



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
INSTALLATIONS, ENERGY AND ENVIRONMENT
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WASHINGTON DC 20310-0110

MAY 15 2018

SUBJECT: Docket ID No. EPA-HQ-OLEM-2017-0463, Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations; Proposed Rule; 83 Fed. Reg. 2018-11654 (March 16, 2018)

U. S. Environmental Protection Agency
Office of Land and Emergency Management (5304P)
1200 Pennsylvania Avenue NW,
Washington, DC 20460

Dear Ms. Tracy Atagi:

This letter provides the Department of Defense (DoD) comments on Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations; Proposed Rule. The comments were prepared by the Resource Conservation and Recovery Act Services Steering Committee, which represents the Departments of the Navy, Air Force, and Army, as well as several other DoD Components. DoD supports finalization of the proposed rule to manage aerosol cans under the universal waste rule. Managing aerosol spray cans as universal waste is expected to facilitate recycling and reduce the cost of hazardous waste management. The enclosed DoD comments recommend clarification of several sections of the proposed rule.

Thank you for the opportunity to comment. If you have any questions concerning these comments, please contact Ms. Deborah Potter, Chair of the Resource Conservation and Recovery Act Services Steering Committee, (703) 695-7981, email deborah.a.potter.civ@mail.mil, or Robert Durham, (703) 697-4032, email robert.w.durham14.civ@mail.mil.

Sincerely,

A handwritten signature in blue ink, appearing to read "Eugene Collins", is written over a horizontal line.

Eugene Collins
Deputy Assistant Secretary of the Army
(Environment, Safety, and Occupational Health)

Enclosure

Number	Page, Para, and Line or Figure	Comment	Proposed Resolution
1	Page 11656, II. B.	As discussed on page 11656, the proposed rule could be interpreted to preclude a VSQG from sending aerosol spray cans to a LQG under the control of the same person unless the LQG is a permitted storage facility. The U. S. Army Corps of Engineers has some VSQGs that may benefit from transferring their aerosol spray cans to a LQG generator under the control of the same person. The proposed rule does not specifically address VSQGs that opt to send their aerosol spray cans to a LQG under the control of the same person as allowed under existing 40 CFR 262.14(a)(5)(viii)(A). However, the preamble discussion on page 11656 states, "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).6 However, facilities receiving hazardous waste aerosol cans from off-site would require a RCRA permit for storage 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."	Clarify in final rule that rule allowing LQGs to accept hazardous waste from offsite VSQGs under the control of the same person without triggering a storage permit requirement (40 CFR 262.14) also applies to handlers of universal waste aerosol cans.
2	Page 1165440 CFR Parts 260, 261, 264, 265, 268, 270, and 273	Army supports finalization of the proposed rule to manage aerosol cans under the universal waste rule. Because universal wastes can be accumulated for longer time frames, managing aerosol spray cans as universal waste is expected to facilitate recycling while reducing the cost of hazardous waste management and remaining protective of human health and the environment.	Army supports finalization of the Proposed Rule.
3	11660, 1 st column, paragraph 3	Concur that the definition of "aerosol can" should not contain a size limitation provided the item meets the general definition requirements. However, certain contents of aerosol cans such as spray adhesives should be disqualified in the definition since the contents of the aerosol can may impact the otherwise beneficial recycling of aerosol cans. For example, spray adhesives when drained may clog puncture equipment rendering it inoperable unless another method can be used for this specific item. The Dept. of Defense procures and uses several aerosol cans that exceed the 24-oz limit as established by the State of Utah. Limiting the size of applicable aerosol containers may result in duplication of requirements contrary to the stated purpose of the proposed rule.	Rather than restricting container size, EPA may consider restricting the contents of aerosol cans, such as spray adhesives, that may not be compatible with the proposed recycling process.
4	Page 11661, end of column III and top of page 11662	EPA requests comment on establishing additional regulatory requirements for can draining devices and limits on aerosol cans that may pose compatibility problems and that may be punctured and drained under the proposed rules. The compatibility concern is already addressed in 273.13 (e)(3)(ii) and 273.33(e)(3)(ii) as part of the written procedure requirement.	It may be of benefit to add for consideration to the UW aerosol can puncturing and draining written procedure requirements EPA's preamble list of potentially incompatible wastes for consideration "...include[ing], but are not limited to, cans containing the following contents: Ethers including ethyl ether, chlorinated compounds, pesticides, herbicides, freons, foamers, corrosive cleaners and unknowns."
5	11660, 2 nd column, paragraph 3	Text of proposed rule reads; "In proposed 273.6(b)(3), EPA specifically excludes aerosol cans that have been emptied of their contents (both propellant and product). Once the contents of a universal waste aerosol can have been removed, the emptied can is considered a new point of generation and is subject to a hazardous waste determination per 40 CFR 262.11. An 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." The historical problem with aerosol cans has been determining exactly when a can is "empty" per the definition at 40 CFR 261.7. Even though no product may remain in the can when emptied as fully as is possible by the generator, a residual amount of propellant vapor and/or product may still remain that could make the can fail the ignitability test, and therefore still make it a hazardous waste. The only real way for an aerosol can to be considered truly empty is for it to be punctured and drained of all of its contents. At that point, the waste is considered scrap metal and not a hazardous waste. EPA should clarify the ambiguity surrounding a generator's requirements as to how best to determine if a can is truly "empty." 40 CFR 261.7 currently states: "(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in §§261.31 or 261.33(e) of this chapter is empty if: (i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating, and (ii) No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner, or (iii)(A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size. (iii)(A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size. (2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric." Testing of each individual aerosol cans for residual contents or gas pressure would be cost prohibitive and negate the benefits realized of aerosol cans being classified as Universal Waste.	Request EPA clarify in proposed 40 CFR 273.6, "Applicability—Aerosol cans." that an aerosol can is allowed to be determined to be empty under the 40 CFR 271.6 definition (and no longer classified as hazardous waste) if the can pressure is at or near atmospheric, with the following clarification: "For purposes of this rule, aerosol cans are considered 'empty' after the generator has fully depressed the aerosol can's spray valve, no further product is discharged, and when the pressure in the container approaches atmospheric. The generator is not required to test or measure can pressure at that point. The mere presence of residual propellant that may remain in what is otherwise considered an empty can (i.e., no further product can be discharged) will not classify the can as hazardous waste."
6	11660, 3 rd column, paragraph 2	The proposed rule notes small and large quantity universal waste handlers may sort aerosol cans by type. "...puncturing and draining an aerosol can, if performed as part of the recycling process (e.g., scrap metal recycling), is exempt from RCRA permitting requirements per 40 CFR 261.6(c). Storage of hazardous waste aerosol cans prior to recycling still requires a permit, unless it is exempt from permitting under another provision". The proposed rule should clarify the permitting requirement or type of permit required for storage of hazardous waste aerosol cans as defined in the RCRA permitting process.	If EPA intends to establish storage quantities or a permitting threshold, this quantity should be defined. The current language could mistakenly be inferred for both small quantity handlers of universal waste (SQHUWs) / large quantity handlers of universal waste (LQUWs) and small quantity generators (SQGs) / large quantity generators (LQGs). Concur with the recommendation to establish separate management standards for handlers vs generators.

Number	Page, Para, and Line or Figure	Comment	Proposed Resolution
7	11661, 3 rd column, last two lines	Consideration should also be given to puncturing of spray adhesive aerosol cans due to compatibility issues with the process equipment. Spray adhesive may build up and clog the puncturing equipment.	The rule identifies different categories of aerosol cans but does not specifically identify spray adhesive, which may not follow the same process as other aerosol containers due to the contents. Other types of material may not logistically meet the criteria for Universal Waste due to the contents.
8	Page 11662, column I	EPA is requesting comment on limiting puncturing and draining practices to handlers that are not commercial processors (i.e., a person that processes aerosol cans received from other entities in exchange for compensation). If EPA places a limitation on puncturing and draining UW aerosol cans by commercial processors, then EPA should include a definition for "commercial processor" in the regulatory text. Department of Defense (DoD) UW handlers of aerosol cans would like the ability to accumulate, puncture and drain UW aerosol cans generated by other offsite DoD installations and commands; therefore, it would help clarify any limitation placed on UW aerosol can commercial processors if the term was defined in the regulatory text.	Define commercial processors (for example, Commercial Processors of aerosol cans means entities that charge a fee and accept wastes from the general public).
9	Page 11666, 40 CFR 273.9 Definitions	Word UW Handler definition per EPA waste management hierarchy to allow handlers to conduct battery and aerosol can activities described in 40 CFR 273, whether the activity is considered recycling, treatment, or disposal.	Reword definition as follows: <i>"Universal Waste Handler:</i> * * * * * (b) Does not mean: (1) A person who recycles, treats, or disposes of universal waste, except under the provisions of 40 CFR 273.13(a) or (c), 40 CFR 273.33(a) or (c), 40 CFR 273.13(e), or 40 CFR 273.33(e); or
10	Page 11666, 40 CFR 273.13 and page 11667, 40 CFR 273.33, Waste Management	UW aerosol can puncturing and draining activities lend themselves to a regulatory structure similar to battery management activities and could be written in parallel manner for greater clarity. Ideally, universal waste punctured and drained aerosol cans will be eligible for recycling under 40 CFR 261.4 scrap metal exclusion or as a solid waste.	Waste management activities could be written in sequence as follows: "(3) A small quantity handler of universal waste who punctures and drains their hazardous waste aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining hazardous waste aerosol cans : * * *(v) <u>Recycle the empty punctured aerosol cans;</u> (vi) Conduct a hazardous waste determination on the emptied aerosol can and its contents and any other solid waste generated as a result of the puncturing activities per 40 CFR 262.11. 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;" Renumber remaining proposed paragraphs (vi) and (viii), accordingly. Revise 40 CFR 237.33 for Large quantity handlers in an identical similar manner.
11	Page 11662, column I	EPA is requesting comment on limiting puncturing and draining practices to handlers that are not commercial processors (i.e., do not charge a fee to accept wastes) unless the commercial processor meets the requirements for a universal waste destination facility (including requiring a permit for storage of the hazardous waste aerosol cans prior to recycling). Handlers that are commercial processors should be allowed to puncture and drain aerosol cans under the same regulatory standards as apply to other universal waste handlers, except that the granting of extended accumulation time may not be appropriate for commercial processors. The current nationwide situation - where many localities lack convenient solutions for managed disposal of household hazardous wastes - only encourages these wastes to be intermingled and disposed with other municipal solid waste. This lack of convenient options for households (and small businesses) has been the norm for far too long and essentially represents a national failing in the management of many common waste types that would be better managed outside of the municipal solid waste stream. EPA should prioritize reducing barriers to the development of appropriate locally available options for disposal of common waste types, such as aerosol cans. The relatively low value of metal available through recycling items like aerosol cans, in comparison to the associated costs, means the some subsidy or a charge for disposal is required to support these types of can recycling operations. EPA's preamble does not offer an explanation of why a commercial processor is not as well positioned to safely puncture and drain aerosol cans as other universal waste handlers, or generators would be. In 40 CFR 273.33, handlers of universal waste batteries are allowed to drain and disassemble batteries, and then (as if they are newly generating wastes) make a determination of whether any resulting wastes exhibit a hazardous waste characteristic. It would seem consistent to allow commercial processor handlers of universal waste aerosol cans to be a point of generation of wastes created by puncturing and draining contents and recycling the metal of aerosol cans. Requiring commercial processors to obtain a RCRA Part B permit to puncture and drain aerosol cans would add a substantial additional administrative burden and associated costs, which would either result in increased fees for management of these waste types or, for many commercial processors, may result in a decision to stop accepting these waste types. These outcomes would be contrary to EPA's stated goals of increasing recycling and reducing disposal of aerosol cans in waste destined for municipal solid waste facilities.	Allow commercial processors that accept aerosol cans to puncture and drain them under the same regulatory requirements as would apply to any other universal waste handlers of aerosol cans.