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Ohio's New Practical Approach To Waste Management

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David Edelstein, an associate in the Vorys Cincinnati office, authored an article for *Environmental Law360* titled "Ohio's New Practical Approach To Waste Management." According to the article, Ohio will soon join Texas and New Jersey as the only states to regulate "paint and paint-related waste" as universal waste under the Resource Conservation and Recovery Act. According to Edelstein, the move is a positive change for Ohio industries from both an economic and practicality of handling the waste. The full text of the article is included below (with permission from Law360).

Ohio's New Practical Approach To Waste Management

Ohio will soon join Texas and New Jersey as the only states to regulate "paint and paint-related waste" as a Resource Conservation and Recovery Act universal waste. The U.S. Environmental Protection Agency's universal waste regulations are a set of streamlined regulations within the RCRA affording a less onerous standard of care for certain hazardous wastes that are commonly generated by a wide variety of industries. The federal universal waste regulations cover batteries, pesticides, mercury-containing equipment and lamps (most commonly, but not limited to, florescent lamps). Federal law permits states to add additional universal wastes without those wastes being first added at the federal level. Texas added paint and paint-related waste to its list of state-specific universal wastes in 2001, closely followed by New Jersey in 2002. No other state has followed suit since; but Ohio could set the trend.

The purpose of designating a hazardous waste as a universal waste is to promote the proper handling, recycling or disposal of the waste by streamlining the regulations that apply. On Dec. 8, 2017, the Ohio Environmental Protection Agency adopted new universal waste rules adding paint and paint-related wastes, aerosol containers, and anti-freeze to its list of universal wastes. These rules will be effective and will be moved to 3745-273-89 of the Ohio Administrative Code on Dec. 21,

2017. While the additions of aerosol containers and anti-freeze to Ohio's list of universal wastes are extremely important, the additions of paint and paint-related waste could have the most significant benefit considering the quantity and frequency of the generation of these wastes in Ohio industries.

The significance and practicality of these Ohio-specific additions should not be understated. Ohio has recognized that paint and paint-related waste, aerosol containers, and anti-freeze share commonality with the federal universal wastes in that they are relatively innocuous and generated by almost every industry. The streamlined approach of designating these wastes as universal wastes will allow for storage of these wastes up to one year (or longer if a generator can demonstrate that the accumulation is necessary to facilitate proper recovery, treatment or disposal), more flexibility in accumulation areas (specific satellite accumulation area requirements have been added to the new rule for unpunctured aerosol containers), and more pragmatic labeling requirements. Further, when following the rules, universal waste does not count toward a generator's monthly hazardous waste accumulation rate, does not have to be manifested as a hazardous waste, and does not have to be reported on a generator's hazardous waste biennial report. This is especially important for any industry working to maintain or lower its generator status from large-quantity generator to small-quantity generator, or even to conditionally exempt small-quantity generator status. Ohio's move to recognize these additional universal wastes is a positive change for Ohio industries from both an economic and "practicality of handling the waste" perspective.

It is important to note that the Ohio-specific universal waste designations are not carte blanche to handle the waste without prohibitions. Universal waste is still RCRA hazardous waste; it is simply subject to a more practical standard of care. There are only two categories of universal waste generators: "small-quantity" which accumulate less than 5,000 kilograms at any time; and "large-quantity" which accumulate 5,000 kg or more at any time. Large-quantity generators are subject to more stringent requirements including notification and record-keeping. Generators of universal waste, and transporters, are prohibited from treating universal waste. Employee training and container standards are still required. The hazardous waste manifest requirement is eliminated; however, U.S. Department of Transportation rules still apply to the transport of universal waste (although the shipping description no longer needs to be "waste"). Finally, and importantly, destination facilities for universal waste are still subject to RCRA treatment, storage and disposal standards; ensuring an industry's universal waste ultimately finds its "grave" at an appropriate destination is paramount to the universal waste program and a key component of due diligence for those industries shipping-out universal waste. The Ohio EPA has a robust and successful hazardous waste enforcement program. Expect the Ohio EPA to be on the lookout for any industry improperly taking advantage of its new streamlined regulations.

While only time will tell the benefit of each new Ohio-specific universal waste, the impact of the universal waste designation for paint and paint-related waste reaches well beyond Ohio's paint and coating industry. The U.S. EPA's industry sector profile for the paint and coating industry estimates that in 2005 the industry sold 1.57 billion gallons of paint to include architectural, industrial, special purpose and allied paint products such as solvents and paint thinners. Industry sector profiles including construction, transportation, automobile manufacturing, printing and the like are all identified by the EPA as "typically" generating significant paint and paint-related waste. When including other Ohio industries such as automotive and other vehicle shops, wood finishers and metal fabricators — the breadth of the Ohio EPA's forward thinking in designating paint and paint-related waste as a universal waste becomes readily apparent. This rule will have widespread beneficial impacts to industry large and small across Ohio.

For industry, leftover paint, solvent waste, solvent rags and any mixture thereof that exhibits a hazardous waste characteristic cannot legally be thrown in the dumpster. Regulating these common and relatively innocuous wastes as RCRA hazardous waste has frustrated industry with overburdensome requirements for a long time. The Ohio EPA's decision to designate paint and paint-related waste will achieve the goal of helping to ensure proper handling, recycling or disposal for large and small industries in Ohio.

Ohio industries should be putting significant consideration into developing a universal waste program for each of the new Ohio-specific universal wastes in order to take advantage of these streamlined regulations once they take effect on Dec. 21, 2017. Such a program will assist each Ohio industry in no longer "counting" universal waste as hazardous waste and will assist in meeting generator status goals. For industries looking to the future, additional consideration regarding generator status should also include an examination of the U.S. EPA's new "Waste Generator Improvements Rule" which became effective May 30, 2017, and provides some additional flexibility to waste generators. Ohio is expected to adopt all or part of that rule sometime in 2018, but the specifics are currently unknown.