



Innovative Products For **Home. Work. Life.**

January 17, 2023

*via* electronic transmission

Alison Egbon  
NYS Department of Environmental Conservation  
RCRA Compliance and Technical Support Section  
625 Broadway  
Albany, NY 12233-7256

Subject: Universal Waste Rule Revisions

Dear Ms. Egbon,

The Household & Commercial Products Association<sup>1</sup> (HCPA) appreciates the opportunity to offer comments to the New York State Department of Environmental Conservation (NYSDEC) on their proposal to amend 6 NYCRR Parts 370, 371, 373, 374, and 376. The proposed amendments will add aerosol cans, as well as waste paint, to the list of wastes that may be managed as universal wastes in New York State. HCPA supports NYSDEC's proposed amendments as it is based on EPA's Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations<sup>2</sup> rule.

HCPA represents a wide range of products, from household cleaners and air fresheners to commercial disinfectant and pest control whose use of aerosol technology makes the aerosol industry an integral part of the household and commercial products industry. HCPA has represented the U.S. aerosol products industry since 1950 through its Aerosol Products Division, representing the interest of companies that manufacture, formulate, supply, market and recycle a variety of products packaged in an aerosol form.

The proposed revisions for hazardous waste management in New York State not only maintains consistency with the Federal Resource Conservation and Recovery Act (RCRA), but it provides a clear, protective system for managing discarded waste aerosol cans; alleviates the regulatory burden on retail stores, aerosol product manufacturers, aerosol product marketers and others that discard waste aerosol cans by reducing the number of cans that must be treated as hazardous waste; promotes the collection and recycling of aerosol cans; and encourages the

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<sup>1</sup> The Household & Commercial Products Association (HCPA) is the premier trade association representing companies that manufacture and sell \$180 billion annually of trusted and familiar products used for cleaning, protecting, maintaining, and disinfecting homes and commercial environments. HCPA member companies employ 200,000 people in the U.S. whose work helps consumers and workers to create cleaner, healthier and more productive lives.

<sup>2</sup> 83 FR 11654-11667; <https://www.govinfo.gov/content/pkg/FR-2018-03-16/pdf/2018-05282.pdf>

development of municipal and commercial programs to reduce the quantity of aerosol can waste going to municipal solid waste landfills. With that said, HCPA has a few comments regarding the proposal and additional considerations which NYSDEC has posed to stakeholders.

Within the proposal, there's additional language for which the requirements of the universal waste provisions do not apply to managing aerosol cans beyond EPA's rule. Specifically, the proposal excludes an aerosol can that is an acute hazardous waste or an aerosol can that exhibits the characteristic of reactivity. HCPA objects to the addition of both of these elements.

Regarding acute hazardous waste, HCPA is unaware of any aerosol product in which a waste aerosol can would be characterized in such a manner. 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 overcharacterization of aerosol wastes and thus undermine the intent of more streamlined, higher levels of compliance (as a Universal Waste).

As for the characteristics of reactivity, the U.S. Department of Transportation (DOT) has specific container requirements<sup>1</sup> 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, HCPA requests that this provision be removed.

For the additional considerations that NYSDEC has asked stakeholders, HCPA does not believe a specific prohibition against the storage of universal waste aerosol cans with incompatible contents in the same container prior to puncturing is 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. Furthermore, HCPA 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. Furthermore, HCPA does 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, we 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?

In conclusion, the proposal incorporates flexibility for handlers of discarded waste aerosol cans and lessens the regulatory burden on the regulated community, allowing more aerosol cans that are properly discarded to be recycled. With the recommended modifications to the proposal to better align with EPA's rule, NYSDEC ensures that programs developed in New York State can also be safely and universally implemented in other states, including neighboring states that have already added aerosol cans to their universal waste programs such as New Jersey, Pennsylvania, and Vermont, so that waste handlers with multiple locations within the United States can have one consistent program to handle aerosol cans across multiple sites.

HCPA supports NYSDEC's decision to add aerosol cans to New York's universal waste standards. If you have any questions about our support or about aerosol cans, please do not hesitate to contact me directly at (202) 833-7304 or [ngeorges@thehcpa.org](mailto:ngeorges@thehcpa.org).

Respectfully Submitted,



Nicholas B. Georges  
Senior Vice President, Scientific and International Affairs  
Household & Commercial Products Association

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<sup>i</sup> From the 49 CFR 173.306, aerosol containers must be capable of withstanding without bursting a pressure of one and one-half times the equilibrium pressure of the contents at 130°F. Furthermore, there are construction requirements for various container specifications such as 2P (49 CFR 178.33), 2Q (49 CFR 178.33a), and 2S (49 CFR 178.33b) to ensure a safety.