

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND
LOCAL GOVERNMENTS

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. Effect of rule:

The proposed rulemaking does not place any additional burdens on small businesses or local governments, create new regulatory programs, expand existing regulatory programs in ways that are more stringent than current New York State (State) or Federal regulations, or increase the universe of regulated entities. The regulation will provide an alternative standard for managing universal waste aerosol cans and waste paint that will be less burdensome.

Accordingly, the number of small businesses and local governments affected by the rulemaking will not be more than those already affected by the existing regulations. Small businesses which are affected by the hazardous waste regulations range from retail outlets to auto maintenance facilities to manufacturers.

Small businesses and local governments who are impacted by the hazardous waste management regulations are typically either conditionally exempt small quantity generators

(CESQGs) or small quantity generators (SQGs). CESQGS do not typically utilize the universal waste regulations for waste management because the universal waste requirements are more stringent than the normal hazardous waste requirements that CESQGs must meet. For this reason, DEC does not believe that small businesses and local governments that are CESQGs will be impacted by this rule. SQGs are those entities that generate between 100 and 1,000 kilograms of hazardous waste per calendar month, no more than 1 kilogram of acute hazardous waste, and store less than 6,000 kilograms of hazardous waste on-site.

Hazardous waste generators have certain management and disposal requirements that must be met for the hazardous waste they generate. Large quantity generators (LQGs) generate most of the waste in New York and are subject to greater regulation. LQGs are those entities that generate 1,000 kilograms or more of hazardous waste or more than 1 kilogram of acute hazardous waste per calendar month, and can store 6,000 kilograms or more of hazardous waste on-site. Generators can choose whether to opt into the new standards for waste paint and aerosol can management or may continue to operate under existing more stringent regulations.

Under existing regulations, SQGs and LQGs must manifest their hazardous waste aerosol cans when they are shipped off site. Based on hazardous waste manifest records, approximately 3,500 New York SQGs shipped hazardous waste for management over a 2-year period (2018 to 2019). If a SQG or LQG chooses to manage its aerosol cans and waste paint as universal waste under the new provisions, the hazardous waste manifest requirement would no longer be applicable to the shipment of those wastes. Large quantity universal waste handlers (i.e., facilities who

accumulate more than 5,000 kg of universal waste per calendar year) and destination facilities will continue to have recordkeeping requirements.

2. Compliance Requirements

There are no new reporting, recordkeeping, or other compliance requirements for SQGs as a result of the proposed rulemaking. The proposed rulemaking will provide an optional set of standards that allow aerosol cans to be collected and managed as universal waste in accordance with the Federal Aerosol Can Rule adopted by EPA (84 Fed. Reg. 67202 [2019]). Likewise, it will promote the collection and recycling of waste paint, including postconsumer paint. In so doing, the rule will support the implementation of the Postconsumer Paint Collection Program law (Environmental Conservation Law, Article 27, Title 20; 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 continue to comply with the State's existing hazardous waste regulations. 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 waste paint.

3. Professional Services

The quantity and types of services needed to handle hazardous waste aerosol cans or paint will not increase as a result of this rulemaking. DEC continues to operate an outreach program for small quantity generators including phone and e-mail access to DEC staff for assistance.

4. Compliance Costs

Small businesses and local governments should not incur any additional costs, in either initial capital costs or annual compliance costs, to comply with the proposed rulemaking. In fact, they should save money if they choose to comply with the new provisions in the proposed rulemaking. Small businesses and local governments will be able to choose to manage their aerosol cans and waste paint as universal waste and will no longer need to dispose of them as hazardous waste. They will also be allowed to consolidate the wastes from multiple locations that they own or operate to a single location which can reduce transportation and disposal costs. Small businesses and local governments will not need to count wastes managed as universal waste in their calculation of their hazardous waste generator status. This could result in some small businesses and local governments qualifying for a lower generator status with less burdensome regulations, which will lower compliance costs. Universal wastes are not included in the calculation of special assessment taxes and regulatory fees for hazardous waste, so small businesses and local governments that choose to manage their aerosol cans and waste paint as universal wastes may also see a reduction in these compliance costs.

5. Economic and Technological Feasibility

Adding aerosol can and waste paint provisions to the State's universal waste regulations will implement the Federal Aerosol Can Rule and support the implementation of the Postconsumer Paint Collection Program law. These revisions are likely to decrease the regulatory burden on small businesses and local governments because these wastes can now be managed as universal waste

rather than fully regulated hazardous waste. Compliance with the new standards in this proposed rulemaking will be optional, so no new or excessive economic burdens will be imposed on small businesses or local governments. For this reason, DEC believes this rulemaking will be economically and technologically feasible for small businesses and local governments.

6. Minimizing Adverse Impact

It is DEC's belief that the proposed rulemaking will result in an economic benefit to the small business community or local governments. Small businesses and local governments that generate hazardous wastes must comply with the State's hazardous waste requirements. The proposed rulemaking is intended to streamline the management requirements for aerosol cans and waste paint and will be less costly than management of these wastes under existing hazardous waste regulations.

7. Small Business and Local Government Participation

DEC has an ongoing education program for small businesses that include small quantity generators of hazardous waste. As part of this program, workshops are conducted with trade associations throughout the State on a periodic basis and a dedicated email inbox is maintained to answer questions from the regulated community. In addition, DEC has a handbook available called "Hazardous Waste management Guide for Small Businesses" that explains how the hazardous waste regulations apply to small businesses.

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. There were approximately 1,200 registrants for the outreach workshops that were conducted by DEC, including municipalities and small businesses. DEC also drafted and posted an aerosol can fact sheet and a waste paint fact sheet on its 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. DEC received written feedback from the regulated community from December 2020 to January 2021 on the regulations for the waste paint amendments. Small businesses and local governments were included in this 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.