



150 South Street
Suite 103-B
Annapolis, Maryland 21401
TEL (301) 577-3786/FAX (301) 577-6476
www.reusablepackaging.org

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EPA ISSUES ADVANCE NOTICE OF PROPOSED RULEMAKING ON RCRA-EMPTY AND NON-RCRA EMPTY CONTAINER MANAGEMENT PRACTICES

Regulatory Options Include Full TSD Permitting for Reconditioners

The Environmental Protection Agency (“EPA”) has issued an [Advance Notice of Proposed Rulemaking](#) (“ANPRM”) seeking public comment on the potential development of regulatory and/or non-regulatory approaches to the management of industrial containers that held regulated materials prior to emptying. An ANPRM is a pre-regulatory notice intended to solicit information from affected parties, including trade associations, potentially affected companies and the public. Once EPA has reviewed the comments submitted to the ANPRM, the agency will likely publish a notice of proposed rulemaking with specific regulatory proposals.

Comments on the proposal are due September 25, 2023. However, due to the complexity of the ANPRM, RIPA plans to ask for an extension of the comment period; such requests are generally granted by the Agency.

The ANPRM, *Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking*, explains that the term “used drum” includes steel and plastic drums as well as intermediate bulk containers that, after emptying by “used drum generators,” are managed by reconditioners or in some other manner.

The ANPRM follows the release last September of the “Drum Reconditioner Damage Case Report,” which purported to document cases of drum and IBC mismanagement. In a letter to the Agency following its release, RIPA strongly disputed many aspects of the Report and argued that reconditioners provide valuable services to thousands of container emptiers throughout the U.S., save millions of pounds of potential greenhouse gas emissions, reduce air and water pollution, and contribute to a better environment.

The Agency seeks comments on a vast assortment of regulatory and non-regulatory options related to the management of both RCRA-empty non-RCRA empty containers. The options range from the drastic, i.e., full Subtitle C permitting for reconditioning facilities (a requirement normally reserved for hazardous waste treatment, storage and disposal facilities), to the more

benign, i.e. the adoption of standard operating procedures (“SOP”) for both reconditioners and generators of empty containers.

EPA commented extensively on the legal role played by generators (“used drum generators”) of both RCRA-empty and non-RCRA empty containers. They said, “Used drum generators are responsible for the hazardous waste they generate, including ensuring its proper disposal.” Importantly, the Agency also notes that RCRA-empty containers are not regulated as hazardous wastes, in accordance with the existing empty container rule.

The Agency also discussed drum furnace emissions and wastewater management issues as points of potential concern. They specifically asked for comments from the emergency response community about the information that could or should be available to them regarding stored empty containers.

Interestingly, EPA barely discussed the positive impact the industry has with respect to climate change. RIPA plans to highlight this aspect of the association’s work in its comments.

RIPA will submit extensive comments on the ANPRM and engage extensively with other associations representing container emptiers to ensure they also submit comments in support of the industry.

If you have any questions about this important matter, please call Paul Rankin at 202.258.6279.