

**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") IEPA RESPONSES TO THE HEARING OFFICER'S HEARING QUESTIONS, 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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**IEPA RESPONSES TO THE HEARING OFFICER’S HEARING QUESTIONS**

**NOW COMES** the Illinois Environmental Protection Agency (“IEPA” or “Agency”), by and through its counsel, and hereby submits its responses to the Hearing Officer’s Hearing Questions attached to the Hearing Officer Order of April 10, 2025:

**Mr. Kyle Rominger**

1. Please comment on whether IEPA consulted with USEPA during the enactment of P.A. 103-887 and sought comments from USEPA regarding the proposed paint and paint-related waste (PPRW) rules.

**RESPONSE:** IEPA did not consult with USEPA directly regarding the bill enacted as P.A. 103-887. However, the Agency did research the ability for paint to be added to a state’s universal waste rules, as well as research the rules of other states whose universal waste rules include paint. The IEPA worked with the sponsors of the bill to help ensure it did not run afoul of federal requirements for universal wastes.

The proposed rules were mentioned to USEPA in the context of quarterly state RCRA program discussions. The proposal was acknowledged by USEPA, but it was not discussed in depth. In addition, at a recent USEPA state authorization conference the IEPA mentioned to USEPA that the proposed rules would be included in Illinois’ next RCRA authorization package. This discussion included note of the general requirements for adding a waste to a state’s universal waste rules, and that the state’s requirements for managing the waste must prevent releases to the environment and increase the likelihood that the waste is recycled or managed at a hazardous waste facility.

2. Under new Section 22.23e(b)(1) of the Environmental Protection Act (Act), hazardous waste PPRW “are hereby designated as a category of universal waste subject to the streamlined hazardous waste rules set forth in 35 Ill. Adm. Code 733.” Given this statutory designation, please explain whether IEPA considers this rulemaking to be subject to 35 Ill. Adm. Code 733.180 and 733.181.
  - a. If IEPA considers Section 733.180 applicable or otherwise relevant here, please explain how the proposed PPRW rules satisfy Section 733.180(c)(1).

**RESPONSE:** The IEPA is not petitioning the Board for the addition of hazardous waste paint and paint-related waste to the universal waste rules pursuant to Section 733.180 and 733.181. Rather, IEPA submits this proposal pursuant to P.A. 103-887, which requires the IEPA to propose rules that reflect that Public Act's designation of those wastes as universal waste. Nonetheless, the IEPA believes the proposed rules satisfy Section 733.180(c)(1). First, it is appropriate for hazardous waste PPRW to be managed as universal waste (Section 733.180(c)(1)(A)). PaintCare seeks to collect oil-based paint and paint-related waste from businesses as well as households. While this waste is exempt from hazardous waste regulation when generated by households, it is subject to hazardous waste regulation when generated by businesses due to its hazardous waste characteristic of ignitability. The proposed regulations provide requirements for storing and transporting the hazardous waste PPRW in a manner that prevents releases to the environment and minimizes the risk of ignitability. Next, managing hazardous waste PPRW as a universal waste would improve management practices for the waste or category of waste (Section 733.180(c)(1)(B)). By easing the regulatory burden on the anticipated collection sites, PaintCare will be able to recruit more collection sites and, as a result, collect more paint overall. More collection sites will also ensure a greater ability of generators to safely dispose of their unwanted paint. Finally, allowing hazardous waste PPRW to be managed as universal waste will facilitate PaintCare's implementation of the Paint Stewardship Act on behalf of paint manufacturers, allowing for better and easier collection, storage, transport, and disposal of hazardous waste PPRW than if it were required to be managed strictly as hazardous waste (Section 733.180(c)(1)(C)).

- b. If IEPA considers Section 733.181 applicable or otherwise relevant here, please address as many of the factors listed in Section 733.181 as IEPA considers appropriate for PPRW.

**RESPONSE:** Although this proposal is not submitted pursuant to Section 733.181, IEPA believes it addresses the factors listed in that Section. Hazardous waste PPRW are not exclusive to a specific industry or group of industries and are commonly generated by a wide variety of parties (Section 733.181(b)). This includes both consumers and a wide variety of businesses. Further, hazardous waste PPRW are generated by a large number of generators and frequently generated in relatively small quantities by each generator (Section 733.181(c)). The proposed system to be used for collection of hazardous waste PPRW would ensure close stewardship of this waste or category of waste (Section 733.181(d)). The risk posed by hazardous waste PPRW during accumulation and transport is relatively low compared to other hazardous wastes and the specific management standards proposed would be protective of human health and the environment during accumulation and transport (Section 733.181(e)). The regulation of hazardous waste PPRW will increase the likelihood of that the waste will be diverted from non-hazardous waste management streams to recycling, treatment, or disposal in compliance with Subtitle C of RCRA (Section 733.181(f)). Regulation of hazardous waste PPRW as a universal waste pursuant to Part 733, as proposed to be amended, will improve implementation of and

compliance with the State's hazardous waste regulatory program (Section 733.181(g)).

3. On page 3, you state, "the architectural paint required to be collected under the Paint Stewardship Act includes both latex paint and oil-based paint. The oil-based paint is subject to regulation as a hazardous waste based on the hazardous waste characteristic of ignitability. Likewise, paint-related waste that is ignitable is also subject to regulation as a hazardous waste."

- a. Please clarify whether architectural paint collected under the Paint Stewardship Act includes nonhazardous latex paint, nonhazardous paint-related waste, hazardous oil-based paint, and hazardous paint-related waste.

**RESPONSE:** The Paint Stewardship Act applies to architectural paint, both interior and exterior, but it does not distinguish between hazardous and non-hazardous paint. The Paint Stewardship Act does not apply to paint-related waste and manufacturers are not required to collect paint-related waste under that Act. Paint-related waste was included in the trailer bill, later enacted as P.A. 103-887, at the request of PaintCare. PaintCare plans to collect paint-related waste along with paint, and therefore could utilize the universal waste rules for any hazardous paint-related waste that is generated by businesses.

- b. If so, explain how latex paint would be managed given that nonhazardous paint or paint-related waste is not covered under the proposed universal waste rules. See proposed Section 733.107(b)(2).

**RESPONSE:** Latex paint that is waste is subject to non-hazardous waste requirements and will continue to be managed as it currently is. Because it is a liquid, it can be mixed with a hardening agent in order to be disposed of in a landfill the same as other non-hazardous waste. With respect to latex paint collected by PaintCare, it is recycled and returned to the economic mainstream as new paint product.

4. The TSD states that the proposed PPRW rules are economically reasonable as they provide an option "less burdensome and more streamlined method for handling the wastes to which they apply, by definition making them more technically feasible and economically reasonable than the regular hazardous waste rules that would otherwise apply". TSD at 145.

- a. To confirm, please indicate whether IEPA expects the new PPRW rules to have a positive economic effect, a negative economic effect, or no economic effect.

**RESPONSE:** The IEPA expects the new PPRW rules to have a positive economic effect. Managing hazardous waste is expensive and overly burdensome, especially for a low-risk material such as hazardous waste PPRW. Without the universal waste rules, persons wanting to collect hazardous waste PPRW in partnership with PaintCare would have to obtain a hazardous waste permit and likely local siting

approval as a pre-requisite. Managing hazardous waste PPRW as universal waste will allow these collectors to avoid hazardous waste permitting costs. The collection of hazardous waste PPRW, in turn, will allow businesses to avoid the costs of having to dispose of their hazardous waste PPRW as hazardous waste by manifesting it to a permitted hazardous waste disposal facility. These businesses can instead take their hazardous waste PPRW to a PaintCare collection site.

b. If IEPA expects an economic effect from the new PPRW rules, please:

i. Identify the entities or types of entities anticipated to be affected economically.

**RESPONSE:** As noted above, the proposed rule amendments are anticipated to have a positive economic effect on parties collecting for PaintCare. These are typically local government entities that provide household hazardous waste collection for their residents and want to extend those services to local businesses, as well as commercial entities, such as dedicated paint stores and other stores that sell paint, that want to participate in PaintCare's paint stewardship program. Also, as noted, the proposed rules will benefit businesses that take advantage of PaintCare's program by enabling such business to drop off their hazardous waste PPRW at collection sites instead of having to manifest it to a permitted hazardous waste disposal site. These entities would include painting contractors and other businesses in possession of unwanted paint.

ii. Describe how IEPA expects the economic effect to occur (when rules become effective and going forward on a yearly basis).

**RESPONSE:** The economic effect will occur in the form of avoided costs. Persons partnering with PaintCare to serve as collectors will not have to incur hazardous waste permitting costs or costs associated with obtaining local siting approval. Businesses generating hazardous waste PPRW will not have to manifest that waste to a permitted hazardous waste disposal facility.

iii. Quantify the dollar amount of the economic effect, if feasible, per affected entity and Statewide.

**RESPONSE:** This information is not available yet. Implementation of the Paint Stewardship Act is just starting up and, as such, the IEPA does not have specific data on the dollar amount of the economic effect.

5. Regarding commingled waste under Section 733.108, you state, “[g]iven the now more numerous types of wastes that are allowed to be managed under the Universal Waste Rules, subsection (b) is amended to *clarify* that any commingled wastes must be of the same type in order to utilize the Universal Waste Rules. Commingled wastes of different types should *remain* regulated under the regular hazardous waste rules.” (emphasis added). Is it IEPA's

view that *existing* Section 733.108(b) (and 40 CFR 273.8(b)) applies to the wastes described in Section 733.108(a)(1) and (a)(2) that are commingled with universal waste, but only if that universal waste is of the same type as the subsection (a)(1) or (a)(2) waste?

**RESPONSE:** Yes.

**Question on the Proposed Rules**

6. In the preamble of Section 703.123, please comment on whether it would be acceptable to IEPA if the phrase “among those that are” is deleted.

**RESPONSE:** The Agency’s only concern is that this phrase could be reasonably interpreted to mean that there may be other types of “persons” who are exempt from obtaining a RCRA permit that are not explicitly mentioned here in Section 703.123. This phrase is also included in the corresponding identical-in-substance federal regulation at 40 CFR 270.1(c)(2), With that said, the Agency defers to the Board as to whether to delete it.

7. Please comment on whether the phrase “universal waste” should be added preceding the subsection headings in Sections 733.113(d), (e), and (f) (“Lamps”, “Aerosol cans”, and “Paint and paint-related waste”) to be consistent with subsection headings in Sections 733.113 (a), (b) and (c).

**RESPONSE:** Yes, this can be added to make the various subsections consistent.

8. Section 733.113(f)(1) requires containers used for storing universal waste PPRW to lack evidence of leakage or damage that could cause leakage under “reasonably foreseeable conditions”. Please provide some examples of reasonably foreseeable conditions.

**RESPONSE:** This language is consistent with the other provisions of Section 733.113. It is copied directly from the provisions dealing with other types of universal waste. A reasonably foreseeable condition in the case of paint is that cans of used paint in various conditions could leak when they are aggregated in large quantities, such as from a can being knocked over, a can with a loose lid due to dried paint accumulation around the lid or the mouth of the can, or a lid coming off when it is dropped, knocked over, crushed, or otherwise damaged.

9. Section 733.113(f)(3) specifies requirements that must be followed by a small quantity handler of universal waste upon detection of a release. Please clarify whether term “release” means the same as the definition of that term under Section 3.395 of the Act. If so, should that definition be added to Section 733.109?

- a. **RESPONSE:** Yes, this use of the term “release” has the same definition of that term under Section 3.395 of the Act. The IEPA does not have an objection to this definition being added.

10. In Section 733.133(f)(3)(C), please clarify what “properly” managing the released universal waste entails with examples. If appropriate, propose revisions by replacing the word “properly” with more descriptive language.

**RESPONSE:** Section 733.137 describes a large quantity handler’s required response to releases. It states:

“Section 733.137 Response to Releases

- a) A large quantity handler of universal waste must immediately contain all releases of universal waste and other residues from universal waste.
- b) A large quantity handler of universal waste must determine whether any material resulting from the release is hazardous waste, and if so, must manage the hazardous waste in compliance with all applicable requirements of 35 Ill. Adm Code 702 through 705 and 720 through 728. The handler is considered the generator of the material resulting from the release, and is subject to 35 Ill. Adm. Code 722.” 35 Ill. Adm. Code 733.137.

11. Please comment on whether the following reorganization of Section 733.113(f)(4) is acceptable to IEPA:

4) Ignitable universal waste paint or paint-related waste.

- A) A small quantity handler of universal waste must locate containers holding ignitable universal waste paint or paint-related waste at least 50 feet from the facility property line, unless the small quantity handler obtains written approval from the authority having jurisdiction over the local fire code to allow ignitable universal waste paint or paint-related waste to be located within 50 feet of the facility property line. The small quantity handler must maintain a record of the written approval as long as universal waste paint or paint-related waste is located within 50 feet of the facility property line.
- B) A small quantity handler of universal waste must take precautions to prevent accidental ignition of universal waste paint or paint-related waste. The small quantity handler must separate and protect universal waste paint and paint-related waste from sources of ignition, including the following: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), or radiant heat.
- C) While handling ignitable universal waste paint or paint-related waste, the small quantity handler must confine smoking and open flames to specifically designated locations. The small quantity handler must conspicuously place “No Smoking” signs wherever there is an ignitability hazard from universal waste paint or paint-related waste.

**RESPONSE:** Yes, it is acceptable to the IEPA.

12. Please comment on whether the following reorganization of Section 733.133(f)(4) is acceptable to the IEPA:

4) Ignitable universal waste paint or paint related waste.

- A) A large quantity handler of universal waste must locate containers holding ignitable universal waste paint or paint related waste at least 50 feet from the facility property line, unless the large quantity handler obtains written approval from the authority having jurisdiction over the local fire code to allow ignitable universal waste paint or paint related waste to be located within 50 feet of the facility property line. The large quantity handler must maintain a record of the written approval as long as universal waste paint or paint related waste is located within 50 feet of the facility property line.
- B) A large quantity handler must take precautions to prevent accidental ignition of universal waste paint or paint related waste. The large quantity handler must separate and protect universal waste paint and paint-related waste from sources of ignition, including, but not limited to, the following: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical, or mechanical), or radiant heat.
- C) While handling universal waste paint or paint-related waste, the large quantity handler must confine smoking and open flames to specifically designated locations. The large quantity handlers must conspicuously place "No Smoking" signs wherever there is an ignitability hazard from universal waste paint or paint-related waste.

**RESPONSE:** Yes, it is acceptable to the IEPA.

Respectfully submitted,  
**ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY**

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

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**CERTIFICATE OF SERVICE**

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

I have electronically served the attached IEPA RESPONSES TO THE HEARING OFFICER’S HEARING QUESTIONS, 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](mailto:nick.m.sandiego@illinois.gov); the number of pages in the e-mail transmission is 10; 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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