



**Walter Wright, Jr.**  
wwright@mwlaw.com  
(501) 688.8839

# Reconditioning/Used Drum Management: ASTSWMO Comments Addressing U.S. Environmental Protection Agency Advance Notice of Proposed Rule Making

12/01/2023

The Association of State and Territorial Solid Waste Management Officials (“ASTSWMO”) submitted comments to the United States Environmental Protection Agency (“EPA”) on November 22 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, 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 contained 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

ASTSWMO describes itself as an association representing the waste management and remediation programs of the 50 states, five territories, and the District of Columbia. The membership is stated to include waste program experts in the management regulation of solid and hazardous waste.

Mr. Brad Toler of the Arkansas Department of Energy and Environment – Division of Environmental Equality is a member of the ASTSWMO Hazardous Waste Subcommittee which drafted the organization's comments.

ASTSWMO characterizes its comments as presenting:

... a nuanced perspective on the proposed regulations, emphasizing the support of maintaining the RCRA empty standard while advocating for additional guidance over rigid requirements.

The November 22 letter suggests:

- Ensuring structurally sound containers should be prioritized over written certifications
- Need for comprehensive oversight in specific areas such as:
- Issuance of EPA ID numbers
- Implementation of Standard Operating Procedures

Issues addressed in the comments include:

- Emptying containers (need for increased regulatory language is not apparent but suggests additional guidance for emptying containers with different waste types)
- Acceptance, storage, handling and management of non-RCRA empty containers (does not support site-specific SOPs for individual used drum generators but endorses SOPs for drum reconditioners)
- Shipping of non-RCRA empty containers (opposed to mandating SOPs for ensuring drums are RCRA empty before being shipped because hazardous waste regulations already set standards)
- Container packaging (integrity) (supports requiring RCRA empty drums going to reconditioners to be structurally sound but notes that not all such drums can meet the standard)
- Emissions from drum furnaces (Clean Air Act permitting may apply to such furnaces and therefore hazardous waste regulations may not be necessary)
- Management and mismanagement of waste waters and other waste generated from drum reconditioning (questions the authority to regulate rinseate from drums previously containing either hazardous or nonhazardous substances if they do not meet the definition of a hazardous waste)
- Emergency Response (if drum reconditioners accept only RCRA empty drums emergency scenarios described by EPA would be unlikely)
- Permitting (opposes full RCRA permitting for drum reconditioners and instead recommends a conditional exemption)
- Management (supports applying the current RCRA empty standard to containers sent for reconditioning or disposal/emphasizes the need for clean containers when sent for scrap recycling to avoid environmental hazards)
- Transportation equipment for cleaning facilities (supports the conditional exemption for such facilities and requiring unauthorized waste reports/compliance with applicable regulations)
- Environmental justice (communities in which reconditioners operate deserve to know of such operations and understand them/provide suggestions)
- Additional topic (suggests proposed addition guidance/training on how drum reconditioner rule making interacts with the hazardous materials transportation requirements)

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