

**COMMENTS OF THE CROSS-CUTTING ISSUES GROUP ON EPA’S PROPOSED RULE
“INCREASING RECYCLING: ADDING AEROSOL CANS TO THE UNIVERSAL
WASTE REGULATIONS”**

EPA Docket No. EPA–HQ– OLEM–2017–0463

I. INTRODUCTION

On March 16, 2018, the U.S. Environmental Protection Agency (“EPA” or “Agency”) published in the *Federal Register*, at 83 Fed. Reg. 11,654, a proposed rule to add hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (“RCRA”) regulations (the “Proposed Rule”). Under the Proposed Rule, aerosol cans, like other hazardous wastes designated as universal, would be managed in a streamlined manner that encourages environmentally sound collection and proper management of the waste within the system.¹ The proposed expansion of the list of universal wastes to include aerosol cans comports with EPA’s multi-factor analysis for adding new types of universal wastes. It also is consistent with EPA’s efforts to ease regulatory burdens.

The Cross-Cutting Issues Group (“CCIG” or “Group”)² respectfully submits these comments to support the Agency’s proposal to add hazardous waste aerosol cans to the RCRA universal waste program. CCIG is a group of electric-generating companies with a diverse portfolio of generating assets located throughout the country. CCIG members are impacted by a wide range of regulatory requirements established by EPA, including regulations and policies related to waste management under RCRA. As explained in detail below, CCIG fully supports the Proposed Rule and recommends that EPA adopt the rule regarding hazardous waste aerosol cans as proposed.

II. COMMENTS

A. Regulating Aerosol Cans as Universal Waste is Appropriate

EPA’s RCRA regulations streamline hazardous waste management standards for categories of hazardous waste considered “universal wastes” that are commonly generated and that pose a lower risk to people and the environment than other hazardous wastes.³ Currently, EPA classifies four types of waste as universal waste: (1) batteries, (2) pesticides, (3) mercury-containing equipment, and (4) mercury lamps.⁴ Adding aerosol cans to this list is appropriate and consistent with RCRA regulations.

In determining whether to add new wastes to the RCRA universal waste program, EPA considers whether the following non-exhaustive factors are present:

- a) The waste is hazardous

¹ 83 Fed. Reg. 11,654, 11,657 (Mar. 16, 2018).

² The CCIG members who support these comments are Alliant Energy Corporation, Entergy Services, Inc., Florida Power and Light, Louisville Gas & Electric/Kentucky Utilities, NextEra Energy, Inc., OGE Energy Corp., Public Service Company of New Mexico, Talen Energy, Salt River Project, and Vectren Corp..

³ See 40 C.F.R. § 273.

⁴ See 40 C.F.R. § 273.2-273.5.

- b) The waste is commonly generated (not specific to an industry)
- c) The waste is generated by a large number of generators (over 1,000 nationally)
- d) Systems used for collecting the waste (e.g., packaging, marking, labeling) would ensure close stewardship
- e) The risk posed during accumulation and transport is relatively low compared to other hazardous wastes, and the proposed management standards would protect human health and the environment during accumulation and transport
- f) Regulation as universal waste will increase the likelihood that the waste will be diverted from non-hazardous waste management systems
- g) Regulation as universal waste will improve implementation of and compliance with hazardous waste regulations.⁵

As described by EPA in the Proposed Rule, aerosol cans satisfy all these factors. Aerosol cans are similar to the other waste products that EPA already regulates as universal waste. Like those products, aerosol cans are frequently hazardous (due to the ignitability of the propellant or the contents of the can) but commonly and widely used, which makes disposal as hazardous waste difficult to control.⁶ Non-residential sources of all sizes, including businesses, industry, government agencies, and schools, use aerosol cans for a multitude of purposes, ranging from painting to cleaning.⁷ EPA anticipates that the Proposed Rule will impact over 18,000 facilities in at least eighteen different industrial sectors.⁸ Aerosol cans also pose a lower risk to people and the environment than other hazardous wastes.⁹

As an additional factor¹⁰ weighing in favor of regulating aerosol cans as universal waste at the federal level, California and Colorado added aerosol cans to their universal waste regulations precisely because of their lower risk,¹¹ and New Mexico and Utah have also successfully implemented this program. According to EPA, “[f]eedback from state programs thus far indicates that management of items such as aerosol cans . . . as universal wastes works well.”¹² The Proposed Rule’s definition of an “aerosol can” that qualifies as universal waste is the same as the definition used by the California, Colorado, and New Mexico universal waste programs.¹³ It is also generally consistent with the definition used in Utah.¹⁴ Specifically, “aerosol can” for purposes of the Proposed Rule is “an intact container in

⁵ See *id.* at § 273.81(a)-(g).

⁶ See *id.* at § 273.81(a).

⁷ See *id.* at § 273.81(b).

⁸ 83 Fed. Reg. at 11,655; see also 40 C.F.R. § 273.81(b)

⁹ See *id.* at § 273.81(e).

¹⁰ 40 C.F.R. § 273.81(h).

¹¹ See 22 CA ADC § 66273.1; Colorado Hazardous Waste Regulations, 6 CCR 1007-3 Part 261.

¹² EPA, *Strategy for Addressing the Retail Sector under RCRA’s Regulatory Framework* at 9 (Sept. 12, 2016).

¹³ 83 Fed. Reg. at 11,660.

¹⁴ Utah includes a size restriction on aerosol cans that may be managed as universal waste. CCIG respectfully requests that EPA adopt the Proposed Rule without a size restriction on the definition of aerosol can, as the broader

which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.”¹⁵ In using this definition, EPA builds on proven regulatory systems to promote close stewardship of aerosol cans, increase the likelihood that aerosol cans will be diverted from non-hazardous waste management systems, and improve compliance with hazardous waste regulations. EPA notes that “state officials from both California and Colorado stated to EPA that their respective aerosol can universal waste programs have been in effect since 2002, and they have not identified any problems with compliance with the standards.”¹⁶ CCIG encourages EPA to adopt the Proposed Rule’s definition of “aerosol can,” which has proven successful in states’ universal waste programs for over fifteen years.

The Proposed Rule contains reasonable management principles to ensure that universal waste aerosol cans would be managed in a manner to prevent release of the universal waste, including that the cans be accumulated in a structurally sound container.¹⁷ CCIG believes that EPA’s proposed management standards for puncturing and draining aerosol cans by universal waste handlers are sufficiently protective of human health and the environment, without additional limitations on puncturing and draining of aerosol cans.

B. Regulating Aerosol Cans as Universal Waste is Consistent with EPA’s Efforts to Ease Regulatory Burdens

Universal waste listings are streamlined regulations that typically ease the regulatory burden on generators and transporters of these wastes.¹⁸ EPA accurately recognizes that adding aerosol cans to the list of universal wastes will result in significant cost savings for the regulated community. EPA states that the Proposed Rule “is expected to result in an annual cost savings of \$3.0 million to \$63.3 million”¹⁹ and time savings to facilities that handle aerosol can waste of 39,113 hours per year.²⁰

This is consistent with CCIG members’ experience of managing aerosol cans. One CCIG member generates between 65,000 and 70,000 aerosol cans per year at its service centers, generating stations, and ancillary facilities. It currently costs \$1.40 to manage and dispose of the cans as hazardous waste. The company estimates that managing aerosol cans as universal waste will reduce the per-can cost to \$1.14, if not lower. Classifying aerosol cans as universal waste would therefore save this company at least \$16,900 per year. Further, because hazardous waste aerosol cans are the primary driver of the classification of these facilities as Small Quantity Generators, the Proposed Rule would result in the reclassification of these facilities as Very Small Quantity Generators, creating additional cost savings by

definition, which has been proven successful in California, Colorado, and New Mexico, will provide the benefits of the Proposed Rule to a greater number of aerosol cans.

¹⁵ 83 Fed. Reg. at 11,659-60.

¹⁶ 83 Fed. Reg. at 11,659.

¹⁷ 83 Fed. Reg. at 11,660.

¹⁸ See, e.g., 60 Fed. Reg. 25,492, 25,501-02 (May 11, 1995).

¹⁹ 83 Fed. Reg. at 11,655. EPA’s primary analysis estimates that the Proposed Rule will result in annual cost savings of \$3.0-\$3.5 million by “calculating average monthly hazardous waste generation at each facility and comparing the quantities to RCRA monthly generation limits.” Regulatory Impact Analysis of Proposed Rule to Add Aerosol Cans to the Universal Waste Program, EPA-HQ-OLEM-2017-0463 at 47 (Feb. 2018). Using a different methodology, EPA’s alternative analysis estimates that cost savings from the Proposed Rule could range from \$56.7 to \$63.3 million annually. *Id.*

²⁰ 83 Fed. Reg. at 11,663.

lowering the regulatory burden. Cost saving associated with reclassification would benefit entities across a wide variety of industrial sectors that use aerosol cans. For instance, aerosol cans comprise a large percentage of the retail sector's hazardous waste stream.²¹ The savings associated with RCRA reclassification is a primary benefit of the Proposed Rule and one that will provide regulatory relief to significant numbers of Large and Small Quantity Generators.

III. CONCLUSION

CCIG appreciates the opportunity to comment on EPA's proposed rule to list aerosol cans as universal waste. The Group urges EPA to adopt the Proposed Rule, which would promote the appropriate management of aerosol cans and alleviate unnecessary regulatory burdens while furthering the overarching goals hazardous waste regulation under RCRA.

Dated: May 15, 2018

Respectfully submitted,

A handwritten signature in purple ink, appearing to read "Megan Berge".

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²¹ See *Strategy for Addressing the Retail Sector under RCRA's Regulatory Framework* at 3.