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Reconditioning/Used Drum Management: Utility Solid Waste Activities Groups Comments Addressing U.S. Environmental Protection Agency Advance Notice of Proposed Rulemaking

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The Utility Solid Waste Activities Group (“USWAG”) 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 comments to assist the federal agency in the potential development of:

. . . nonregulatory 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-type intermediate bulk containers for resale and re-use by cleaning, restoring, testing, and certifying the industrial containers. The containers may have held substances such as chemicals, resins, tars, adhesives, oils, soaps, solids, and 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 the 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

USWAG describes itself as:

. . . an association of over 130 utilities, utilities operating companies, energy companies, and trade associations representing electric companies, utilities, and cooperatives.

The USWAG comments initially state:

- Nothing in the EPA September 2022 Drum Reconditioner Damage Case Report supports the notion that existing RCRA regulations including the empty-container rule are not protective of public health and the environment.
- Elimination of the empty-container rule and/or the imposition of additional regulatory conditions and the management of empty containers would do little to address EPA's concern with damage case incidents identified in the previously referenced report.
- Regulatory changes would threaten to undermine the significant/important environmental benefits of reconditioning RCRA empty containers for reuse as opposed to disposal.
- A preferred and more effective option to address the issues is for EPA to pursue the practical and effective non-regulatory options identified in the ANPR.

The USWAG comments contain the following sections:

1. The Drum Report does not provide the requisite record evidence to warrant additional rulemaking.
2. Adding additional regulations will not increase compliance.
 1. Reduce the "one-inch" regulatory limit; require rinsing for all containers; and add structural integrity condition
 2. Add/strengthen regulatory requirements for used drum generators to ensure all waste has been removed from containers using commonly employed practices prior to being sent to reconditioners, such as SOPs for drum emptying, certification of empty drums, and employee training.
 3. Add regulatory language further clarifying "commonly employed practices" and distinguishing between pourable and non-pourable wastes.
 4. Add tracking and/or Recording & Drum Labeling Requirement for Used Drum Generators.
3. Focus on devoting additional resources toward compliance training.

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