Environmental, Health & Safety Communications Panel
EHS Support and Advocacy for the Communications Industry

May 15, 2018

Via Electronic Submittal to http://www.regulations.gov

Sarah Rees, Director, Office of Regulatory Policy and Management
Office of Policy
Mail Code 1803A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Attention Docket ID Number EPA-HQ-OLEM-2017-0463

Re: Comments on proposed rule "Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations"

To Whom It May Concern:

The Environmental Health & Safety Communications Panel (EHSCP or "we")[1] is pleased to provide comments in response to the Environmental Protection Agency's ("EPA" or "Agency") proposed rule referenced above, as published on March 6, 2018 [83 Fed. Reg. 11654]; comments must be received by EPA on or before May 15, 2018.

The EHSCP is a consortium of communications environmental, health, and safety (EH&S) professionals dedicated to promoting employee safety and health, and environmental responsibility throughout the communications industry. The EHSCP strives to provide constructive input to the development and implementation of environmental, health, and safety standards and guidelines that affect the varied businesses within the communications industry. As such, the panel maintains an active advocacy role, providing comments and recommendations to federal and state agencies where issues concern the communications industry. More information regarding the EHSCP can be found at www.ehscp.org.

EHSCP applauds EPA's efforts to facilitate collection and sound environmental management of used aerosol cans. We agree that the Universal Waste Rules (UWRs) provide the most appropriate regulatory structure for aerosol cans. The telecommunications industry uses products in aerosol cans at many remote field locations, the majority of which are very small quantity generator sites. Regulation as universal waste will allow the industry to collect these from our many remote locations in sufficient quantities to facilitate recycling and other environmentally preferable management options.

[1]The EHSCP member companies include AT&T, Bell, CenturyLink, Comcast, Crown Castle, Ericsson, Ledcor Technical Services, Nokia, Rise Broadband, Sprint, T-Mobile, Verizon, and Windstream Communications.

The EHSCP strongly supports the proposed rule in most of its elements. However; we recommend a few changes to increase clarity or effectiveness.

Size Limits:

The preamble to the proposed rule mentions that one state includes a size limit of 24 ounces for aerosol cans to qualify as universal waste then continues "EPA has not, however, included a size limitation on universal waste aerosol cans in this proposal because EPA believes that aerosol cans that meet the proposed definition in general can be safely managed under the universal waste system." (83 FR 11660).

EHSCP concurs with the EPA that a size limit is arbitrary, unnecessary, and would detract from the goal of the UWRs. Typical aerosol cans range in size from 2 ounces to 32 ounces. The environmental risk from aerosol cans is related to their aggregate contents, not the capacity of each aerosol can. Setting an arbitrary size limit would force generators to segregate small aerosol cans for universal waste management, and larger aerosol cans for hazardous waste management. This adds unnecessary burden that could cause some Very Small Quantity Generators to not to take advantage of the UWRs and result in aerosol cans being disposed and not recycled.

Aerosol Can Definition:

At 40 CFR 260.10 and 40 CFR 273.9 EPA proposed to define 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."*

There are two ways in which this fails to accurately describe cans commonly referred to as aerosol cans and may introduce confusion as to what cans may be managed as universal waste.

- Large gas cylinders and associated systems may aerate and dispense a spray, but aren't aerosol cans. The US Department of Transportation in its definition in 49 CFR 171.8 recognizes two design features that distinguish aerosol cans—they are "non-refillable" and they incorporate a "self-closing release device". Adding these two characteristics to the definition will distinguish aerosol cans from cylinders.
- Many products commonly referred to as aerosol cans produce a material that some people would not recognize as a spray or foam. For example, some insecticides produce a stream; some produce a fog. This could result in some aerosols not being recycled under the UWR.

EHSCP recommends that the definition of "Aerosol can" be modified to read as follows:

> *"Aerosol can means an intact, **non-refillable** container in which gas under pressure is used to ~~aerate and dispense~~ **expel** any material through ~~a valve in the form of a spray or foam~~ **a self-closing release device**".*

Leaking aerosol cans:

In section 273.6(b)(4), the proposed rule excludes:

> *"Aerosol cans that show evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions."*

We question the need to exclude damaged cans and particularly to exclude cans that show evidence of past spillage. This would remove many aerosol cans from management as universal waste and would reduce the benefits of the rule, both environmental and financial. Existing universal waste rules provide standards for managing damaged or leaking containers by containing them within another intact container. Leaking or damaged aerosol cans can be safely managed in an equivalent manner. The language currently applying to broken universal waste lamps can be easily adapted to provide such a standard for aerosol cans.

EHSCP recommends deleting subsection (b)(4) from §273.6 and amending both §273.13(e) and §273.33(e) by renumbering subsection (3) to subsection (4) and adding a new subsection (3) to read:

> ***"A [small/large] quantity handler of universal waste must immediately clean up and place in a container any aerosol can that shows evidence of breakage, leakage, or damage that could cause the release of any hazardous constituents to the environment. The container must be closed, structurally sound, compatible with the contents of the aerosol can and must lack evidence of leakage, spillage or damage that could cause leakage or releases of any hazardous constituents to the environment under reasonably foreseeable conditions".***

Puncturing and draining aerosol cans:

1. Sections 273.13(e)(3) and 273.33(e)(3) of the proposed rule broadly refer to **hazardous waste** aerosol cans. Since the rule only applies to hazardous wastes being managed as universal wastes, the reference to hazardous waste could cause confusion.

   We recommend changing the text to read:

   > *"A … handler of universal waste who punctures and drains their aerosol cans must recycle the empty punctured aerosol cans and meet the following requirements while puncturing and draining ~~hazardous waste~~ universal waste aerosol cans " --*

2. Sections 273.13(e)(3)(iii) and 273.33(e)(3)(iii) of the proposed rule read "Ensure that puncturing of the can is in a manner designed to prevent fires and to prevent the release of any component of

universal waste to the environment. This includes, but is not limited to, locating the equipment on a solid, flat surface in a well ventilated area". We suggest two changes to this paragraph.

a. First, the term "component of universal waste" is not well defined. Aerosol cans typically include a non-hazardous compressed gas as a propellant which could be interpreted to be a "component" of the universal waste aerosol can. It would require very sophisticated engineering and provide no environmental benefit to prevent the release of an inert gas. We suggest replacing "component of universal waste" with the well-defined terms "hazardous waste or hazardous waste constituent". This will accomplish EPA's purpose more clearly while preventing misinterpretations.

b. Second, we understand it is common practice to manage devices of this sort on spill catchment pallets consisting of a catchment basin covered by a metal or plastic grating that supports the puncturing device. This practice aids in capturing any incidental leak or spill. We recommend replacing "solid, flat surface" with "stable surface" to allow for such practice.

As amended, this paragraph would read:

> *"Ensure that puncturing of the can is in a manner designed to prevent fires and to prevent the release of any ~~component of universal waste~~ **hazardous waste or hazardous waste constituent** to the environment. This includes, but is not limited to, locating the equipment on a ~~solid, flat~~ stable surface in a well ventilated area"*

3. Sections 273.13(e)(3)(v) and 273.33(e)(3)(v) of the proposed rule require that the universal waste handler "Conduct a hazardous waste determination on the emptied aerosol can and its contents per 40 CFR 262.11." While we agree on the need for a hazardous waste determination to be made on the contents, requiring it for the emptied cans contradicts prior EPA guidance regarding scrap metal. The proposed rule only allows for puncturing of cans on the condition that the empty punctured aerosol cans be recycled. Existing rules and previous EPA guidance have been clear that a formal hazardous waste determination is not required for scrap metal being recycled under 40 CFR 261.6(a)(3)(ii). (RCRA Online 11782, 11806.)

   We recommend changing the text to read:

   > *"Conduct a hazardous waste determination per 40 CFR 262.11 on the ~~emptied aerosol can and its~~ contents **removed from aerosol cans**. **Hazardous waste determinations are not needed for emptied aerosol cans being managed as scrap metal recycled under 40 CFR 261.6(a)(3)(ii)**."*

4. Sections 273.13(e)(3)(vi) and 273.33(e)(3)(vi) of the proposed rule read "If the contents are determined not to be hazardous, the handler may manage the waste in any way that is in compliance with applicable federal, state or local solid waste regulations". The phrase "determined not to be hazardous" could be ambiguous.

We recommend changing the text to read:

*"If the contents are determined not to be hazardous **waste**, the handler may manage the **solid** waste in any way that is in compliance with applicable federal, state or local solid waste regulations".*

5. Sections 273.13(e)(3)(iv) and 273.33(e)(3)(iv) of the proposed rule require that a can puncturing process "Immediately transfer the contents from the waste aerosol can, or puncturing device if applicable, to a container or tank that meets the applicable requirements of § 262.14, 262.15, 262.16, or 262.17". This could be interpreted to imply (although does not explicitly state) that the container attached to the puncturing device would be considered an accumulation container, as that is the container that "immediately" receives the contents. Typical aerosol can puncturing systems consist of a puncturing device and filter that are mounted to a drum which serves to receive the contents of the punctured can. The drum is an integral part of the puncturing process and is necessary for safe operation. Prior EPA guidance on recycling operations has suggested that devices integral to a recycling process are part of the recycling process and not subject to regulation as waste storage/accumulation devices. Therefore, we request clarification to confirm that:

   a. A container installed between the puncturing device and the filter is integral to the puncturing process.
   b. A container that is an integral part of the puncturing process is part of the exempt recycling unit and not subject to hazardous waste container requirements.
   c. A container that is part of the exempt recycling unit will retain exempt status during times when can puncturing is not actively occurring, the puncturing system is removed and the container remains closed, but will later be returned to aerosol can puncturing service.

   We suggest changing the language of 273.13(e)(3)(iv) and 273.33(e)(3)(iv) to read

   *"~~Immediately transfer~~ **When a universal waste aerosol can is punctured** the contents from the ~~waste~~ aerosol can~~, or puncturing device if applicable, to a container or tank~~ **must be immediately contained in a device** that meets the applicable requirements of § 262.14, 262.15, 262.16, or 262.17**; or is an exempt recycling unit. If a container that is part of an exempt recycling unit is permanently removed from the recycling unit it must be immediately managed under the applicable requirements of § 262.14, 262.15, 262.16, or 262.17."***

Managing any aerosol can as universal waste:

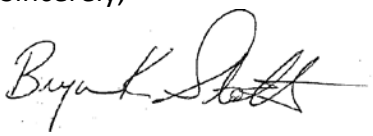
In the past, EPA has suggested that solid wastes otherwise meeting the applicability of a universal waste category can be managed as that type of universal waste irrespective of whether they are, in fact, hazardous waste. It is helpful because it allows all waste aerosol cans to be collected and managed under a single program. However, this is not stated anywhere in the UWRs. EHSCP suggests

that EPA take this opportunity to add that allowance explicitly in the rules. This could be accomplished by amending §273.8(a) as follows:

> *"(a) Persons managing the wastes listed below may, at their option, manage them under the requirements of this part:*
>
> *(1) Household wastes that are exempt under §261.4(b)(1) of this chapter and are also of the same type as the universal wastes defined at §273.9; ~~and/or~~*
>
> *(2) Very small quantity generator wastes that are exempt under §262.14 of this chapter and are also of the same type as the universal wastes defined at §273.9~~.~~**: and/or**
>
> ***(3) Solid wastes not meeting the definition of hazardous waste that are also of the same type as the universal wastes defined at §273.9."***

On behalf of the EHSCP member companies, thank you again for the opportunity to provide comment on this proposed rule. Please contact me if you need additional information or would like to discuss our comments further.

Sincerely,



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