American Coatings ASSOCIATION℠

November 22, 2023

Ms. Kaitlin Franssen
Materials Recovery and Waste Management Division
Office of Resource Conservation and Recovery
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460
Docket ID No. EPA-HQ-OLEM-2023-0320

RE: U.S. Environmental Protection Agency Used Drum Management and Reconditioning Advanced Notice of Proposed Rulemaking; ACA Comments

Dear Ms. Franssen:

The American Coatings Association (ACA) submits the following comments to the U.S. Environmental Protection Agency (EPA) regarding the used drum management and reconditioning advanced notice of proposed rulemaking (ANPRM).

Introduction

ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services. ACA appreciates the opportunity to comment on this ANPRM and looks forward to working with U.S. EPA as it evaluates regulatory and non-regulatory options to address the management of used industrial containers.

ACA and the coatings industry strongly believe the existing regulatory framework for the management of used industrial containers works. However, if the agency determines that action needs to be taken, then ACA encourages EPA to develop non-regulatory guidance to promote compliance with the existing regulations. This guidance could be developed in collaboration with EPA, industry, and other interested stakeholders to ensure it captures the used industrial container management issues identified in the ANPRM. ACA is confident that the agency can best protect human health and the environment by supporting and promoting compliance with the existing regulations.

Industrial Container Use & Management in the Paint and Coatings Industry

In terms of industrial containers, the coatings industry uses plastic drums (e.g., 55-gallon open head and closed head), steel drums (e.g., 55-gallon open head and closed head), fiberboard cylinders with internal liners (50-gallon), and intermediate bulk containers (e.g., 250- or 275-gallon totes). Once the containers are deemed empty, they are collected and transported offsite through licensed recyclers. The paint and coatings industry relies on the reconditioning of these containers to minimize costs and reduce its environmental footprint. The reduction or elimination of container reconditioning would result in increased risks and costs to numerous

sectors, including the coatings industry. The large majority of industrial containers used by this industry are reconditioned. Once the industrial containers are reconditioned, the coatings industry purchases the recycled containers back for use at their facilities.

The reconditioning process for industrial containers substantially reduces industrial wastes and harmful air emissions. The reconditioning process keeps the containers and any residues within them out of landfills, diminishes the need to consume raw materials and energy to manufacture new containers, and reduces greenhouse gas emissions. Entirely new regulations that would discourage or eliminate the reconditioning of used containers would result in a significant harm to human health and the environment by increasing industrial waste and harmful air emissions.

Furthermore, the coatings industry anticipates significant costs to its industrial container management practices if new regulations are adopted. Facilitating a new empty container standard will adversely affect industry costs and capital expenditures through additional labor, training, and equipment purchases necessary to meet a revised empty container standard.

ACA believes the best way to protect human health and the environment is to identify and implement ways to promote compliance with the existing regulatory requirements, rather than adopt new regulations that would discourage or eliminate container reconditioning. There are practical, non-regulatory means to achieve these ends. ACA supports the development and expansion of educational initiatives and guidance documents to ensure compliance with the existing regulatory framework.

Current Framework and Possible Regulatory/Non-Regulatory Options

The current RCRA regulations were promulgated following a deliberative rulemaking process that considered the benefits of container reconditioning as well as the need to effectively manage hazardous wastes. EPA concluded 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." (*See* 45 Fed. Reg. 78,525 (Nov. 25, 1980)). ACA considers that conclusion to still hold true today. When the empty container rule is followed, it promotes the environmentally beneficial reuse of containers without posing a substantial risk to human health or the environment. The licensed recycler only accepts drums or containers from the coatings industry that are deemed empty based on the current regulatory framework. If the container has too much leftover material in it, then the reconditioner should not accept the container. This process ensures compliance with the current regulations and, in return, safeguards human health and the environment.

Certain regulatory options that EPA identifies in the ANPRM would have negative impacts on human health and the environment, reduce or eliminate the beneficial reuse of industrial containers, significantly increase waste sent to overburdened landfills, and substantially increase harmful air emissions. In addition, the coatings industry anticipates significant costs in time, money, labor, and additional resources to its industrial container management practices if new regulations are adopted.

Elimination of the Empty Container Exemption

One of the options identified in the ANPRM is to revise or eliminate the RCRA empty container exemption in 40 CFR § 261.7. ACA does not support this option. The paint and coatings industry utilizes the "RCRA-empty" definition and complies through a variety or combination of methods, including visual inspections, draining the containers upside down until no material flows outward, weighing the containers, and ensuring its personnel are routinely and adequately trained on the applicable regulatory requirements. Licensed recyclers only accept

drums or containers from the coatings industry that are deemed empty based on the current regulatory framework. If the container has too much leftover material in it, then it will not be accepted. This process ensures compliance with the current regulations and, in return, safeguards human health and the environment. After the container is reconditioned, industry buys it back for reuse at their facilities.

Without the RCRA empty container exemption, the residual coatings in the bottom of IBC totes, drums, and other industrial containers will need to be removed and disposed of by the point of use facility. This would create thousands of new waste streams and new hazardous waste generators across several industries due to the various contents of the container and what is likely to be thousands of point-of-use locations that are not currently generating any RCRA hazardous waste streams today. These newly regulated hazardous waste generators would include coatings manufacturers, distributors, laboratories, and storage facilities.

With such a significant increase in new hazardous waste generators, there would be an equally significant increase in risk of accidental spills and hazardous exposures. These sites (i.e., the manufacturers, distributors, laboratories, and storage facilities) would now need to ensure their staff are properly trained and ensure that their existing site is designed to handle the expanded waste processing and storage requirements.

Overall, paint and coatings companies depend on reconditioners to provide cost effective and safe management of their empty containers. If EPA decides to eliminate the RCRA-empty exemption, it would increase the cost of container reconditioning, eliminate the cost savings of reconditioned containers, and generate additional waste for industry to manage. This option is impractical and cost prohibitive.

Pretreatment Requirements

The ANPRM also lists the possibility of mandatory pretreatment requirements, such as triple rinsing of containers. ACA does not support this option. Any benefits that might be realized would be undermined by the dramatic increase in wastewater and negative environmental effects that would result from this activity. The added burden of rinsing would significantly increase industry's hazardous waste volume and management costs.

For the coatings industry, the type of container and what it contains denotes what can be rinsed out properly. While water-based coatings products can be rinsed effectively, solvent-based coatings products, such as alkyd resins, cannot be rinsed without generating even more solvent waste. Most of the containers that are water-based contain non-hazardous chemicals, such as latex resins and waxes. Solvent-based resins and additives are stored in metal drums, and rinsing those drums is not practical. Those metal drums are put on a drum stand to drain the container completely. Rinsing a solvent-based metal drum will only create more hazardous solvent waste since it cannot be used in a batch of paint due to solvent restrictions.

The coatings industry rinses its plastic containers to get all of the material out of the container, including hazardous chemicals/biocides in water-based products which are very expensive. Industry is incentivized to drain these containers completely to guarantee the cost-effective use of its product. In addition, the coatings industry rinses its containers to comply with the current regulations and ensure the drum/tote recycler accepts it for reconditioning. Typically, used containers are inspected when taken out of the factory and re-inspected when loaded to send to the recycler. Again, the licensed recycler only accepts drums or containers that are deemed empty based on the current regulatory framework.

If EPA decides to require pretreatment of empty industrial containers, such as triple rinsing, there will be significant environmental and monetary impacts. For waterborne products, rinsing is already done. However,

for solvent-based products that are not water soluble, the cost is going to be excessive and prohibitive since it will generate more solvent waste that will need to be captured and disposed of properly. The monetary impact will be the cost of the solvent plus the disposal of that solvent. In addition, the metal drum recycler will still have to burn the drum out when it gets them, so extensive rinsing is a waste of time and materials.

There are also potential issues with handling, compatibility, and health and safety of personnel. The process required to conduct triple rinsing may pose ergonomic concerns that will need to be addressed. Rinsates would need to be handled separately and placed in containers where someone would need to determine what can or cannot be comingled. In addition, new workplace exposures to hazardous waste will be created if all containers are required to be rinsed prior to disposal. Many businesses will not be able to afford the automated container cleaning systems, thereby necessitating the need for manual container washing. This will directly result in a significant increase in worker exposures to hazardous chemicals and waste.

Air emissions associated with solvent cleaning need to be considered, as well. Triple rinsing of containers results in the use of solvents (hazardous chemicals) where the residual material is not miscible nor compatible with water. Most hazardous chemicals used in the paint and coatings industry are not miscible nor compatible with water. The solvents needed to triple rinse empty containers will ultimately increase the generation of hazardous waste and require treatment to applicable management method standards, such as incineration (H040) and fuel blending (H061). This will increase harmful air emissions and negatively impact air quality. Furthermore, a drum cleaning machine costs about $80,000, and there is limited availability of machines that will meet the stringent state rules for solvent metal cleaning. Requiring rinsing prior to recycling would increase the cost financially on industry and may result in more harm to the environment than good.

Lastly, most facilities do not have the capacity or institutional knowledge to take on triple rinsing or other mandatory pretreatment requirements. The coatings industry relies on the reconditioning industry to handle the complex management of its industrial containers after they are deemed empty. The coatings industry is already doing what it can do practically in this area and does not have the financial resources available to triple-rinse containers, manage the resulting waste waters, and hire the personnel needed to operate and maintain these complicated operations.

Summary

Thank you for your consideration of our comments. ACA urges the agency to reconsider any potential regulatory changes and instead focus on non-regulatory guidance or initiatives that promote compliance with the existing regulatory framework. This approach would effectively address the issues identified in the ANPRM without causing undue burden on industry. Please do not hesitate to contact us if you have any questions or require additional clarification.

Sincerely,

Rhett Cash
Counsel, Government Affairs

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Submitted via Regulations.gov