On March 16, 2018, the U.S. Environmental Protection Agency (EPA) published a Notice of Proposed Rulemaking in the Federal Register (see 83 FR 11654; https://www.federal-register.gov/documents/2018/03/16/2018-05282/increasing-recycling-adding-aerosol-cans-to-the-universal-waste-regulations) to add waste aerosol cans to the list of “universal wastes” that are regulated under the rules set forth at 40 CFR Part 273. Waste aerosol cans can be designated RCRA hazardous waste because the wastes often exhibit the “ignitability” hazardous waste characteristic. This creates a management problem, especially for the thousands of retail organizations and facilities that handle aerosol cans.

EPA notes that the Consumer Specialty Products Association estimates that 3.82 billion aerosol cans were filled in the United States in 2015 for use by commercial and industrial facilities as well as by households. Consequently, the agency states that “many, but not all generators of aerosol cans identified or listed as hazardous waste are subject to the full RCRA subtitle C hazardous waste management requirements.” Admittedly, the rules contain special small quantity generator dispensations, households themselves are exempt from RCRA by virtue of the household waste exemption, and simply puncturing and draining an aerosol can is considered by EPA to be a recycling procedure that is exempt from the RCRA permitting rules. Nonetheless, the day-to-day management of these wastes can pose difficult management challenges.

As an alternative to the standard RCRA permitting and regulatory regime, EPA is suggesting that the management of used aerosol cans be regulated under the universal waste regulations that are located at 40 CFR Part 273 of the agency’s rules, which are described as alternative hazardous waste management standards. According to EPA, handlers such as “managers and transporters who generate or manage items designated as a universal waste are subject to the management standards under Part 273 rather than the full RCRA subtitle C regulations.” If adopted, this new rule promises to simplify the handling and disposal of aerosol wastes, while ensuring that aerosol cans are diverted from municipal waste streams and are recycled, treated, or disposed of in compliance with Part 273 of the RCRA rules. A final rule will be issued late in 2019.

EPA plans to revise its Municipal Solid Waste Landfills Liquid Management rules (located at 40 CFR Part 258) to provide “regulatory flexibility” in managing accelerated waste decomposition. A notice may be published in October 2018.

EPA is considering updating its “flash point method” for...
making the ignitable liquids determination as required by the “characteristic” hazardous waste rules. A rulemaking notice is scheduled to be published in August 2018.

In September 2018, EPA plans to issue proposals to modify its Coal Combustion Residual Waste Rules, located at 40 CFR Part 257, which were initially promulgated in April 2015. These steps will be taken in response to ongoing litigation.

In response to a recent decision of the U.S. Court of Appeals for the DC Circuit (in the April 2017 case of Waterkeeper Alliance v. EPA), and the “FARM Act” that was included in the 2018 Consolidated Appropriations Act, EPA will be revising its current rules regarding the reporting of air emissions of hazardous substances from animal waste. A proposal should be published in the Federal Register in the next few weeks and months.

EPA plans, in October 2018, to issue new rules to revise its existing pharmaceutical waste management and disposal rules.

Finally, in the recently-decided case of American Petroleum Institute v. EPA, 883 F. 3d 918, the DC Circuit court reviewed and vacated parts of EPA’s RCRA hazardous waste recycling rules, in particular the “Verified Recycler Exclusion”, and factor 4 of the definition of “legitimate recycling”, and also reinstated the “Transfer-based Exclusion”. The agency has announced plans to promptly issue a final rule to bring these rules into compliance with the court’s decision.

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