

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
STANDARDS FOR UNIVERSAL)	R 2025-22
WASTE MANAGEMENT)	(Rulemaking–Land)
(35 ILL. ADM. CODE PARTS 703, 720,)	
721, 724, 725, 728, and 733))	

NOTICE

TO: ATTACHED CERTIFICATE OF SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency’s (“IEPA” or “Agency”) RESPONSES TO THE ILLINOIS ATTORNEY GENERAL’S QUESTIONS FOR THE IEPA, a copy of which is herewith served upon you.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

By: /s/ Nick M. San Diego
Nick M. San Diego
Deputy General Counsel
Division of Legal Counsel

DATED: April 16, 2025

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**RESPONSES TO THE ILLINOIS ATTORNEY GENERAL’S QUESTIONS
FOR THE IEPA**

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”), by and through its counsel, and hereby submits its Responses to the Illinois Attorney General’s Questions as follows:

1. Does the way Illinois Environmental Protection Agency’s (“IEPA”) plan to implement the Paint Stewardship Act (P.A. 103-372) and its proposed associated regulations differ from the way IEPA implements other stewardship programs? For instance, does it differ in significant ways from the Drug Take-Back Act (410 ILCS 720), Mercury Thermostat Collection Act (415 ILCS 98), Electronic Products Recycling and Reuse Act (415 ILCS 150), or the Mercury Switch Removal Act (415 ILCS 97).

RESPONSE: The Agency plans to implement the Paint Stewardship Act in the same manner as other Extended Producer Responsibility (“EPR”) or stewardship programs. The main difference with the Paint Stewardship Act is that PaintCare, the organization that will be operating the paint EPR program on behalf of manufacturers, desires to collect oil-based paint from non-households. This paint is regulated as hazardous waste, which led to PaintCare seeking the trailer bill (later enacted as P.A. 103-887) so that collection of the oil-based paint could be conducted under the universal waste rules instead of the full hazardous waste regulations. The Drug Takeback Act and Electronic Products Recycling and Reuse Act are more comparable to “modern stewardship programs” but the Mercury Thermostat Collection Act and the Mercury Switch Removal Act are not stewardship programs. There are independent requirements with relation to mercury removal that do not apply to the other Acts mentioned.

2. Does IEPA have the authority to implement requirements for the statutorily required “paint stewardship program plan” (P.A. 103-372 at Section 15) or “annual report” (P.A. 103-372 at Section 40)? In particular, does IEPA have the authority to implement the statutory requirement that the paint stewardship program “shall seek to reduce the generation of postconsumer paint, promote its reuse and recycling, and manage the postconsumer paint waste stream using environmentally sound management practices”? (P.A. 103-372 at Section 15(a))

RESPONSE: Yes, the Agency has the authority. The Agency interprets the quoted language in Subsection 15(a) as providing a general description of what a stewardship program should

“seek” to accomplish. The specifics of how those goals must be accomplished, however, are set forth in detail in Subsection 15(b) through the required contents of a program plan. The Agency’s duties with respect to a program plan are set forth in Subsection 15(d) of P.A. 103-372 (which is also codified as Section 15(d) of the Paint Stewardship Act, 415 ILCS 175/).¹ The Agency is to review the plan and approve it if the plan contains all of the information required under Subsection 15(b).

3. Is IEPA aware of any major differences between the way it proposes to implement the Paint Stewardship Act and the way other states implement similar paint stewardship programs?

RESPONSE: The Agency is not sufficiently familiar with other states’ implementation of their paint stewardship programs to make a comparison to the implementation of the Paint Stewardship Act.

4. Are there regulatory responsibilities currently performed by IEPA that would instead be performed by PaintCare after adoption of these regulations? If so, are there legal mechanisms by which IEPA could resume these responsibilities?

RESPONSE: No, there are no regulatory responsibilities currently performed by the IEPA that would instead be performed by PaintCare. PaintCare and the IEPA have, and will continue to have, entirely different roles with the regard to the implementation of this regulation. The IEPA will continue to maintain regulatory authority to ensure the Universal Waste regulations are complied with, and if the Hazardous Waste regulations are triggered, the IEPA will still have the authority to enforce them.

5. Would these regulations lead to large quantities of waste paint being stored at collection sites? Would some collection sites become large quantity handlers if paint accumulates over long periods of time? *See* proposed Section 733.133(f), IEPA’s Statement of Reasons (“SR”) at 125. Are expected paint collection sites located in environmental justice communities?

RESPONSE: These regulations themselves would not inherently lead to large quantities of waste paint being stored at collection sites. Whether large quantities of waste paint are being stored at collection sites is solely dependent upon the amount of paint and paint-related waste being collected and how often the collection is picked up and transported. These collection sites could also potentially become large quantity handlers if they accumulated 5,000 kg or more of paint pursuant to Section 733.109. Subpart C of the amended regulations provides standards for large quantity handlers. It is anticipated that some paint collection sites would be located within and outside of environmental justice communities.

¹ Question No. 2 references Public Act 103-372. This Public Act was signed into law on July 28, 2023, creating the Illinois Paint Stewardship Act, 415 ILCS 175. Note also that the Paint Stewardship Act was then later amended by Public Act 103-887. Although, this amendment only served to change the dates and timeframes found in Section 15(d), Section 25, and Section 40, references to either Public Act may generate confusion given that both enacted laws are now compiled in the Illinois Paint Stewardship Act found at 415 ILCS 175.

6. The proposed definition of “paint” does not include “other types of coatings such as industrial original equipment or specialty coatings”. Proposed Section 720.110, SR at 37. *See also* SR at 102.

- a. Does this exemption create potential for confusion from consumers or individual collection sites?

RESPONSE: The definition of “paint” provided in Proposed Section 720.110 should not create confusion from consumers or individual collection sites. The Paint Stewardship Act and its paint stewardship program plan requirements specifically apply to only architectural paint. Other types of coatings, such as industrial original equipment or specialty coatings, do not qualify as the postconsumer paint that is being collected.

- b. Are these substances excluded from the regulatory definition of “paint” marketed or generally referred to as a type of paint?

RESPONSE: The intent of the trailer bill (later enacted as P.A. 103-887) was to extend the universal waste rules to oil-based paint to be collected by PaintCare from non-household consumers. The exclusion was included to keep the definition of paint consistent the Paint Stewardship Act (i.e., the architectural paint that PaintCare would be collecting). The Agency is not aware as to whether these other coatings are typically marketed or generally referred to as a type of paint.

7. For the proposed definition of “paint-related waste” (SR at 37), what types of waste does subsection (ii) describe? For instance:

- a. Does “material derived from the reclamation of paint-related wastes that is ... used in a manner constituting disposal” include paint-related waste that has been previously disposed in a landfill?

RESPONSE: The Agency would not interpret paint-related waste collected under the Paint Stewardship Act to include waste previously disposed of in a landfill, as the intent of the Paint Stewardship Act is to provide collection of paint and paint-related waste from consumers. The program is to collect leftover paint in its original container or unused customized paint in its original container versus, for example, paint in a glass jar.

- b. Does “paint-related waste” include items that are covered in paint but are discarded? For instance, a piece of metal or other substance that has been powder coated with a pigmented or unpigmented powder coating?

RESPONSE: No, not everything that is painted is considered paint-related waste. Per the proposed definition of paint-related waste in Section 733.109, it must be “material *contaminated* with paint that results from the packaging of paint, wholesale and retail operations, paint manufacturing, and paint application or removal activities

(emphasis added).” Merely being coated in paint is not sufficient to be contaminated under this definition.

8. For proposed Section 733.107(b)(1), would the solvents or other materials that are mixed with the paint or paint-related waste that alter the physical properties of the paint or paint-related waste work to reduce the potential ignitability, corrosivity, reactivity, and/or toxicity characteristics of the paint or paint-related waste?

RESPONSE: These solvents could potentially work to reduce the ignitability, corrosivity, reactivity, and/or toxicity characteristics of the paint or paint-related waste. However, it is important to note that, to the extent these solvents or other materials are mixed with paint or paint-related waste, it is possible the paint or paint-related waste would cease to qualify as such under the proposed definitions provided in Section 733.109. If these materials no longer qualify as paint or paint-related waste as defined therein, then they will not be managed as universal waste.

- a. Is there any instance where paint or paint-related waste with solvents or other materials mixed in increases the ignitability, corrosivity, reactivity, and/or toxicity characteristic of the paint or paint-related waste?

RESPONSE: Yes, there are potentially instances where paint or paint-related waste with solvents or other materials mixed in increased the ignitability, corrosivity, reactivity, and/or toxicity characteristic of the paint or paint related waste. However, if the increases in ignitability, corrosivity, reactivity, and/or toxicity are such that the paint or paint or paint-related waste no longer meets the proposed definition of paint or paint-related waste, then it will no longer be managed that way. If no longer a paint or paint-related waste, but the waste exhibits one or more of the characteristics identified in Subpart C of 35 Ill. Adm. Code 721, then that waste will be managed as hazardous waste.

- b. For proposed Section 733.107(c)(2), is there any instance where paint-related waste also goes unused? Why is paint-related waste not included in (c)(2) but is included in (c)(1)?

RESPONSE: Per the definition of “paint-related waste” provided in Section 733.109, paint-related waste cannot be unused. The moment the material becomes “contaminated with paint” or the material is “derived from the reclamation of paint-related wastes that is recycled in a manner other than burning for energy recovery or used in a manner constituting disposal,” it automatically becomes paint-related waste. Paint-related waste, as such, cannot be “used” in the same way paint can be “used” (i.e., to form an adherent coating when applied to a surface). “Unused paint” (i.e., leftover paint in its original can/container) becomes a waste on the date the handler decides to discard it.

9. In proposed Section 733.113(f) Waste Management, if the small quantity handler of universal waste collect and stores paint and paint-related waste in containers pursuant to Section 733.113(f)(1), would the container become paint-related waste since it would then be a “material contaminated with paint that results from ... removal activities”?

RESPONSE: No, these containers would not inherently become paint-related waste. These containers will not always be “contaminated with paint” as the paint will be delivered and stored in paint cans with lids. If the lids are not secure, the lids will be taped to prevent spillage. Presuming these cans do not spill, the container would not be contaminated.

- a. Further in Section 733.113(f)(3)(D), would the leaking container then be “paint-related waste” and need to be disposed of pursuant to these proposed regulations?

RESPONSE: Yes, the leaking container could be considered “paint-related waste,” but it could be also returned to service if it was repaired to meet the requirements of Section 733.113(f)(1). If not returned to service, then it would need to be disposed of pursuant to these proposed regulations.

- b. Likewise for Section 733.133(f)(1) and (f)(3)(D), would the leaking container then be “paint-related waste” and need to be disposed of pursuant to these proposed regulations?

RESPONSE: Yes, the leaking container could be considered “paint-related waste,” but it could be also returned to service if it was repaired to meet the requirements of Section 733.133(f)(1). If not returned to service, then it would need to be disposed of pursuant to these proposed regulations.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

By: /s/ Nick M. San Diego
Nick M. San Diego
Deputy General Counsel
Division of Legal Counsel

DATED: April 16, 2025

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CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state the following:

I have electronically served the attached RESPONSES TO THE ILLINOIS ATTORNEY GENERAL’S QUESTIONS FOR THE IEPA, on behalf of the Illinois EPA, upon the following:

See attached Service List

I affirm that my e-mail address is nick.m.sandiego@illinois.gov; the number of pages in the e-mail transmission is 8; and the e-mail transmission took place before 5:00 p.m. on April 16, 2025.

Respectfully submitted,

**ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY**

By: /s/ Nick M. San Diego
Nick M. San Diego
Deputy General Counsel
Division of Legal Counsel

DATED: April 16, 2025

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