



# AmericanCoatings

ASSOCIATION<sup>SM</sup>

May 15, 2018

Tracy Atagi  
Office of Land and Emergency Management  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460  
Docket ID No.: EPA—HQ—OLEM—2017—0463

**RE: EPA's Proposed Rule to Add Aerosol Cans to the Universal Waste Regulations; ACA Comments**

Dear Ms. Atagi:

The American Coatings Association<sup>1</sup> (ACA) submits the following comments regarding the U.S. Environmental Protection Agency's (EPA or the Agency) proposed rule to add hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (RCRA). ACA appreciates the opportunity to comment on the proposed rule, and looks forward to assisting EPA throughout the rulemaking process.

## **1. Definition of "Aerosol Can"**

In the proposed rule, EPA defines "aerosol can" as "an intact container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam."<sup>2</sup> EPA states in the preamble that this definition is the same as the definition used in the California, Colorado, New Mexico, and Utah universal waste programs, with the exception of a size limit in Utah's definition. ACA supports this consistency and believes that the scope of the definition of "aerosol can" is appropriate.

Furthermore, ACA does not believe that EPA should include a size limit of twenty-four (24) ounces or any other limitation on the types of aerosol cans that would be eligible under this rule. As mentioned, the definition of aerosol can under Utah's universal waste program includes a size limitation of twenty-four (24) ounces.<sup>3</sup> The U.S. Department of Transportation (DOT) already limits the capacity of an aerosol container to one (1) liter.<sup>4</sup> Since aerosol cans would need to follow this limitation to be transported as a product, it is not necessary to duplicate the limitation in this proposed rule. Thus, ACA does not believe that EPA should include a size limitation on universal waste aerosol cans.

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<sup>1</sup> The American Coatings Association (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

<sup>2</sup> 83 FR 11660.

<sup>3</sup> Utah Administrative Code R315-273-9(a).

<sup>4</sup> 49 CFR § 173.306.

## **2. Puncturing and Draining Requirements**

Under EPA's Universal Waste Regulations, sections 273.13 and 273.33 outline the waste management requirements for small quantity handlers of universal waste and large quantity handlers of universal waste. For aerosol cans, the proposed rule allows small quantity handlers and large quantity handlers to puncture and drain their aerosol cans, *so long as the empty punctured aerosol cans are recycled and the handlers follow seven specific requirements while performing the actual puncturing and draining of the hazardous waste aerosol cans.*<sup>5</sup> ACA believes that the puncturing and draining requirements that EPA is proposing are appropriate, and that no further limitations need to be imposed on handlers who puncture and drain aerosol cans. The proposed limitations are consistent with other state universal waste aerosol programs, including universal waste programs in California, Colorado, New Mexico, Ohio, and Utah.

Furthermore, ACA supports EPA's proposed regulatory requirements for can-draining devices. One of the requirements for universal waste handlers who puncture and drain their aerosol cans is that the handler "conduct puncturing and draining activities using a device specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof."<sup>6</sup> This requirement ensures the safety of the handler and the environment. In addition, ACA and its member companies are not aware of any compatibility problems that would be posed for aerosol can puncturing and draining with regards to the paint and coatings industry.

## **3. Effect on State Authorization**

In the state authority section of the preamble, EPA explains that "some states have already added aerosol cans to [its] list of universal wastes.... If a state's standards for aerosol cans are less stringent than those in the final rule, the state would have to amend its regulations to make them at least equivalent to the federal standards and pursue authorization."<sup>7</sup> ACA recognizes that EPA has tried to develop a proposal consistent with existing state rules to minimize the effect of a federal rule on state authorization. However, there are some differences between EPA's proposed rule and Ohio EPA's Dec. 8, 2017 final action that added "aerosol containers" to its universal waste rules.<sup>8</sup> While there are differences in language, ACA believes Ohio EPA's aerosol container universal waste rules are as stringent as EPA's proposed rule. ACA supports the approach Ohio EPA has taken.

## **4. EPA Background Information Regarding Over-Heating of Aerosol Cans**

In the background section of the preamble, EPA states that as a result of over-heating an aerosol can, it "may fragment as it bursts, releasing metal shards."<sup>9</sup> The aerosol industry has performed fire tests on metal aerosol products since the 1980s when fire codes were developed for the safe manufacturing and storage of these products. When the pressure from an over-heated or over-pressurized container cause contents to release, the product will be released at a designed or known weak point of the container. For a two-piece or three-piece metal aerosol product, this would be at the crimp of the dome, the crimp of the bottom, or possibly at a seam. The resulting burst would not result in the container releasing metal shards. ACA suggests EPA substantiate its statement from the preamble or otherwise remove it.

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<sup>5</sup> 40 CFR § 273.13(e) for small quantity handlers and 40 CFR § 273.33(e) for large quantity handlers.

<sup>6</sup> 40 CFR § 273.13(e)(3)(i) for small quantity handlers and 40 CFR § 273.33(e)(3)(i) for large quantity handlers.

<sup>7</sup> 83 Fed. Reg. 11663 (March 16, 2018).

<sup>8</sup> Ohio Administrative Code 3745-273-01, 09, 13, 14, 33, 34, and 89.

<sup>9</sup> 83 Fed. Reg. 11656 (March 16, 2018).

## 5. Adding Paint and Paint Related Waste to the Federal Universal Waste Regulations

Lastly, in the background section of the preamble, EPA states, “aerosol cans are widely used for dispensing a broad range of products including paints....” ACA recommends that EPA consider adding “paint and paint-related waste” to the federal universal waste program. ACA believes that “paint and paint-related waste” meets the factors that describe hazardous waste that is appropriate for management under the streamlined universal waste system.

Thank you for your consideration of our comments and concerns. We look forward to working with EPA as it develops the universal waste program. Please do not hesitate to contact us if you have any questions.

Sincerely,

/s/

Rhett Cash  
Counsel, Government Affairs

/s/

Raleigh Davis  
Assistant Director, Environmental  
Health & Safety

/s/

Xavier Ferrier  
Specialist, Environmental  
Health & Safety

*\*\*Sent via regulations.gov\*\**