

Comments to Universal Waste Aerosol Can Proposed Rule

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Comment 1

While comments were not requested, it is imperative the agency clearly address the regulatory status of spent filters from universal waste aerosol can puncturing operations. Upon generation, will spent filters only be hazardous if they exhibit a characteristic or can P- and U-codes apply? This should be codified in §273.13(e)(3).

Comment 2

This comment is in response to the proposed rule requiring a hazardous waste determination for empty, punctured universal waste aerosol cans.

In the proposed §273.13(e)(3) and §273.33(e)(3), a handler who punctures and drains universal waste aerosol cans must recycle the empty, punctured, aerosol cans. This is in line with what is currently taking place across the country. Generators routinely puncture and drain aerosol cans and manage the emptied aerosol cans as scrap metal under the §261.6(a)(3)(ii) exemption. Per EPA guidance, the puncturing process is an exempt form of hazardous waste treatment when the punctured aerosol cans are managed as scrap metal for recycle. [RO 11782] In the proposed §273.13(e)(3)(v) and §273.33(e)(3)(v), the handler is required to conduct a hazardous waste determination on the emptied aerosol cans. However, these emptied aerosol cans meet the scrap metal recycling exemption of §261.6(a)(3)(ii) which exempts the scrap metal from Parts 262-270 which includes the hazardous waste determination of §262.11. [RO 11782, 11806] Thus, the agency is proposing requiring a handler make a hazardous waste determination on something that is exempt from making a hazardous waste determination. A hazardous waste determination is not needed for the scrap metal going for recycle, thus the proposed hazardous waste determination requirement for emptied aerosol cans is contradictory to the current regulation (and guidance) and needs to be removed. It would benefit the regulated community if EPA were to add a sentence clearly stating that a hazardous waste determination is not needed for the scrap metal being managed under the scrap metal exemption.

In the preamble of the proposed rule the agency only discussed making a hazardous waste determination for the contents removed from the aerosol cans, not the emptied cans themselves. [83 *FR* 11661] It seems the agency made an inadvertent mistake when it proposed requiring a hazardous waste determination for the emptied aerosol cans that will be recycled.

The text of §273.13(e)(3)(v) and §273.33(e)(3)(v) should read “Conduct a hazardous waste determination on the contents removed from aerosol cans per 40 CFR 262.11. A hazardous waste determination is not needed for emptied aerosol cans being managed under 40 CFR 261.6(a)(3)(ii). Any hazardous waste generated as a result of puncturing and draining the aerosol can is subject to all applicable requirements of 40 CFR parts 260 through 272. The handler is considered the generator of the hazardous waste and is subject to 40 CFR part 262;”.

Comment 3

This comment is in response to the proposed definition of aerosol can.

EPAs intent is to capture aerosol cans, not cylinders, under the universal waste program. If finalized, the overly-broad definition of aerosol can would allow handlers to manage many hazardous waste cylinders under the Part 273 standards. The agency needs to differentiate an aerosol can from a cylinder. It's recommended the agency borrow text from the Department of Transportation. From 49 *CFR* 171.8, DOT uses "non-refillable" and "self-closing release device" for the aerosol definition. Unlike most cylinders, aerosol cans are non-refillable, and aerosol cans are designed with a self-closing release device, whereas cylinders are typically not fitted with such a device.

The aerosol can definition at §260.10 and §273.9 should read, "an intact, non-refillable container in which gas under pressure is used to expel any material in the form of a spray or foam through a self-closing release device."