

Assessment of Public Comment Summary  
for revisions to  
6 NYCRR PARTS 370, 371, 373, 374, AND 376

Comments received during 2:00 PM - January 11, 2023 through  
5:00 PM - January, 17, 2023

The New York State Department of Environmental Conservation (DEC) proposes to amend the regulations that implement the hazardous waste program in New York State. This includes amendments to existing regulations for universal waste in 6 NYCRR Parts 370, 371, 373, 374 and 376.

These amendments incorporate provisions of EPA's Aerosol Cans Rule (2019) into New York's universal waste and designate hazardous waste paint as a universal waste to support implementation of New York's new paint take back program. Revisions to Parts 370, 371 and 373 add definitions and update cross references. The revisions to Subpart 374-3 add management, transportation and disposal standards for universal waste aerosol cans and paint. Changes to Part 376 update cross references in the regulations for land disposal restrictions related to universal waste.

The draft regulations were published for public review and comment on November 9, 2022, with the public comment period ending on January 17, 2023. A virtual public hearing was held in Albany on January 11, 2023.

Overall, the majority of comments received by the Department expressed support for the Department's proposed amendments to Parts 370, 371, 373, 374 and 376.

Several comments concern implementation of rules in this rulemaking. We are providing paraphrased summaries of the comments and general answers to the comments. However, if a specific facility requires assistance with regulatory interpretations, they should contact DEC at that time.

Generally, comments were outside the scope of the rulemaking.

Three commenters thought the universal waste aerosol cans and universal waste paint regulations would establish more stringent requirements for handling those materials. The Department responded by explaining that this rule establishes alternative regulatory standards that can be met in lieu of the existing hazardous waste regulatory standards.

Two commenters were concerned about the 50-foot setback from the property line for small quantity handlers that store hazardous waste paint. The Department responded by explaining that the standard was inadvertently added to the small quantity handler provisions. The Department would revise the express terms to remove the provision.

One commenter stated that a specific prohibition against the storage of universal waste aerosol cans with incompatible contents in the same container prior to puncturing is not necessary. The can must be intact to be handled under the universal waste aerosol can rule so the can itself keeps the incompatible contents from mixing in a container. The Department responded by explaining that the separation of aerosol cans containing incompatible materials requirement for both large and small quantity handlers is an equivalent requirement to the requirements for large quantity and small quantity handlers to separate their incompatible hazardous wastes. The Department deems that inclusion of these requirements is necessary for the protection of health and the environment.

One commentor highlighted that excluding hazardous waste cans that meet the hazardous waste characteristic of reactivity would undermine the purpose of the rule. Also, DOT has specific container requirements to ensure the aerosol cans do not burst and the general safeguard for aerosol cans and their hazardous waste characteristics are still present for

NYSDEC universal waste aerosol can requirements. The Department responded by agreeing with the comment and will remove the provision.

One commenter stated that they are not aware of any acute hazardous waste aerosol cans and will burden handlers with determining if their aerosol cans are acute hazardous waste aerosol cans and separating them from the other hazardous waste aerosol cans. The Department explained that if acute hazardous waste aerosol cans do exist, the separation of the aerosol cans containing acute hazardous waste from the other aerosol cans is an appropriate requirement. There is an increased risk to health and the environment when puncturing aerosol cans containing acute hazardous waste.

Several commenters stated that the definition of “paint” under the universal waste paint rule should be revised to incorporate “paint-related waste” similar to Ohio’s definition and other types of paint such as traffic roadway and marine paints. The Department explained that the purpose of the universal waste paint rule is to streamline the recycling of hazardous waste paints, in addition to supporting the Postconsumer Paint Collection Program Law. Also, the Department did not have sufficient information to evaluate including other types of paint formulations. If the Department receives sufficient information to demonstrate their suitability for addition to the state universal waste regulations per 6 NYCRR 374-3.7(b) including information on the chemical compositions of these types of paints and their recycling or beneficial use, the Department can evaluate and discuss their possible addition to the universal waste regulations in a future rulemaking.