



# AmericanCoatings

ASSOCIATION<sup>SM</sup>

January 17, 2023

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

**RE: ACA Comments on New York’s Proposed Hazardous Waste Revisions to the Universal Waste Rule**

Dear Ms. Egbon:

The American Coatings Association (ACA)<sup>1</sup> submits the following comments to New York State Department of Conservation (NYS DEC or DEC) regarding the proposed hazardous waste management regulatory revisions. The ACA represents approximately 96% of the paint and coatings products manufactured in the United States, including architectural, industrial and specialty coatings. These products are formulated using a wide variety of technologies, including water-based, solvent-based (or oil/alkyd), powder, etc. ACA has a significant interest in assisting our industry in pollution prevention strategies and compliance with RCRA requirements. ACA contributed significant comments on the U.S. EPA universal waste proposal for aerosol products as well as to several states on the development of universal waste regulations for paint.

In addition, ACA and the coatings industry worked diligently over six legislative sessions to pass the 2019 legislation authorizing the establishment of a paint stewardship program in New York State for architectural paint products. This stewardship program is operated by PaintCare, the stewardship organization established by ACA to fulfill the obligations of paint manufacturers under the authorizing statute. ACA appreciates the opportunity to comment on New York’s Department of Environmental Conservation’s proposed revisions on the Universal Waste Rule.

**1. Setback requirements should only apply to large quantity waste handlers and not to retail drop off locations for the architectural paint stewardship program.**

Under the proposed Sec. 374-3.2(d)(6)(v), it states that “Containers holding ignitable universal waste paint, as described in...this Title, must be located at least 50 feet from the facility’s property line unless a written approval is obtained from the authority having jurisdiction over the local fire code...”

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<sup>1</sup> ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

ACA is concerned about retail locations that collect leftover architectural paint products pursuant to an approved product stewardship program because of the burden that would be placed upon the limited physical space. These retail store locations will be located in a variety of settings, including rural areas where stores may have a large footprint and very dense cities such as New York City, where retail stores are likely to be very small in size. Establishing a 50-foot setback requirement for these types of facilities will present a significant regulatory obstacle for most of the retail store locations. Even for those retail stores that have a large footprint, a 50-foot setback is probably not possible due to the typical configuration of these types of stores.

Furthermore, the 50-foot separation requirement will significantly impact PaintCare's ability to recruit retail facilities to voluntarily serve as drop-off/collection sites for the architectural paint stewardship program due to retailers' limited space and limited personnel. Under the architectural paint stewardship program, PaintCare relies upon facilities to voluntarily serve as a drop-off/collection site in order to better serve the community by encouraging responsible waste practices. PaintCare intends to recruit a significant number of retail store locations across the entire state to voluntarily serve as drop-off/collection sites for leftover consumer architectural paint products.

Facilities such as transfer stations, processors, and treatment, storage and disposal facilities (TSDF) are already subject to this setback requirement for ignitable waste streams. For these facilities, it would be consistent with current practices to impose a 50-foot setback requirement for wastes deemed to be universal waste. Under the federal Generator Improvement Rule, the U.S. EPA recognizes that the 50-foot setback requirement presents difficulties for locations that are small in size and provides for a waiver process that includes obtaining written approval from the local authority with jurisdiction over the local fire codes.<sup>2</sup> Additionally, transfer stations, processors, and TSDFs are in the business of collecting and managing waste streams. Applying for and maintaining permits and related waivers for this activity is a regular part of their business model and quite frankly, these types of facilities cannot do business without dedicated staff to perform the function of maintaining these permits and waivers. In contrast, managing waste streams is a voluntary effort by retail stores and is not a part of their primary business operations. The business of retail stores is to sell consumer products and while these retail businesses may also have permits and retail licenses, the need to obtain another regulatory permission to participate in a stewardship program will be a significant disincentive for a business with limited personnel, especially when the subject of the waiver request does not support a revenue stream.

While this regulatory solution may work for facilities such as TSDFs, transfer stations and processors that are in the regulator business of managing waste streams, this significant regulatory obstacle for retail store locations will significantly impact PaintCare's ability to recruit retail facilities to voluntarily serve as a drop-off/collection site for the architectural paint stewardship program which aims to reduce the amount of waste going into to solid landfills.

## **2. The definition of “universal waste paint” should be based on technical criteria.**

Under the proposed Sec. 370.2(b)(137) it states that:

“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),

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<sup>2</sup> 40 C.F.R. §262.17(a)(1)(vi) (2016).

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.

ACA suggests that DEC consider using a definition 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.<sup>3</sup>

Having a technical-based definition would help reduce confusion among consumers, retailers, processors, waste transporters, other businesses in the coatings industry, and regulators because it is important to clearly articulate which paint products fall under the definition of universal waste paint. Additionally, ACA’s architectural paint stewardship program, PaintCare, began operations in New York in 2021.<sup>4</sup> A technical-based definition would not only provide clarity and ease of regulatory interpretation, but it would provide more regulatory certainty on which products are included in the universal waste process.

### **3. New York’s universal waste regulations should be expanded to include materials under a category of “paint-related waste.”**

Under the proposed Sec. 370.2(b)(137) it states that “Paint does not include other industrial, original equipment or specialty coatings, paint thinners, or paint contaminated applicators, debris or personal protective equipment.”

ACA also suggests that DEC consider including a technical definition for “paint-related waste” under its universal waste regulation to encourage a streamlined approach to its universal waste regulations that would encourage environmentally sound waste collection and recycling practices in New York while alleviating regulatory burdens and costs. Other states, such as Ohio and Texas, that have implemented their own universal waste regulations have included “paint-related waste” and “paint-related materials” into their state regulations.

Texas and Ohio both include the following definition in their universal waste regulations:

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

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<sup>3</sup> Ohio Administrative Code §3745-273-09(P)(1) and Texas Administrative Code Rule §335.262(b)

<sup>4</sup> PaintCare currently operates programs in eleven jurisdictions, including Washington, Oregon, California, Maine, Minnesota, Vermont, Connecticut, Rhode Island, Colorado, New York, and the District of Columbia.

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.<sup>5</sup>

Texas’s implementation and inclusion of paint-related materials within their universal waste program began in 2020 and allows for materials such as paint-contaminated personal protective equipment, rags, gloves, brushes, rollers, and debris resulting from painting operations.<sup>6</sup> Universal waste regulations have been developed to handle certain hazardous wastes that are widely generated in order to make it easier to collect this type of waste and encourage the proper recycling and treatment of these types of wastes. New York’s inclusion of “paint-related waste” also addresses the need to collect the type of materials and debris involved in painting operations that are widely generated and provide for consistency with these other states. This streamlined approach will further ensure proper recycling and disposal of such wastes.

## Conclusion

ACA recommends that NYS DEC consider these comments to the proposed revisions to the hazardous waste management regulatory revisions to ensure regulatory consistency and clarity, while furthering the intent of the universal waste program by providing streamlined regulations that encourage sound waste collection and recycling practices, reduce the regulatory burden on both the government and the public, and reduce the waste going into landfills. In summary, ACA recommends that:

1. the 50-ft setback requirement should not apply to retail facilities that voluntarily serve as drop-off and collections sites under the architectural paint stewardship program,
2. the definition of “universal waste paint” should be based on technical criteria for regulatory consistency and clarity, and
3. “Paint-related wastes” should be included to streamline the universal waste regulations and promote environmentally sound waste collection, recycling, and treatment of such wastes.

ACA applauds NYS DEC in its efforts to develop the hazardous waste management rules to include paint under its universal waste rule. Adding these proposed recommendations would bolster the intent to alleviate any regulatory burdens while streamlining the waste management process for generators, haulers, and processors within the state and encouraging environmentally sound recycling processes.

Sincerely,

/s/

Heidi K. McAuliffe  
Vice President, Government Affairs

/s/

Suzanne Chang  
Staff, Government Affairs

*\*\*Sent via email\*\**

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<sup>5</sup> Ohio Administrative Code §3745-273-09(P)(2) and Texas Administrative Code Rule §335.262(b)

<sup>6</sup> Texas Regulatory Guidance, “Managing Paint and Paint-Related Waste Under the Universal Waste Rule,” (Aug. 2021) [https://www.tceq.texas.gov/assets/public/comm\\_exec/pubs/rg/rg-370.pdf](https://www.tceq.texas.gov/assets/public/comm_exec/pubs/rg/rg-370.pdf)