

Date: November 12, 2020

To: S.C. Board of Health and Environmental Control

From: Bureau of Land and Waste Management

**Re: Public Hearing for Notice of Final Regulation Amending R.61-79, *Hazardous Waste Management Regulations*, Document No. 4975**

## **I. Introduction**

The Bureau of Land and Waste Management (“Bureau”) proposes the attached Notice of Final Regulation amending R.61-79, *Hazardous Waste Management Regulations*. Legal authority resides in the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10 *et seq.*, which authorizes the Department of Health and Environmental Control (“Department”) to promulgate hazardous waste management regulations, procedures, or standards as may be necessary to protect human health and the environment. The Administrative Procedures Act, S.C. Code Ann. § 1-23-120(A), requires General Assembly review of these proposed amendments.

## **II. Facts**

1. Pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. §§ 44-56-10 *et seq.*, the Department is authorized to promulgate hazardous waste management regulations, procedures, or standards as may be necessary to protect human and environmental health.

2. The Bureau proposes amending R.61-79, *Hazardous Waste Management Regulations*, to adopt Environmental Protection Agency (“EPA”) interim final rule “Safe Management of Recalled Airbags,” published on November 30, 2018, at 83 FR 61552-61563. This rule provides a conditional exemption from the Resource Conservation and Recovery Act (“RCRA”) hazardous waste requirements for entities, including but not limited to, automobile dealerships, automotive salvage and scrap yards, independent repair facilities, and collision centers that collect airbag modules and inflators (“airbag waste”) from automobiles as long as certain conditions are met. This rule enables expedited removal of defective airbag inflators.

3. The Bureau also proposes amending R.61-79, *Hazardous Waste Management Regulations*, to adopt EPA final rule “Universal Waste Regulations: Addition of Aerosol Cans,” published on December 9, 2019, at 84 FR 67202-67220. This rule adds hazardous waste aerosol cans to the universal waste program under the federal RCRA regulations. Adopting the rule will reduce regulatory burdens on retail stores and other establishments that generate, manage, and dispose of aerosol cans by providing a clear, protective system for handling waste aerosol cans. This will promote the collection and recycling of aerosol cans and encourage the development of municipal and commercial programs to reduce the amount of aerosol can waste going to municipal solid waste landfills or combustors.

4. The Bureau had a Notice of Drafting published in the April 24, 2020, *State Register*. The Bureau received no comments during the public comment period.

5. The Bureau published a summary of the proposed amendments on the Department’s Regulation Development Update website. The Bureau provided notice to stakeholders via an email list on April 24, 2020. The Bureau maintains a website (<https://www.scdhec.gov/about-dhec/laws-regulations-regulatory-updates/hazardous-waste-management-regulations-update-status>) which provides more detail on the amendments.

6. Appropriate Department staff conducted an internal review of the proposed amendments on June 3, 2020.

7. The Department had a Notice of Proposed Regulation published in the August 28, 2020, *State Register*. The Department received public comments from one (1) person by the September 28, 2020, close of the public comment period.

### III. Request for Approval

The Bureau respectfully requests the Board to find need and reasonableness of the attached proposed amendments of R.61-79, *Hazardous Waste Management Regulations*, for submission to the General Assembly.



Henry Porter  
Bureau Chief



Myra C. Reece  
Director

Attachments:

- A. Notice of Final Regulation
- B. Summary of Public Comments and Department Responses

**ATTACHMENT A**

**STATE REGISTER NOTICE OF FINAL REGULATION  
FOR R.61-79, *Hazardous Waste Management Regulations***

**November 12, 2020**

Document No. 4975

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL  
CHAPTER 61**

Statutory Authority: 1976 Code Sections 44-56-10 et seq.

61-79. Hazardous Waste Management Regulations.

**Synopsis:**

The Department of Health and Environmental Control (“Department”) amends R.61-79 to adopt two Environmental Protection Agency (“EPA”) rules published in the Federal Register. The EPA has given authorized states, including South Carolina, the discretion to adopt these rules as they will make existing standards less stringent and provide more flexibility to the regulated community. The “Safe Management of Recalled Airbags” interim final rule, published on November 30, 2018, at 83 FR 61552-61563 creates a conditional exemption from Resource Conservation and Recovery Act (“RCRA”) requirements for certain entities that collect airbag waste from automobiles. The “Universal Waste Regulations: Addition of Aerosol Cans” final rule published on December 9, 2019, at 84 FR 67202-67220 reduces regulatory burdens on businesses that generate, manage, and dispose of aerosol cans. The Department also revises the R.61-79 to make corrections for clarity and readability, grammar, punctuation, codification, and other such regulatory text improvements.

The Department had a Notice of Drafting published in the April 24, 2020, *South Carolina State Register*.

**Instructions:**

Amend R.61-79 pursuant to each individual instruction provided with the text of the amendments below.

**Text:**

~~Indicates Matter Stricken~~

Indicates New Matter

61-79. Hazardous Waste Management Regulations.

Statutory Authority: 1976 Code Ann. Section 44-56-30

**Add the following definitions in alphabetical order to 260.10 to read:**

“Aerosol can” means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

“Airbag waste” means any hazardous waste airbag modules or hazardous waste airbag inflators.

“Airbag waste collection facility” means any facility that receives airbag waste from airbag handlers subject to regulation under 261.4(j) of this chapter, and accumulates the waste for more than ten (10) days.

“Airbag waste handler” means any person, by site, who generates airbag waste that is subject to regulation under this chapter.

**Revise 260.10 to read:**

"Universal Waste" means any of the following hazardous wastes that are managed under the universal waste requirements of 273: ~~(5/96)~~

- (1) Batteries as described in 273.2;
- (2) Pesticides as described in 273.3;
- (3) Mercury-containing equipment as described in 273.4; ~~and~~
- (4) Lamps as described in 273.5 of this chapter; and
- (5) Aerosol cans as described in 273.6 of this chapter.

**Revise 260.10 “Universal waste handler” (2)(i) to read:**

(i) A person who treats (except under the provisions of ~~R.61-79:273.13~~ (a) or (c), or 273.33 (a) or (c)), disposes of, or recycles (except under the provisions of 273.13(e) or 273.33(e)) universal waste; or

**Add Subparts I through CC to R.61-79:261. Table of Contents to read:**

SUBPART I: Use and Management of Containers

261.170. Applicability.

261.171. Condition of containers.

261.172. Compatibility of hazardous secondary materials with containers.

261.173. Management of containers.

261.175. Containment.

261.176. Special requirements for ignitable or reactive hazardous secondary material.

261.177. Special requirements for incompatible materials.

261.179. Air emission standards.

SUBPART J: Tank Systems

261.190. Applicability.

261.191. Assessment of existing tank system’s integrity.

261.192. [Reserved]

261.193. Containment and detection of releases.

261.194. General operating requirements.

261.195. [Reserved]

261.196. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

261.197. Termination of remanufacturing exclusion.

261.198. Special requirements for ignitable or reactive materials.

261.199. Special requirements for incompatible materials.

261.200. Air emission standards.

SUBPART L: [Reserved]

SUBPART M: Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials

261.400. Applicability.

261.410. Preparedness and prevention.

261.411. Emergency procedures for facilities generating or accumulating 6000 kilograms or less of hazardous secondary material.

261.420. Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kilograms of hazardous secondary material.

SUBPART N-Z: [Reserved]

SUBPART AA: Air Emission Standards for Process Vents

261.1030. Applicability.

261.1031. Definitions.

261.1032. Standards: Process vents.

261.1033. Standards: Closed-vent systems and control devices.

261.1034. Test methods and procedures.

261.1035. Recordkeeping requirements.

261.1036. [Reserved]

261.1037. [Reserved]

261.1038. [Reserved]

261.1039. [Reserved]

261.1040. [Reserved]

261.1041. [Reserved]

261.1042. [Reserved]

261.1043. [Reserved]

261.1044. [Reserved]

261.1045. [Reserved]

261.1046. [Reserved]

261.1047. [Reserved]

261.1048. [Reserved]

261.1049. [Reserved]

SUBPART BB: Air Emission Standards for Equipment Leaks

261.1050. Applicability.

261.1051. Definitions.

261.1052. Standards: Pumps in light liquid service.

261.1053. Standards: Compressors.

261.1054. Standards: Pressure relief devices in gas/vapor service.

261.1055. Standards: Sampling connection systems.

261.1056. Standards: Open-ended valves or lines.

261.1057. Standards: Valves in gas/vapor service or in light liquid service.

261.1058. Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

261.1059. Standards: Delay of repair.  
261.1060. Standards: Closed-vent systems and control devices.  
261.1061. Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.  
261.1062. Alternative standards for valves in gas/vapor service or in light liquid service: skip period leak detection and repair.  
261.1063. Test methods and procedures.  
261.1064. Recordkeeping requirements.  
261.1065. [Reserved]  
261.1066. [Reserved]  
261.1067. [Reserved]  
261.1068. [Reserved]  
261.1069. [Reserved]  
261.1070. [Reserved]  
261.1071. [Reserved]  
261.1072. [Reserved]  
261.1073. [Reserved]  
261.1074. [Reserved]  
261.1075. [Reserved]  
261.1076. [Reserved]  
261.1077. [Reserved]  
261.1078. [Reserved]  
261.1079. [Reserved]

#### SUBPART CC: Air Emission Standards for Tanks and Containers

261.1080. Applicability.  
261.1081. Definitions.  
261.1082. Standards: General.  
261.1083. Material determination procedures.  
261.1084. Standards: Tanks.  
261.1085. [Reserved]  
261.1086. Standards: Containers.  
261.1087. Standards: Closed-vent systems and control devices.  
261.1088. Inspection and monitoring requirements.  
261.1089. Recordkeeping requirements.  
261.1090. [Reserved]

#### **Add and reserve 261.4(h) and (i) to read:**

(h) [Reserved]

(i) [Reserved]

#### **Add 261.4(j) to read:**

(j) (1) Airbag waste at the airbag waste handler or during transport to an airbag waste collection facility or designated facility is not subject to regulation under parts 124, 262 through parts 268, or 270 of this chapter, and is not subject to the notification requirements of section 3010 of RCRA provided that:

(i) The airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators, for no longer than 180 days;

(ii) The airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled “Airbag Waste – Do Not Reuse”;

(iii) The airbag waste is sent directly to either:

(A) An airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of an authorized party administering a remedy program in response to a recall under the National Highway Traffic Safety Administration, or

(B) A designated facility as defined in 260.10;

(iv) The transport of the airbag waste complies with all applicable U.S. Department of Transportation (DOT) regulations in 49 CFR part 171 through 180 during transit;

(v) The airbag waste handler maintains at the handler facility for no less than three (3) years records of all off-site shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste (i.e., airbag modules or airbag inflators) in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste (i.e., airbag modules and airbag inflators) received; and the date which it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records (e.g., electronic or paper financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).

(2) Once the airbag waste arrives at an airbag waste collection facility or designated facility, it becomes subject to all applicable hazardous waste regulations, and the facility receiving airbag waste is considered the hazardous waste generator for the purposes of the hazardous waste regulations and must comply with the requirements of part 262.

(3) Reuse in vehicles of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration is considered sham recycling and prohibited under 261.2(g).

**Revise 261.6(d) to read:**

(d) Owners or operators of facilities subject to RCRA permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of subparts AA and BB of parts 264 or 265 of this chapter.

**Revise 261.9 to read:**

The wastes listed in this section are exempt from regulation under parts 262 through 270 except as specified in part 273 and, therefore, are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under 273: ~~(5/96)~~

(a) Batteries as described in 273.2;

(b) Pesticides as described in 273.3;

(c) Mercury-containing equipment as described in 273.4; ~~and~~

(d) Lamps as described in 273.5; and

(e) Aerosol cans as described in 273.6 of this chapter.

**Revise 261.31(b)(4)(i) to read:**

(i). Motor vehicle manufacturing is defined to include the manufacture of automobiles and light trucks/utility vehicles (including light duty vans, pick-up trucks, minivans, and sport utility vehicles). Facilities must be engaged in manufacturing complete vehicles (body and chassis or unibody) or chassis only.

**Revise 261.31(b)(4)(ii) to read:**

(ii) Generators must maintain in their on-site records documentation and information sufficient to prove that the wastewater treatment sludges to be exempted from the F019 listing meet the conditions of the listing. These records must include: the volume of waste generated and disposed of off site; documentation showing when the waste volumes were generated and sent off site; the name and address of the receiving facility; and documentation confirming receipt of the waste by the receiving facility. Generators must maintain these documents on-site for no less than three (3) years. The retention period for the documentation is automatically extended during the course of any enforcement action or as requested by the Department ~~or the state regulatory authority.~~

**Add 262.13(f)(1)(iii) to read:**

(iii) If a very small quantity generator's wastes are mixed with used oil, the mixture is subject to R. 61-107.279. Any material produced from such a mixture by processing, blending, or other treatment is also regulated under R.61-107.279.

**Add 262.14(a)(5)(ix) through (xi) to read:**

(ix) [Reserved]

(x) [Reserved]

(xi) For airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of 261.4(j) of this chapter.

**Revise 262.21(a)(1) to read:**

(1) A registrant may not print, or have printed, the manifest for use of distribution unless it has received approval from the EPA Director of ~~Office of Solid Waste~~ the Office of Resource Conservation and Recovery to do so under paragraphs (c) and (e) of this section.

**Revise 262.21(b) to read:**

(b) A registrant must submit an initial application to the EPA Director of the Office of ~~Solid Waste~~ Resource Conservation and Recovery that contains the following information:



**Revise 264.1(g)(11) to read:**

(11) Universal waste handlers and universal waste transporters (as defined in R.61-79.260.10) handling the wastes listed below. These handlers are subject to regulation under R.61-79.273, when handling the below listed universal wastes. ~~(added 5/96)~~

- (i) Batteries as described in ~~R.61-79.273.2~~;
- (ii) Pesticides as described in ~~R.61-79.273.3~~; and
- (iii) Mercury-containing equipment as described in 273.4; and
- (iv) Lamps as described in 273.5; and
- (v) Aerosol cans as described in 273.6 of this chapter.

**Revise 264.119(b)(1)(ii) to read:**

- (ii) Its use is restricted under R.61-79.264 ~~and R.61-79.265~~ Subpart G; and

**Revise 264.151(a)(2) to read:**

(2) Certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in 264.143(a) and 264.145(a) or 265.143(a) and 265.145(a). This document must be worded as noted in 264.151 Appendix A(2) except that instructions in brackets are to be replaced with the relevant information and the brackets deleted. ~~(amended 11/90)~~

**Revise 265.1(c)(14) to read:**

(14) Universal waste handlers and universal waste transporters (as defined in R.61-79.260.10) handling the wastes listed below. These handlers are subject to regulation under R.61-79.273, when handling the below listed universal wastes. ~~(added 5/96)~~

- (i) Batteries as described in ~~R.61-79.273.2~~;
- (ii) Pesticides as described in 273.3; and
- (iii) Mercury-containing equipment as described in 273.4; ~~and~~
- (iv) Lamps as described in 273.5; and
- (v) Aerosol cans as described in 273.6 of this chapter.

**Revise 265.195(a) to read:**

(a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

~~(1) Overfill/spill control equipment (e.g., waste feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;~~

~~(2) The above-ground portions of the tank system, if any, to detect corrosion or releases of waste;~~

~~(3) Data gathered from monitoring equipment and leak detection equipment (e.g., pressure and temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and~~

~~(4) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation);~~

Note: Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Department ~~and Regional Administrator~~ within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release. ~~(revised 12/92) paragraphs (a) and (b) of this section.~~

**Revise 268.1(f) to read:**

(f) Universal waste handlers and universal waste transporters (as defined in 260.10) are exempt from 268.7 and 268.50 for the hazardous wastes listed below. These handlers are subject to regulation under part 273. ~~(5/96)~~

(1) Batteries as described in 273.2;

(2) Pesticides as described in 273.3;

(3) Mercury-containing equipment as described in 273.4; ~~and~~

(4) Lamps as described in 273.5-; and

(5) Aerosol cans as described in 273.6 of this chapter.

**Revise 270.1(c)(2)(viii) to read:**

(viii) Universal waste handlers and universal waste transporters (as defined in R.61-79.260.10) managing the wastes listed below. These handlers are subject to regulation under R.61-79.273. ~~(revised 5/96)~~

(A) Batteries as described in ~~R.61-79.273.2;~~

(B) Pesticides as described in 273.3;

(C) Mercury-containing equipment as described in 273.4; ~~and~~

(D) Lamps as described in 273.5-; and

(E) Aerosol cans as described in 273.6 of this chapter.

**Revise 270.19(e) to read:**

(e) When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance) under 63.1207(j) and 63.1210(~~bd~~) documenting compliance with all applicable requirements of Part 63, subpart EEE, the requirements do not apply, except those provisions the Department determines are necessary to ensure compliance with 264.345(a) and 264.345(c) if you elect to comply with 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Department may apply the provisions, on a case-by-case basis, for purposes of information collection in accordance with 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

**Revise R.61-79.273. Table of Contents to read:**

273.6. Applicability—Aerosol Cans.

**Revise 273.1(a) to read:**

(a) This part establishes requirements for managing the following:

- (1) Batteries as described in 273.2;
- (2) Pesticides as described in ~~R.61-79.273.3~~;
- (3) Mercury-containing equipment as described in 273.4; ~~and~~
- (4) Lamps as described in 273.5; and
- (5) Aerosol cans as described in 273.6 of this chapter.

**Revise 273.3(b)(2) to read:**

(2) Pesticides not meeting the conditions set forth in paragraph (a) of this section. These pesticides must be managed in compliance with the hazardous waste regulations in parts 260 through 272, except that aerosol cans as defined in 273.9 that contain pesticides may be managed as aerosol can universal waste under 273.13(e) or 273.33(e);

**Add 273.6 to read:**

**273.6 Applicability—Aerosol Cans.**

(a) Aerosol cans covered under this part. The requirements of this part apply to persons managing aerosol cans, as described in 273.9, except those listed in paragraph (b) of this section.

(b) Aerosol cans not covered under this part. The requirements of this part do not apply to persons managing the following types of aerosol cans:

(1) Aerosol cans that are not yet waste under part 261 of this chapter. Paragraph (c) of this section describes when an aerosol can becomes a waste;

(2) Aerosol cans that are not hazardous waste. An aerosol can is a hazardous waste if the aerosol can exhibits one or more of the characteristics identified in part 261 subpart C of this chapter or the aerosol can contains a substance that is listed in part 261 subpart D of this chapter; and

(3) Aerosol cans that meet the standard for empty containers under 261.7 of this chapter.

(c) Generation of waste aerosol cans.

(1) A used aerosol can becomes a waste on the date it is discarded.

(2) An unused aerosol can becomes a waste on the date the handler decides to discard it.

**Add the following definition in alphabetical order to 273.9 to read:**

Aerosol can means a non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

**Revise 273.9 “Large quantity handler of universal waste” to read:**

Large Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates 5,000 kilograms or more total of universal waste (batteries, pesticides, mercury-containing equipment, ~~or~~ lamps, or aerosol cans, calculated collectively) at any time. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which the 5,000-kilogram limit is met or exceeded.

**Revise 273.9 “Pesticide” to read:**

Pesticide means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(~~a~~1) is a new animal drug under FFDCA section 201(w); ~~or~~

(~~b~~2) is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug; ~~or~~

(~~c~~3) is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (~~a~~1) or (~~b~~2) of this definition ~~section~~.

**Revise 273.9 “Small quantity handler of universal waste” to read:**

Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who does not accumulate 5,000 kilograms or more of universal waste (batteries, pesticides, mercury-containing equipment, ~~or~~ lamps, or aerosol cans, calculated collectively) at any time.

**Revise 273.9 “Universal waste” to read:**

Universal Waste means any of the following hazardous wastes that are subject to the universal waste requirements of part 273:

- (1) Batteries as described in 273.2;
- (2) Pesticides as described in 273.3;
- (3) Mercury-containing equipment as described in 273.4; ~~and~~
- (4) Lamps as described in 273.5; and
- (5) Aerosol cans as described in 273.6 of this chapter.

**Revise 273.9 “Universal waste handler” to read:**

Universal Waste Handler:

(~~a~~1) Means:

- (~~i~~1) A generator (as defined in this section) of universal waste; or
- (~~ii~~2) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(~~b~~2) Does not mean:

- (~~i~~1) A person who treats (except under the provisions of 273.13(a) or (c), or 273.33(a) or (c)), disposes of, or recycles (except under the provisions of 273.13(e) or 273.33(e)) universal waste; or
- (~~ii~~2) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

**Revise 273.13(c)(2)(iii) and (iv) to read:**

- (iii) 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 ~~meets the requirements of 262.34~~ is subject to all applicable requirements of parts 260 through 272;
- (iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that ~~meets the requirements of 262.34~~ is subject to all applicable requirements of parts 260 through 272;

**Add 273.13(e) to read:**

(e) Aerosol cans. A small quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

- (1) Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) Universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of paragraph (e)(4) of this section.

(3) A small quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i) Sorting aerosol cans by type;

(ii) Mixing intact cans in one container;

(iii) Removing actuators to reduce the risk of accidental release; and

(4) A small quantity handler of universal waste who punctures and drains their aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) 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.

(ii) Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.

(iii) Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This manner includes, but is not limited to, locating the equipment on a solid, flat surface in a well-ventilated area.

(iv) Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the applicable requirements of 262.14, 262.15, 262.16, or 262.17.

(v) Conduct a hazardous waste determination on the contents of the emptied aerosol can per 262.11. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of parts 260 through 272. The handler is considered the generator of the hazardous waste and is subject to part 262.

(vi) If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.

(vii) A written procedure must be in place in the event of a spill or leak and a spill clean-up kit must be provided. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.

**Add 273.14(f) to read:**

(f) Universal waste aerosol cans (i.e., each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: "Universal Waste—Aerosol Can(s)," "Waste Aerosol Can(s)," or "Used Aerosol Can(s)."

**Revise 273.32(b)(4) to read:**

(4) A list of all the types of universal waste managed by the handler (e.g., batteries, pesticides, mercury-containing equipment, ~~and~~ lamps, and aerosol cans); and

**Revise 273.33(c)(2)(iii) and (iv) to read:**

(iii) Ensures that a mercury clean-up system is readily available to immediately transfer any mercury resulting from spills or leaks of broken ampules from that containment device to a container that ~~meets the requirements of 262.34~~ is subject to all applicable requirements of parts 260 through 272;

(iv) Immediately transfers any mercury resulting from spills or leaks from broken ampules from the containment device to a container that ~~meets the requirements of 262.34~~ is subject to all applicable requirements of parts 260 through 272;

**Add 273.33(e) to read:**

(e) Aerosol cans. A large quantity handler of universal waste must manage universal waste aerosol cans in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) Universal waste aerosol cans must be accumulated in a container that is structurally sound, compatible with the contents of the aerosol cans, lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, and is protected from sources of heat.

(2) Universal waste aerosol cans that show evidence of leakage must be packaged in a separate closed container or overpacked with absorbents, or immediately punctured and drained in accordance with the requirements of paragraph (e)(4) of this section.

(3) A large quantity handler of universal waste may conduct the following activities as long as each individual aerosol can is not breached and remains intact:

(i) Sorting aerosol cans by type;

(ii) Mixing intact cans in one container;

(iii) Removing actuators to reduce the risk of accidental release; and

(4) A large quantity handler of universal waste who punctures and drains their aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining universal waste aerosol cans:

(i) 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.

(ii) Establish and follow a written procedure detailing how to safely puncture and drain the universal waste aerosol can (including proper assembly, operation and maintenance of the unit, segregation of incompatible wastes, and proper waste management practices to prevent fires or releases); maintain a copy of the manufacturer's specification and instruction on site; and ensure employees operating the device are trained in the proper procedures.

(iii) Ensure that puncturing of the can is done in a manner designed to prevent fires and to prevent the release of any component of universal waste to the environment. This includes, but is not limited to, locating the equipment on a solid, flat surface in a well-ventilated area.

(iv) Immediately transfer the contents from the waste aerosol can or puncturing device, if applicable, to a container or tank that meets the applicable requirements of 262.14, 262.15, 262.16, or 262.17.

(v) Conduct a hazardous waste determination on the contents of the emptied aerosol can per 262.11. Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of parts 260 through 272. The handler is considered the generator of the hazardous waste and is subject to part 262.

(vi) If the contents are determined to be nonhazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state, or local solid waste regulations.

(vii) A written procedure must be in place in the event of a spill or leak and a spill clean-up kit must be provided. All spills or leaks of the contents of the aerosol cans must be cleaned up promptly.

**Add 273.34(f) to read:**

(f) Universal waste aerosol cans (i.e., each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: “Universal Waste—Aerosol Can(s),” “Waste Aerosol Can(s),” or “Used Aerosol Can(s).”

**Fiscal Impact Statement:**

The amendments have no substantial fiscal or economic impact on the state or its political subdivisions. Implementation of this regulation will not require additional resources beyond those allowed. There is no anticipated additional cost by the Department or state government due to any requirements of this regulation.

**Statement of Need and Reasonableness:**

The following presents an analysis of the factors listed in 1976 Code Sections 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: 61-79, Hazardous Waste Management Regulations.

Purpose: The purpose of these amendments is to realize the benefits of and maintain state consistency with the following EPA regulations published in the Federal Register: “Universal Waste Regulations: Addition of Aerosol Cans,” published on December 9, 2019, at 84 FR 67202-67220, and “Safe Management of Recalled Airbags,” published on November 30, 2018, at 83 FR 61552-61563.

Legal Authority: 1976 Code Sections 44-56-10 et seq.

Plan for Implementation: The Department’s Regulation Development Update (accessible at <http://www.scdhec.gov/Agency/RegulationsAndUpdates/RegulationDevelopmentUpdate/>) provides a summary of and link to this amendment. Additionally, printed copies are available for a fee from the Department’s Freedom of Information Office. Upon taking legal effect, Department personnel will take appropriate steps to inform the regulated community of the amendments and any associated information.



#### DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The Department amends R.61-79, Hazardous Waste Management Regulations, to adopt EPA interim final rule “Safe Management of Recalled Airbags,” published on November 30, 2018, at 83 FR 61552-61563. This rule provides a conditional exemption from the RCRA hazardous waste requirements for entities, including but not limited to, automobile dealerships, automotive salvage and scrap yards, independent repair facilities, and collision centers that collect airbag modules and inflators (“airbag waste”) from automobiles as long as certain conditions are met. This rule enables expedited removal of defective airbag inflators.

The Department further amends R.61-79 to adopt the EPA final rule “Universal Waste Regulations: Addition of Aerosol Cans,” published on December 9, 2019, at 84 FR 67202-67220. This rule adds hazardous waste aerosol cans to the universal waste program under the federal RCRA regulations. Adopting the rule reduces regulatory burdens on retail stores and other establishments that generate, manage, and dispose of aerosol cans by providing a clear, protective system for handling waste aerosol cans. This will promote the collection and recycling of aerosol cans and encourage the development of municipal and commercial programs to reduce the amount of aerosol can waste going to municipal solid waste landfills or combustors.

#### DETERMINATION OF COSTS AND BENEFITS:

There is no anticipated increased cost to the state or its political subdivisions resulting from this revision. The EPA estimates that the “Safe Management of Recalled Airbags” interim final rule will result in industry savings between \$1.7 million and \$13 million (Federal Register, Vol 83, No. 231, page 61561). Similarly, the EPA estimates annual industry cost savings for the “Universal Waste Regulations: Addition of Aerosol Cans” final rule to be between \$5.3 million and \$47.8 million (Federal Register Vol. 84, No. 236, page 67203).

#### UNCERTAINTIES OF ESTIMATES:

There are no uncertainties of estimates regarding costs to the state or its political subdivisions.

#### EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

The revisions to R.61-79 will provide continued protection of the environment and public health, as indicated above.

#### DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

If the regulation is not implemented, there will be detrimental effects on the environment and public health because South Carolina would not be implementing or realizing the benefits of the EPA’s “Universal Waste Regulations: Addition of Aerosol Cans” final rule and the “Safe Management of Recalled Airbags” interim final rule described above.

#### **Statement of Rationale:**

Below is the Statement of Rationale pursuant to S.C. Code Section 1-23-110(h):

The Department amends R.61-79 to adopt two EPA rules published in the Federal Register. The EPA has given authorized states, including South Carolina, the discretion to adopt these rules as they make existing standards less stringent and provide more flexibility to the regulated community. The “Safe Management of Recalled Airbags” interim final rule, published on November 30, 2018, at 83 FR 61552-61563 creates a conditional exemption from RCRA requirements for certain entities that collect airbag waste from automobiles. The “Universal Waste Regulations: Addition of Aerosol Cans” final rule published on December 9, 2019, at 84 FR 67202-67220 reduces regulatory burdens on businesses that generate, manage, and dispose of aerosol cans.

**ATTACHMENT B**

**SUMMARY OF PUBLIC COMMENTS AND DEPARTMENT RESPONSES**

**Document No. 4975**

***R.61-79, Hazardous Waste Management Regulations***

**As of the September 28, 2020, close of the Notice of Proposed Regulation comment period:**

<b>Name</b>	<b>Section</b>	<b>Department Response</b>
<b>Household &amp; Commercial Products Association (HCPA)</b>	<b>None Cited</b>	The Department agrees with the below comments from the HCPA, this new rule, modeled from the EPA will reduce regulatory burdens on retail stores and other establishments that generate, manage, and dispose of aerosol cans by providing a clear, protective system for handling waste aerosol cans. This will promote the collection and recycling of aerosol cans and encourage the development of municipal and commercial programs to reduce the amount of aerosol can waste going to municipal solid waste landfills or combustors.
<b>Comment:</b> The Household & Commercial Products Association (HCPA) appreciates the opportunity to offer comments to the South Carolina Department of Health and Environmental Control (SCDHEC) on their proposed amendment to R.61-79, which would include aerosol cans in South Carolina's Universal Waste program. HCPA supports SCDHEC's proposed amendment as it is based on EPA's Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations rule.		