



AUTO ALLIANCE

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May 15, 2018

U.S. Environmental Protection Agency
Office of Land and Emergency Management (5304P)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Sent electronically to: <https://www.regulations.gov/>

Subject: “Proposed Rule to Add Aerosol Cans to the Universal Waste Regulations” (83 FR 11654); Docket ID No. EPA-HQ-OLEM-2017-0463

Dear Sir or Madam:

The Alliance of Automobile Manufacturers¹ (Alliance) appreciates the opportunity to provide comment on EPA’s proposed rule to expand the universal waste regulations² to include aerosol cans, “Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations.”³ Aerosol cans are widely used by the automotive industry in multifaceted applications within the vehicle development process as well as in the dealership networks. The Alliance supports EPA in this initiative and believes that regulating aerosol cans under the universal waste rules will simplify managing this ubiquitous waste stream. Current regulations require detailed waste characterizations for each can, difficult “point of generation” determinations, full satellite accumulation area requirements, and unnecessarily short time frames for generators to ship these materials off-site. The streamlined universal waste classification will reduce the compliance burden on generators while providing an effective framework to encourage recycling and ensure proper management.

While the proposed universal waste rules will simplify the specific requirements that apply to intact hazardous waste aerosol cans, the Alliance believes that there is an opportunity to greatly broaden the positive impacts of regulating aerosol cans as universal waste if EPA expands the applicability provisions of the rules. As proposed, and if applied in practice, limiting the universal waste category to only non-leaking intact cans greatly restricts the advantages of using the universal waste category to only a portion of the aerosol can waste stream and may not create the intended simplified system for a greater number of generators.

We urge EPA to consider the following:

- Create a Single Approach for Managing Non-Hazardous, Intact and Non-Intact Aerosol Cans
- Impact on Monthly Generator Category Determinations
- “Point of generation” for Waste Determinations
- Permitting Exemption for Puncturing / Draining Activities

¹ Alliance members are BMW Group, FCA US, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Cars of North America. For additional information, please visit <http://www.autoalliance.org>.

² 40 CFR 273.

³ 83 Federal Register (FR) 11656, “Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations,” Proposed Rule, March 16, 2018.



- Allow “Same Company” Operations to Manage Aerosol Cans Without Requiring Destination Facility Permitting
- Allow Alternative Labeling Language
- No Aerosol Can Size Limit
- Paint Related Material Should be Added as a Universal Waste

Create a Single Approach for Managing Non-Hazardous, Intact and Non-Intact Aerosol Cans

The Alliance requests that EPA create a single regulatory structure for aerosol cans that allows non-hazardous, non-intact, and intact aerosol cans to be managed as universal waste. As indicated in EPA’s background information and rationale for the proposal, aerosol cans are “widely used for dispensing a broad range of products”⁴ by many different entities, and the metal used to make the cans has high potential to be recycled. The proposed rule presents a hierarchy for aerosol can management that requires a generator to have at least three separate can management procedures: one for non-hazardous aerosol cans, one for intact universal waste aerosol cans, and one for non-intact (leaking) hazardous waste aerosol cans. Incompatible and non-recyclable materials would also need to be considered and would require additional segregation and management procedures. The proposed rule requires each user of an aerosol can to evaluate the can’s regulatory category at the time the can is no longer going to be used, and then follow through and comply with the can’s corresponding management requirements. This evaluation is required to be repeated for every can throughout a facility. Although the proposed rule is an improvement over the current requirements by potentially reducing the regulatory burden specific to intact hazardous waste cans, the benefits of the regulation could be greatly enhanced by allowing all aerosol cans—non-hazardous, intact, and non-intact cans—to be managed together. Allowing all aerosol cans to be managed together in accumulation containers is more likely to ensure that cans containing hazardous waste will not inadvertently be disposed as non-hazardous waste and cans showing evidence of leakage would be properly contained while waiting to be punctured on-site for further recycling or shipped off-site for proper management.

Allowing aerosol cans that show evidence of leakage (non-intact cans) to also be managed as universal waste would be consistent with existing regulations for universal waste batteries. Universal waste handlers may manage leaking (non-intact) batteries as universal waste provided the compromised batteries are placed in a closed, structurally sound container; the handler must ensure any released materials are properly contained, characterized, and managed accordingly. EPA’s approach for identifying non-qualifying cans as those that “are not leaking or otherwise damaged where contents or propellants could be dispersed out of the can”⁵ is subjective. Creating separate regulatory requirements for intact and non-intact cans potentially eliminates the recycling opportunity for non-intact cans and establishes a higher risk for non-compliance with the rules. Unless a single aerosol can management approach is allowed, the burden for generators—to evaluate each can against the “intact” criteria, segregate the cans, and comply with different complex standards for what may appear to be the “same” waste—will not be measurably reduced. Allowing management of non-hazardous, non-intact, and intact aerosol cans as universal waste is expected to result in no additional risk to human health or the environment. Lastly, managing non-hazardous aerosol cans as universal waste would be optional for generators and not a requirement.

⁴ 83 Federal Register (FR) 11656, “Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations,” Proposed Rule, March 16, 2018.

⁵ Id. At 11660.



Impact on Monthly Generator Category Determinations

If EPA establishes an aerosol can as subject to full hazardous waste regulations based on whether the can is intact (or not), generators will have difficulty establishing and maintaining a stable generator category. In practice, generators monitor their activities and establish procedures that will ensure compliance based on the highest predictable amount of waste generated. One of the greatest benefits of moving aerosol cans into the universal waste regulatory structure is that many generators have the potential to operate in a lower category once aerosol cans are removed from their monthly hazardous waste generation calculations. Continuing to have certain cans managed as hazardous waste based on unpredictable conditions (evidence of leakage, potential for propellants to be dispersed, damaged, etc.) will not provide the full potential of reduced requirements associated with other universal waste regulations nor provide a consistent compliance category for generators.

The Alliance also requests that EPA clarify whether it allows non-hazardous aerosol cans to be accumulated with hazardous aerosol cans. This overly conservative management practice may be the most effective way for a generator to ensure compliance on the plant floor and facilitate the recycling of the containers. Eliminating waste characterizations by the user of the can, allowing easy collection of the cans, and simplifying the regulatory requirements will provide the greatest benefit to generators and best assurance of proper management—including increased recycling. Unnecessary segregation of materials that may be sent off-site to the same destination facility adds additional burdens and increased resources without providing any additional environmental benefits.

“Point of Generation” for Waste Determinations

EPA has interpreted the “point of generation” to be at both the time and place the waste is initially generated and “that the [waste] determination cannot be made downstream in the process, where other materials could be mixed with the waste or where the waste may have changed its physical or chemical characteristics.”⁶ Establishing the correct point of generation for this unique waste stream is critical since a generator’s category is determined each month based on the amount of hazardous waste generated in that month. The Alliance requests that EPA clarify the point of generation for conducting a waste determination for the residues collected from draining and/or puncturing aerosol cans and for non-intact cans. Depending on the variety of products handled, it may be impractical to conduct a complete waste determination until all the residues have been collected and mixed. Alliance suggests that for residues collected from draining and/or puncturing activities, the point of generation is when the handler has determined the waste stream is representative of the material that will be shipped off-site.

Permitting Exemption for Puncturing/Draining Activities

The Alliance supports continuing to exempt puncturing and draining activities from permitting since they are part of the recycling process. However, the Alliance requests clarification on the following statement: “Storage of hazardous waste aerosol cans prior to recycling still requires a permit, unless it is exempt from permitting under another provision.”⁷ The Alliance requests that EPA establish the start of accumulation time to begin when the container is full, not when the

⁶ 81 FR 85750 and 85759, “Hazardous Waste Generator Improvements Rule,” Final Rule, November 28, 2016.

⁷ 83 FR 11660.



first initial residue material is added to the container. This will simplify the burden on generators and support efficient management of the material without imposing restrictive time frames. Therefore, the 90/180-day accumulation time limits would be exempt from permitting.

Allow “Same Company” Operations to Manage Aerosol Cans Without Requiring Destination Facility Permitting

The Alliance requests EPA to consider “same company” generators and handlers to collect, puncture, and drain aerosol cans from “same company” generators and handlers without becoming universal waste destination facilities. This approach would allow businesses to leverage resources to effectively manage aerosol cans. Similar to the provisions in the Hazardous Waste Generator Improvements Rule⁸ that allow a large quantity generator to accept and consolidate its waste with hazardous waste from a “same company” very small quantity generator,⁹ the Alliance suggests that leveraging resources between same company facilities, such as equipment, trained employees, and knowledge of the waste may reduce costs and enhance compliance.

Allow Alternative Labeling Language

The Alliance requests that EPA allow generators to label the container/can with any words that identify the aerosol cans or contents of the accumulation container. Providing more flexible labeling language will ease compliance without compromising proper management of the wastes. This may be accomplished by revising language in proposed 40 CFR 262.273.34(f) as follows: (proposed changes in italics and underlined)

(f) Universal waste aerosol cans (i.e., each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases *such as, “aerosol can(s)”, “Universal Waste—Aerosol Can(s)”, “Waste Aerosol Can(s)”, or “Used Aerosol Can(s)”, or other words to identify the contents of the container or can, such as, “aerosol can(s)”*.

No Aerosol Can Size Limit

The Alliance agrees with EPA that there should not be a size limit on aerosol containers that may be managed as universal waste. A size limitation adds an unnecessary complexity to implementing the rules.

Paint Related Material Should be Added as a Universal Waste

EPA should consider expanding the universal waste rules to include paint and paint-related materials. These materials are regulated as universal wastes in both Ohio and Texas, significantly simplifying the regulatory requirements for these ubiquitous materials and eliminating unnecessary characterizations. This approach reduces the potential for these items to be improperly managed by providing a simpler, but protective, management approach.

⁸ 81 FR 85750 and 85759, “Hazardous Waste Generator Improvements Rule,” Final Rule, November 28, 2016.

⁹ 40 CFR 262.17(f).



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Conclusion

The Alliance appreciates EPA's consideration of these comments and urges EPA to increase the breadth of aerosol cans that may be managed as universal waste. If you have any questions regarding these comments, please don't hesitate to contact me.

Best Regards,

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