

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

WAYNE J. D'ANGELO

DIRECT LINE: (202) 342-8525

EMAIL: wdangelo@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
CHICAGO, IL
PARSIPPANY, NJ
STAMFORD, CT
BRUSSELS, BELGIUM
BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

May 15, 2018

VIA REGULATIONS.GOV

U.S. Environmental Protection Agency
Office of Land and Emergency Management (Mail Code 5304P)
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

**Re: Joint Comments of the Steel Manufacturers Association and
Specialty Steel Industry of North America on Proposed Rule
“Increasing Recycling: Adding Aerosol Cans to the Universal Waste
Regulations” (Docket ID No. EPA-HQ-OLEM-2017-0463)**

Dear EPA:

The Steel Manufacturers Association (“SMA”) and Specialty Steel Industry of North America (“SSINA”) (collectively, “the Steel Associations”)¹ are pleased to provide the following comments regarding the U.S. Environmental Protection Agency’s (“EPA’s” or “The Agency’s”) proposed rule adding aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (“RCRA”) regulations. 83 *Fed. Reg.* 11,654 (Mar. 16, 2018).

The Steel Associations support EPA’s efforts to identify inefficient regulatory burdens, streamline effective regulation, and encourage proper recycling of metals in aerosol cans. In fact, Steel

¹ SMA is the largest steel trade association in North America in terms of membership, and the primary trade association of electric arc furnace (“EAF”) steel producers, often referred to as “minimills,” that make various steel products, including carbon, alloy, and stainless steels, from a feedstock of nearly 100 percent steel scrap, including scrap from recycled aerosol cans.

SSINA is a national trade association representing most of the U.S. producers of specialty steel products, including stainless, electric, tool, magnetic, and other alloy steels. SSINA members produce specialty steel alloys in EAFs using scrap steel and other feedstocks.

Together, the Steel Associations represent an industry that directly employs over 150,000 people and indirectly supports over one million jobs in affiliated industries.

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Association members are the largest recyclers in North America, and steel is recycled five times more than the sum of all other metals combined. By using steel scrap as a primary feedstock, SMA and SSINA members reuse millions of tons of ferrous and specialty scrap that might otherwise be deposited as refuse in landfills or disposed of as litter. Members recycle aerosol cans used at their facilities, as well as aerosol cans that may be contained in scrap received as feedstock.

Currently, SMA and SSINA members efficiently and safely manage and recycle used aerosol cans within existing RCRA parameters. Generally, facilities collect used aerosol cans in satellite accumulation areas; operate puncture and drain stations to render the cans “empty” and depressurized; recycle the scrap metal cans; and manage any drained contents or propellants as appropriate based on hazard analysis. These practices are consistent with EPA’s long-standing guidance on aerosol can recycling, as noted in the preamble to the proposed rule:

EPA has interpreted the current hazardous waste regulations to mean that puncturing and draining an aerosol can, if performed for the purpose of recycling (*e.g.*, for scrap metal recycling), is considered part of the recycling process and is exempt from RCRA permitting requirements under 40 CFR 261.6(c).

83 *Fed. Reg.* at 11,656.

Accordingly, the proposed regulation “specifically excludes aerosol cans that have been emptied of their contents (both propellant and product)” and further recognizes that “[a]n aerosol can that meets the definition of empty container in 40 CFR 261.7 is not subject to hazardous waste regulation, and may be recycled as scrap metal.” *Id.* at 11,660.

The Steel Associations agree with these conclusions and believe that EPA intends in the proposal to make clear that existing aerosol can management practices, such as those described above, may continue to operate outside of the proposed “universal waste” framework for handling aerosol cans. For example, EPA states:

Because of the likely differences between recycling of aerosol cans at hazardous waste generators versus recycling of aerosol cans at universal waste handlers, EPA is proposing specific management standards for the puncturing and draining of aerosol cans at universal waste handlers, similar to the requirements currently being implemented in states that have added aerosol cans to their list of universal waste.

Id. at 11,661. Hence, it is our understanding that the prescribed puncture and drain provisions of the proposed rule only apply to handlers of universal waste aerosol cans and not to generator facilities that manage used aerosol cans pursuant to the existing RCRA provisions governing recycling and “empty” containers. While this appears to be the design and intent of the proposed

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rule, the Steel Associations request that EPA confirm this understanding to avoid any confusion about the compliance status of used aerosol cans managed outside of the “universal waste” framework.

The Steel Associations appreciate the opportunity to provide these comments and support EPA’s efforts to streamline RCRA requirements and recycling activities. We believe that inclusion of aerosol cans in the universal waste program with an accompanying exclusion for facilities that “empty” and recycle aerosol cans under existing RCRA provisions will eliminate unnecessary regulatory burdens and help facilitate proper recycling. If you have any questions or would like additional information, please contact Wayne D’Angelo, counsel to SMA, at 202.342.8525 or WDangelo@KelleyDrye.com, or Joe Green, counsel to SSINA, at 202.342.8849 or JGreen@KelleyDrye.com.

Respectfully submitted,



Wayne D’Angelo, Counsel
Steel Manufacturers Association



Joe Green, Counsel
Specialty Steel Industry of North America