



12/21/2016

Karen Hale  
Ohio Environmental Protection Agency, DERR  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
karen.hale@epa.ohio.gov

Re: Interested Party Review – Draft Ohio-Specific Universal Waste Rules

Dear Ms. Hale,

The Ohio Manufacturers' Association (OMA) is dedicated to protecting and growing manufacturing in Ohio. The OMA represents over 1,400 manufacturers in every industry and in every county of Ohio. For more than 100 years, the OMA has supported reasonable, necessary, and transparent environmental regulations that promote the health and well-being of Ohio's citizens.

The OMA appreciates the opportunity to comment on Ohio EPA's draft rules adding Ohio-specific wastes to Ohio EPA's Universal Waste rules. The OMA has a few comments to submit regarding the draft rules and rule modifications.

#### Waste Management Standards and Storage

The rule provisions in OAC 3745-273-33(E)(1) and OAC 3745-34(F) pertaining to management and labeling of aerosol containers allow for storage of aerosol containers in "a cabinet, hopper, or container." A cabinet is therefore recognized as an acceptable manner of storage that "prevents releases of any universal waste or any component of a universal waste to the environment" as it pertains to aerosol containers. OAC 3745-273-33(E). However, the rule provisions pertaining to universal waste batteries and lamps do not similarly allow for storage of batteries and lamps in a cabinet, even though cabinet would be well-suited for storage of these universal wastes as well. OAC 3745-273-33(A)(1), (D)(1).

A cabinet holding universal waste batteries or lamps can be better secured to prevent releases or damage to the waste containers than a container alone. A closed and labeled cabinet containing batteries or lamps, rather than, for example, individual boxes of batteries or lamps, would in some scenarios be easier to manage. Lamps and batteries are collected and placed in containers over the course of months, often by multiple individuals. It can be difficult to ensure that box ends remain fully closed. Moreover, the original packaging of boxes for new lamps is often used for lamp collection. These boxes are typically glued or stapled shut, and there are ends that often do not stay fully closed. Furthermore, purchased tubes for lamp collection can deform into an oval shape if left on their side, making it extremely difficult to get the lid back on the box. Placing the box upright,

especially for 8 foot bulbs, creates other issues and may even subject the box to getting dropped.

For these reasons, “cabinet or other unit” should be added to the provisions for storage of batteries and lamps, to reflect the similar provision already included for aerosol containers. Suggested changes have also been made to ensure consistency between OAC 3745-273-33 and -34. The suggested changes have been made in redline to the enclosed versions of draft OAC 3745-273-33(A)(1), (D)(1), and (E)(1), and OAC 3745-273-34(A), (E), and (F) as they pertain to large quantity handlers. Changes should similarly be made to OAC 3745-273-13(A)(1), (D)(1), and (E)(1), and OAC 3745-273-14(A)(1) and (E) as they pertain to small quantity handlers.

### Interstate Transport of Universal Waste

The OMA further requests clarification of the rules pertaining to interstate transport of universal wastes. If a facility manages an Ohio-specific universal waste and sends it for recycling to another state, can this be managed as a universal waste? Are the requirements set forth in OAC 3745-273-39 the only such requirements for tracking of this waste? For example, with universal waste paint waste and paint-related waste, if another state has not adopted provisions similar to Ohio to treat such wastes as universal wastes, but rather, regulates paint waste and paint-related waste as a hazardous waste, what rule provisions would apply to such scenario? How would paint waste and paint-related waste be regulated if another state has not adopted provisions similar to Ohio to treat such wastes as universal wastes, but rather has adopted the federal provisions for solid waste set forth in 80 FR 1694, and if such paint waste or paint-related waste meets the Ohio definition for universal waste but does not meet the federal definition for solid waste applicable in the other state? The OMA would appreciate clarification of scenarios of this nature.

### Labeling or Marking Standards

The rule changes applicable to how universal wastes must be labeled present a concern, as these new requirements differ from the federal requirements. Many facilities use pre-printed universal waste labels that comply with the federal requirements for labeling of universal waste, which are acceptable in all other states. The Ohio-specific labeling changes will now consequently result in a different labeling requirement than that used by the majority of states. OMA requests that OAC 3745-273-14 and OAC 3745-273-34 be modified to include the option to use either the federally-accepted label phrases or the Ohio-specific phrases.

### Management Standards

The management standards set forth in OAC 3745-273-89 prohibit mixtures of universal waste and other waste to be managed as universal waste. See OAC 3745-273-89(C)(2)(c). While the definition of paint-related waste set forth in OAC 3745-273-09(M) is broad, the wording of OAC 3745-273-89(C)(2)(c) leaves confusion as to the scope of what is included. OMA believes that paint overspray captured on filters and PPE, wipes, cleaners, and solvents mixed with paint fall within the definition of paint-related waste in OAC 3745-273-09(M). Such wastes should not be considered mixtures of universal and other waste, and should be eligible for management as universal waste.

### Puncturing, Shredding, or Crushing Containers of Paint

The current rules in OAC 3745-273-13(G)(10) and -33(G)(10) allow for the use of commercially available equipment specifically designed to puncture, shred, or crush and empty the paint containers within an enclosed compartment or hopper. However, some handlers perform these same actions using noncommercial equipment (for example, custom-built equipment) that is equally as effective. The OMA therefore requests that OAC 3745-273-13(G)(10) and -33(G)(10) be broadened to allow for use of noncommercial equipment in addition to commercially available equipment.

Additionally, OAC 3745-273-13(G)(10) and -33(G)(10) should be broadened to allow for handlers to open, scrape, and drain the paint containers, in addition to puncturing, shredding, or crushing. This addition is necessary to allow handlers to segregate the coatings into colors to facilitate recycling of the paint. The OMA therefore requests that language be added to allow for handlers to open, scrape, and drain paint containers, in addition to puncturing, shredding, or crushing.

### VOCs Emission Control

The provisions for aerosol containers and paint waste and paint-related wastes that require the capture of volatile organic carbons (VOCs) using an air filter should be reconsidered, as such filters would not suffice to capture such emissions for propellant or any substantial VOCs. See OAC 3745-273-13(E)(4) and (G)(10); OAC 3745-273-33(E)(4) and (G)(10). Any such language should be expanded to allow for "other methods approved by the agency," so as to provide an option for VOC control that may be more effective (such as direct to RTO or boiler).

The OMA is grateful to Ohio EPA for expanding the Universal Waste Rule definitions for Ohio. The OMA would further encourage exploration of other opportunities in the future to expand these provisions, such as implementation of U.S. EPA's RCRA rules for definitions of solid waste (as published in the January 13, 2015 Federal Register, 80 FR 1694). This would have the effect of encouraging recycling and reducing regulatory costs to Ohio's manufacturers.

As Ohio EPA continues to develop these rules please include the OMA in these developments, and OMA environmental counsel Frank L. Merrill at Bricker & Eckler. We look forward to working with Ohio EPA on this issue.

Regards,



Rob Brundrett  
Director, Public Policy Services

Encl.

cc: Frank L. Merrill, Esq.

**NEW**

**3745-273-33**      **Waste management- standards for large quantity handlers of universal waste.**

(A) Universal waste batteries. A large quantity handler of universal waste shall manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) A large quantity handler of universal waste shall contain any universal waste battery that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container, cabinet, tank, or other unit. The container, cabinet, tank, or other unit shall be closed, structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

(2) A large quantity handler of universal waste may conduct any or all of the following activities as long as the casing of each individual battery cell is not breached and remains intact and closed (except that cells may be opened to remove electrolyte but shall be immediately closed after removal):

(a) Sorting batteries by type.

(b) Mixing battery types in one container.

(c) Discharging batteries so as to remove the electric charge.

(d) Regenerating used batteries.

(e) Disassembling batteries or battery packs into individual batteries or cells.

(f) Removing batteries from consumer products.

(g) Removing electrolyte from batteries.

(3) A large quantity handler of universal waste who removes electrolyte from batteries, or who generates other waste (e.g., battery pack materials, discarded consumer products) as a result of the activities listed in paragraph (A)(2) of this rule, shall determine whether the electrolyte or other waste exhibit a characteristic of hazardous waste identified in rules 3745-51-20 to 3745-51-24 of the Administrative Code.

- (a) If the electrolyte or other waste exhibit a characteristic of hazardous waste, the electrolyte or other waste shall be managed in compliance with all applicable requirements of Chapters 3745-50 to 3745-69, 3745-205, 3745-256, 3745-266, and 3745-270 of the Administrative Code. The handler is considered the generator of the hazardous electrolyte or other waste and is subject to Chapter 3745-52 of the Administrative Code.
  - (b) If the electrolyte or other waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable law.
- (B) Universal waste pesticides. A large quantity handler of universal waste shall manage universal waste pesticides in a way that prevents releases of any universal waste or component of a universal waste to the environment. The universal waste pesticides shall be contained in one or more of the following:

  - (1) A container that remains closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
  - (2) A container that does not comply with paragraph (B)(1) of this rule, provided that the unacceptable container is overpacked in a container that does comply with paragraph (B)(1) of this rule.
  - (3) A tank that complies with rules 3745-66-90 to 3745-66-101 of the Administrative Code, except for paragraph (C) of rule 3745-66-97, rule 3745-66-100, and rule 3745-66-101 of the Administrative Code.
  - (4) A transport vehicle or vessel that is closed, structurally sound, compatible with the pesticide, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.
- (C) Universal waste mercury-containing equipment. A large quantity handler of universal waste shall manage universal waste mercury-containing equipment in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

  - (1) A large quantity handler of universal waste shall place in a container any universal waste mercury-containing equipment with non-contained elemental mercury or that shows evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The container shall be closed, structurally sound, compatible with the contents of the device, shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and shall

be reasonably designed to prevent the escape of mercury into the environment by volatilization or any other means.

- (2) A large quantity handler of universal waste may remove mercury-containing ampules from universal waste mercury-containing equipment provided the handler does all of the following:
- (a) Removes and manages the ampules in a manner designed to prevent breakage of the ampules.
  - (b) Removes the ampules only over or in a containment device (e.g., tray or pan sufficient to collect and contain any mercury released from an ampule in case of breakage).
  - (c) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks from broken ampules from that containment device to a container that complies with rule 3745-52-34 of the Administrative Code.
  - (d) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that complies with rule 3745-52-34 of the Administrative Code.
  - (e) Ensures that the area in which ampules are removed is well ventilated and monitored to ensure compliance with applicable occupational safety and health administration (OSHA) exposure levels for mercury.
  - (f) Ensures that employees removing ampules are thoroughly familiar with proper waste mercury handling and emergency procedures, including transfer of mercury from containment devices to appropriate containers.
  - (g) Stores removed ampules in closed, non-leaking containers that are in good condition.
  - (h) Packs removed ampules in the container with packing materials adequate to prevent breakage during storage, handling, and transportation.
- (3) A large quantity handler of universal waste mercury-containing equipment that does not contain an ampule may remove the open original housing holding the mercury from universal waste mercury-containing equipment provided the handler does the following:

- (a) Immediately seals the original housing holding the mercury with an air-tight seal to prevent the release of any mercury to the environment.
    - (b) Follows all requirements for removing ampules and managing removed ampules under paragraph (C)(2) of this rule.
  - (4) Mercury and clean-up residues.
    - (a) A large quantity handler of universal waste who removes mercury-containing ampules from mercury-containing equipment or seals mercury from mercury-containing equipment in the original housing shall determine whether the following exhibit a characteristic of hazardous waste identified in rules 3745-51-20 to 3745-51-24 of the Administrative Code:
      - (i) Mercury or clean-up residues resulting from spills or leaks.
      - (ii) Other waste generated as a result of the removal of mercury-containing ampules or housings (e.g., the remaining mercury-containing device).
    - (b) If the mercury, residues, or other waste exhibit a characteristic of hazardous waste, the mercury, residues, or other waste shall be managed in compliance with all applicable requirements of Chapters 3745-50 to 3745-69, 3745-205, 3745-256, 3745-266, and 3745-270 of the Administrative Code. The handler is considered the generator of the mercury, residues, or other waste and shall manage the mercury, residues, or other waste in compliance with Chapter 3745-52 of the Administrative Code.
    - (c) If the mercury, residues, or other waste is not hazardous, the handler may manage the waste in any way that is in compliance with applicable law.
- (D) Universal waste lamps. A large quantity handler of universal waste shall manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:
  - (1) A large quantity handler of universal waste shall contain any lamp in containers, ~~cabinets, or~~ packages, or other units that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers, ~~cabinets, and~~ packages, or other units shall remain closed and shall lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

- (2) A large quantity handler of universal waste shall immediately clean up and place in a container any lamp that is broken and shall place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or other hazardous constituents to the environment. Containers shall be closed, structurally sound, compatible with the contents of the lamps, and shall lack evidence of leakage, spillage, or damage that could cause leakage or releases of mercury or other hazardous constituents to the environment under reasonably foreseeable conditions.
- (E) Universal waste aerosol containers. A large quantity handler of universal waste shall manage universal waste aerosol containers in a way that prevents releases of any universal waste or any component of a universal waste to the environment, as follows:
- (1) A large quantity handler of universal waste shall store aerosol containers in a cabinet, hopper, ~~package, or~~ container, or other unit that is structurally sound and compatible with the contents of the containers and that lacks leakage.
- (2) A large quantity handler of universal waste who initially collects aerosol containers at universal waste satellite accumulation areas prior to moving the aerosol containers to a specified accumulation area for storage, puncturing, or shipment off-site shall move the satellite accumulation container to the specified accumulation area once the satellite accumulation container is full.
- (3) A large quantity handler of universal waste shall immediately empty a leaking aerosol container of the container's contents in accordance with paragraph (E)(4) of this rule or shall individually overpack the leaking aerosol container in a container having enough absorbent material to absorb the leaking contents of the aerosol container.
- (4) A large quantity handler of universal waste may puncture, crush, or shred an aerosol container to remove and collect the contents of the aerosol container, rendering the container empty, provided the handler does the following:
- (a) The large quantity handler of universal waste shall use commercially available equipment specifically designed to puncture, crush, or shred and empty aerosol containers within an enclosed compartment.
- (b) The large quantity handler of universal waste shall use puncturing, crushing, or shredding equipment that has sufficient processing

**3745-273-34      Labeling/markings Labeling or marking- standards for large quantity handlers of universal waste.**

A large quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified in this rule follows:

- (A) Universal waste batteries (i.e., each battery), or a container, ~~cabinet, or~~ tank, or other unit in which the batteries are contained, must be labeled or marked clearly with any ~~one~~ of the following phrases: "Universal Waste-Battery(ies), Batteries" or "Waste Battery(ies), Batteries" or "Used Battery(ies) Batteries.";
- (B) A container (or multiple container package unit), tank, or transport vehicle or vessel in which recalled universal waste pesticides as described in paragraph (A)(1) of rule 3745-273-03 of the Administrative Code are contained must be labeled or marked clearly with the following:
- (1) The label that was on or accompanied the product as sold or distributed; and.
- (2) The words "Universal Waste- Pesticide(s) Pesticides" or "Waste-Pesticide(s) Pesticides.";
- (C) A container, tank, or transport vehicle or vessel in which unused pesticide products as described in paragraph (A)(2) of rule 3745-273-03 of the Administrative Code are contained must be labeled or marked clearly with the following:
- (1) Labeling.
- (a) The label that was on the product when purchased, if still legible;
- (b) If using the labels described in paragraph (C)(1)(a) of this rule is not feasible, the appropriate label as required under the department of transportation regulation 49 CFR Part 172;
- (c) If using the labels described in paragraphs (C)(1)(a) and (C)(1)(b) of this rule is not feasible, another label prescribed or designated by the pesticide collection program; and.
- (2) The words "Universal Waste- Pesticide(s) Pesticides" or "Waste-Pesticide(s) Pesticides."
- (D) Universal waste mercury-containing equipment and mercury-containing thermostats.

- (1) Mercury-containing equipment (i.e., each device), or a container in which the equipment is contained, ~~must~~shall be labeled or marked clearly with any of the following phrases: "Universal Waste- Mercury-Containing Equipment;" or "Waste Mercury-Containing Equipment;" or "Used Mercury-Containing Equipment."
- (2) A universal waste mercury-containing thermostat or container containing only universal waste mercury-containing thermostats ~~must~~shall be labeled or marked clearly with any of the following phrases: "Universal Waste-Mercury ~~Thermostat(s), Thermostats~~" or "Waste Mercury ~~Thermostat(s), Thermostats~~" or "Used Mercury ~~Thermostat(s), Thermostats~~."
- (E) Each lamp or a container, ~~cabinet, or~~ package, or other unit in which such lamps are contained ~~must~~shall be labeled or marked clearly with any one of the following phrases: "Universal Waste- ~~Lamp(s), Lamps~~" or "Waste ~~Lamp(s), Lamps~~" or "Used ~~Lamp(s), Lamps~~."
- (F) Each universal waste aerosol container, multiple aerosol container package, cabinet, hopper, or other unit in which the aerosol containers are accumulated shall be labeled with words that identify the contents (for example but not limited to: universal waste aerosol containers, used aerosol containers, recyclable aerosol containers). This provision also applies to collection units used in universal waste satellite accumulation areas.
- (G) Each container or tank of universal waste antifreeze used to accumulate antifreeze shall be labeled with words that identify the contents of the container or tank (for example, used antifreeze, spent antifreeze, universal waste antifreeze, recyclable antifreeze).
- (H) Paint and paint-related wastes.
- (1) Each container, tank, multiple container package or hopper in which universal waste paints are accumulated shall be labeled with words that identify the contents of the container, tank, transport vehicle, multiple container package or hopper (for example but not limited to, universal waste paint, paint waste or recyclable paint).
- (2) Each container or tank in which universal paint-related wastes are accumulated shall be labeled to identify the contents of the container or tank (for example but not limited to: paint-related universal waste, paint-related waste, paint wastes or a general description of the waste- paint rags, used paint stripper or used paint blast media).

[Comment: For dates of non-regulatory government publications, publications of recognized organizations and associations, federal rules, and federal statutory provisions referenced in this rule, see rule 3745-50-11 of the Administrative Code titled "Incorporated by reference."]

Effective: Set UW date

Five-year review date: Exempt, Set UW review

Promulgated under: 119.03

Rule amplifies: 3734.12

Statutory authority: 3734.12

Prior effective dates: 09/02/1997, 12/07/2004, 09/05/2010