

# No Place for a Shortcut



## Scrapping HazMat Containers Can Be Risky Business

BY PAUL W. RANKIN



kyrocketing international demand for scrap steel and plastic has created a frenzied market for these products. No potential source of scrap is being overlooked — including emptied industrial packagings that previously contained hazardous materials, such as some lubricants, additives, solvents and cleaners.

Unfortunately, companies that shred or crush emptied containers for their scrap value could run afoul of federal transportation and environmental laws and regulations. Liability risks include fines for the corporation and, in egregious cir-



cumstances, jail time for individuals responsible for illegal activity.

Lubricant companies, their suppliers, distributors and customers all need to know the laws, regulations and legal liabilities associated with the scrapping, transportation and handling of the most common industrial packagings, i.e., empty steel and plastic 55-gallon drums, and 275-gallon composite intermediate bulk containers (IBCs).

During the past two years, prices for scrap steel and high-density polyethylene (HDPE) have fluctuated wildly, but

always remained well above long-term industry averages. No. 1 bundles of scrap steel, for example, have commanded prices of \$150 to \$250 per ton or more, while loads of granulated HDPE have sold for 30 cents to 40 cents per pound and higher.

Industrial containers are a rich potential source of steel and plastic scrap. In the United States, approximately 58 million steel 55-gallon drums, 20 million plastic 55-gallon drums, and 2.5 million IBCs are used annually. Steel drums contain between 35 and 40 pounds of steel

apiece; plastic contain about 18 to 20 pounds of HDPE; and 275-gallon composite IBCs contain approximately 92 to 95 pounds of steel and 35 to 38 pounds of HDPE.

It is not commonly understood, however, that approximately half of all these containers are used to transport regulated hazardous materials. These containers necessarily retain hazardous material after emptying. Therefore, companies emptying such containers must exercise great care to ensure compliance with applicable transportation and environmental laws and regulations.

Currently, more businesses are being called on by “flush and crush” operators, who offer to rinse out and crush the plastic or steel containers right at the owner’s site, then haul them away after paying something for their scrap value. While this quick cash may look tempting, such a move may come back to haunt you. If scrap scavengers sidestep the procedures established by the U.S.

Department of Transportation for emptying and preparing empty hazmat containers for transport, they can contaminate your site and leave you facing fines and even criminal charges.

### Penalties Raised

An emptied industrial container that retains residue of a DOT-regulated hazardous material must be shipped as if it were full of its original contents. (See 49 CFR 173.29.) This means the all closures in the container must be in place and properly tightened. And, all marks and

Empty tote bins and drums may have scrap value — but not if they cause a scrape with transportation and environmental regulations.



labels originally required when the container was full must still be intact and visible when it is shipped with residual contents. Clearly, compliance with these legal provisions is not possible if the container has been crushed or shredded.

DOT fully regulates the transportation of containers that are shredded, crushed or leaking. In fact, DOT has said, “crushed drums which have not been cleaned and purged of all hazardous materials residues must be over-packed in authorized packagings, marked and labeled as required when the drums previously contained a greater amount of hazardous materials.”

In other words, uncleaned crushed, shredded or leaking industrial containers with hazardous material residues cannot simply be loaded into a truck; they must be packaged in accordance with DOT regulations applicable to shipment of the hazardous material, including appropriate classification; shipment in a properly marked and closed UN container; and, use of DOT-compliant shipping papers.

Recently, Congress created a new criminal liability penalty in federal transportation law for “recklessly” violating DOT regulations. These penalties are spelled out in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-59). The penalties, which apply to individuals and companies, include up to five years in prison and enormous fines. If the violation results in death or any injury to any person, the jail term can be as much as 10 years.

#### Letter of the Law

In 1980, U.S. Environmental Protection Agency determined that certain controls under the Resource Conservation and Recovery Act (RCRA), such as hazardous waste manifesting, transportation, and facility permitting, would not be required if all that is handled are “empty” containers.

The definition of “empty” container is found in 40 CFR 261.7: Drums are considered empty if they are emptied as completely as possible using common emptying techniques, such as pouring or

pumping. For more viscous materials, like lubricating greases, paints and adhesives, the amount of residue allowed is no more than one inch or 3 percent of the original capacity of the container.

Intermediate bulk containers (IBCs) are subject to the same EPA rule, but the authorized allowable volume of residue is only 0.3 percent of the capacity of the container.

If the container is not empty by these criteria, and the residue is a hazardous substance, then the container and its contents become EPA-regulated hazardous waste. The container emptier is the generator of that waste, who must have his own EPA identification number; must create a waste manifest and consign the load to an EPA or State-permitted hazardous waste treatment, storage, or disposal facility; and must utilize the services of an EPA or State-registered hazardous waste transporter.

Importantly, intact RCRA-empty containers may be transported to a container reconditioning facility. To facilitate the handling of such containers, the Reusable

Industrial Packaging Association created the Empty Container Certification Form used by members, in which the emptier of the industrial container must certify that both the DOT and EPA RCRA requirements are met when the emptied packaging is offered for transport.

### Disposal Liability

EPA also administers Superfund, sometimes called CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act). Under this law, people who arrange for the disposal of hazardous substances may be held strictly, jointly and severally liable for the clean up of any site where those substances are released and cause environmental contamination. In addition, this liability is retroactive, which means there is no time limitation on its enforcement.

CERCLA defines the term “release” to mean “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (*including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant*)” (Italics added.)

Company executives and site managers should be aware that the RCRA empty container rule does not exempt them or their company from prosecution for CERCLA or DOT violations. In practice, this means that any regulated hazardous residue in any industrial container — even if the container is “RCRA-empty” — exposes the emptier of that container to CERCLA and DOT prosecution if the residue is released and harms human health or the environment.

For this reason, prudent operators of scrapyards and other facilities purchasing scrap material will not accept uncleaned industrial containers. Recognizing this, the scrap industry’s national trade association and the predecessor of RIPA established a joint recommendation that drums to be scrapped first would be cleaned using an effective cleaning agent and purged of all foreign matter and prior residues, or would be thermally neutralized in a drum reclamation furnace for the same purpose. This “Scrap Preparation Standard” has been in place for almost 20 years.

In 1999, Congress passed the Superfund Recycling Equity Act (P.L. 106-13, 113 Stat. 1501A - 599), which included an amendment exempting scrap processors from cleanup liability when they send lightly contaminated “recyclable material” to downstream customers, including steel mills, who must meet highly specific operating criteria. However, this law has a provision excluding any industrial shipping container, whether intact or not, having a capacity from 30 to 3,000 liters (eight to 800 gallons), from the definition of “recyclable material.”

This means that industrial containers such as steel and plastic drums, as well as IBCs, whether whole, shredded or crushed, that are sent to a scrapyard or other industrial facility, with hazardous residue in or on the container or its parts, may expose both the generator and the recipient of it to full Superfund cleanup liability.

### Be Aware

Improperly managed hazardous residues in emptied industrial containers pose

threats to employees, the public and the environment. For this reason, agencies like DOT and EPA under Superfund continue to regulate such containers effectively to the same extent as if those containers were full of their original contents. As such, prudent operators of scrap and other industrial facilities will not accept uncleaned industrial packaging, whether whole, shredded or crushed.

Companies that crush or shred their empty containers for their scrap value — on or off-site — should conduct a thorough environmental compliance review of these operations. They must ensure that the company and all its contractors comply with all applicable laws and regulations discussed above. Companies and managers that fail to follow these laws may be exposed to significant potential liabilities, including fines and, possibly, jail time. These responsibilities and liabilities extend long after the shredded or crushed containers leave the emptier’s premises. ■



*Paul W. Rankin is president of the Landover, Maryland-based Reusable Industrial Packaging Association (RIPA), which represents*

*reconditioners and manufacturers in North America. He also is the association’s representative to the International Confederation of Container Reconditioners (ICCR), the worldwide organization governed by the principal trade groups from Japan, Europe, Australia and North America. Visit [www.reusablepackaging.org](http://www.reusablepackaging.org) for information.*