

## SUMMARY OF 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

### 1. Statutory Authority

The New York State Department of Environmental Conservation's (DEC) authority to undertake this rulemaking is found in Article 1, Titles 1 and 3; Article 3, Title 3; Article 19, Title 3; Article 27, Titles 1, 3, 7, and 9; Article 70; and Article 71, Titles 27 and 35 of the Environmental Conservation Law (ECL). These statutory sections grant DEC the authority to promulgate and revise the hazardous waste regulations at 6 NYCRR Parts 370, 371, 373, 374, and 376 and to enforce the ECL and its implementing regulations.

### 2. Legislative Objective

The Legislature intended that DEC implement and administer the comprehensive hazardous waste management program created by Chapter 639, Laws of 1978 (New York State Industrial

Hazardous Waste Management Act). Hazardous waste is currently managed under Article 27, including Titles 3, 7, and 9.

DEC's hazardous waste regulations include provisions that implement the Federal universal waste program. 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. Additional provisions implementing the universal waste program are found in 6 NYCRR Parts 370, 371, 372, and 373, Subparts 374-1 and 374-2 and Part 376. The full Regulatory Impact Statement summarizes DEC's authorizations under these provisions.

### 3. Needs and Benefits

The proposed rulemaking will incorporate the Federal Aerosol Can rule published in the *Federal Register* on December 9, 2019, and provisions to support the implementation of the Postconsumer Paint Recycling Program law (added L. 2019, c. 673 § 1 eff. Dec. 16, 2019; amended L. 2020 c. 63, § 1, eff. Dec. 16, 2019) into the State's Universal Waste regulations. It includes amendments to 6 NYCRR Subpart 374-3, "Standards for Universal Waste."

The proposed amendments 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 waste paint, two categories of hazardous waste that are commonly generated and

would otherwise end up in landfills or be incinerated.

On December 9, 2019, EPA added aerosol cans to the list of wastes that may be managed as universal wastes (see 84 Fed Reg 67202 [2019], the “Aerosol Can Rule”). This management option is not available in New York until adopted into regulation. Aerosol cans may be hazardous waste due to the contents of the cans and/or due to the propellants which may be ignitable or reactive. Adding aerosol cans to the State universal waste rule would improve the collection and recycling of aerosol cans, especially from retail establishments who often receive returned cans from customers. This rule will streamline the management of aerosol cans for the regulated community and increase the recycling rate of aerosol cans. DEC is also proposing to add some requirements beyond those included in the federal rule 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 and prohibiting handling of acute hazardous waste under this rule. This provision will require handlers to keep records of sites from which they receive aerosol cans and notify DEC of handlers recycling off-site aerosol cans. DEC does not believe that aerosol cans containing acute hazardous waste should be handled as universal waste because acute hazardous wastes are toxic in very small amounts. The proposed revisions are designed to encourage handlers to recycle aerosol cans by consolidating and puncturing the cans so the empty cans can be recycled as scrap metal. This often means that the aerosol cans could be handled and repackaged by many different handlers before the aerosol cans are drained and sent for recycling. However, DEC does not want acute hazardous wastes to be handled any more than necessary to facilitate proper treatment or disposal, because acute hazardous wastes can cause significant harm to human health and the environment when handled improperly.

On December 16, 2019, the Postconsumer Paint Collection Program was enacted into law, (L.2019, c. 673, section 1, eff. Dec. 16, 2019, amended L.2020, c. 63, section 1, eff. Dec. 16, 2019). The law requires manufacturers of architectural paint to implement a paint collection and recycling program. Some architectural paints may be hazardous waste when discarded. Under the current regulations, collection sites must obtain a Part 373 Hazardous Waste Treatment, Storage and Disposal Facility (TSDF) permit for storage of oil-based paint or are limited to only taking paint from conditionally exempt small quantity generators of hazardous waste and households. This inhibits manufacturers' ability to comply with the collection requirements of the State law and prevents small and large quantity generators from taking part in a program they are eligible to participate in under State law. Adding paint to the universal waste rule will allow collection sites to collect waste paint from all generators without a TSDF permit, provided they meet management standards for the handling of these wastes.

There are several reasons why maintaining consistency with the Federal universal waste regulations and addressing postconsumer paint collection and recycling are beneficial to the State and the regulated community:

- The proposed regulations will streamline the management, and encourage the collection and recycling, of aerosol cans and waste paint which are commonly generated by a wide variety of establishments;

- Less confusion occurs in the regulated community when State universal waste regulations are consistent with Federal universal waste regulations and those of neighboring states;
- The regulatory burden on retail establishments and other waste generators that collect these wastes for recycling and proper disposal will be reduced;
- The regulatory burden on transporters of these wastes will be reduced; and
- Limited State, Federal and private resources can be more effectively used to protect human health and the environment.

#### 4. Costs

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

DEC is adopting EPA's Federal Aerosol Can Rule without substantive changes and adding waste paint to its universal waste regulations. The adoption of these proposed amendments is not expected to result in substantial additional costs to the regulated community or local or State Government. 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. DEC has determined that the costs associated with regulatory conformance for regulated entities under these proposed regulations will result in an

overall cost savings. These changes will ensure New York State's regulations are consistent with Federal regulations and other states' regulations.

Aerosol Cans: The cost savings for regulated entities in New York State is estimated to be about \$124,650 annually.

Paint: The cost savings for regulated entities in New York State is estimated to be about \$120,285 in avoided labor and operations costs annually.

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 the Federal regulations.

- Aerosol cans being handled as a universal waste would not require manifest reporting. However, adoption of this rulemaking may result in additional workload to DEC to process permits and registrations, and to inspect facilities because the rule encourages more entities to recycle aerosol cans.

- 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 waste paint.

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 waste paint to the universal waste regulations will result in savings in DEC's operating costs for the management and disposal of these waste streams.

Failure to adopt the Federal Aerosol Can Rule could result in confusion in the regulated community due to differences between New York State's Universal Waste program and other state and Federal Universal Waste programs. Failure to promulgate the state-initiated proposed changes to add waste paint to the state universal waste rule would undermine the implementation of the new Postconsumer Paint Collection Program, 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 a full cost analysis for the Aerosol Can Rule and the cost information from this Federal analysis was used as the basis for the cost estimates for this rulemaking. Data from the “National Biennial RCRA Hazardous Waste Report (2019),” the US Census Bureau, and several websites were used to determine New York State’s component of national EPA cost estimates and estimates of compliance costs for the provisions of the proposed regulations for facilities managing aerosol cans in New York.

Data from DEC’s computer data systems, PaintCare, Inc., DEC’s household hazardous waste grants program, and several websites were used to determine paint disposal costs and estimates of compliance costs for the provisions of these proposed regulations for facilities managing waste paint in New York.

#### 5. Local Government Mandates

This rulemaking will impose no additional record keeping, reporting, or other requirements on local governments.

#### 6. Paperwork

Some of the proposed regulatory provisions have recordkeeping requirements, but DEC expects a reduction in paperwork, as universal waste is subject to fewer recordkeeping requirements than hazardous waste. In most cases, paperwork may be submitted and maintained in electronic format.



## 7. Duplication

The proposed rulemaking will not result in a duplication of State regulations. It will ensure that New York's regulations are consistent with Federal regulations and regulations adopted by neighboring states

## 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. As many surrounding states have adopted or are currently adopting these more flexible standards, DEC's failure to implement this rulemaking could cause confusion and regulatory implementation difficulties within the regulated community. If DEC took no action for the management of paint waste, it would interfere with the implementation of the Postconsumer Paint Collection Program Law and make it exceedingly difficult for small and large quantity hazardous waste generators to participate.

DEC has the option to adopt the Federal Aerosol Can Rule as written, with no State changes. However, DEC believes that requiring universal waste handlers receiving aerosol cans from off-site for puncturing to meet the large quantity handler requirements, regardless of the amount of aerosol cans the handler processes and prohibiting the handling of acute hazardous waste as universal waste

is important for the protection of human health and the environment. Provisions have been included in the rulemaking to address these requirements.

## 9. Federal Standards

The proposed rulemaking will ensure that the State's universal waste regulations are consistent with Federal regulations. The proposed rulemaking includes requirements for off-site management of aerosol cans that are more stringent than Federal universal waste regulations which DEC believes are necessary to protect human health and the environment.

## 10. Compliance Schedule

The proposed regulation will not create any deadlines for compliance with new regulatory standards. The proposed aerosol can rule reflects the existing Federal rule and is an alternative, voluntary management standard. The addition of waste paint to the universal waste rule is classified as equivalent to Federal regulations and is governed by statute. The rulemaking takes effect 60 days after publication of the Notice of Adoption by the Department of State.