Environmental Technology Council

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May 15, 2018

Ms. Tracy Atagi
Office of Land and Emergency Management (5304P)
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OLEM-2017-0463

Dear Ms. Atagi;

On behalf of its member companies, the Environmental Technology Council (ETC) respectfully submits these comments in response to EPA's proposed rule to add aerosol cans to the Universal Waste Regulations. 52 Fed. Reg. 11654 (March 16, 2018).

The ETC is the leading trade association of commercial firms that provide technologies and services to customers for the recycling, treatment, and secure disposal of industrial and hazardous wastes. ETC member companies own and operate a wide variety of commercial operations, including spent solvent distillation, oil recovery facilities, metals reclamation units, mercury recovery from fluorescent lamps, photographic chemical and film recovery facilities, wastewater treatment plants, collection and transfer stations, secure landfills, high-temperature incinerators, industrial furnaces and a variety of other types of facilities for the management of industrial and hazardous wastes.

In general, ETC supports the Agency's proposed rule to add aerosol cans to the Universal Waste Regulations. Currently, under the Resource Conservation and Recovery Act (RCRA) aerosol cans are often categorized as hazardous waste and must be managed by a permitted RCRA hazardous waste treatment, storage and disposal facility (TSDF). The contents (i.e. propellants) within aerosol cans may be flammable, the product may contain solvents, metals and toxic organics and therefore these cans may have a negative impact on human health and the environment and thus must be disposed of properly. Like other Universal Waste (i.e. batteries and bulbs), aerosol cans are generated by a wide variety of waste generators. Classification as Universal Waste would allow and encourage collection by Universal Waste handlers including retail establishments. This will help promote environmentally sound management for aerosols that are not currently regulated by RCRA, such as those generated by homeowners and Very Small Quantity Generators. The Agency correctly notes that absent government intervention, facilities that generate waste aerosol cans would likely send them to municipal solid waste landfills which generally are less protective of human health and the environment than disposal at

TSDFs. Again, while we generally support the Agency's proposed rule, there are several areas listed below we believe the Agency must address and consider making changes.

Definition of Aerosol Cans

EPA defines an aerosol can as an intact container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam. ETC recommends expanding the definition to include the phrase "any non-refillable" to make it consistent with the U.S. Department of Transportation Hazardous Materials Regulations 49 CFR 171.8. Under this regulation an aerosol is defined as "any non-refillable receptacle containing a gas compressed, liquefied or dissolved under pressure, the sole purpose of which is to expel a nonpoisonous (other than a Division 6.1 Packing Group III material) liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas." By adding the phrase "any non-refillable" EPA's definition would read as follows: Any non-refillable intact container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam. By adding this phrase it makes it very clear as to what the Agency defines as an aerosol can for purposes of the Universal Waste program.

Additionally, it would serve the Agency well to clarify the term "intact." As written, the term could be narrowly interpreted thus rendering an aerosol can as not being intact if it is simply missing an actuator. After the word intact, the Agency should add "does not show evidence of leakage, spillage or damage that could cause leakage." This would be consistent with the description of ineligible aerosol cans in Sec. 273.6(b)(4).

Generators Must Properly Characterize Their Hazardous Aerosol Cans

While handlers who manage items designated as Universal Waste are subject to the management standards in 40 CFR part 273, a TSDF performing disposal of these Universal Wastes is subject to the full RCRA subtitle C regulations. Due to the diversity of the materials that may be present in waste aerosol cans, ETC recommends that when this Universal Waste is sent to a TSDF disposal facility such as an incinerator, the generator and/or handler who collects the cans be required to provide the disposal facility (i.e. an incinerator or processing facility) with information about the contents of the cans, including what constituents must be treated in order to demonstrate compliance with the Land Disposal Restriction (LDR) standards. This provides continuity from the generator and his waste characterization responsibilities through to the disposal facility where treatment/disposal is subject to the RCRA LDRs. This will also ensure that the generator's cradle to grave management responsibilities are being conducted in accordance with RCRA: the generator determines his waste aerosol cans qualify as hazardous waste, he chooses the more flexible accumulation option of Universal Waste, ships his aerosols to a Universal Waste handler for consolidation, the aerosols are shipped

to a disposal facility where they re-enter the full RCRA program and are treated in compliance with the LDR standards.

EPA's Should Regulate Handlers and Destination Facilities The Same

The preamble of the proposed rule states that EPA has interpreted the current hazardous waste regulations to mean that puncturing and draining an aerosol can, if performed by a generator for the purpose of recycling (i.e. for scrap metal recycling), is considered part of the recycling process and is exempt from RCRA permitting requirements under 40 CFR 261.6(c). However, facilities receiving hazardous waste aerosol cans from off-site would require a RCRA permit for storage if stored prior to the recycling activity, and the recycling process would be subject to subparts AA and BB of 40 CFR part 264, 265, or 267. Under the universal waste rule, destination facilities are those facilities that treat, store, dispose or recycle Universal Wastes. The Agency needs to realize that all destination facilities that receive Universal Waste for the sole purpose of recycling should be exempted from RCRA permitting requirements for this activity under 40 CFR 261.6(c). Recycling should be the focus; the location where the process takes place should not matter. There should be no double standards for Universal Waste handlers and TSDF facilities if the sole purpose is the recycling of Universal Waste. All TSDF facilities that receive Universal Waste for recycling should be treated as Universal Waste handlers and thus not be subject to subparts AA and BB of 40 CFR part 264, 265 or 267.

Commercial Devices

The Agency investigated the performance of only one aerosol can puncturing and draining device through its Environmental Technology Verification (ETV) program. The ETV review demonstrated that this type of drum-top system was effective in processing only 187 cans before breakthrough of volatile chemicals occurred, which was significantly less than the 600–750 cans estimated by manufacturers. The drum that contained the drained liquid from the aerosol cans was also never more than 25% full before breakthrough occurred, which was inconsistent with the manufacturer recommendations that the container could reach 70% full before breakthrough. In addition, the ETV program found that halogenated compounds (e.g., chlorinated solvents) were incompatible with the seal and gasket materials. Despite the Agency's admission that the one investigation that was conducted resulted in a negative outcome with premature breakthrough of volatile chemicals, EPA is still proposing that recyclers must use a "commercial device" specifically designed to safely puncture aerosol cans and effectively contain the residual contents and any emissions thereof.

In light of the outcome of the ETV investigation, there is no record basis for EPA prescribing one particular method for puncturing and draining aerosol cans using only a

so-called "commercial device." Many ETC companies have designed and operate their own equipment for such purposes, based on their engineering expertise in handling hazardous wastes. ETC believes the emphasis should be on ensuring that aerosol cans are safely punctured and their contents safely contained. Whether it is a commercial device or an engineered system designed in-house should not matter as long as it is designed and operated in a manner to reasonably meet technical standards required for air emissions under RCRA. Moreover, it should not matter whether the activities are being performed by a TSDF or a handler, the required standards must be the same.

Puncturing and Draining Aerosol Cans

The Agency is proposing that puncturing and draining-recycling practices without a RCRA permit be limited to Universal Waste handlers that are not TSDFs (commercial processors). Under this option, handlers that are TSDFs may still accept aerosol cans for sorting and consolidation, but they would not be able to puncture and drain the cans. To do so, TSDFs must first meet the requirements for a Universal Waste destination facility, which requires a RCRA permit for storage and compliance with Subpart AA and BB standards. ETC does not support this unequal approach. Generators (i.e. Universal Waste handlers) are likely less equipped or adequately trained to recycle aerosol cans than TSDFs. In fact, the risk of mismanagement, spills or air releases is greater for a universal waste handler who may not have the level of expertise of a company that specializes in hazardous waste management. Aerosol cans frequently contain flammable propellants such as propane or butane which can cause the aerosol can to demonstrate the hazardous characteristic for ignitability.

In addition, aerosol cans may also be hazardous waste for numerous other characteristics when discarded. ETC has serious concerns about the qualifications of the personnel and the processes employed when puncturing and draining activities are performed by non-professionals. Due to the dangers associated with improper handling of aerosol can contents (i.e. fire risk, potential air emissions, and need to properly characterize the liquid collected from draining the cans), ETC recommends that the practice of puncturing and draining aerosol cans not be performed only by Universal Waste handlers, but instead be performed by TSDFs.

Management Requirements for Universal Waste Handlers

The proposed rule indicates that small quantity handlers of Universal Waste and large quantity handlers must manage their Universal Waste aerosol cans in a manner designed to prevent releases to the environment. This includes accumulating Universal Waste aerosol cans in containers that are structurally sound and compatible with the contents of the can, and show no evidence of leaks, spills, or damage that could cause leaks under reasonably foreseeable conditions. Based on some of the experiences of the

ETC membership, we recommend EPA propose additional packaging requirements such as requiring aerosol cans be packaged with strong outer packaging (not necessarily UN specification packaging), that compatibility must be considered when the cans are collected in containers and the cans must have protective caps in place or have valve stems removed or other packaging techniques employed to prevent accidental discharge. We believe these requirements would help to prevent drums from becoming pressurized due to aerosol propellants escaping or the can's contents being confined in a closed drum leading to a forceful and dangerous pressure release (i.e. drum lid blown off). The regulation should mention that containers must be properly labeled in accordance with DOT hazard class and proper DOT shipping description.

Other Management Requirements for UW Handlers

EPA is proposing that Universal Waste handlers must establish a written procedure detailing how to safely puncture and drain universal waste aerosol cans (including operation and maintenance of the unit; segregation of incompatible wastes; and proper waste management practices to prevent fires or releases) and ensure employees operating the devices are trained in the proper procedures. ETC supports this proposal; however, our recommendation is that the practice of puncturing and draining aerosol cans should not be performed by Universal Waste handlers, but instead be performed by TSDFs (commercial processors) who have a greater level of expertise in performing such operations.

EPA is proposing that the contents from the cans or puncturing device be immediately transferred to a container or tank and that the contents are subject to a hazardous waste determination under 40 CFR 262.11. ETC supports this proposal. The proposed rule would also require that a written procedure be in place in the event of a spill or release and a spill clean-up kit be readily available. ETC supports this proposal.

Thank you for the opportunity to comment on EPA's proposed rule. The ETC looks forward to working with you on developing and implementing this proposal. If you have any questions, please feel free to contact me at 202-731-1815 or via e-mail at jwilliams@etc.org.

Sincerely,

James A. Williams

James A. Williams, II
VP of Government Affairs