Reconditioning/Used Drum Management: Institute of Scrap Recycling Industries Comments Addressing U.S. Environmental Protection Agency Advance Notice of Rule Proposed Rulemaking



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The Institute of Scrap Recycling Industries ("ISRI") submitted November 22nd comments to the United States Environmental Protection Agency ("EPA") addressing the following Advance Notice of Proposed Rulemaking ("ANPR") titled:

Used Drum Management and Reconditioning 88 Fed. Reg. 54537 (August 11, 2023)

EPA's ANPR solicits information/requests comment to assist the federal agency in the potential development of:

. . . non-regulatory and regulatory options that would ensure the proper management of used industrial containers that held hazardous chemicals or hazardous waste, up to and including the drum reconditioning process.

Drum reconditioning facilities clean and recondition metal and plastic and intermediate bulk containers for resale and reuse by cleaning, restoring, testing, and certifying the industrial containers. The containers may have held substances such as chemicals, resins, tars, adhesives, oils, soaps, solids, related materials.

EPA has described the two main processes used for reconditioning as:

- Burning residuals for metal drums in a burn-oven or furnace
- Washing metal or plastic drums with water and/or a caustic solution to remove residues

A key Resource Conservation and Recovery Act ("RCRA") provision is relevant to drum reconditioning. The so-called "empty container" provision exempts RCRA hazardous waste residues remaining in a drum or other container if certain conditions are met. See 40 C.F.R. 261.7.

EPA's concern is that the volume of containers handled by reconditioning facilities could result in some non-RCRA empty containers being accepted.

The federal agency describes the potential options for revising its regulation of drum reconditioning as:

- Revising the RCRA regulations
- Non-regulatory options

ISRI describes itself as the Voice of the Recycled Materials Industry and consists of 18 chapters nationwide and more than 1600 members, representing companies that process, broker, and consumer recyclable materials, including metals, paper, plastics, glass, rubber, electronics, and textiles.

ISRI initially states its concern that:

. . . the lifecycle of used drums is not a valid purpose for tightening the RCRA Subtitle C regulations relevant to recycling of used drums and urges EPA not to do so.

The association states that its members use acceptance policies to prevent receiving problematic used drums for recycling. As a result, it takes the position that additional regulation under RCRA Subtitle C is not necessary. It further argues that tightening the relevant RCRA Subtitle C regulations could in fact result in less recycling of used drums.

Key points put forth in the ISRI comments include:

1. Concern about the lifecycle of used drums is not a valid purpose for tightening the RCRA Subtitle C regulations relevant to recycling of used drums, and EPA should not do so (arguing that life cycle considerations are not the purpose of the RCRA Subtitle C regulations).
2. ISRI members use acceptance policies to prevent receiving problematic used drums for recycling and do not need additional regulation under RCRA Subtitle C (ISRI members mostly handle steel drums for processing into recycled steel products by electric arc furnace operators which is promoted by the existence of the RCRA recycling exemption at § 261.6(a)(3)(ii).)
3. Tightening of RCRA Subtitle C regulations relevant to recycling of used drums to encourage drum reuse could result in less recycling of used drums (since recyclers are not required to accept used drums for recycling, requiring used drums for recycling to be clean of all hazardous residues could result in less recycling of used drums.)

ISRI also states that it supports “many” of the points raised by the Steel Manufacturers Association in its comments on the ANPR. The Steel Manufacturers Association is the primary trade association for scrap-based electric arc furnace carbon steel makers. They are often referred to as minimills and account for 70 percent of the steel producing capacity in the United States.

A copy of both the ISRI and Steel Manufacturers comments can be downloaded here.