all this stuff – maybe one central place to bring our spent inhalers and wound care sprays and old air conditioner units that all have HFCs. (Commenter 1)

Response: The commenter's suggestion for the Department to establish a system for the disposal of HFC-containing products is outside the scope of this rulemaking.

For information purposes, households are not Very Small Quantity Generators under the Department's hazardous waste regulations and are exempt from the hazardous waste generator regulations. Households may dispose of their household hazardous wastes through an approved household hazardous waste program. Information about household hazardous waste collection can be found at: <https://www.dec.ny.gov/chemical/8485.html>. There is general information on this page, and links to household hazardous waste collection events and facilities. If a resident has difficulty locating a household hazardous waste collection event or facility, they can contact the Bureau of Solid Waste Management in DEC's Division of Materials Management for assistance.

Household prescription drugs, including dispensed inhalers, may be disposed at a participating pharmacy under the State's drug take-back program at a participating pharmacy.

Comment 2: One commenter expressed concern regarding the disposal of various household items including rechargeable batteries, compact fluorescent light lightbulbs and used motor oils. (Commenter 1)

Response: Generally, waste generated by households is not regulated under the Department's hazardous waste regulations. This waste is regulated under the Department's solid waste management program. Additional detail is provided below regarding waste specifically mentioned in the comment.

Rechargeable batteries are subject to the New York State Rechargeable Battery Law which makes it illegal to throw rechargeable batteries in the trash. The Law requires manufacturers of covered rechargeable batteries who sell in or into New York to fund the collection and recycling of rechargeable batteries. Retailers that sell rechargeable batteries or rechargeable-battery-containing products must accept used rechargeable batteries from NYS consumers. The rechargeable batteries covered under the law include but are not limited to Nickel-cadmium, sealed lead and Lithium-ion batteries. More information on the New York Rechargeable Battery Law can be found at: <https://www.dec.ny.gov/chemical/72065.html>

Compact fluorescent light (CFL) bulbs from residents can be taken to any big box stores that have collection containers for bulbs or to a household hazardous waste event or facility. Compact fluorescent tubes from residents can be taken to a household hazardous waste event or facility.

Used motor oils generated by residents that service their own vehicles are covered under the used oil take back program. That program requires any service establishment that sells at least 500 gallons per year of new oil and provides oil changing services to the public must accept from the public, at no charge, up to 5 gallons of used oil per person per day. Retailers who don't service vehicles but sell at least 1,000 gallons per year of new oil must either accept used oil from the public, as service establishments do, or contract to have another service or retail establishment accept it on their behalf. Entities that are typically subject to the used oil take back program include automotive maintenance garages and dealerships, automotive parts stores, boat marinas with service garages, and big box retailers and home improvement stores that sell lubricating oil.

Comment 3: One commenter stated they were unaware of any aerosol product in which a waste aerosol can would be characterized as an acute hazardous waste. As such, it does not make sense to burden handlers with varied levels of experience with the responsibility of evaluating waste aerosol cans against this highly unlikely classification. This could lead to over-characterization of aerosol wastes and thus undermine the intent of more streamlined, higher levels of compliance (as a Universal Waste). (Commenter 3)

Response: If acute hazardous waste aerosol cans do exist, the Department believes the separation of the aerosol cans containing acute hazardous waste from the other aerosol cans is an appropriate requirement. There is an increased risk to health and the environment when puncturing aerosol cans containing acute hazardous waste.

Comment 4: One commentor stated that for the characteristics of reactivity, the U.S. Department of Transportation (DOT) has specific container requirements for aerosol cans such that the design, manufacture, and testing of aerosol products ensures that the product will not burst, much less detonate, when heated to the types of temperatures contemplated by the RCRA, or when subjected to the types of initiating sources contemplated by the characteristic. Retaining the “reactive waste” determination, despite not being intended for aerosol products, would erode the purpose of the rule and be detrimental to its environmental benefit. The general safeguard for aerosol cans and their hazardous waste characteristics are still present for NYSDEC requirements as in EPA’s rule with the requirement that handlers conduct a hazardous waste determination of the contents of the emptied aerosol can. Thus, the commentor requests that this provision be removed. (Commenter 4)

Response: DEC agrees with this comment and has amended the express terms to remove this standard in the universal waste aerosol can rule.

Comment 5: One commentor stated that a specific prohibition against the storage of universal waste aerosol cans with incompatible contents in the same container prior to puncturing is not necessary. For aerosol cans to be managed as universal waste, they must be intact. This means that the cans cannot have any structural damage, such as corrosion, that may lead to leakage. Thus, the container keeps incompatible contents separate prior to puncturing. The commentor does not believe a specific prohibition against the storage of universal waste aerosol cans with incompatible contents in the same container after puncturing is necessary, as the contents of each container must be handled appropriately (such as not mixing incompatible material), and the punctured aerosol cans will no longer be hazardous as the contents have been drained. (Commenter 3)

Response: The Department believes the separation of incompatibles before puncturing and separation of incompatible drained contents of the cans provides an added protection to human health and the environment. The Department did not intend for the separation of aerosol cans to apply to empty aerosol cans. The express terms have been amended to incorporate this change.

Comment 6: One commentor stated that they do not oppose facilities puncturing cans received from off-site operations to operate under the large quantity handler standards regardless of the number of aerosol cans managed on-site; however, they would appreciate clarity around the potential requirement. For instance, if a location has multiple buildings and all of the aerosol cans within each building are consolidated into one building for handling, would this facility be subject to the large quantity handler standards if they otherwise would be a small quantity handler? (Commenter 3)

Response: If a small quantity handler’s contiguous site consists of multiple buildings where aerosol cans are generated, the aerosol cans may be consolidated and/or punctured at a single building at the site without the handler needing to operate as a large quantity handler.

Comment 7: One commenter supported the general idea of reducing regulatory costs and burdens while increasing the amount of aerosol cans going to landfills, but is concerned some of those aerosol cans will contain unused or residual amounts of hydrofluorocarbons (HFCs) and other super-pollutant greenhouse gases that require special handling. (Commenter 7)

Response: HFCs are not a hazardous waste and, therefore, are not within the scope of the Department's hazardous waste regulations or this rulemaking. This rulemaking will reduce the amount of aerosol cans going to landfills by requiring that the drained cans are sent for scrap metal recycling. The aerosol cans handled under this rule must be directed for recycling. Any emissions from the puncturing of the aerosol cans are required to be captured by the puncturing device.

Universal Waste Paint:

Comment 8: One commenter stated that setback requirements should only apply to large quantity waste handlers and not to retail drop off locations for the architectural paint stewardship program. (Commenter 1)

Response: The 50-foot setback was inadvertently added as a requirement for small quantity handlers of universal waste. The Department will amend the express terms to remove this provision.

Comment 9: The "Paint" definition should be based upon technical criteria so that paint products with similar physical and chemical characteristics could be included in the definition of "paint" and "universal waste paint." Other states, including Ohio and Texas have already accomplished this in their respective state universal waste regulations by implementing the following definition for paint:

"Paint" means a pigmented or unpigmented powder coating, or a pigmented or unpigmented mixture of binder and suitable liquid resulting from commercial, industrial, mining, agricultural, and post-consumer activities that upon drying forms an adhering coating on the surface that the paint is applied. Powder coating is a surface coating that is applied as a dry powder and is fused into a continuous coating film through the use of heat.

The commenter also suggests that DEC consider including a technical definition for paint-related wastes. Again, Texas and Ohio provide good examples: "Paint-related waste" is material contaminated with paint that results from the packaging of paint, wholesale and retail operations, paint manufacturing, and paint application or removal activities, or a material derived from the reclamation of paint-related wastes that is recycled in a manner other than burning for energy recovery or used in a manner constituting disposal. (Commenter 3)

Response: These suggested revisions to the definition of paint include items that are beyond the scope of this rulemaking. The intended purpose of this rulemaking is to collect unused paint from different entities for recycling and improve implementation of the Post Consumer Paint Collection Program Law and facilitate recycling.

Comment 10: The definition of paint includes latex and water-based paints that have known to be non-hazardous. Do latex and water-based paints have to be managed under the universal waste paint rule? (Commenter 4)

Response: Non-hazardous waste paints are not required to be managed under the universal waste regulations, however, Universal waste handlers have the option to manage their non-hazardous waste paint under the universal waste regulations.

Comment 11: The definition of Paint includes latex and water-based paints which are known to be non-hazardous paints. However, 374-3.1 (g)(2)(ii) states that the regulations do not apply to paints that are non a hazardous waste. The definition of paint and excluded paints under 374-3.1(g)(2)(ii) conflict. (Commenter 4)

Response: The Department did not want to assume that latex and water-based paint are always non-hazardous in the definition of "paint" because there some formulations of latex and water-based paints have contained or still contain hazardous constituents (e.g., mercury, heavy metals). If the paint does not exhibit a hazardous waste characteristic (i.e., ignitability, toxicity, corrosivity or reactivity) it is not a hazardous waste. However, the handler may still choose to manage such paint as a universal waste. Therefore, the Department does not see a conflict with the definition of paint under the universal waste rule and paragraph 374-3.1(g)(2)(ii).

Comment 12: The definition of paint as defined at both newly renumbered paragraph 370.2(b)(137) and new paragraph 374-3.1 (i)(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.

How does this proposed definition, which intends to include "architectural" coatings under the management standards for universal wastes align with NYS DEC's proposed rulemaking to also add architectural coatings to its Part 360 Solid Waste regulations, namely Sections 362.5.1-362.5.5, for the management of these coatings from household and CESQG sources?

Does this create two separate classifications for these coatings i.e., exempt hazardous waste versus universal wastes, based upon the source of the paint (from households and CESQGs versus other generators) and the location where it is taken to for recycling/disposal? (Commenter 4)

Response: Sections 362-5.1- 362-5.5 of Part 360 will allow households and conditionally exempt small quantity generators (CESQG) to drop off both hazardous and non-hazardous postconsumer architectural paint at paint collection sites. Those regulations do not exempt CESQG hazardous waste paint from the hazardous waste regulations; it provides an additional type of location where CESQGs are allowed to take hazardous waste paint for recycling.

The solid waste regulations are to support implementation of the Paint Postconsumer Collection Program Law at paint collection sites like retail stores. The purpose of the universal waste paint rule is to streamline the recycling of hazardous waste paints, in addition to supporting the Postconsumer Paint Collection Program Law. The universal waste paint regulations will allow both small quantity and large quantity handlers of hazardous waste to more easily participate in the New York State Postconsumer Paint Collection Program. All hazardous waste generators will be allowed to choose between the normal hazardous waste regulations and the universal waste regulations for management of hazardous postconsumer architectural paint. The definition of paint under the universal waste regulations is slightly broader than the solid waste definition of architectural coatings, in that the universal waste definition of paint includes structural coatings as well. In addition, the universal waste rule does not have the container size limitations as found in the Paint Postconsumer Collection Program law. Non-hazardous paint that can be managed under the New York State Postconsumer Paint Collection Program does not need to be managed under the universal waste paint rule.

Also, please note solid waste regulations are independently applicable to paints as described in the comment.

Comment 13: Are marine paints and traffic roadway paints excluded from being managed under the universal waste paint regulations? These types of paints do not present a greater hazard than the included coatings. Also, currently the only option for disposal is incineration. If we can manage them as universal waste, it opens pathways for recycling. (Commenter 4)

Response: Marine and traffic roadway paints were not evaluated for the universal waste regulations for paint and thus are outside the scope of this rulemaking. The Department did not have sufficient information to evaluate including these types of paint formulations. If the Department receives sufficient information to demonstrate their suitability for addition to the state universal waste regulations per 6 NYCRR 374-3.7(b) including information on the chemical compositions of these types of paints and their recycling or beneficial use, the Department can evaluate and discuss their possible addition to the universal waste regulations in a future rulemaking.

Other hazardous waste exemptions may also be available if recycling opportunities are identified for unused marine or roadway paint.

Comment 14: How does a generator ensure that the paints they are managing as UW is not excluded under the definition of a universal waste paint? (Commenter 4)

Response: The Department chose to create a functional definition to help with implementation for the Paint Postconsumer Collection Program law to facilitate collection and recycling of the material. The generator should review the manufacturer's intended purpose for the paint to determine if the paint meets the definition in the universal waste paint regulations. This can be done by looking at the labeling on the paint container to identify if the paint is covered under the universal waste regulations. If a generator is unsure if a particular paint meets the definition in the regulation they can contact the Department to assist in making a determination on a case-by-case basis. Non-hazardous waste paint does not need to be managed under the universal

waste regulations, but the Department allows similar types of non-hazardous wastes that meet a universal waste definition to be overmanaged by use of the universal waste regulations. Other hazardous waste exemptions may also be available if legitimate recycling opportunities are identified for hazardous waste paint that is not included in the definition of a universal waste paint.

Comment 15: DEC should expand the definition of paint to include paint and paint related wastes so that it is consistent with several other states that have added paint and paint related wastes to their state UW wastes. We would like the definition to be similar to Ohio and Texas. Their functional definition of paint and paint related wastes allows the printing industry to have ink and some ink wastes qualify as a paint and paint related wastes. This provides an opportunity for the printing industry to have certain inks and waste products recycled without having to manage and treat them as hazardous waste, which typically means they are incinerated. (Commenter 5)

Response: Adding printing wastes and other materials was not evaluated during the rulemaking and is beyond the scope of this rulemaking. The rule was to improve implementation of the Post Consumer Paint Collection Program law and facilitate recycling.

Comment 16: Expanding beyond flammable paint and adding a 50-foot setback is a burden on the paint industry in New York. We will be afforded no protection from neighboring states dumping their product into New York. You would be placing New York companies at a competitive disadvantage. (Commenter 6)

Response: This rulemaking provides optional provisions that are designed to reduce the burden on generators of hazardous waste paint at their own sites and to support the burgeoning recycling infrastructure for hazardous waste paint in New York. Generators of hazardous waste paint like businesses, institutions, and government entities will be able to more easily consolidate and transport their paint for recycling if they choose to operate under these new optional provisions. This rulemaking does not expand what would already be considered hazardous waste paint in New York State.

The 50-foot setback requirement was only intended to apply to large quantity handlers, similar to the 50-foot setback requirement for large quantity hazardous waste generators that is already in place; the Department has amended the express terms to reflect this. If a large quantity handler can demonstrate that they cannot comply with the 50-foot setback requirement they may approach the authority having jurisdiction over the local fire code to obtain written approval stating that they may store ignitable or reactive waste paint within 50 feet of the site's property line.

Commenters

1. American Coatings Association
2. Ann Sterling
3. Housing Commercial Products Association (HCPA)
4. NYSDOT
5. Printing Alliance
6. Starlight Paint
7. Sustainable Hudson Valley/New Yorkers for Cool Refrigerant Management