



November 21, 2023

VIA E-DOCKET

US Environmental Protection Agency
EPA Docket Center
Office of Resource Conservation and Recovery Docket
Mail Code 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

**Re: Docket ID EPA-HQ-OLEM-2023-0320
Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking
(ANPRM)
88 Fed Reg 54537 (August 11, 2023)**

Dear Sir or Madam:

The Cement Kiln Recycling Coalition (CKRC) is a national trade association representing cement manufacturers in the U.S. that recycle the value in energy-bearing wastes by using them as fuel in kilns that produce portland cement. In addition, CKRC represents companies that collect, process, manage, and market alternative fuels for use in cement kilns as well as companies that provide consulting services to the industry.

Energy recovery in cement kilns plays a key role in fulfilling EPA's Land Disposal Restrictions (LDR) program, which is directed at reducing the amount and effects of hazardous waste constituents that are land-disposed. CKRC member companies provide *essential waste management* services that eliminate land-disposal of hazardous constituents, protecting the environment while simultaneously producing cement, a key component of concrete which is the second most consumed commodity in the world after water.

In addition, energy recovery in cement kilns achieves an overall improvement of CO₂ savings by avoiding the combustion of coal that would occur if these wastes went to thermal treatment solely for destruction.

The Used Drum Management and Reconditioning Advance Notice (“Used Drum Advance Notice” or “ANRPM”) focuses on drum reconditioners that are not Treatment, Storage, and Disposal facilities (TSDFs). In some cases, CKRC member facilities send RCRA Empty drums to these reconditioners. However, CKRC’s members, in addition to taking advantage of the “RCRA Empty” exemption, are fully permitted TSDFs under 40 CFR Part 264 and 270 and, as such receive substantial regulatory oversight.

CKRC is concerned with many of the changes being contemplated in the ANPRM because of the negative -- and in some cases unintended -- consequences they could have on the existing compliance framework within which these permitted TSDFs successfully operate. Furthermore, CKRC finds that the basis on which EPA is considering potential changes is both flawed and outdated. CKRC feels strongly that Agency resources would be better used on education and compliance assistance efforts to improve implementation of existing standards which, when complied with, are both effective and protective of human health and the environment.

CKRC offers comments on the Used Drum Advance Notice in the following areas:

- EPA’s Damage Case Report mischaracterizes the causes of damages; overstates the environmental and human health risks associated with container reconditioners today; fails to demonstrate that existing regulations, when complied with, are inadequate; and does not support the regulatory enhancements being considered.
- The changes to the “RCRA Empty” standard being contemplated by EPA will not improve the management of used containers and will add unnecessary burden to container generators especially those, including CKRC members, which are already permitted TSDFs, and reconditioners.
- CKRC is particularly concerned about adding container rinsing requirements in order to achieve “RCRA Empty” [Section V.A.].
- EPA should compile and analyze all existing federal and state regulations that apply during the full lifecycle of container management before developing additional requirements and include that analysis in this rulemaking docket.

EPA's Damage Case Report¹ mischaracterizes the causes of damages; overstates the environmental and human health risks associated with container reconditioners today; fails to demonstrate that the existing regulations, when complied with, are inadequate; and does not support additional regulation. EPA should re-evaluate its damage case report findings and look closely at the basis for its conclusions. For example, the primary focus of such a reanalysis should be on the open, contemporary facilities, operating under modern environmental protection standards that have had recent damage incidents. There are 35 facilities that have been identified as having damage cases since 2001. EPA identifies 21 of the 35 facilities as being open (the remaining 14 are characterized as closed).

In the attached table, CKRC has included key excerpts from each of these 21 damage cases. Of the 21, at least two of the facilities were operating well before 1970; likely have legacy environmental releases and contamination; and are not reflective of operations under modern environmental protection standards. All of the 19 remaining facilities are reported as having violations or other enforcement actions under a variety of environmental or occupational protection regulations with the vast majority having reported little to do with the handling and reconditioning of RCRA Empty containers (e.g., worker stepped into an unguarded opening and sustained injury). In fact, only three of the 19 facility summaries include a reported concern with RCRA non-empty containers. Of the three damage cases that mentioned the handling of non-empty containers, one was cited for fires and flames bursting from thermal cleaning of containers; this risk may have been exacerbated *if* the facility had been handling RCRA non-empty containers, but this was not suggested in the damage case summary. Another case summary alludes to handling drums that are likely RCRA non-empty but only cites environmental concern and violations associated with its wastewater discharge and not the handling of RCRA non-empty containers. The third damage case mentioned that some drums *may have been* RCRA non-empty and was cited for OSHA workplace protection violations.

¹ Drum Reconditioner Damage Case Report, September 2022, Office of Resource Conservation and Recovery, EPA 530-R-22-003

The bottom line is that today's operating drum reconditioners are already subject to multiple regulatory programs under the Occupational Safety and Health Administration (OSHA), Department of Transportation (DOT) and Environmental Protection Agency's (EPAs) Resource Conservation and Recovery Act (RCRA), Emergency Preparedness and Community Right-To-Know Act (EPCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Clean Water Act (CWA), and Clean Air Act (CAA) programs. While there are certainly examples of open facilities that have caused recent adverse human health or environmental impacts, in all the cases identified, these facilities have been found to be in noncompliance with some existing regulatory requirement. However, there is almost no information suggesting that the handling of RCRA non-empty containers at container reconditioning facilities has resulted in a significant risk to human health or the environment. EPA's suggestion that these particular damage cases are evidence of a "persistent" concern warranting significant revisions to the existing RCRA regulations is overstated. As EPA pointed out when it first promulgated these standards in 1980: "the small amount of hazardous waste residue that remains in individual empty, unrinsed containers does not pose a substantial hazard to human health or the environment."² Based on the review summarized above, this remains true today. EPA must do a much more precise analysis and reporting of damage cases in order to justify proposing the enhanced regulations under consideration.

EPA should focus on identifying and evaluating a subset of container reconditioners who are complying with the existing rules but are still causing a risk of concern to human health and the environment. If enough such facilities exist and can be identified, they can be used to help design and inform any further action that may be recommended, regulatory and non-regulatory. CKRC encourages EPA to first focus on non-regulatory options [Section III.B.] such as compliance assistance strategies, clearer guidance, and outreach. Then, as necessary, stepped-up enforcement of the existing requirements. Only after these two important steps are implemented fully should EPA consider the development of additional regulations.

² Federal Register, Vol. 45 No. 229, Tuesday, November 25, 1980, 78525

If EPA ultimately gets to the stage of considering additional regulatory provisions, it should shape a national scale risk analysis to help decide whether and to what extent a rework of this portion of the hazardous waste management regulatory system is needed to protect human health and the environment. As mentioned above in developing such a risk analysis EPA should identify and focus on facilities and damage cases that are complying with the existing rules but are still causing a risk of concern to human health and the environment. EPA expresses concern about the cumulative environmental hazard associated with the residues from handling many RCRA Empty containers. Such a risk analysis – if applied realistically – could also inform this issue. EPA’s suggestion in the ANPRM that millions of RCRA Empty containers are being managed in one location and could pose a collective risk of concern is a far-fetched, unrealistic scenario that could be corrected as part of such a risk analysis. [Section V.C.]

The changes to the “RCRA Empty” standard being contemplated by EPA will not improve the management of used containers and will add unnecessary burden to container generators, especially those, including CKRC members, which are already permitted TSDFs, and reconditioners. CKRC is concerned that many of EPA’s proposals [Section V.] will disincentivize the sustainable reconditioning, reuse and recycling of containers and also will adversely affect used container markets. This is especially true of any amendment that would effectively remove the “RCRA Empty” option. If the RCRA Empty option is eliminated or if the requirements to achieve RCRA Empty become excessively burdensome, then container generators will have no recourse but to manage, from cradle to grave, the small amount of material remaining in their containers as hazardous waste. This will create incentives for container generators to either seek container reconditioners that have become permitted TSDFs at substantial cost; or simply bypass the container reconditioners and send their containers directly to existing hazardous waste treatment and disposal. Under either scenario, with no guardrails on the amount allowed, the volume of discard is likely to be greater than under today’s RCRA Empty standard. In short, if the criteria for achieving RCRA Empty is modified to be more stringent, this will increase the regulatory burden for those already achieving RCRA Empty and likely *will not* change the behavior of those who are not meeting the current standard.

CKRC is particularly concerned about adding additional container rinsing requirements in order to achieve “RCRA Empty” [Section V.A.]. CKRC does not believe that the changes to the RCRA Empty standard being contemplated by EPA will improve the management of used containers and instead will add unnecessary burden to container generators and reconditioners. As indicated in the damage case report, wastewater handling at drum reconditioning facilities already poses significant challenges. Requiring container generators to also engage in more rinsing prior to shipment to drum reconditioners simply spreads and transfers the wastewater challenge identified in EPA’s damage case report to another category of facility, container generators. The suggestion that rinsing be expanded at container generator facilities and required to render all containers RCRA Empty should be evaluated thoroughly especially from a multimedia impact perspective. Rinsing requirements impose a huge operational impact with limited benefit and substantial cost. Requirements to do more rinsing contradict waste minimization goals and will likely introduce a new waste stream to be managed. More waste may go to landfills because container reconditioners will not find it cost effective to invest in the wastewater handling infrastructure that is needed to meet these new requirements. Rinsing requirements will entail installation of significant new equipment, management of new processes, and involve substantial amounts of manual labor and the associated increase in employee health and safety injuries and accidents. In addition, significant implementation time is needed for such an undertaking. Finally, CKRC notes that the imposition of additional requirements to achieve RCRA empty will likely slow down the entire waste handling process and aggravate the containerized waste treatment backlog being experienced by TSDFs.³

EPA should look to the existing regulations that apply along the lifecycle of container management before developing additional requirements. Throughout the ANPRM EPA mentions a variety of record keeping, reporting and similar administrative requirements. These include, for example, labeling [Section V.C.], certification [Section V.B.], standard operating procedures (SOPs) [Section V.B.], training [Section V.B.], tracking [Section V.B.], inspections and

³ EPA Office of Land and Emergency Management, Memorandum from Carolyn Hoskinson, Director Office of Resource Conservation and Recovery (August 10, 2021), "Regulatory Options for Addressing the Temporary Backlog of Containerized Hazardous Waste Needing Incineration." <https://rcrapublic.epa.gov/files/14939.pdf>.

inventory [VI.A.], contingency planning [Section VI.D. & VI.E.]. Before EPA moves forward to develop additional regulatory provisions in any of these areas, CKRC encourages EPA to thoroughly evaluate the many regulatory programs that both container generators and container reconditioners must comply with today. These include, but are not limited to, regulations under the RCRA, CAA, CWA, EPCRA, CERCLA, DOT-Hazardous Materials, Mine Safety and Health Act, Occupational Safety and Health Act and applicable State laws. Together these laws and their associated regulatory requirements offer layers of environmental and human health protectiveness. Before adding to this landscape of existing requirements a full analysis of the degree of overlap and duplication is needed.

Thank you for the opportunity to provide comments on this Advance Notice. Should you have questions or need additional information, please contact me.

Sincerely,

/s/ Michelle Lusk

Michelle Lusk
Executive Director
Cement Kiln Recycling Coalition

ATTACHMENT

Drum Reconditioners⁴ – Damage Case Date Range between 2001 and the present and remain open.

#	Company	City	State	Excerpt from Damage Incident Summary ⁵	Category ⁶
1	Apex Drum Company	Commerce	CA	OSHA: inadvertently stepped into the unguarded opening (2 ft by 2 ft), which was located beneath the working floor and sustained unspecified injuries.	V
2	Charlotte Steel Drum Corp.	Charlotte	NC	Site is a Significant Non-Complier for RCRA, with citations beginning in April 2020 include managing hazardous waste without a RCRA Permit.	V
3	Dallas Steel Drums, Inc	Dallas	TX	Violations pertained to drums not meeting minimum thickness requirements, improper/inaccurate marking of reconditioned drums, improper training of employees, and not maintaining required notification records.	V
4	Drumco of Arkansas	Arkadelphia	AR	Due to the nature of the reconditioning process using incineration, reports have been made from employees of flames bursting from open burners/incinerators at the facility. Chemicals left in the bottom of the drums have also caused fires that have injured workers..... the plant was not properly recording and reporting emissions	V NE
5	Drumco of Tennessee	Memphis	TN	Facility was in "significant noncompliance" for continuous pH violations related to wastewater discharges The only time his team rejects a drum is if it is too heavy for anybody to pick up and move. "We get some that are, you know, more than an inch that we just, you know, pick up together and dump it up in a tote, let it drain ... whatever," the supervisor said.	V NE
6	Industrial Container Services	Brighton	CO	The Colorado Department of Public Health & Environment identified a Clean Air Act (CAA) violation at the facility.	V

⁴ These data are extracted from Appendix B – Drum Reconditioner Facility Comprehensive List in *Drum Reconditioner Damage Case Report*, September 2022, Office of Resource Conservation and Recovery, EPA 530-R-22-003. The list includes those facilities that have a "Damage Case Date Range" between 2001 and the present and were designated as being "Open".

⁵ The column titled "Excerpt from Damage Incident" are selected key statements copied directly from the case studies in Appendix A of the *Drum Reconditioner Damage Case Report*.

⁶ The column titled "Category" indicates whether the facility was found in violation of an applicable environmental or worker protection regulation (V), was considered a legacy facility rather than an open and operating facility (L) or if there was an indication in the damage case report that the facility had handled non RCRA empty containers (NE).

7	Industrial Container Services	Grand Rapids	MI	During the inspection, it was found that ICS did not properly maintain acceptable records of Hazardous Air Pollutant (HAP) emissions.	V
8	Industrial Container Services	Charleston	SC	SCDHEC drafted an inspection report which cited several deficiencies of South Carolina Hazardous Waste Management Regulations..., including failure to make hazardous waste determinations on solid wastes.	V
9	Industrial Container Services	Seattle	WA	Drum reconditioning and manufacturing operations on the property date back to as early as the 1930s.... it may be contributing pollution to the Lower Duwamish Waterway Superfund Site... Contamination at this site is a result of drum reconditioning operations.	L
10	Industrial Container Services	Jeffersonville	IN	drums brought into the facility were classified as RCRA Empty but contained varying quantities of product residue...OSHA: employer did not establish and maintain conditions of work, which were reasonably safe and healthy for employees, and free from recognized hazards that could cause or were likely to cause death or serious physical harm to employees due to the exposure to potentially dangerous and/or toxic decomposition products produced from inadvertent mixing of incompatible chemicals.	V NE
11	Meyer Steel Drum	Chicago	IL	The NOV from the EPA was a result of an announced inspection in March 2019 to witness CAA volatile organic compounds stack testing at washing operations. According to their process system, the facility receives empty drums....and empties, washes, cleans, repairs, paints, and resells them. They observed a strong odor in the plant and a high concentration on their volatile organic compound analyzers. They also observed poor capture of vapors from the first solvent washing line.	V
12	Mid America Steel Drum Co	St Francis	WI	See below	V
13	Mid America Steel Drum Co	Oak Creek	WI	See below	V
14	Mid America Steel Drum Co	Milwaukee	WI	Violated RCRA regulations regarding the storage and transportation of hazardous waste, as well as recordkeeping and reporting requirements. Plants have been cited repeatedly by regulators for dumping too much mercury in the wastewater and toxic emissions into neighborhood air.	V
15	Meyers Container CMS	Portland	OR	In 2007, city of Portland sampling of inline stormwater sediments, both above and below Container Management Services (CMS) stormwater	V

				connection, suggested that the site may be discharging contaminants to the Willamette River.	
16	Patrick J. Kelly Drums, Inc	Camden	NJ	This facility had been discharging stormwater containing pollutants to the waters of the State without a valid NJPDES permit.	V
17	Schuetz Container Systems	Pasadena	TX	Apparently not in compliance with Emergency Planning and Community Right-to-Know Act requirements at the time of the accident [unknown chemical reaction had started in the return processing area]. OSHA has cited Schuetz on two occasions	V
18	Scranton Cooperage	Jessup	PA	sodium chlorite ignited after an employee punctured a steel drum with a forklift...charged with failing to properly manage hazardous waste at his business.... did not have the necessary permits from DEP to store or dispose of hazardous waste.	V
19	Superior Barrel and Drum Co	Elk Township	NJ	The company used a hidden drain, and over ten years, lied to regulators to carry out their illegal dumping.	V
20	Tote Detailing Services	Joliet	IL	OSHA inspected the plant and found eight violations, ranging from how the plant handled hazardous materials to poor record keeping.	V
21	Tunnel Barrel & Drum Co	Carlstadt	NJ	The Carlstadt plant and headquarters were opened in 1966. 12 settling parties (Tunnel Barrel & Drum Co being one of them) will pay an estimated \$2.5 million for the investigation and an estimated \$1 million to remove contaminated soil.	L