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Reconditioning/Used Drum Management: Alliance for Chemical Distribution Comments Addressing U.S. Environmental Protection Agency Advance Notice of Proposed Rulemaking

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The Alliance for Chemical Distribution (“ACD”) submitted comments to the United States Environmental Protection Agency (“EPA”) on November 17th addressing the following Advance Notice of Proposed Rulemaking (“ANPR”):

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

EPA’s ANPR solicits information/requests comments 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, or related materials.

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

- Burning residuals from metal drums in a burn-off oven or furnace
- Washing metal or plastic drums (or containers) with water and/or a caustic solution to remove residues

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

EPA has expressed concern that the volume of containers handled by reconditioning facilities could mean that some non-RCRA empty containers are excepted.

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

- Revising the RCRA regulations
- Non-regulatory options

ACD's November 17th comments state that the trade association represents more than 400 chemical distribution industry members which are primarily small, multi-generational family-owned businesses. They are stated to provide chemical products used in medicine and healthcare, food and agriculture, clean water and sanitation, energy production, electronics, communication and more to over 750,000 end users.

ACD's comments request that EPA reconsider certain changes that it has stated to have identified in the ANPR.

ACD argues that the current RCRA regulations are "largely working as intended." Further, the organization notes:

. . . 86 distinct reconditioning facilities that have reported damage cases in its Drum Reconditioner Damage Case Report but 51 of those, or 59%, were reported in the year 2000 or earlier. Only 23 facilities reported damage cases, or 12.7%, from 2011 to the present. ACD believes this is evidence that used drum management is improving.

The comments further state in part:

- Existing regulations surrounding the drum reconditioning industry are comprehensive and can address EPA's concern through outreach, education, and enforcement.
- New overly prescriptive/burdensome regulations will put additional strain on reconditioners and other stakeholders potentially forcing them to close, increasing costs and disincentivizing reconditioning
- Various changes do not clearly delineate whether they apply only to containers containing hazardous materials or also to nonhazardous materials

Additional definitions and/or issues addressed in the comments include:

- Emptying containers
- RCRA "empty" definition
- Shipping non-RCRA empty containers
- Standard operating procedures
- Labeling
- Container packaging
- Acceptance, storage, handling, and management of non-RCRA empty containers by reconditioners:
- Standard operating procedures for drum reconditioners
- Rejecting non-RCRA empty containers from transporters
- Waste analysis plans
- Sending non-RCRA empty containers directly to treatment storage and disposal facilities
- Discrepancy reports
- Financial resources
- Emissions from drum furnaces and management of wastes generated from reconditioning
- Emergency response
- Permitting
- End-of Life-Management

A copy of the comments can be downloaded [here](#).