



ISRI is the voice of the recycled materials industry, promoting safe, economically sustainable, and environmentally responsible recycling through networking, advocacy, and education.

Via electronic submission at www.regulations.gov

November 22, 2023

Tracy Atagi
Environmental Protection Agency
Office of Land and Emergency Management
1200 Pennsylvania Avenue NW, Mail Code 5304T,
Washington, DC 20460

Re: Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking (EPA-HQ-OLEM-2023-0320)

Dear Ms. Atagi,

The Institute of Scrap Recycling Industries, Inc. (ISRI) would like to submit the following brief comments for EPA’s consideration concerning its “Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking” (ANPRM)¹.

ISRI is the *Voice of the Recycled Materials Industry*[™]. With headquarters in Washington, DC, 18 chapters nationwide, and more than 1,600 members, ISRI represents companies that process, broker, and consume recyclable materials, including metals, paper, plastics, glass, rubber, electronics, and textiles. ISRI provides education, advocacy, and safety and compliance training, and promotes public awareness of the essential role that recycled materials play in the U.S. economy, global trade, the environment, and sustainable development. Based on the latest annual data (2021), the U.S. recycled materials industry produces more than \$117 billion annually in economic activity and supports more than 500,000 Americans with good jobs.

ISRI appreciates this opportunity via the ANPRM to inform EPA’s development of potential non-regulatory and regulatory options for used drums and similar containers (henceforth, “used drums”, for conciseness). While ISRI’s comments on the ANPRM focus solely on the recycling of used drums as conducted by its members, ISRI supports many of the points raised by the Steel Manufacturers Association (SMA) in its comments on the ANPRM.

In summary, ISRI maintains that 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

¹ 88 Fed. Reg. 54537-54548, August 11, 2023; EPA-HQ-OLEM-2023-0320.



urges EPA not to do so. ISRI members use acceptance policies to prevent receiving problematic used drums for recycling (i.e., those with residual chemicals) and do not need additional regulation under RCRA Subtitle C. Tightening of the RCRA Subtitle C regulations relevant to recycling of used drums to encourage drum reuse could result in less recycling of used drums.

I. Comments

The ANPRM mainly discusses activities related to used drums (i.e., drum reconditioning for reuse) that are largely outside the activities conducted by ISRI members. ISRI members are involved in the recycling of used drums, mainly used steel drums. As a consequence, ISRI's review of the ANPRM focused on the discussion in the "End-of-Life Management" section, which was summarized in part by Table 1, "Potential Future Regulatory Options", concerning "Drum End-of-Life Management Facilities (e.g., scrap yards and landfills)".

A. 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.

The "End-of-Life Management" section of the ANPRM is somewhat surprisingly focused on the lifecycle of used drums and the lifecycle issue of recycling a used drum before it has been reused. ISRI agrees that such lifecycle considerations are important and that drum reuse should be encouraged when feasible and when doing so produces net environmental benefits in practice. However, such lifecycle considerations are not part of the purpose of the RCRA Subtitle C regulations; the purpose of these regulations is to define hazardous waste and to address issues associated with hazardous waste.

After reviewing the importance of drum reuse in the lifecycle of used drums, EPA considers the effect of future RCRA Subtitle C regulations on drum reconditioners and notes the potential "unintended consequence [of] steer[ing] used drums away from reconditioners and instead divert[ing] them straight to scrap recycling or disposal." EPA mentions concerns raised by the Reusable Industrial Packaging Association (RIPA) about "direct-to-scrap management of used industrial containers, including the potential for contamination of the scrap metal and plastics from the container residues, and the lost environmental benefits from container reconditioning." The source RIPA document² notes that "scrapping industrial containers before the end of their useful life actually harms the environment by preventing reuse" and advises that "[c]ompanies should send all their empty residue containers to a reconditioner that is a member of [RIPA]."

² "No More Direct To Scrap" (<https://www.reusablepackaging.org/direct-to-scrap/>).

For the purpose of achieving more drum reuse prior to recycling, rather than addressing any hazardous waste issue, EPA considers potentially changing the RCRA Subtitle C regulations to restrict movement of RCRA-empty drums per 40 CFR § 261.7 to only drum reconditioners and allowing only “containers [that are] clean of all hazardous residues” (emphasis added) to be sent to recycling facilities. These potential regulatory changes are listed in Table 1 as addressing the “[r]isk from contaminated scrap metal and plastic when recycled or land disposed”. This risk is not obviously a hazardous waste issue, and these potential regulatory revisions do not obviously address one either. Nonetheless, ISRI members that recycle used drums are concerned about a such risks and have policies to address them.

It seems evident that EPA is considering tightening the RCRA Subtitle C regulations to increase drum reuse by making recycling of used drums more difficult, even though doing so does not address a hazardous waste issue. Encouraging drum reuse is not a valid reason for tightening the RCRA Subtitle C regulations relevant to recycling of used drums. EPA should not do so.

B. ISRI Members Use Acceptance Policies to Prevent Receiving Problematic Used Drums for Recycling and Do Not Need Additional Regulation under RCRA Subtitle C.

In response to EPA’s request for comment on “end-of-life management of containers with hazardous residues remaining in the containers”, ISRI notes that its members handle used steel drums mainly and process them into a recycled steel product that mostly electric arc furnace (EAF) operators purchase as input materials for their production of steel. This fact is likely promoted by the existence of the long-time RCRA recycling exemption at § 261.6(a)(3)(ii) for “[s]crap metal that is not excluded under § 261.4(a)(13)”, RCRA recycling exclusion for processed and certain other scrap metal” under § 261.4(a)(13), and the RCRA-empty definition under § 261.7, “Residues of hazardous waste in empty containers”. Only § 261.7 applies to used non-metallic (e.g., plastic) drums. At least one ISRI member is known to recycle used plastic drums.

ISRI members are aware of the potential operational issues arising from residual chemicals (whether or not hazardous waste) associated with used drums received for recycling. These potential issues include environmental (e.g., adverse impact on quality of stormwater discharges), health & safety (e.g., worker inhalation of toxic vapor), quality (e.g., rendering recycled steel product off-specification and unfit for an EAF), and regulatory (e.g., potential violations and enforcement). Avoiding all of these potential used drum issues is important to recycling operations.

To prevent receiving for recycling used drums with residual chemicals, ISRI members operate with acceptance policies that include provisions for such problematic used drums. Examples of policy provisions include: “open, with no lids or caps so the interior of the drums can be visually inspected to confirm they are empty”; “Accepted if they are open top and are completely empty with no solids or vapors or are closed top and are empty and crushed flat such that no vapors could be accumulated”; and “Empty with no residual content; entire top removed or cut in half to allow for inspection. Containers formerly containing ‘acute’ hazardous waste (as defined in 40 CFR 261) only accepted if certified triple rinsed. Provide MSDSs for any drums bearing hazard or warning labels.” The one ISRI member known to recycle used plastic drums requires them to have been previously triple-rinsed.

ISRI members are operating under the current RCRA Subtitle C regulations to properly receive and recycle used drums. Nothing presented in the ANPRM justifies tightening the RCRA Subtitle C regulations relevant to recycling of used drums.

C. Tightening of RCRA Subtitle C Regulations Relevant to Recycling of Used Drums to Encourage Drum Reuse Could Result in Less Recycling of Used Drums.

For the purpose of increasing drum reuse, EPA suggests potentially tightening the RCRA Subtitle C regulations relevant to recycling of used drums. In particular, EPA is potentially considering requiring used drums sent to recycling to be clean of all hazardous residues rather than RCRA-empty under § 261.7 currently. Because 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. The necessary degree of cleaning could be too impracticable for those possessing used drums for potential recycling (e.g., manufacturing operations). On the other side, a recycler could encounter difficulty verifying upon receipt that every used drum is completely clean (e.g., the need to conduct a hazardous waste determination under § 262.11 on every used drum) and decide that the regulatory and economic risks of receiving a non-clean used drum are too high to continue accepting used drums for recycling. EPA should consider the possibility of these adverse outcomes for recycling of used drums in its future work on used drum management and reconditioning.

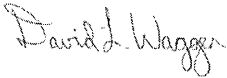
II. Summary

ISRI maintains that 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 urges EPA

not to do so. ISRI members use acceptance policies to prevent receiving problematic used drums for recycling and do not need additional regulation under RCRA Subtitle C. Tightening of the RCRA Subtitle C regulations relevant to recycling of used drums to encourage drum reuse could result in less recycling of used drums.

In closing, ISRI appreciates this opportunity to provide comment on EPA's Used Drum Management and Reconditioning ANPRM and EPA's consideration of these comments. If you have any questions, you can reach me at DWaggar@isri.org or 202-662-8533.

Sincerely,



David L. Waggoner, Ph.D.
Chief Scientist / Director of Environmental Management
Institute of Scrap Recycling Industries, Inc.



STEEL MANUFACTURERS ASSOCIATION

November 22, 2023

Via Regulations.gov

Michael S. Regan, Administrator
Environmental Protection Agency
Docket ID No. EPA-HQ-OLEM-2023-0320
Mailcode: 28221T
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: Comments of the Steel Manufacturers Association on the Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking; EPA Docket ID No. EPA-HQ-OLEM-2023-0320

Dear U.S. Environmental Protection Agency:

This letter provides comments from the Steel Manufacturers Association (“SMA”) on the U.S. Environmental Protection Agency’s (“EPA’s” or “the Agency’s”) Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking (“ANPRM”).¹ In addition to these comments, SMA supports many of the points raised in the more detailed comment letter submitted by the Institute of Scrap Recycling Industries (“ISRI”) and Nucor Corporation (“Nucor”).

EPA is soliciting comments and information on a variety of potential options that may improve the management, reconditioning, and reuse of drums and other industrial containers.² The regulatory and non-regulatory management approaches on which EPA is seeking comment include potentially revising the regulatory definition for “empty” containers³ under the Resource Conservation and Recovery Act (“RCRA”) at 40 C.F.R. § 261.7;⁴ requiring drum generating facilities to individually develop Standard Operating Procedures (“SOPs”) for emptying and inspecting used drum and containers prior to shipping them off site for reconditioning;⁵ and requiring used drum generating facilities to institute training programs under the aforementioned SOPs.⁶

¹ 88 Fed. Reg. 54,537 (Aug. 11, 2023).

² 88 Fed. Reg. 54,537 - 54,538.

³ Commonly referred to as “RCRA empty” containers.

⁴ 88 Fed. Reg. 54,542 and 54,548.

⁵ 88 Fed. Reg. 54,542.

⁶ 88 Fed. Reg. 54,543.

As explained in Section I below, SMA has a unique perspective and interest in this ANPRM because many of its members frequently generate used drums and containers, but also because SMA members are major steel recyclers that may be impacted if EPA adopts management requirements or approaches that make drum reconditioning and reuse less feasible or desirable. While recycling steel drums at the end of their useful life is safe and environmentally beneficial, we believe it is important for EPA to continue to incentivize the continued beneficial reuse of steel drums until it is appropriate to responsibly process the drums for metals reclamation. Thus, SMA is broadly concerned with any regulatory or non-regulatory approach that would needlessly increase the barriers on drum reconditioning such that generators of industrial containers might prematurely dispose or recycle fully functional steel drums rather than send them to reconditioners that are best equipped to safely return the containers to productive use.

As such, SMA provides the following comments in Section II below:

- Improving used drum management is best accomplished through enhanced outreach, compliance assistance, and focused enforcement against those few bad actors that knowingly ignore relevant regulatory requirements;
- Given the wide variety of industries that generate used drums and the wide variety of materials that industrial drums are used to contain, one-size-fits-all operating procedures and training requirements are unlikely to improve used drum management, and may make used drum management and reuse more complicated and less desirable;
- Amending the “RCRA empty” container provision will significantly inhibit the beneficial reuse of used containers and needlessly increase hazardous waste generation;
- Imposing new management requirements on generators of used containers that needlessly make management more complex and less desirable may reduce the reconditioning and reuse of used containers;
- EPA should clearly define the scope of any forthcoming regulatory or non-regulatory approaches to make clear that scrap metal recyclers are not subject to any new used container management rules or requirements simply because no longer functional steel drums may ultimately enter scrap metal recycling streams; and
- EPA should expressly exclude from any future rule or requirement industrial containers that are returned to product manufacturers.

For the reasons set forth below and in more detail in the ISRI and Nucor comment letters, SMA encourages additions to and revisions of any RCRA regulations to be consistent with the numerous technical and legal considerations outlined herein and discussed in greater detail in the ISRI and Nucor comments.

I. SMA’s Interests

SMA is the primary trade association for scrap-based electric arc furnace (“EAF”) carbon steelmakers, often referred to as “minimills,” that comprise the nation’s largest recyclers and

account for 70% of the steel producing capacity of the United States today. Members make various steel products, including carbon, alloy, and stainless steels, from a feedstock of nearly 100 percent steel scrap. Indeed, steel is the most recycled material in the world, and steel produced in domestic EAFs is the cleanest, greenest, most sustainable steel in the world.

SMA consists of 25 American companies that operate over 125 facilities, directly employ approximately 76,000 people, and indirectly generate over 300,000 additional jobs. SMA also has a wide range of associate member companies worldwide that provide goods and services to the steel industry.

SMA represents an industry that is not only environmentally beneficial, but highly regulated as well. EAF steel manufacturers in the United States are subject to some of the most stringent environmental standards in the world, employ the most advanced pollution control technology, and protect their workforces and neighboring communities better than any their overseas competitors. As it relates to this ANRPM, many SMA members are both generators of used containers and end-of-life recyclers of steel from drums that can no longer be reconditioned and reused.

SMA members generate used drums and containers from their use of chemicals, lubricants, oils, and cleaning products that they consume on-site and use at various points in the steelmaking process. SMA members generally return these empty drums to product manufacturers for reuse, but there may be instances in which SMA members send empty industrial containers to dedicated drum reconditioners as well. Additionally, all SMA members use as their primary feedstock scrap metal that may be derived in part from end-of-life steel drums, and some SMA members operate their own scrap yards or otherwise receive end-of-life steel drums as part of their scrap metal feedstock.

II. Detailed Comments

SMA offers the following detailed comments on EPA's ANPRM.

a. EPA Should Maintain the Current "RCRA Empty" Definition

EPA's ANPRM extensively discusses and requests comment on potential reviews to the definition of "RCRA empty," which is used to determine whether a used container can be managed outside of the RCRA regulatory framework or whether it will be subject to RCRA based on its residual contents.⁷ EPA regulations currently define a container as "RCRA empty" if two elements are satisfied: (1) all wastes have been removed that can be removed using practices commonly employed to remove such materials from that type of container; and (2) no more than 2.5 centimeters (one inch) of residue remains, or no more than 3% by weight remains if the container is less than or equal to 119 gallons, or no more than 0.3% by weight remains if the container is over 119 gallons.⁸

Now, EPA seeks comment on whether to amend the second prong of this definition by lowering the amount of residue that can remain in a container by height (*i.e.*, the 2.5 centimeter limit) or the

⁷ 88 Fed. Reg. 54,542 and 54,548.

⁸ See 40 C.F.R. § 261.7(b).

weight of residue that can remain in the container (*i.e.*, the 3% or 0.3% limit).⁹ EPA further seeks comments on whether to eliminate this definition completely and require empty containers to be empty if they are “clean of all hazardous residues (and not just be “RCRA empty”) prior to going to scrap recycling or to disposal.”¹⁰

SMA urges EPA to refrain from amending the definition of “RCRA empty.” This definition has been implemented by EPA, states, and regulated entities for multiple decades. It is clear, effective, well understood, and easily implemented by the regulated community.

This definition is also protective of human health and the environment. Indeed, when the “RCRA empty” regulations were initially promulgated, the Agency recognized that “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.”¹¹ EPA’s recent Drum Reconditioner Damage Case Report (“Case Report”) suggests that the environmental hazards presented by “RCRA empty” containers may be more substantial than EPA previously anticipated, and it is noteworthy that none of the cited damage cases in the Agency’s Case Report were associated with used containers that were emptied in accordance with EPA’s definition of “RCRA empty.” Thus, revising the current definition of “RCRA empty” will not effectively address the damage cases described in the Agency’s Case Report. On the contrary, eliminating the current “RCRA empty” definition to address a few bad actors’ failure to lawfully manage used containers will merely penalize the overwhelming majority of used container generators that have complied with EPA regulations and dutifully applied the Agency’s definition of “RCRA empty.”

Moreover, SMA is concerned that revising or eliminating this definition could result in an increase in hazardous waste. Indeed, if no minimum threshold (other than the total absence of residue) is established to define an “empty” drum, *any* drum containing hazardous waste residue would itself be hazardous waste and fall within the definition of solid waste under 40 C.F.R. § 261.2. These drums would thus be required to be sent for further management and would constitute a hazardous waste mixture within the definition of hazardous waste, regardless of the methods and practices used to empty the drum.

Pragmatically, eliminating the definition of “RCRA empty” also poses significant problems related to waste characterization. Used drum generators must determine whether a drum/mixture is a characteristic hazardous waste via the determination process outlined in 40 C.F.R. § 262.11. Many of these determinations require sampling to determine if one of the listed characteristics is exhibited by the drum/mixture. Conducting such sampling on a small amount of residue mixture in the drum would hardly be representative of the mixture as a whole. Obtaining a fairly representative sample of the drum is thus not feasible.

SMA is also concerned that revising the current definition of “RCRA empty” could unfairly subject small quantity generators (“SQGs”) and very small quantity generators (“VSQGs”) to more stringent regulatory requirements even though those smaller generators may have made no changes to the size or intensity of their operations. Indeed, if EPA proposing a definition that would not allow any used drum or container to remain exempt from RCRA regulations, the entire amount of

⁹ 88 Fed. Reg. 54,542.

¹⁰ 88 Fed. Reg. 54,548.

¹¹ 45 Fed. Reg. 78,525 (Nov. 25, 1980).

residue in the drum, and the drum itself, would necessarily be added to the quantity of hazardous waste generated by facilities that received and consumed hazardous materials in drums and other containers. Consequently, a significant number of SQG and VSQG facilities may become large quantity hazardous waste generators based solely on a change to EPA's regulatory definition of "RCRA empty."

Moreover, it is simply not the case that used drum generators are refraining from effectively removing the contents of their drums or that adopting a more stringent removal requirement will cause used drum generators to extract product that they would otherwise have allowed to remain in the container. Used drum generators have a strong financial incentive to use as much of the product present in these containers as possible. SMA's members generate used drums and other containers because they purchase and consume valuable products, such as chemicals, lubricants, oils, and cleaners that are critical to the steelmaking process. The cost of these products alone provides sufficient incentive for SMA members to fully and effectively remove and use the products they purchase and need in the steelmaking process.

Thus, SMA respectfully urges EPA to refrain from amending 40 C.F.R. § 261.7(b).

b. It is Not Appropriate to Require Used Drum Generators to Rinse Containers Other than those that Contain Acute Hazardous Waste

EPA is soliciting comments on the viability of "rinsing" containers out as a potential method to achieve "truly" empty containers.¹² While SMA believes that rinsing may be appropriate for used drums containing acute hazardous wastes, a rinsing requirement is unnecessary and untenable for other hazardous wastes.

As discussed above, EPA has previously recognized that the small amounts of residues that may remain in "RCRA empty" containers pose little to no threat to human health or the environment. Rinsing is therefore unnecessary to remove *de minimis* container residues other than acute hazardous wastes and, in many cases, may simply cause larger volumes of more diluted hazardous waste to be discharged from generator facilities with little to no practical impact on the risk presented to human health or the environment. For example, rinsing a drum containing residue that is characterized as hazardous due only to an elevated concentration of a RCRA metal would significantly dilute concentrations below the levels established for determining the toxicity characteristic, but the rinsate would likely still be considered a hazardous waste despite the rinsate mixture no longer exhibiting a hazardous waste characteristic.

Moreover, some smaller facilities likely lack the wastewater containment and management infrastructure that most drum reconditioners use to capture and treat wastewater used in drum cleaning. As such, broadly imposing a "rinsing" requirement on used drum generators may actually shift hazardous waste rinsate generation from the types of facilities that are generally best equipped to manage and treat the wastewater to myriad smaller facilities that may lack the equipment and experience necessary to properly manage the wastewater. And relatedly, the elimination of "RCRA empty" provisions, combined with a rinsing mandate, may cause many SQGs and VSQGs to exceed the hazardous waste categorization thresholds for those classes of hazardous waste

¹² 88 Fed. Reg. 54,543.

generators. For example, if a VSQG is required to rinse drums containing a listed hazardous waste residue, it may only take 25-30 gallons of water to exceed the VSQG waste generation limit.

Accordingly, SMA respectfully urges EPA to refrain from requiring used drum generators to rinse drums prior to shipment to reconditioners.

c. Prescriptive SOPs and Employee Training Requirements are Unnecessary and Likely to be Less Effective

EPA is also soliciting comments on requiring used drum generators to adopt SOPs and employee training programs governing the emptying, inspection, labeling and preparation of used containers prior to off-site shipment for reconditioning.¹³ While SMA believes that SOPs and employee training programs are integral to effective waste management programs, given the diverse array of facilities and industries that generate and ship used containers to drum reconditioners, we are concerned that imposing one-size-fits-all SOP and training requirements through regulation may make these facilities' procedures less effective and more complex and confusing given the need to account for a broad spectrum of facilities and waste streams.

SMA agrees with and supports EPA's belief that SOPs may help ensure that "drums are RCRA empty... and that the used drum generators don't intentionally or inadvertently ship drums that are not RCRA empty."¹⁴ As discussed above, a generator may remove waste "using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating."¹⁵ When these provisions were originally promulgated, they were done so under the premise that the definition of an empty container was "keyed to the type of waste in the container..." and that "the methods that must be used to remove the residue from the container... depend on the material that it held."¹⁶ EPA acknowledged that this "definition is not perfectly precise and may be subject to interpretation in difficult cases."¹⁷ Thus, the Agency has long recognized that particular wastes require individualized techniques to ensure that containers meet the letter and intent of the "RCRA empty" definition. Accordingly, if EPA ultimately promulgates a rule mandating used drum generators to develop SOPs, SMA respectfully urges the Agency to ensure these rules set forth a broad framework for the development of individual facilities' SOPs rather than rigidly prescribing each element of the SOPs that each facility must implement irrespective of their individualized characteristics (*i.e.*, facility size, location, industry sector, waste profile, container use, et cetera). Given the wide variety of facilities that generate used containers, SMA urges EPA to recognize that the used container generators are best positioned to develop SOPs tailored to their facilities and operations.

Similarly, SMA shares and supports EPA's recognition that proper employee training is essential for used drum generators and any other facility in which employees are required to handle and manage waste.¹⁸ We specifically agree that employees responsible for shipping "RCRA empty" containers off site to drum reconditioners must fully understand the elements of this regulatory

¹³ 88 Fed. Reg. at 54,542 – 54,543.

¹⁴ 88 Fed. Reg. 54,542.

¹⁵ 40 C.F.R. § 261.7(b)(1)(i).

¹⁶ 45 Fed. Reg. 78,524 – 78,525.

¹⁷ 45 Fed. Reg. 78,524 – 78,525.

¹⁸ 88 Fed. Reg. 54,543.

definition and the potential adverse consequences of shipping non-empty or structurally compromised used containers offsite to drum reconditioners. But, the existing RCRA large and small generator training requirements already require employees responsible for handling “RCRA empty” containers to be extensively trained in proper waste handling to ensure compliance with RCRA.¹⁹

SMA is therefore concerned that a rule expanding RCRA training requirements to specifically include used container management could lead to the unnecessary proliferation of training requirements even for employees that are not expected to manage used containers. Broadly adding used container management procedures to the multitude of existing RCRA training requirements irrespective of whether facilities or employees are likely to manage used containers may make some facilities’ RCRA training programs less effective because it may divert focus away from other important RCRA waste handling responsibilities and requirements that new and reassigned employees must be trained for.

As such, SMA respectfully suggests that the Agency expand RCRA training guidance to include a “module” or brief section on used container management, rather than impose a new requirement that all hazardous waste training programs provide instruction on used container management. Doing so would allow facilities to provide focused training to those employees that are likely to manage used containers.

d. If EPA Proceeds With a Rulemaking Following this ANPRM, it Should be Narrowly Focused

While SMA appreciates EPA’s solicitation of comments at this early stage, we note that the ANPRM is unclear on the potential applicability of any proposed rule that EPA may develop as part of this initiative. As EPA considers the ultimate scope of any forthcoming rulemaking, we urge the Agency to narrowly focus any regulatory or non-regulatory changes on those circumstances and sectors that are most closely associated with the damages outlined in EPA’s Case Report.

Thus, although SMA believes that outreach, education and compliance assistance will ultimately benefit the end-of-life recycling operations of industrial steel containers, we urge EPA to ensure that any future regulatory action does not inadvertently include the metals recycling industry as part of the “used container lifecycle.” Ferrous metals recycling facilities are completely different operations than industrial container reconditioners. SMA members already prohibit the acceptance of containers with residual liquids. And in fact, SMA members typically specify that their scrap metal feedstock must not contain any “free liquids” or other aqueous wastes regardless of whether they are hazardous or nonhazardous.

Most scrap metal recyclers are not in the business of cleaning and restoring industrial metal containers. Unlike drum reconditioners, metals recyclers do not operate under RCRA Treatment, Storage and Disposal permits because metals recyclers generally do not generate liquid hazardous wastes from steel recycling operations. Any hazardous materials remaining in scrap metal can create dangerous employee health and safety exposures or result in significant equipment damage

¹⁹ See 40 C.F.R. §§ 262 – 266.

from fire or explosion. That is why SMA members routinely utilize supplier contracts, scrap specifications, vendor education, and scrap inspections to prohibit residual liquids in industrial containers as well as free liquids and aqueous wastes of all kinds. These measures are highly effective and already widely implemented across the scrap recycling and EAF steelmaking industry.

The ANPRM is also unclear with respect to the potential applicability of any proposed or final rule to VSQGs and non-hazardous waste generators. While the ANPRM provides a list of potentially regulated industry *sectors*, it does not discuss whether EPA intends VSQGs and non-hazardous waste generators within those sectors to be potentially swept into any forthcoming rulemaking. As explained above, SMA is concerned that potential application to VSQGs or non-hazardous waste generators would result in serious impacts to those generators. Thus, SMA recommends that any proposed rule specifically defines the scope of applicability, especially since non-RCRA regulated entities such as non-hazardous waste generators could find themselves newly subject to the RCRA program. One alternative is limiting the proposed rule's applicability to drum generators that are also *current* hazardous waste generators.

Finally, SMA echoes Nucor's recommendation that any regulatory option exclude product residues in reusable industrial containers that are returned to the product manufacturer. If any amount of residue is regulated as hazardous waste, returning these containers to the product manufacturer could inadvertently subject both the generator and the manufacturer to hazardous waste regulation.

Many industrial facilities receive products in drums or intermediate bulk containers ("IBCs"), consume that product directly from the container, and return the container to the product manufacturer which then reuses the container. Chemical supply relying on reusable, as opposed to single-use containers, is almost always the preferred supply chain option for most manufacturers from both an environmental and an economic perspective. Many SMA members report that products in reusable containers are generally less expensive to purchase while also eliminating the disposal costs associated with single-use container. Should EPA choose to extend any forthcoming used industrial container regulations to these types of container returns, any residual product in the container may trigger hazardous waste regulations. The container generator and the product manufacturer may therefore be required to establish that the residue either falls outside the definition of solid waste pursuant to 40 C.F.R. § 261.2 or falls within an exclusion set forth in 40 C.F.R. § 261.4. This needlessly places a significant burden on both the container generator and the product manufacturer without any concordant environmental benefit.

III. Conclusion

SMA appreciates the opportunity to provide these comments. If you have questions or would like to discuss these comments, please feel free to contact me using the information below, or our counsel, Wayne D'Angelo at WDAngelo@KelleyDrye.com or (202) 342-8525.

Respectfully,

Eric J Stuart

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Steel Manufacturers Association
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