

## REVISED CONSOLIDATED REGULATORY IMPACT STATEMENT

6 NYCRR Part 370, Hazardous Waste Management System – General

6 NYCRR Part 371, Identification and Listing of Hazardous Wastes

6 NYCRR Part 373, Hazardous Waste Management Facilities

6 NYCRR 374, Management of Specific Hazardous Waste

6 NYCRR 376, Land Disposal Restrictions

### INTRODUCTION

The New York State Department of Environmental Conservation (DEC) is authorized to promulgate regulations to establish requirements for hazardous waste management in New York State, primarily under Article 27 of the Environmental Conservation Law, which provides general and specific authority. DEC is also authorized to implement Subtitle C of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) ((42 USC §§ 6901 et seq. (RCRA)) and regulations promulgated pursuant thereto in lieu of the United States Environmental Protection Agency (EPA). The universal waste regulations are part of the RCRA regulations. The objective of the universal waste regulations is to streamline the hazardous waste management standards for certain categories of hazardous waste that are commonly generated by a wide variety of entities. The regulations are designed to promote the collection and recycling of universal waste, ease the regulatory burden on retail establishments and other entities that generate these wastes, and encourage the development of municipal and commercially run recycling programs to reduce the quantity of these wastes going for treatment and disposal.

The Federal universal waste regulations are found in Title 40 of the Code of Federal Regulations (CFR) in part 273 – Standards for Universal Waste Management. These Federal regulations include five types of universal waste: batteries; certain pesticides; mercury-containing equipment; lamps; and aerosol cans. DEC’s universal waste regulations are primarily found at Title 6 of the Codes, Rules, and Regulations of the State of New York Part 374, Subpart 374-3 and currently apply to batteries, pesticides, thermostats and other mercury-containing equipment, and lamps. This rulemaking will incorporate provisions of the Federal universal waste regulations relating to aerosol cans into the State’s universal waste regulations.

This rulemaking will also amend DEC’s universal waste regulations to include provisions to allow hazardous waste paint, including postconsumer paint, to be managed as a universal waste in the State. Hazardous waste paint that will be managed as universal waste is referred to in the rulemaking using the term “paint” or “universal waste paint.” This rulemaking defines paint as interior and exterior architectural 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. The proposed definition of paint, also called universal waste paint, will not include industrial, original equipment or specialty coatings; paint thinners; or paint contaminated applicators, debris or personal protective equipment. These proposed revisions are necessary to implement the Postconsumer Paint Collection Program Law that was enacted in 2019 (L.2019, c. 673, § 1, eff. Dec. 16, 2019. Amended L.2020, c. 63, § 1, eff. Dec. 16, 2019 [Postconsumer Paint Collection Program Law].) These revisions will ensure that postconsumer paint can be collected, transported, recycled,

and processed in the State. Absent these changes to current regulations, persons managing and handling postconsumer paint would be subject to more stringent hazardous waste regulations. Paint retailers and entities that would collect and transport the paint would likely not voluntarily participate in a paint collection program, and the intention of the Postconsumer Paint Collection Program Law would be undermined as a result.

Both the Federal and State universal waste regulations include provisions pertaining to small quantity handlers of universal waste (accumulates less than 5,000 kg of universal waste), large quantity handlers of universal waste (accumulates 5,000 kg or more of universal waste), universal waste transporters and universal waste destination facilities. This proposed rulemaking includes provisions for the management of aerosol cans and paint by each of these types of individuals.

#### 1. Statutory Authority

DEC's authority to undertake this rulemaking action is found in Article 1, Title 1; Article 3, Title 3; Article 19, Title 3; Article 23, Title 3; Article 27, Titles 3, 7, 9 and 20 of the Environmental Conservation Law (ECL). Brief synopses of the statutory sections that grant DEC authority to promulgate these revisions to the hazardous waste regulations at 6 NYCRR Parts 370, 371, 373, 374, and 376 are outlined below.

ECL section 1-0101 declares it the policy of the State to conserve, improve and protect its natural resources and environment and to prevent, abate and control water, land and air pollution in

order to enhance the health, safety and welfare of the people and their overall economic and social well-being.

ECL section 3-0301 empowers DEC to adopt regulations as may be necessary to carry out the environmental policy of the State set forth in Section 1-0101.

ECL section 19-0303 pertains to air pollution control and authorizes DEC to adopt regulations for preventing, controlling or prohibiting air pollution. This provision authorizes DEC to adopt regulations concerning the control and prevention of emissions of hazardous waste and hazardous chemicals during waste handling operations.

ECL 23-2305 authorizes the Commissioner to promulgate rules and regulations governing used collectors and rerefiners in accordance with Article 27 of the ECL.

ECL section 27-0305 authorizes DEC to adopt regulations pursuant to ECL Article 27 Title 3 to regulate waste transporters. This section also authorizes DEC to issue waste transporter permits.

ECL section 27-0705 authorizes DEC to adopt regulations governing the operation of solid waste management and resource recovery facilities including waste aerosol can and paint collection and recycling facilities.

ECL 27-0703(2) authorizes DEC to adopt and promulgate, amend and repeal rules and regulations governing the operation of solid waste management facilities.

Pursuant to ECL section 27-0909, DEC is authorized to promulgate regulations and standards applicable to the generation, storage, transportation, treatment, and disposal of hazardous waste, as necessary to protect human health and the environment. These regulations and standards must be at least as stringent as those established by the United States Environmental Protection Agency (EPA) under authority of Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (42 USC sections 6901 et seq., (RCRA)).

ECL Section 27-0911 specifies that standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities be established by regulation and consistent with Federal standards and with the manifest system in ECL 27-0905. Where appropriate and consistent with RCRA, DEC may authorize, pursuant to regulation, exemptions from standards or variances in requirements.

ECL Section 27-0913 relates to permitting of hazardous waste facilities and the regulation of the transportation of hazardous waste.

ECL Section 27-2007 authorizes DEC to promulgate rules and regulations governing the recycling of paint under the postconsumer paint collection program.

## 2. Legislative Objectives

DEC is authorized by EPA to implement the RCRA program in New York State in lieu of EPA. RCRA sets the standards for the generation, transportation, treatment, storage, and disposal of hazardous waste. As an authorized agency, DEC adopts and enforces regulations, issues permits, conducts inspections, provides technical assistance, and gathers and processes data related to hazardous waste management in New York State.

DEC's authority to implement a hazardous waste program in the State derives from the New York State Industrial Waste Management Act (L. 1978, c. 639) (Act) which adopted Title 9 of ECL Article 27. Today, Article 27 includes provisions for the identification and listing of hazardous waste (ECL section 27-0303), the waste manifest system (ECL section 27-0905), standards applicable to generators of waste (ECL section 27-0907), standards applicable to the transporters of waste (ECL section 27-0909), standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities (ECL section 27-0911, and permits and registration for storage, transportation, treatment or disposal of hazardous waste (ECL 27-0913).

Pursuant to Title 9 of Article 27 of the ECL, DEC must promulgate solid and hazardous waste management regulations necessary to protect human health and the environment (see ECL section 27-0907) that are at least as stringent as Federal regulations promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Resource Conservation and Recovery Act (see e.g., ECL sections 27-0903(1), 27-0905, 27-0911, 27-0913(2)). It was also the intent of the Legislature that DEC adopt regulations that are analogous to new and amended Federal regulations in a timely manner to maintain EPA's authorization of New York State's comprehensive hazardous

waste management program. DEC's hazardous waste management regulations, which implement RCRA and the Act, are found at Title 6 of the Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) at Parts 370, 371, 372, 373, 374 and 376 (the "hazardous waste regulations").

DEC's hazardous waste regulations include provisions that implement the Federal universal waste program. The Federal universal waste program is optional for States to adopt. Federal universal waste regulations are found in Title 40 of the Code of Federal Regulations (CFR) in Part 273. The universal waste program is intended to streamline the management of certain commonly generated wastes to promote their collection and recycling. The State's universal waste program is set forth in 6 NYCRR Subpart 374-3 of Part 374. Section 374-3.2 sets forth standards for small quantity handlers of universal waste; section 374-3.3 prescribes standards for large quantity handlers of universal waste; section 374-3.4 sets forth standards for universal waste transporters and section 374-3.5 includes standards for destination facilities. Additional provisions implementing the universal waste program are found in 6 NYCRR Parts 370, 371, 372, and 373, and Part 376.

Since DEC last amended the hazardous waste regulations in Parts 370-374 and 376 (NY Reg, Mar. 4, 2020, at 7-10, "Hazardous Waste Management Regulations (FedReg5)"), EPA adopted a rule which added hazardous waste aerosol cans to the universal waste program under the Federal RCRA regulations (see 84 Fed Reg 67202 [2019], the "Aerosol Can Rule").<sup>[1]</sup> This rulemaking will add aerosol cans to the State's universal waste program. The rulemaking also includes minor technical corrections promulgated in the Aerosol Can Rule related to mercury-containing equipment. These

changes will correct the citations that pertain to containers used to hold mercury that is collected from spills or leaks from mercury-containing equipment.

Additionally, the Postconsumer Paint Collection Program Law was enacted into law at Title 20 of Article 27 of the ECL in 2019 as noted above. The objective of the Postconsumer Paint Collection Program Law is to reduce the burden of disposal of postconsumer paint, defined as architectural paint that is not used and no longer wanted by a consumer, by reducing its generation and promoting its reuse and recycling. Under the Postconsumer Paint Collection Program Law, the term architectural paint means interior and exterior architectural coatings sold in containers of five gallons or less, but excludes industrial, original equipment or specialty coatings. See ECL section 27-2001(1). The implementation of the Paint Collection Program in New York is to be accomplished through the negotiation and execution of the collection, transport, reuse, recycling, and proper disposal of postconsumer paint using environmentally sound management practices. This rulemaking will include provisions that allow postconsumer paint to be collected and managed as a universal waste under DEC's hazardous waste regulation to ensure the law's goals for recycling paint are achieved.

6 NYCRR 374-3.7 lists criteria that must be considered to add additional wastes to the State's universal waste rule. These factors include that: 1) the waste is generated by a wide variety of generators and a proportion of the waste is hazardous waste; 2) the waste or category of wastes is commonly generated by a wide variety of types of establishments such as households, retail and commercial businesses, office complexes, and many other types of entities; 3) the 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 entity; 4) systems to be used to collect the waste (including packaging, marking and labelling practices) would ensure close stewardship of the waste; 5) the risk posed by the waste during management is relatively low compared to other hazardous wastes, and specific management standards proposed in the rule would be protective of human health and the environment; 6) regulation under the universal waste rule will increase the likelihood of recycling and improve compliance; and 7) any other appropriate factors (such as improving collection by the state Paint Collection Program).

DEC's regulations for adding new classes of universal wastes mirror EPA's regulations at 40 CFR 273 Subpart G and the authority to add new universal wastes is delegated to the state under 40 CFR 272 Subpart HH. Both paint and aerosol cans meet the criteria for addition to the state universal waste rule. Aerosol cans and paint are generated by virtually all hazardous waste generators and are typically generated in small amounts. When managed separately from ordinary solid waste, these wastes are amenable for recycling, but when inadvertently put in the ordinary trash, they present fire or explosion hazards. The option to manage these wastes as universal wastes would incentivize economic collection of these materials by providing a predictable flow of materials to potential recyclers. Stakeholder engagement with potential recyclers confirmed interest by potential recyclers. The proposed regulations provide management standards specific to waste aerosol cans and paint that address the particular hazards of the wastes in order to prevent releases and emissions while providing clear management standards for all universal waste handlers managing this waste. The addition of paint to the universal waste rule will improve the efficiency of the Postconsumer Paint Collection program from businesses and institutions.

### 3. Needs and Benefits

The Federal amendments relating to aerosol cans and the State-initiated amendments relating to paint proposed for adoption in this rulemaking are not necessary for the State to adopt to maintain its RCRA authorization. The proposed changes, however, will improve the overall management of DEC's universal waste program by streamlining the management, and encouraging the recycling and proper disposal, of aerosol cans and paint, two categories of hazardous waste that are commonly generated and would otherwise end up in landfills or be sent for incineration.

The Federal universal waste regulations are found in Title 40 of the Code of Federal Regulations in Part 273 - Standards for Universal Waste Management. On December 9, 2019, EPA amended Part 273 by adding aerosol cans to the list of wastes that may be managed as universal wastes through the adoption of the Aerosol Can Rule (84 Fed. Reg. 67202 [2019]).

The Department's universal waste regulations currently do not include provisions for the management of aerosol cans. Aerosol cans may be hazardous waste due to the contents of the cans, and/or due to the propellants, which may be ignitable, corrosive, toxic or reactive. Adding aerosol cans to the list of universal wastes in Subpart 374-3 would improve the collection and recycling of aerosol cans, especially from retail establishments which often receive returned cans from customers. DEC believes that this amendment will streamline the management of aerosol cans for the regulated community while simultaneously increasing the recycling rate of aerosol cans that would otherwise be disposed of through incineration or in a landfill.

Under the proposed rulemaking, all universal waste aerosol cans may be sent for recycling to recover the metal from the cans. If a hazardous waste aerosol can will not be recycled, it cannot be managed as universal waste and must be managed as a hazardous waste. Aerosol cans managed under DEC's existing hazardous waste regulations are not required to be recycled and are frequently incinerated. The proposed rule also includes some additional protections by requiring that universal waste handlers receiving aerosol cans from off-site for puncturing meet the large quantity handler requirements, regardless of the amount of aerosol cans the handler processes. In addition, under the proposed rule, aerosol cans containing acute hazardous waste will not be eligible to be managed as universal waste and therefore will only be able to be managed as fully regulated hazardous waste.

On December 16, 2019, the Governor signed the Postconsumer Paint Collection Program bill into law. This legislation expands the Environmental Conservation Law (ECL) Article 27 by adding a new Title 20 requiring producers of architectural paint to implement a postconsumer paint collection and recycling program in accordance with a plan approved by DEC. The law requires that producers ensure that there is an adequate number of paint collection sites located throughout New York State to accept paint from all consumers, including individuals, businesses, and institutions, for recycling. Some architectural paints, particularly oil-based paints, may be hazardous waste when discarded. Under the DEC's current hazardous waste regulations, paint collection sites would be required to obtain a Part 373 Hazardous Waste Treatment, Storage and Disposal Facility (TSDF) permit for storage of oil-based paint or would be limited to only taking paint from conditionally exempt small quantity generators of hazardous waste and households. This would inhibit manufacturers' ability to

comply with the collection requirements of the law and prevent small and large quantity generators from taking part in a paint recycling program they are otherwise eligible to participate in under the law. If paint is added to the universal waste regulations, collection sites would be able to collect paint from all hazardous waste paint generators and operate without a TSDF permit, if they meet the universal waste management standards which are specifically designed to address the risks associated with handling these wastes.

In addition to postconsumer paint, the proposed rulemaking will address the management of other paint that is currently regulated as hazardous waste, including unused paint that is unwanted, off-specification, or past its shelf life and is discarded by retailers, wholesalers and other businesses and institutions.

Under the proposed rulemaking, large quantity handlers of universal waste are required to obtain an EPA ID number by submitting a notification to EPA with information about the hazardous waste and universal waste activities occurring at their site. DEC has access to the database that contains the EPA ID numbers that are issued to facilities located in New York, so DEC will know the location of these handlers and will be able to target them for inspections. Small and large quantity handlers are also required to comply with labeling standards and have a limited list of handling activities that they are allowed to conduct. Paint collection sites will be required to obtain a Part 360 solid waste registration from DEC and will be required to identify their location as a part of that registration. The proposed rule ensures that the unique hazards associated with ignitable liquids are addressed in the management standards for universal waste paint by requiring that all physical consolidation of paint (e.g., pouring like paints into a larger container from individual paint cans)

occurs within secondary containment systems to prevent releases to the environment and that ignitable or reactive paint that a large quantity handler stores should be at least 50 feet from a handler's property line.

If a large quantity handler cannot meet the requirement to store their ignitable or reactive paint at least 50 feet from their property line due to site-specific constraints, for example, because the handler's site is narrower than 100 feet, the proposed regulations require the handler to obtain a waiver from the local fire code official to store the paint in an alternative location at their facility that is equally protective in terms of fire protection and prevention. Recyclers and disposal facilities that accept universal waste paint will remain subject to the ordinary hazardous waste regulations. Historically, oil-based paints have typically been directed for fuel blending and burning, but there is a burgeoning recycling market for oil-based paint recycling in other countries. DEC is hopeful that oil-based paints managed under the universal waste regulations will eventually be directed for recycling as the recycling capacity for oil-based paints increases and that the clear management standards of the universal waste regulations will help to encourage the development of a recycling structure for paint in New York State.

There are several reasons why it's beneficial to the environment and the regulated community for New York to maintain the RCRA program and keep the State's hazardous waste regulations consistent with Federal regulations:

- Less confusion occurs when the regulated community can follow one set of regulations (i.e., New York's). For example, waste aerosol cans that are transported between New York and another state that has adopted the Aerosol Can Rule are currently required to be managed as a fully regulated hazardous waste in New York but may be managed as universal waste in the other state. DEC has received questions from the regulated community asking when each set of regulations apply or stop applying because there are two different sets of regulations involved in the management of the same waste. If New York adopts regulations that are consistent with EPA's regulations, like the other RCRA-authorized states, aerosol cans will be subject to similar regulatory requirements regardless of where the aerosol cans are generated or received. As a result, there will be fewer questions and less confusion within the regulated community regarding which regulations apply.
- The regulatory burden on retail establishments and other waste generators that collect these wastes for recycling and proper disposal will be reduced. A generator's hazardous waste generator status is based, in part, on the amount of hazardous waste they generate per calendar month. The regulatory burden on a generator increases as their generator status increases. Universal wastes are not included in the calculation of the amount of hazardous waste a generator generates in a calendar month. This means that any aerosol can or paint managed as universal waste will no longer count towards a generator's hazardous waste generator status. This may result in some generators being eligible to operate under a lower generator status and, by extension, less

burdensome regulatory requirements. Universal wastes are also not included in the calculation of special assessment taxes and regulatory fees for hazardous waste, so small businesses and local governments that choose to manage their aerosol cans and paint as universal wastes may also see a reduction in these compliance costs.

- The regulatory burden on transporters of these wastes will be reduced. Currently, small quantity generators and large quantity generators, and the transporters shipping their hazardous waste, are required to use a hazardous waste manifest for their shipments of hazardous waste aerosol cans and paint. The hazardous waste manifest then needs to be submitted to EPA's electronic manifest system, which includes payment of a fee to process the manifest. Aerosol cans and paint that are managed as universal waste will still be required to be tracked using a shipping document, however, generators and transporters can use other documents, like bills of lading or non-hazardous waste manifests, to meet this requirement and will avoid the additional labor and cost involved to submit shipping information and fees to EPA.
- Limited State, Federal and private resources can be more effectively used to protect human health and the environment.

### Proposed Regulatory Changes

The proposed rulemaking would amend Part 370 to add definitions for "aerosol cans,"

“architectural coatings” and “paint” (also called as “universal waste paint”) and modify the definitions of “universal waste” and “universal waste handler” to include aerosol cans and paint as wastes that may be managed by universal waste handlers pursuant to Subpart 374-3 - Standards for Universal Wastes. The proposed rulemaking defines the terms paint and universal waste paint in a way that will capture the types of paint identified in the term architectural paint, as defined in ECL section 27-2001, without requiring that the paint to have been originally sold to the consumer in containers of five gallons or less. This change will allow businesses and institutions who buy paint in larger containers or bulk quantities to manage their hazardous waste paint in accordance with the proposed universal waste regulations and will make it easier for these handlers to send their paint for recycling, which is a primary objective of the Postconsumer Paint Collection Program Law.

The proposed rulemaking would amend Part 371 to add an exemption from the hazardous waste regulations at Parts 372, 373, 376 and Subpart 374-1 for aerosol cans and paint that are managed as universal waste.

The proposed rulemaking would amend Part 373 – Hazardous Waste Management Facilities. An exemption from the requirements of Parts 372, 373, 376 and Subpart 374-1 would be added in Subparts 373-1 (Hazardous Waste Treatment, Storage and Disposal Facility Permitting Requirements), 373-2 (Final Status Standards for Owners and Operators of Hazardous Waste Treatment Storage and Disposal Facilities), and 373-3 (Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities) for universal waste handlers and transporters managing universal waste aerosol cans and paint handled by universal



waste handlers and transporters.

The proposed rulemaking would amend Part 374 (Management of Specific Hazardous Waste) by adding and revising Subparts 374-3.1, 374-3.2, and 374-3.3. Specifically, section 374-3.1 will be amended to add aerosol cans and paint to the list of wastes that can be handled by universal waste handlers and universal waste transporters if certain conditions involving labeling, storage time limits and handling requirements are satisfied. Section 374-3.2 will be amended to add provisions for handling of aerosol cans and paint for small quantity handlers. Section 374-3.3 will be amended to add management requirements for handling of aerosol cans and paint for large quantity handlers.

Part 376 would be amended to add aerosol cans and paint to the list of universal wastes under Subpart 376.1 to exempt universal waste handlers and transporters from certain land disposal requirements for these wastes. Universal waste handlers and transporters would not be required to determine if aerosol cans and paint must be treated before they go for land disposal under Section 376.1(g). Also, universal waste handlers and transporters would not be subject to the storage prohibition regulations under Section 376.5.

#### 4. Costs

##### a. Costs to the Regulated Community

##### i. Aerosol Cans:

DEC is adopting EPA's updated universal waste regulations with minor changes. The adoption of the Aerosol Can Rule should not result in substantial additional costs to the regulated community or other branches of local or State Government. DEC has determined that the costs associated with regulatory conformance for regulated entities will result in an overall decrease in cost. These changes will also increase consistency between New York State regulations and Federal regulations.

EPA's analysis of costs associated with adding aerosol cans to the universal waste regulations found no cost increases to the regulated community. EPA stated in the Federal Register Notice that addition of aerosol cans to the universal waste regulations will reduce the regulatory burden on states. EPA estimates a net reduction in burden of approximately 62,621 hours. The total estimated annual cost savings is \$2.77 million. This cost savings is composed of approximately \$2.65 million in annualized avoided labor costs and \$23,000 in avoided capital or operation and maintenance costs (84 Fed. Reg. 67216 [2019]).<sup>[1]</sup>

New York generators represent approximately 4.5 percent of the total waste generators in the United States.<sup>[2]</sup> Based on the proportion of New York generators and EPA's analysis of costs described above, regulated entities in aerosol can waste handlers operating in the New York State will save approximately 2,818 hours in labor and \$124,650 on an annual basis. This includes an annual cost savings of \$119,250 from avoided labor costs and an annual cost savings of \$1,035 from avoided operation costs.

EPA did not quantify costs for the optional provisions of the rule, for example, the one-time costs associated with the purchasing of a puncturing unit and the maintenance costs associated with filter and gasket replacements. Most commercially available drum-top style aerosol can puncturing units cost between \$800 to \$2,500 on average. Filter replacements for these units cost between \$200 to \$600, depending on the number of cans that can be processed before filter breakthrough occurs. Replacement gaskets typically cost between \$5 and \$40 each depending on the manufacturer and replacements are conducted on an “as-needed” basis depending on the contents of the aerosol cans being punctured.<sup>[3-6]</sup> While these are potential costs associated with this rulemaking with respect to universal waste handlers that choose to puncture the aerosol cans they generate at their site, the costs related to acquiring the puncturing units would be completely optional as handlers are not required to puncture their aerosol cans themselves to manage them as universal waste. DEC expects that most entities will avoid puncturing their own aerosol cans and opt to send their aerosol cans to an off-site recycler instead, as they do with other universal wastes. Aerosol can recyclers accepting aerosol cans from off-site for puncturing under the current hazardous waste regulations are already required to have this type of equipment so these costs would not be considered new costs to recyclers.

ii. Paint:

According to data collected from PaintCare, a product stewardship organization that runs postconsumer paint collection programs on behalf of paint manufacturers, the average rate of recovery is 0.03 gallons of oil-based paint recovered per person. This number is based on all oil-based paint received through the PaintCare program from consumers in participating states for the years the program has been in operation.<sup>[7]</sup> Given New York’s estimated population of 19,453,561

people, DEC estimates the amount of oil-based paint generation to be approximately 583,606 gallons.<sup>[8]</sup> Using this figure and a typical disposal cost ranging from \$5.43 to \$8.63 per gallon, DEC estimates an approximate cost for disposal of all oil-based paint generated in New York, some of which is from businesses, to range from \$3,168,980.58 to \$5,036,519.78.<sup>[9]</sup> DEC also requested estimates from PaintCare. Based on data they collected, PaintCare estimates that 551,000 gallons of oil-based paint will be generated in New York annually and will cost approximately \$10.98 per gallon for shipping containers, transportation, and processing. This results in annual disposal costs of approximately \$6,053,000.<sup>[10]</sup> If the paint is handled as universal waste and recycled, there would be a reduction in compliance costs. The amount in reduced disposal costs is difficult to quantify as oil-based paint recycling is a newer industry and recycling cost data are not readily available. Recycling is typically cheaper than hazardous waste disposal, however, and DEC expects that these proposed regulations will help to support the diversion of oil-based paint from disposal to recycling.

Cost savings that may result from the proposed changes include savings related to labeling, shipping documentation and reduced recordkeeping requirements. These cost savings are similar to the cost savings estimated for aerosol cans as there is a large overlap between the universe of regulated entities and the universal waste compliance costs for generators that manage aerosol cans and generators that manage paint. Therefore, DEC estimates an aggregate savings of approximately \$119,250 from avoided labor costs, an annual cost savings of \$1,035 in avoided operations costs, and an annual burden savings of 2,818 hours for regulated entities throughout the State.

If a facility chooses to consolidate universal waste paint, it will incur costs to establish secondary containment if such containment was not already present at the facility. A facility can meet the secondary containment requirement in a variety of ways using both pre-built items like spill pallets

or systems constructed specifically for a site using materials like concrete curbing and plastic liners. A facility that chooses to use standard size plastic spill pallets would need one pallet for every four 55-gallon drums that they store on-site and could be expected to spend between \$350 - \$650 per pallet, depending on the design and features desired by the facility.<sup>[11-13]</sup> An average 690 square foot cement storage area can hold up to nine 40.25 inch x 48.25 inch pallets.<sup>[14]</sup> The cost of the pallets would be about \$350 at a minimum.<sup>[15]</sup> An epoxy-coated cement floor would cost about \$792.<sup>[16]</sup> These costs can be extrapolated for any storage area size. It is difficult for DEC to fully estimate these costs as they are highly variable and can depend largely on the volume of waste being managed at a facility and often include site-specific concerns like facility layout and space constraints which are unpredictable and are therefore difficult to quantify. DEC was unable to obtain data to quantify the costs associated with pre-consumer paint that could be eligible to be managed as a universal waste under the proposed rulemaking. Examples of pre-consumer paint include off-specification, recalled or otherwise unsaleable paint that never reaches the final consumer.

DEC also did not identify any costs that would be required for an entity to remain in compliance with New York hazardous waste regulations. The only costs that could be incurred by regulated entities would be incurred on a voluntary basis because compliance with the proposed regulations in lieu of compliance with the ordinary hazardous waste regulations is optional.

b. Costs to DEC, State, and Local Government

The actual costs to DEC for implementing these changes should not be substantial. The proposed regulations do not require additional statutory authority, do not create new regulatory programs, do not expand existing regulatory programs in ways that are more stringent than current regulations, and do not increase the universe of the regulated community beyond that which is already required by Federal regulations.

- Handling aerosol cans as a universal waste will not require manifest reporting. However, the adoption of this proposed rule may result in an additional workload to DEC to inspect facilities. The rule encourages more entities to send their aerosol cans to recycling facilities for puncturing rather than to existing hazardous waste disposal facilities. Currently, aerosol can recycling facilities are not common in New York State. But DEC expects that this change in the regulatory structure will encourage the establishment of new aerosol can recycling facilities in New York to meet the demand for this waste management service.
- The addition of paint as a universal waste will result in additional workload to DEC to process permits and registrations and to inspect facilities because the rule encourages more entities to recycle paint. Designating hazardous waste paint as a universal waste may shift some costs to DEC's solid waste program as some paint recycling facilities may fall under solid waste permitting authority, depending on the nature of the recycling facility. The costs associated with this shift in program responsibilities may be offset by the costs avoided by the DEC's hazardous waste permitting program.

Other costs to DEC should be minimal. Conformance with these amendments should not result in substantial additional costs to other branches of local or state governments.

DEC's addition of aerosol cans and paint to the universal waste regulations will result in savings in DEC operating costs for management and disposal of both waste streams as DEC will no longer need to pay to dispose of such items as hazardous waste. DEC will also be able to consolidate these wastes from multiple DEC sites at a single DEC location which could help to minimize transportation and disposal costs. Similarly, other branches of local or state governments in New York will be able to take advantage of these same cost-saving measures as DEC.

Failure to adopt the Federal Aerosol Can Rule could result in confusion in the regulated community due to differences between the New York State universal waste program, the Federal universal waste program, and the universal waste programs of neighboring states. Failure to promulgate the state-initiated proposed changes will undermine the implementation of the new Postconsumer Paint Collection Program Law, as mandated by State law, and make it much more difficult for small and large quantity generators to participate in the program. It would also require more staff time to address the confusion within the regulated community concerning compliance with the hazardous waste regulations.

c. Basis of Cost Estimates

EPA completed full cost analysis for the Aerosol Can Rule and the cost information from this federal analysis were used as the basis for the development of the cost estimates included in the discussion above. Data from the “National Biennial RCRA Hazardous Waste Report (2019)” and from DEC's computer data systems were used to assist in determining New York State’s component of national costs. Data from PaintCare, Inc., the US Census Bureau, DEC’s household hazardous waste grants program, a hazardous waste facility permit, and several websites were used to determine paint disposal costs and estimates of compliance costs for the optional provisions of these proposed regulations for facilities in New York. The specific documents and websites consulted by DEC for this rulemaking are identified in the “Sources” section at the end of the document.

#### 5. Local Government Mandates

No additional record keeping, reporting, or other requirements will be imposed solely on local governments by this rulemaking. Local governments will be subject to the same requirements as any other subject facility.

#### 6. Paperwork

The proposed regulations may result in added paperwork if a regulated entity chooses to manage their waste under these new regulations. In most cases, this will take the form of updating their Site Identification Form (EPA Form 8700-12).<sup>[17]</sup> Some of the changes will make existing



regulations less stringent and reduce paperwork requirements. In most cases, paperwork may be submitted and maintained in electronic format.

## 7. Duplication

The proposed amendments will not result in a duplication of State regulations. By adopting regulations similar to the recent Federal regulations, regulation of waste aerosol cans in New York will be consistent with the Federal Aerosol Can Rule.

## 8. Alternatives

The “no-action” alternative would leave in place State regulations that impose standards on the regulated community that are more stringent than the Federal regulations allowed under the Federal Aerosol Can Rule with little environmental benefit. Many surrounding states have adopted or are currently adopting the more flexible standards allowed under the federal Aerosol Can rule. Thus, the State’s failure to adopt this rulemaking could cause confusion and implementation difficulties for interstate universal waste activities. The regulated community would be left to determine which requirements applied in New York and at what point in the waste handling process.

If DEC takes no action to allow postconsumer paint to be managed as universal waste, it will severely restrict the implementation of the Postconsumer Paint Collection Program Law. It would make it difficult for small and large quantity hazardous waste generators to participate in the program,

due to the burdensome requirements they would have to comply with under the State's existing hazardous waste regulations.

DEC has the option to adopt the amendments to the Federal universal waste regulations as written, with no revisions. While this would increase conformity with federal regulations, DEC believes that the additional protections offered by this rulemaking are important for the protection of human health and the environment. The federal rule allows all universal waste handlers to puncture and drain aerosol cans but does not make any distinction between aerosol cans generated by the handler and aerosol cans received from other handlers. DEC does not believe that this is appropriate and proposes that facilities accepting aerosol cans from off-site for puncturing and draining be regulated as large quantity universal waste handlers regardless of the quantity of aerosol cans that are handled. This modification will require these facilities to submit a notification using EPA's Site Identification Form (EPA Form 8700-12) to indicate that they are conducting this activity at their site and will also require them to keep records of incoming and outgoing universal waste shipments.<sup>[17]</sup> The notification requirement is a one-time activity that should take each facility about one to three hours to complete. Ordinary business records should serve to fulfill the recordkeeping requirement. Including these requirements will improve DEC's ability to identify these facilities for the purposes of ensuring compliance.

## 9. Federal Standards

The proposed changes will increase consistency between DEC's hazardous waste regulations and the Federal universal waste regulations, as amended on December 9, 2019 (84 Fed Reg 67202 [2019]), by allowing universal waste handlers in New York to manage waste aerosol cans as universal waste. Some of the proposed changes to State regulations will result in rules that exceed the federal minimum standard or are broader in scope than the federal standards. DEC believes that all proposed changes that go beyond the federal standard are warranted. The requirement that universal waste handlers receiving aerosol cans from off-site for puncturing and draining operate as a large quantity handler is necessary because these entities could be handling a much wider variety of aerosol cans and therefore have a more complex operation than a typical small quantity handler. DEC believes it is important that DEC is aware of the locations of these entities for that reason.

The primary reason DEC decided to adopt provisions to designate hazardous waste paint as a universal waste is because hazardous waste paint is included as an eligible waste under New York's Postconsumer Paint Collection Program Law. This law is designed to facilitate the recovery and recycling of paint. If hazardous waste paint is not added to the universal waste regulations, the Postconsumer Paint Collection Program Law will be exceedingly difficult to fully implement, hindering paint recovery and recycling efforts. The universal waste regulations are unique in that they are specifically designed to allow states to add their own waste categories as long as the categories being added meet a certain list of standards. These standards include but are not limited to: the waste is generated by a large number and wide range of generators in relatively small quantities; the risk posed by the waste during accumulation and transport is relatively low compared to other hazardous wastes and waste-specific management standards are addressed in the universal waste

standards; and regulation of the waste as a universal waste will help to direct the waste to appropriate recycling, treatment or disposal outlets, rather than inappropriate non-hazardous waste management systems. Other states have also added paint to their universal waste regulations to assist in implementing this same type of program.

#### 10. Compliance Schedule

The proposed regulation will not create any deadlines for compliance with new regulatory standards. Aerosol cans are currently regulated as a universal waste under Federal regulations; the proposed rulemaking is consistent with those regulations and is an alternative, voluntary management standard. The universal waste paint regulation is classified as equivalent to Federal regulations and is an optional management standard. These regulatory changes will decrease the regulatory burden or implement optional standards that do not require any substantive changes by the regulated community. Therefore, the regulated community is not required to opt into these provisions by a certain date. The rulemaking takes effect 60 days after publication of the Notice of Adoption by Department of State. The regulated community is under no deadline to implement these proposed regulatory provisions.

#### **Sources**

<sup>1</sup> (United States Environmental Protection Agency, "Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations." 84 Fed. Reg. 67202 [December 9, 2019])

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<sup>3</sup> (Justrite, Aerosolv Aerosol Can Disposal Recycling System, available at <https://www.justrite.com/aerosols/aerosolv-aerosol-can-disposal-system> [last accessed 17 Sep. 2021])

<sup>4</sup> (Justrite, Aerosolv Aerosol Can Recycling, 2016, available at <https://www.justrite.com/media/catalogs/Aerosolv-5000-Instructions.pdf> [last accessed 17 Sep. 2021])

<sup>5</sup> (Grainger, Aerosol Can Recycling Equipment, available at <https://www.grainger.com/category/safety/safety-storage/aerosol-can-recycling-equipment> [last accessed 17 Sep. 2021])

<sup>6</sup> (McMaster-Carr, Aerosol Can Recycling Punches, available at <https://www.mcmaster.com/aerosol-can-recycling-systems/> [last accessed 17 Sep. 2021])

<sup>7</sup> (PaintCare, Data from PaintCare Annual Reports for the years 2011 – 2020, available from DEC)

<sup>8</sup> (United States Census Bureau, U.S. Census Bureau - QuickFacts: New York, available at <https://www.census.gov/quickfacts/NY> [last accessed 27 Sep. 2021])

<sup>9</sup> (New York State Department of Environmental Conservation, Data from the Department of Environmental Conservation's Household Hazardous Waste Grant Program for the years 2019 and 2020, available from DEC)

<sup>10</sup> (Paul Fresina, Paint Care Data for NY Universal Waste Analysis email, received by Peter van Erp, 27 Sep. 2021, available from DEC)

<sup>11</sup> (ULINE, Spill Containment Pallets for Forklift Use, available at [https://www.uline.com/BL\\_8211/Spill-Containment-Pallets](https://www.uline.com/BL_8211/Spill-Containment-Pallets) [last accessed 20 Sep. 2021])

<sup>12</sup> (The Cary Company, Spill Pallets, available at <https://www.thecarycompany.com/spill-control/prevention/pallets> [last accessed 20 Sep. 2021])

<sup>13</sup> (Grainger, Spill Pallets, available at <https://www.grainger.com/category/safety/sorbents-spill-control-spill-containment/spill-containment-systems/spill-containment-pallets/spill-pallets> [last accessed 20 Sep. 2021])

<sup>14</sup> (Norlite, Secondary Containment Cost Data from Norlite, LLC Permit, Permit ID 4-0103-00016/00016, EPA ID NYD080469935, Effective 1 Jan. 2016 – 31 Dec. 2020, available from DEC)

<sup>15</sup> (Grainger, Pallets, available at <https://www.grainger.com/search/material-handling/dock->

[equipment/pallets](#) [last accessed 27 Mar. 2020])

<sup>16</sup> (Grainger, Clear Epoxy Activator and Finish Kit, Gloss Finish, 200 sq ft/gal Coverage, Size: 3 gal, available at <https://www.grainger.com/product/TENNANT-Epoxy-Activator-and-Finish-29UR39> [last accessed 27 Mar. 2020])

<sup>17</sup> (United States Environmental Protection Agency, Instructions and Form for Hazardous Waste Generators, Transporters and Treatment, Storage and Disposal Facilities to Obtain an EPA Identification Number (EPA Form 8700-12/Site Identification Form), available at: <https://www.epa.gov/hwgenerators/instructions-and-form-hazardous-waste-generators-transporters-and-treatment-storage-and> [last accessed 12 Jan. 2022])