RURAL AREA FLEXIBILITY ANALYSIS

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. Types and Estimated Number of Rural Areas:

For purposes of this Rural Area Flexibility Analysis, “rural area” means those portions of the state so defined by Executive Law section 481(7). SAPA section 102(10). Executive Law section 481(7) defines rural areas as “counties within the state having less than 200,000 population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of 200,000 or greater population, "rural areas" means towns with population densities of 150 persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein.” There are 44 counties in New York State that have populations of less than 200,000 people and 71 towns in non-rural counties where the population densities are less than 150 people per square mile. This rule will apply statewide including all rural areas of New York State (State).

2. Reporting, Recordkeeping, Other Compliance Requirements, and Need for Professional

Services:

No additional reporting, recordkeeping, compliance requirements, or professional services will be imposed solely on local governments by this rulemaking. The proposed rulemaking principally adopts a new United States Environmental Protection Agency (EPA) regulation which provides an optional set of standards specific to waste aerosol cans (see 84 Fed Reg 67202 [2019], the "Aerosol Can Rule") and a similar set of optional standards specific to waste paint that is necessary to implement the New York Postconsumer Paint Collection law that was enacted in 2020 (Added L. 2019, c. 673 § 1 eff. Dec. 16, 2019; amended L. 2020 c. 63, § 1, eff. Dec. 16, 2019). Generators may choose to comply with the new provisions or may continue to operate under the present State regulations with which the regulated community already must comply. Adoption of the proposed rulemaking will reduce duplication of effort in complying with both Federal and State regulations when managing hazardous waste aerosol cans or paint.

3. Costs:

No local mandates will be created by this rule, nor will this rule impose any costs on rural areas. Economic impacts to existing rural area facilities that handle hazardous wastes are small because the proposed rulemaking provides optional standards that are less burdensome than the existing regulations with which the regulated community in rural areas must already comply. Both Postconsumer Paint Collection Program law and the EPA regulations alleviate disposal burdens.

Conformance with these amendments should not result in substantial additional costs to the regulated community.

a. Aerosol Cans:

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]).

New York generators represent approximately 4.5 percent of the total waste generators in the United States. 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 aerosol can puncturing units cost between $800 to $2,500. Filter replacements for these units cost between $200 to $600 dollars, depending on the number of cans the filters can process before filter breakthrough occurs. Replacement gaskets typically cost between $5 and $40 each depending on the manufacturer. Replacements are conducted on an “as-needed” basis depending on the contents of the aerosol cans being punctured. These costs related to 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 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 their 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 and so these costs would not be considered new costs to recyclers.

b. Paint:

According to data collected from PaintCare, a product stewardship organization which 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 all participating states and all years that the program has been in operation. 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, annually. Using this figure and an average disposal cost of $5.43 - $8.63 per gallon, DEC

estimates an approximate annual disposal cost of $3,168,981 - $5,036,520 of all oil-based paint generated in New York, some of which is borne by businesses. DEC also requested estimates from PaintCare. Based on data they collected, PaintCare estimates that 551,000 gallons of oil-based paint is 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. If the paint is handled as universal waste and recycled, there would be a reduction in compliance costs. The amount of reduced disposal costs is difficult to quantify as oil-based paint recycling is a newer industry and recycling cost data are hard to obtain, but recycling is typically cheaper than hazardous waste disposal 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 waste paint. Therefore, DEC estimates a 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.

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. Facilities can

meet the secondary containment requirement in a variety of ways using both pre-built items like spill pallets or 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 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. An average 690 square foot cement storage area can hold up to nine 40.25-inch x 48.25-inch pallets. The cost of the pallets would be about $350 at a minimum. An epoxy-coated cement floor would cost about $792. 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 factors 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.

4. Minimizing Adverse Impact:

These regulations will not have any adverse impact in rural areas because the proposed regulations will establish an optional set of management standards for waste aerosol cans and paint that are more streamlined and less costly than the present State regulations with which rural areas already must comply.

5. Rural Area Participation:

From December 2019 through April 2020, DEC held 10 public workshops and webinars on the hazardous waste revisions DEC is proposing to adopt. The revisions included the addition of aerosol cans and paint to the universal waste regulations. DEC advertised these workshops and webinars to small businesses, local governments, and the general public by sending out a notice through its DEC Delivers listserv that was specifically targeted towards those subscribers that were interested in the hazardous waste program. DEC posted fact sheets about the rulemaking and proposed changes to the regulations for waste aerosol cans and paint on the DEC website for review by the public. DEC invited stakeholders and other members of the public to submit comments on the proposed regulatory changes from December 2020 to January 2021. DEC also posted webpages about the revisions being considered and detailed specific areas of the regulations DEC was particularly interested in receiving input from the public. Small businesses and local governments were included in a statewide outreach effort, and no significant comments opposing the proposed revisions were received from these stakeholders. Rural areas were also included in this statewide outreach effort. The Aerosol Can Rule has already been through a public review and comment process on the Federal level. DEC's experience indicates general support from the interested public for keeping State hazardous waste

regulations current with the corresponding Federal regulations. DEC deems the level of early public outreach described above to be sufficient for the purposes of this rulemaking.