OLEM-2017-0463

USWAG | UTILITY SOLID WASTE ACTIVITIES GROUP

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**VIA ELECTRONIC SUBMISSION AND U.S. MAIL**

U.S. Environmental Protection Center
EPA Docket Center
Docket ID No. EPA-HQ-OLEM-2017-0463
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Proposed Rule: Increased Recycling: Adding Aerosol Cans to the Universal Waste Program, Docket ID No. EPA-HQ-OLEM-2017-0463

To whom it may concern:

The Utility Solid Waste Activities Group ("USWAG")[1] submits these comments on EPA's proposal to add aerosol cans to the federal RCRA universal waste program. 83 Fed. Reg. 11654 (March 16, 2018). USWAG is an association of electric and gas utilities, power producers and affiliated associations and represents its members on, among other issues, the management and recycling of solid and hazardous wastes. USWAG member companies regularly generate waste aerosol cans during the generation, transmission and distribution of electricity and natural gas at a wide variety of locations and in various quantities. Adding aerosol cans to the RCRA universal waste program will directly impact the management and recycling of aerosol cans by our industry. USWAG generally supports EPA's proposal which will reduce the management burdens on the recycling and disposal of aerosol cans. We

[1] USWAG, formed in 1978, is an association of over one hundred and thirty electric utilities, power producers, utility operating companies, and utility service companies located throughout the United States, including the Edison Electric Institute ("EEI"), the American Gas Association ("AGA"), the American Public Power Association ("APPA"), and the National Rural Electric Cooperative Association ("NRECA"). Together, USWAG members represent more than 73% of the total electric generating capacity of the United States, and service more than 95% of the nation's consumers of electricity and 92% of the nation's consumers of natural gas.

have concerns, however, that the proposed management standards will limit the benefits that would otherwise accrue from adding aerosol cans to the universal waste program and will unnecessarily impose regulatory burdens on the recycling and disposal of these materials.

As an initial matter, USWAG firmly supports adding waste aerosol cans to the RCRA universal waste program. We agree that reducing the regulatory burdens on aerosol cans that otherwise would be subject to full RCRA hazardous waste regulation will significantly improve the collection and recycling of these cans. Much like the universal waste program has accomplished for other waste streams, households and very small quantity generators likely will decide either to accumulate their own wastes in larger amounts or bring these materials to collection centers which both diverts these wastes from being disposed of in municipal solid waste landfills and allows for the accumulation of universal wastes facilitating recycling. States' successful experiences with the management of aerosol cans as universal waste and the past success of the federal universal waste program for other materials is powerful evidence that similar benefits will accrue if EPA adds aerosol cans to the federal program.

Furthermore, if EPA adds these materials to the universal waste program, generators that otherwise would be classified as either small or large quantity generators would be allowed to accumulate larger volumes of these cans for up to one year which will significantly facilitate recycling. USWAG members generate aerosol cans at a wide variety of sites ranging from utility manholes to large power plants. Providing an option for the accumulation of these wastes at central collection points significantly reduces the regulatory burdens associated with managing these disparate but ubiquitous wastes. As is true for virtually all recycling, the collection of larger volumes of materials reduces the burden on managing and transporting aerosol cans being recycled.

In the preamble to the proposed rule, EPA provides a discussion of the appropriateness of adding aerosol cans to the federal universal waste program and how these materials meet the regulatory criteria established for this program. While USWAG agrees with EPA's assessment of the universal waste regulatory factors, we think that EPA's analysis does not consider other factors that are important for evaluating aerosol cans as a candidate for the program. In differentiating the relative risk of these cans in comparison with other hazardous waste, EPA does not consider the fact that the public at large knows about the risks of aerosol cans. These materials are so ubiquitous that the primary risk of these cans, ignitability, due to the pressurization and contents of these cans can be assumed to be common knowledge. This fact, above all other considerations, illustrates that these cans have a lower risk than other hazardous wastes.

EPA also does not fully consider the regulatory burdens associated with managing aerosol cans as hazardous waste. Even if aerosol cans are managed as excluded hazardous waste—for example, excluded scrap metal, these cans still must be subject to the codified legitimacy criteria, which is a significant burden on their potential recycling. Because the universal waste program is not a hazardous waste exclusion, the legitimacy criteria do not need to be evaluated for aerosol cans being recycled as universal waste. This factor alone is a significant benefit to managing aerosol cans as universal waste.

Notwithstanding our general support for the addition of aerosol cans to the federal universal waste program, we have significant concerns that EPA's proposal unnecessarily adds regulatory burdens to the management of these materials as universal waste. In the proposal's preamble, the Agency notes that generators that puncture and/or drain waste aerosol cans are exempt from RCRA permitting requirements if the activity is part of the recycling process. 83 Fed. Reg. at 11656. Nonetheless, EPA intends to codify management standards in the current proposal requiring the use of a commercial device with attendant written procedures on its use, including procedures for spill and release responses for handlers puncturing and draining aerosol cans. *Id.* at 11666-67. While we can see the benefit of this requirement for large scale commercial entities that handle aerosol cans on behalf of many generators, generators that manage their own aerosol cans should not be subject to this standard. Forcing generators to choose between managing aerosol cans as fully hazardous waste without management standards or universal waste subject to management standards will necessarily limit the relief provided by EPA in this rulemaking. Since generators have been safely handling the puncturing and draining of cans pursuant to the full hazardous waste regulations, imposing these management standards on purportedly streamlined universal waste standards seems unnecessary and counterproductive.

USWAG also supports EPA's position that the universal waste management standards should not adopt a limitation on the weight of cans authorized to be managed as universal waste. While aerosol cans are assumed to be of certain specific dimensions, adopting this limitation could require that all aerosol cans be weighed individually which would frustrate the streamlined management standards. This would be especially problematic for aerosol cans generated in the field at remote locations where scales might be inaccessible. Cans that did not meet this weight restriction would potentially be subject to full hazardous waste regulation and when managed together with universal waste cans would presumably subject entire loads of materials to full hazardous waste regulation. This type of restriction could frustrate the entire regulatory scheme being proposed.

In finalizing this regulatory program, USWAG also requests that EPA clarify the currently available management standards for aerosol cans that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. In the preamble of the proposal, EPA suggests that these cans "be subject to full hazardous waste standards" and not be managed pursuant to the universal waste standards being proposed. *Id.* at 11660. While we do not object to the exclusion of these cans from the scope of the proposal, we request that EPA clarify that these cans can still be punctured and drained by generators where it is safe to do so. By puncturing and draining these cans, generators can and often do eliminate potential leakage and remove a risk associated with future management of these cans. We also strongly encourage the Agency to address what constitutes leakage from aerosol cans. Many cans can have minor leaks such that the contents of the can are visible outside of the can. This can occur even from normal use and often does not indicate that the aerosol can's ability to contain its contents has been compromised. We urge EPA to clarify that cans with these ordinary "leaks" can still be managed pursuant to the proposed universal waste standards.

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We appreciate the opportunity to submit these comments on this important initiative. If you have questions about these comments or if we can be of further assistance, please contact USWAG counsel Aaron Wallisch (202-344-4474; ajwallisch@venable.com) at Venable LLP.

Sincerely,

James R. Roewer
Executive Director
Utility Solid Waste Activities Group