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November 22, 2023

The Honorable Barry Breen  
Acting Assistant Administrator  
Office of Emergency and Land Management  
Office of Resource Conservation and Recovery Docket  
Mail Code 28221T  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OLEM-2023-0320  
"Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking"  
88 Fed. Reg. 54,537 (Aug. 11, 2023)

Dear Acting Assistant Administrator Breen:

On behalf of the Reusable Industrial Packaging Association (RIPA), I submit the following comments in response to the U.S. Environmental Protection Agency's August 11, 2023 "Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking" (ANPRM). The following trade associations join with RIPA in submitting these comments: the Agricultural Retailers Association, the American Chemistry Council, the American Coatings Association, the American Coke and Coal Chemicals Institute, the American Fuel and Petrochemical Manufacturers, the Dangerous Goods Advisory Council, the Industrial Packaging Alliance of North America, and the Independent Lubricant Manufacturers Association. Collectively, we thank you for the opportunity to assist the Agency in evaluating non-regulatory and regulatory options to address the management of used industrial containers in a manner that is protective of human health and the environment.

By way of introduction, RIPA, founded in 1942, is the North American trade association representing companies that recondition 90% of the used industrial containers in the United States. RIPA and its members literally have — for nearly a century — made the management of used industrial containers their business. Moreover, RIPA, on behalf of its members, has served as the leading voice in seeking to promote compliance with applicable EPA regulations, and as the Agency is aware, has previously proposed guidelines to promote environmentally safe practices in the reconditioning supply chain. Accordingly, RIPA respectfully submits that it is

uniquely qualified to assist the Agency in evaluating non-regulatory and regulatory options to address the responsible management of used industrial containers.

The trade associations joining in these comments represent a broad array of companies that supply goods essential to the U.S. economy, including the agriculture, energy, petroleum, transportation, hazardous materials, and chemicals sectors. Their members receive, empty, and sell for reconditioning thousands of industrial containers daily. As such, they present the perspective of industrial container users and emptiers.

For the reasons explained below, RIPA and the trade associations joining in these comments are unwavering in their view that the existing regulatory scheme — which EPA promulgated after a lengthy, considered, and deliberate rulemaking more than 40 years ago — works. Practical, real-world solutions can be implemented to ensure compliance with these regulations, which will address the used container management issues EPA has identified. We welcome the Agency's support in implementing these solutions through the issuance of EPA guidance.

As also explained below, RIPA and the trade associations joining in these comments are equally firm in their belief that the potential regulatory changes EPA identifies in the ANPRM will not solve or even address the compliance issues that underlie the concerns EPA identifies in the ANPRM. And certain of the regulatory options EPA identifies would have dire consequences for human health and the environment, by reducing or eliminating altogether the beneficial reuse of industrial containers, dramatically increasing the volume of wastes sent to our nation's overburdened landfills, increasing harmful air emissions, and substantially increasing greenhouse gas emissions.

In short, EPA can best protect human health and the environment by driving compliance with the existing regulations, rather than adopting new rules to paper over challenges already addressed by the regulations EPA adopted more than 40 years ago.

### **Overview of Container Reconditioning**

Reconditioning industrial containers has for decades been a legally recognized industry in virtually all industrialized economies, including Europe, Japan, and North America, as well as numerous emerging economies, including India and South Africa. Despite its presence as a well-established global industry, the rules governing reconditioning operations long varied from country to country.

As international trade in regulated materials expanded, national governmental representatives recognized the need to create a globally harmonized system for marking and testing these containers, both to ensure safe transport and to facilitate the movement of valuable commodities in trade. About 40 years ago, the United Nations Committee of Experts on the Transport of Dangerous Goods ("UNCETDG") initiated an effort to create a globally harmonized

approach to regulating steel drums. The U.N. initially adopted model regulations for steel drums and published them in the United Nations Recommendations on the Transport of Dangerous Goods (“U.N. Model Regulations”).<sup>1</sup> Importantly, in the run-up to adopting the U.N. Model Regulations, the Chairman of the U.N. Committee of Experts, Mr. Lance Grainer of the United Kingdom, observed:

There are increasing concerns about the disposal of uncleaned, used unprocessed drums into the environment.

The further use of metal drums after reconditioning or other suitable processing is an environmentally sound method of reducing the need for disposal of packagings containing residues of dangerous goods. Some methods include:

- a. minimizing packaging disposal problems;
- b. facilitating the management and safe disposal of dangerous goods residues; and
- c. saving materials and energy through prolonging the life of packagings.<sup>2</sup>

In 1990, the U.S. Department of Transportation adopted HM-181<sup>3</sup>, which included the referenced provisions on marking, testing, and reconditioning of steel drums. Over time, the U.N. revised its Model Regulations to recognize plastic drum and IBC reconditioning, as well as related changes authorizing the use of recycled plastics in the manufacture of drums and, more recently, IBC inner receptacles.

Using the U.N. Model Regulations as a starting point, international Modal Authorities<sup>4</sup> and national governments around the world have adopted regulations governing the handling of used industrial containers, recognizing that reconditioned containers are ubiquitous in global and national commerce and that procedures to ensure the safe reuse of these containers is environmentally preferable to any other management option, including direct recycling. As a result, used container management rules allowing for the transport and reconditioning of empty containers can be found at the national government level around the world, including in Europe, North America, and Japan. These rules effectively mirror the UN Model Regulations and recognize the necessity of allowing containers with small residual amounts of regulated materials to be safely transported from the emptier’s facility to a reconditioner for processing and reuse or, if the container is deemed to be no longer fit for purpose, recycling.

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<sup>1</sup> The U.N. Model Regulations uses the term “dangerous goods” to describe regulated materials. The term is synonymous with the U.S. Department of Transportation’s definition of “hazardous materials.”

<sup>2</sup> Steel Drum Processing Under Chapter 9 of the United Nations Recommendations on the Transport of Dangerous Goods; International Confederation of Container Reconditioners; 1994.

<sup>3</sup> 55 Fed. Reg. 52,402 (Dec. 21, 1990).

<sup>4</sup> International Civil Aviation Organization; International Maritime Organization.

This long-standing global process of container filling, emptying, reconditioning, and reuse or recycling is now appreciated — indeed encouraged — not only for its general environmental benefits, which include energy and waste savings, but also for its positive contributions to climate change goals based on numerous studies showing significant CO<sub>2</sub>e savings from the reuse of industrial containers when compared to single trip containers of the same type.<sup>5</sup>

### **Recognition of the Industrial Container Industry as an Essential U.S. Industry**

Because of their pervasive use in commerce, twice in recent U.S. history, industrial containers—both new and reconditioned — have been singled out by the U.S. government as essential to the U.S. economy. In 1943, the Office of Price Administration (OPA) established the Used Steel Drum Advisory Committee, whose main purpose was to ensure steel drums needed for the war effort were priced reasonably and available when needed by the various military branches to transport fuel and other commodities to our troops overseas. The War Production Board in Washington, DC created its own Used Steel Drum Advisory Committee, which worked in tandem with OPA.<sup>6</sup> Members of the National Barrell and Drum Association, now the Reusable Industrial Packaging Association, served on both Committees.

More recently, on March 19, 2020, the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) issued guidance to assist state and local jurisdictions and the private sector in identifying and managing essential workforces in response to COVID-19.<sup>7</sup> The CISA guidance identified industries and workers that were considered essential to the continuity of operations and incident response throughout the economy, as well as ensuring critical infrastructure viability. The essential industries CISA identified included companies (and their workers) that supply new and reconditioned industrial containers to key economic sectors, including energy, petroleum, food and agriculture, water and wastewater, transportation and logistics, hazardous materials, and chemicals.

### **EPA’s Promulgation of the RCRA Empty Container Rule**

In 1976, Congress passed the Resource Conservation and Recovery Act (RCRA) to address the management of hazardous waste in the U.S. In May 1980, following a lengthy rulemaking

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<sup>5</sup> Life Cycle Assessment of Newly Manufactured and Reconditioned Industrial Packaging; Ernst & Young Accountants LLP; Revised edition: October 2015, *available at* <https://www.reusablepackaging.org/wp-content/uploads/Life-Cycle-Analysis-Final-Oct-2015.pdf> (E&Y Assessment) (copy attached as Exhibit A). Japan Drum Reconditioners Association; Life Cycle Report on Steel Drums, Certification # CR 180001; Japan Environmental Management Association, August 23, 2018.

<sup>6</sup> P. Terry, *Fifty-Five Gallons: The History of Steel Drum Reconditioning*, p. 80; ISBN 0-87491-984-4.

<sup>7</sup> “Guidance on the Essential Critical Infrastructure Workforce, Ensuring Community and National Resilience in COVID-19 Response”; U.S. Department of Homeland Security; Memorandum on Identification of Essential Critical Infrastructure Workers during COVID-19 Response; March 19, 2020

process, EPA promulgated regulations to implement the mandates of RCRA.<sup>8</sup> As initially promulgated, however, EPA's RCRA regulations were silent with respect to how (or whether) empty containers that contained trace residue of hazardous materials should be regulated. Representatives of RIPA met with the Agency to discuss this point, and subsequently joined a group of plaintiffs seeking judicial review of the RCRA final rules in search of clarity regarding how empty containers should be managed.

Following extensive deliberation, EPA adopted the Empty Container Rule, codified in 40 CFR 261.7, to address the management of empty containers. In the preamble to the Rule, EPA explained that "[t]he Agency did not intend... to regulate hazardous waste residues in 'empty' but unrinsed containers, except where the hazardous waste is an acutely hazardous material listed in Sec. 261.33(e). . . . EPA believes that, except where the hazardous waste is an acutely hazardous material listed in Sec. 261.33(e), the small amount of hazardous waste residue that remains in individual empty, unrinsed containers does not pose a substantial hazard to human health or the environment."<sup>9</sup> Significantly, before reaching this conclusion, EPA solicited comment on whether it should regulate the removal of residue from used industrial containers.<sup>10</sup> After considering the comments received, EPA rejected proposals to regulate the residue in containers that formerly held regulated substances.<sup>11</sup> The final RCRA regulations that EPA promulgated instead adopt the Empty Container Rule.

### **Industry Efforts to Promote Compliance with the Empty Container Rule**

To drive compliance with the new Empty Container Rule, RIPA held seminars across the country for container reconditioners and emptiers, explaining the requirements of the rule and the regulatory consequences to the container emptier who fails to comply with the rule. RIPA also developed an "Empty Container Certificate," requiring container emptiers to certify compliance with the empty container rule in 40 C.F.R. Section 261.7. Use of the Empty Container Certificate became an element of the RIPA Code of Operating Practices, and a condition of membership in RIPA.

To facilitate the safe management of any non-empty container inadvertently sent for reconditioning, RIPA also developed a "REJECTED" sticker to be applied to such containers, which states that the container does not comply with the Empty Container Rule, has been rejected by the reconditioner, and is not accepted for reconditioning. To assist in the timely retrieval of the non-empty container by the emptier, the sticker also identifies the date of inspection, the name of the emptier, and the name of the carrier (if applicable).

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<sup>8</sup> 45 Fed. Reg. 33,119 (May 19, 1980).

<sup>9</sup> 45 Fed. Reg. 78,524, 78,525 (Nov. 25, 1980).

<sup>10</sup> See 45 Fed. Reg. 78,524, 78,526-27 (Nov. 25, 1980).

<sup>11</sup> See 47 Fed. Reg. 36,092, 36,096 (Aug. 18, 1982) (rejecting proposals to regulate the removal of residue from containers cleaned at reconditioning facilities).

Finally, to address the need for clarity, certainty, and consistency across states and EPA Regions, RIPA developed and presented to the Agency in 2019 “Reconditioning Facility Environmental Guidelines for the Inspection and Management of Containers.”<sup>12</sup> As RIPA explained to EPA at that time, the purpose of these proposed guidelines was, in addition to promoting compliance with the Empty Container Rule, to: “(i) promote the ultimate safe and environmentally sound disposition of used industrial containers in accordance with RCRA’s requirements; and (ii) provide clarity, certainty, and uniformity for the reconditioning industry and the industrial customer base it serves in the management of containers that do not meet the requirements of RCRA’s empty-container rule.”<sup>13</sup> RIPA invited the Agency to meet with RIPA and other interested parties “to discuss how these guidelines, and perhaps additional initiatives, can be used to promote RCRA compliance within the reconditioning supply chain.”<sup>14</sup> Unfortunately, the Agency did not do so.

### **The Benefits of Promoting Compliance Throughout the Industrial Container Management Supply Chain**

Although reconditioners comprise only one part of the industrial container management supply chain and although the Empty Container Rule obligates container emptiers to ensure containers are RCRA-empty before they are sent to a reconditioner, EPA’s compliance focus, like its 2022 Drum Reconditioner Damage Case Report, has targeted reconditioners almost exclusively. Many of the potential regulatory approaches described in the ANPRM would continue that practice, focusing on the management of used non-empty containers once received by the reconditioner, rather than promoting the removal of hazardous materials from used containers *before* they are sent for reconditioning. We respectfully suggest that the more effective approach would be to ensure compliance *throughout* the industrial container management supply chain, starting with educating, providing guidance, and developing standard operating procedures to assist container emptiers in ensuring that their used containers are RCRA-empty before they are sent for reconditioning. Doing so will minimize the occurrence of the occasional non-empty container inadvertently sent for reconditioning *and* minimize any amount of hazardous materials that reconditioners are required to manage.

### **EPA’s Erroneous Assumptions Regarding Used Drum Management**

EPA states in the ANPRM that it is seeking comment on how “the EPA should address the issues outlined in the 2022 EPA Drum Reconditioner Damage Case Report, as well as those summarized in Section II of this ANPRM.”<sup>15</sup> RIPA submitted a response to the Damage Case

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<sup>12</sup> 05/01/2019 Letter from P. Rankin to G. Sullivan and B. Devlin (copy attached as Exhibit B).

<sup>13</sup> *Id.* at 3.

<sup>14</sup> *Id.*

<sup>15</sup> 88 Fed. Reg. 54,537, 54,539 (Aug. 11, 2023).

Report in February 2023.<sup>16</sup> As noted in RIPA’s response, the Agency posits in its Damage Case Report, based on “anecdotal feedback,” that there is a built-in economic incentive for reconditioners to accept non-empty drums.<sup>17</sup> The Agency theorizes, based on this anecdotal feedback and conjecture about economic incentives, that reconditioning “facilities are *likely* accepting *many* drums that are not actually RCRA ‘empty’ (40 CFR 261.7), and they *may* be managing millions of gallons of hazardous waste residues that remain in these non-RCRA ‘empty’ containers, without being subject to substantive RCRA hazardous waste regulations.”<sup>18</sup> EPA further postulates such practices are contributing to a “growing number of incidents at drum reconditioner facilities.”<sup>19</sup>

As RIPA previously explained in its response to the Damage Case Report, the Agency’s conjecture about economic incentives is wrong. RIPA and its members have spent substantial sums to promote compliance with the Empty Container Rule precisely because the management, return, and in some instances disposal of the contents of a non-empty container costs reconditioners time and money. The discovery of a non-empty container requires a reconditioner to slow or halt the unloading and processing of empty containers to manage the non-empty container by, among other actions, applying a rejected label to the container, filling out the label, segregating the container in a safe location, contacting the customer to arrange for retrieval of the container, and if not retrieved, arranging for and incurring the cost of disposing of the container contents, a cost that, standing alone, exceeds any value realized through the resale of the reconditioned container.

EPA’s speculation about container handling practices at reconditioning facilities drawn from its retrospective paper review of “reconditioning facilities” is also wrong. There is no *evidence* that reconditioners are “managing millions of gallons of hazardous waste residues” because they aren’t. Many of the facilities identified in the Damage Case Report are not and never were reconditioning facilities. EPA’s claim that there is a “growing” problem is belied by the very examples EPA cites -- the overwhelming majority (70%) of the facilities identified in the Damage Case Report are no longer operating and/or operated before the Empty Container Rule was adopted. And many of the issues EPA identifies in the Damage Case Report are wholly

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<sup>16</sup> 02/03/23 Letter from P. Rankin to J. Young (copy attached as Exhibit C).

<sup>17</sup> EPA Office of Resource Conservation and Recovery, Drum Reconditioner Damage Case Report, EPA 530-R-22-03 (Sept. 2022) at 11, available at <https://www.epa/hw/drum-reconditioner-damage-case-report>. The anecdotal feedback provided to the Agency presumably is from employees of reconditioners who have chosen not to comply with the applicable regulations. Unfortunately, irrespective of the industry and regulatory regime, there are always a few who choose to break the law. The willingness of a few to break the law does *not* support a conclusion that there is an industry-wide, built-in economic incentive to accept non-empty containers.

<sup>18</sup> *Id.* at 5 (emphasis added).

<sup>19</sup> *Id.*

unrelated to RCRA compliance. In short, EPA's Damage Case Report does not demonstrate a need for, or provide support for, the promulgation of new or revised RCRA regulations.

Ultimately, however, the concerns EPA identifies in both the Damage Case Report and ANPRM – the shipment of non-empty containers to reconditioners; the storage, handling, and management of non-empty containers; the management of wastewaters and other wastes associated with container reconditioning; and emissions from reconditioning furnaces – all can be addressed through the elimination of non-empty containers, *i.e.*, containers that are not “RCRA empty” under the *current* regulations. Accordingly, it follows that implementing effective measures to eliminate non-empty containers and to foster the responsible management of any non-empty container inadvertently sent to a reconditioner will effectively address the issues EPA has identified.

### **Container Reconditioning Protects Human Health and the Environment**

As EPA recognized more than 40 years ago, the reconditioning of used industrial containers is protective of human health and the environment. Reconditioning industrial containers substantially reduces industrial wastes and emissions of both particulate matter and CO<sub>2</sub>e because it (i) keeps the containers and any residues they contain out of landfills, (ii) reduces the emission of particulate matter by up to 92 percent compared to the manufacture of new containers, and (iii) reduces greenhouse gas emissions by up to 70 percent compared to the manufacture of new containers.<sup>20</sup> In total, the reconditioning industry reduces emissions of CO<sub>2</sub>e by approximately 2 billion pounds per year. According to recent EPA estimates of the social cost of carbon, this equates to the avoidance of nearly \$200 million in environmental damage *each year*.<sup>21</sup> New regulations that would discourage or eliminate the reconditioning of used containers would thus result in a significant harm to human health and the environment.

More broadly, the reduction or elimination of container reconditioning would result in increased costs across numerous key economic sectors.<sup>22</sup> These increased costs would lead to increased costs to consumers and further indirect impacts to human health and the environment. As EPA has recognized, socio-economic factors are a significant factor in rendering communities vulnerable to the effects of pollution. Indeed, EPA analyzes such factors

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<sup>20</sup> E&Y Assessment at 11-22.

<sup>21</sup> Elijah Asdourian and David Wessel, Commentary: “[What is the Social Cost of Capital?](https://www.brookings.edu/articles/what-is-the-social-cost-of-carbon/#:~:text=As%20it%20stands%2C%20the%20official,nearly%20fourfold%20increase%20to%20%24190)” Brookings Institution, March 2023, *available at* <https://www.brookings.edu/articles/what-is-the-social-cost-of-carbon/#:~:text=As%20it%20stands%2C%20the%20official,nearly%20fourfold%20increase%20to%20%24190>.

<sup>22</sup> As reflected in the attached report assessing the economic impact of the ANPRM, reconditioning used industrial containers saved container emptiers approximately \$280 million in 2021 and \$400 million in 2019. I. Brannon and D. Kemp, *The Impact of Proposed EPA Regulations on the Economy, the Environment, and the Reconditioning Industry*, p. 8 (Oct. 1, 2023) (copy attached as Exhibit D). If all reconditioners were required to be permitted as hazardous waste treatment, storage, and disposal facilities (an option identified in the ANPRM), the cost of container reconditioning would *increase* to approximately \$10 billion annually. *Id.* at 9.



to identify communities most vulnerable to human health and environmental harms. New regulations that discourage container reuse, increasing costs to consumers, would thus render the most vulnerable communities *more*, not less, vulnerable to human health and environmental harms.

EPA promulgated the current RCRA regulations following a deliberative rulemaking process that considered the benefits of container reconditioning as well as the need to effectively manage hazardous wastes. As noted earlier, EPA concluded then that “the small amount of hazardous waste residue that remains in individual empty, unrinsed containers does *not* pose a substantial hazard to human health or the environment.”<sup>23</sup> That conclusion holds true today. When the Empty Container Rule is followed, it promotes the environmentally beneficial reuse of containers without posing a substantial risk to human health or the environment. Thus, rather than adopt new regulations that would discourage or eliminate container reconditioning and reuse, the best way to protect human health and the environment is to identify and implement ways to promote compliance with the existing regulatory requirements. There are practical, real-world, non-regulatory means to achieve these ends.

First, the Agency should seek to ensure compliance by container emptiers with the empty container rule through education initiatives. RIPA has long sought to do so, but lacks the resources and authority that the Agency wields. As a result, such initiatives by the Agency are likely to be more effective in promoting compliance. Such education initiatives directed to container emptiers should substantially reduce, if not obviate, the need for any other regulatory or non-regulatory action. Simply put, it is in the financial interest of container emptiers to remove as much of their valuable product and/or raw material as possible from containers before sending those containers to reconditioners. Indeed, during discussions about this ANPRM, container emptiers have advised RIPA members that they are very interested in learning how to remove still more residues from their containers before sending them to reconditioners.

Second, the Agency should secure the responsible management of non-empty containers through the issuance of appropriate guidance. The core elements of such guidance are embodied in RIPA’s Responsible Packaging Management program,<sup>24</sup> which imposes the following responsibilities on reconditioners:

- (i) Signed empty container certificate(s) from the emptier(s);
- (ii) Inspection of each incoming container;

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<sup>23</sup> 45 Fed. Reg. at 78,525 (emphasis added).

<sup>24</sup> RIPA, Responsible Packaging Management 2023, *available at* <https://www.reusablepackaging.org/wp-content/uploads/2023/02/Responsible-Packaging-Management-2023.pdf>.

- (iii) Means of identifying the origin of each load of containers, including the date of arrival
- (iv) Written plan describing the reconditioner's system for managing "non-conforming" containers, including labeling containers with a "rejection sticker" that identifies the date received and shipper identification information for possible return;
- (v) Plan for contacting companies that send to the reconditioner non-RCRA empty containers; and
- (vi) Recordkeeping requirements regarding the ultimate disposition of "non-conforming" containers.

In addition, the Responsible Packaging Management program encourages the following standard operating practices by container emptiers:

- (i) Creation of a system for ensuring that all outgoing containers comply with the RCRA Empty Container Rule;
- (ii) Provision of a signed "Empty Container Certificate" that will accompany each shipment of containers destined for a reconditioner which includes the company name, address, date of shipment, and confirmation that all the containers are RCRA empty;
- (iii) Formation of a process to ensure that each outgoing container destined for a reconditioning facility can be identified regarding point of origin; and
- (iv) Training of personnel engaged in container emptying and loading of empty containers into transport vehicles, as well as related issues regarding appropriate empty container management practices.

Finally, the Agency should work with container emptiers and reconditioners to develop standard operating practices (SOPs) and/or guidance for the application of a mark to all containers (e.g., a sticker with a QR code) before they are sent to reconditioners to facilitate the identification of the source and contents of used industrial containers. Because of the various ways in which containers are brought to reconditioners, e.g., via "drop trailers" loaded by customers and retrieved by the reconditioner, via "milk runs" where containers are picked up from multiple customers by the reconditioner or a for-hire motor carrier, and/or via peddlers who may not always have records identifying which containers came from which emptiers, reconditioners are not always provided with a clear line of sight regarding where containers originated or what residues may be in those containers. These issues can lead to "orphan containers," containers that the reconditioner does not have adequate information on regarding its point of origin and/or contents as well as challenges managing any residues in those containers. Developing SOPs for a tracking system that identifies the contents and source of the container would allow reconditioners to better determine the origin of the container; assess the contents of the containers they receive; and assist both reconditioners and emptiers in complying with the Empty Container Rule.

Implementing these proposals would effectively address the issues EPA identifies in the ANPRM while maintaining the human health and environmental benefits that the reconditioning and reuse of industrial containers provides.

### **Other Agency-Identified Options**

EPA identifies other non-regulatory and regulatory options in the ANPRM to address the management of used industrial containers, but none, if implemented, would effectively address the management of used industrial containers in a manner that is protective of human health and the environment. And some of the options the Agency identifies risks eliminating the entire container reconditioning industry and the human health and environmental benefits it provides. RIPA addresses each of these options below.

#### *Elimination of the Empty Container Rule*

One of the options EPA identifies in the ANPRM is elimination of the RCRA Empty Container Rule.<sup>25</sup> Doing so would result in reconditioners being regulated as hazardous waste treatment, storage, and disposal (TSD) facilities and require that they complete the lengthy, expensive RCRA Subtitle C permitting process. Imposing such overly stringent and expensive permitting requirements on reconditioners would drive many out of business, while doing nothing to address any residues in used industrial containers. Indeed, eliminating the empty container rule would eliminate the requirement that emptiers ensure their used industrial containers are empty, and thus, potentially would increase the volume of residue in used industrial containers sent for reconditioning.

Additionally, eliminating the empty container rule and requiring reconditioners to be permitted as TSD facilities would substantially increase the cost of container reconditioning, eliminating the cost savings of reconditioned containers, and drive container users towards purchasing new containers instead of reconditioned containers. As noted above, this would result in negative impacts to human health and the environment by increasing the disposal of wastes in landfills and increasing particulate and CO<sub>2</sub>e emissions associated with the manufacture of new containers.

Eliminating the Empty Container Rule also would have a disproportionate negative economic impact on small and mid-size businesses throughout the United States, who depend on reconditioners to provide cost effective and safe management of their empty containers.

#### *Waste Analysis Plans*

The ANPRM also suggests that EPA could impose a requirement on reconditioning facilities to prepare a waste analysis plan like the plans required of RCRA-permitted facilities. According to the ANPRM, such plans would include a characterization of the rinsates from RCRA empty containers and would allow the reconditioner to “make[] an informed decision in determining

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<sup>25</sup> 88 Fed. Reg. at 54,540.

the compliant management method” for disposing of rinsates.<sup>26</sup> EPA’s proposal would do nothing to address the root cause of the concerns identified in the ANPRM, which is the occasional non-empty container sent to reconditioners, and to the extent that EPA is suggesting better knowledge of container contents prior to reconditioning and disposal would be beneficial, the container management guidance proposed herein would accomplish that goal without a dramatic increase in regulatory burdens.

### Container Inventory

EPA also suggests in the ANPRM that a potential solution to “bad actors” stockpiling and eventually abandoning residue containers would be to require all reconditioners to regularly inspect their facilities and maintain an inventory of all containers, both RCRA empty and non-RCRA empty.<sup>27</sup> RIPA members already comply with the salient part of this proposal by labeling, separating, and appropriately storing in a designated area non-RCRA empty containers. Requiring compliant reconditioners to do the same for every empty container received would be incredibly burdensome and costly, would provide no identifiable benefit to protecting human health or the environment, and would do nothing to address EPA’s concerns about bad actors. Parties that currently struggle to comply, or choose not to comply, with existing regulations are unlikely to comply with such new, more stringent regulatory requirements, meaning that imposing an inventory obligation would simply create a significant, new burden on parties that are already compliant. Again, the concerns EPA has identified are best addressed by emphasizing compliance with existing RCRA regulations and through the development of the guidance proposed above.

### Air Requirements for Reconditioning Furnaces

In the ANPRM, EPA requests comment on emissions from reconditioning furnaces, and notes that the Drum Reconditioner Report identified “several instances” of reconditioning facilities that were subject to penalties resulting from enforcement cases under the Clean Air Act. As a possible solution, EPA notes that it may pursue future regulatory action such as imposing specific emissions controls or emission factor limits for reconditioning furnaces, limiting the use of such furnaces, or requiring pretreatment prior to pyrolyzation.<sup>28</sup>

The “several instances” EPA cites do not evidence a need for regulatory action both because they suggest that the issue identified is not widespread and because they confirm that existing regulations provide the means to address the issue. In any event, the promulgation of air standards for reconditioners is not appropriate in a rulemaking under RCRA. To the extent that

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<sup>26</sup> 88 Fed. Reg. at 54,546.

<sup>27</sup> *Id.* at 54,544.

<sup>28</sup> *Id.* at 54,545.

EPA believes revisions to the applicable standards should be considered, such regulatory consideration is properly addressed under the Clean Air Act.

#### Pretreatment Requirements

The ANPRM also lists mandatory pre-treatment, such as triple rinsing of containers prior to pyrolyzation, as a potential regulatory action to reduce emissions from reconditioning furnaces.<sup>29</sup> We are not aware of any scientific analysis or study which suggests that triple rinsing of containers would be an effective method of managing air emissions from reconditioning furnaces. In any event, requiring triple rinsing of containers before pyrolyzation, even if effective in reducing furnace emissions, would create substantial issues for the management of the rinsate, which must be managed as waste, without any identified net benefit to human health or the environment. Small and mid-size reconditioners likely would be unable to handle the volume of rinsates required for triple-rinsing and likely would be driven out of business by such a requirement.

#### Use of Tanks for Wastewater Management

EPA also suggests in the ANPRM that reconditioners should be required to manage wastewater generated during container rinsing in tanks, rather than land-based units, and should be permitted to discharge wastewater from those tanks only in accordance with Sections 301 and 402 or Section 307 of the Clean Water Act (CWA).<sup>30</sup> RIPA has not identified *any* reconditioner in operation today who discharges to a land-based unit. There is no need to address through regulation or otherwise a non-existent practice of wastewater discharges to land-based units. Nor is any action necessary or appropriate *under RCRA* to ensure reconditioners comply with the CWA.

#### Discharges of Rinsate to Surface Impoundments, Sewers

In the ANPRM, EPA also notes that rinse waters from containers “can cause environmental problems *when mismanaged*,” e.g., when wastewaters are dumped directly on the ground, dumped in surface waters in violation of a permit, or are otherwise disposed of in ways that violate environmental laws and regulations. (Emphasis added)<sup>31</sup> To address this issue, EPA suggests limiting discharges of rinsates to surface impoundments and sewers from only those containers that previously held non-hazardous substances.

Many reconditioners operate zero-discharge facilities, and responsible reconditioners that do discharge wastewater do so in accordance with applicable regulations. Environmental problems caused by the *mismanagement* of wastewaters are best addressed by enforcing existing laws and regulations. Imposing additional restrictions on how rinsates may be managed rather than promoting compliance with existing laws and regulations is unnecessary,

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 54,546.

<sup>31</sup> *Id.*

would be ineffective, and would impose additional regulatory burdens on compliant reconditioners without any additional identifiable benefit to human health or the environment.

Environmental Justice

EPA's Damage Case Report also raises environmental justice concerns with respect to the damage cases it summarizes.<sup>32</sup> EPA asserts that, according to the EPA's EJSCREEN tool, environmental justice issues are prevalent in the areas surrounding the facilities identified by the report. RIPA and its members are sensitive to issues of environmental justice, but respectfully submit that EPA's analysis does not support a conclusion that reconditioning facilities are increasing environmental burdens on vulnerable communities or that regulatory action would be effective to address such issues.

First, there is no evidence that the environmental justice concerns the Damage Case Report identifies are attributable to the operations of any reconditioner. The Damage Case Report notes that many of the identified reconditioning facilities are in areas with above-average cancer risks, air pollution exposure, and chemical accidents. However, reconditioning facilities typically are in industrialized areas in which there is a long history of industrialized activity with numerous pollution sources. The Damage Case Report provides no evidence that reconditioners are responsible for, or currently are contributing in a material way to, the pollution load in the communities where they are located. Moreover, there is no reason to believe that any such issues could not be effectively addressed through the measures identified herein to eliminate non-empty containers to the greatest extent possible and to improve handling practices and management of the occasional non-empty container inadvertently sent to a reconditioner.

Second, EPA's discussion of environmental justice and reconditioners ignores the environmental benefits that the reconditioning and reuse of industrial containers provides, including for the communities in which reconditioning facilities are located. As outlined previously by EPA, environmental harms and climate change disproportionately impact socially and economically vulnerable populations. The substantial environmental *benefits* of the reconditioning industry serve to reduce these negative impacts of climate change and other environmental damages, such as the emission of particulate matter, in these same communities. Any analysis of environmental justice issues must consider the environmental benefits the reconditioning industry provides. More stringent regulation of container reconditioning, especially if that regulation proves costly enough to preclude its economic viability, could increase, rather than lessen environmental harms to our nation's most vulnerable communities. At best, elimination of container reconditioning would transfer negative environmental impacts elsewhere, and at worst it would cause businesses to opt for more environmentally damaging alternatives and, thereby, exacerbate environmental inequities.

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<sup>32</sup> *Id.* at 54,541.

Third, effectively addressing environmental justice requires a community-specific assessment and a plan to address the unique characteristics and challenges each community faces. Nationwide regulations addressing the management of used industrial containers simply cannot be effective in addressing the myriad of unique issues that each environmental justice community faces. Implementation of the proposals RIPA has identified in these comments should substantially reduce or eliminate any contribution by reconditioners to environmental harms in the communities where they are located. Addressing the broader issues these communities face, unrelated to container reconditioning, is beyond the scope of this ANPRM or any regulatory or non-regulatory measure for container reconditioning that might be implemented under RCRA.

### **Conclusion**

As EPA recognized more than 40 years ago, industrial container reuse provides significant human health and environmental benefits, and the reconditioning industry plays a critical role in sustaining those benefits. As EPA also recognized then, the small amounts of residue that might remain in some empty containers do not pose a substantial hazard to human health of the environment. RIPA understands EPA has concerns that some containers sent to reconditioners might not be empty, that such non-empty containers might increase the potential for harmful air and water emissions from reconditioners, and that such non-empty containers might increase the potential for spills and other releases from reconditioning facilities. However, the most effective way to address all these issues is to ensure compliance with the existing Empty Container Rule -- through education initiatives and guidance on how best to empty containers, track containers, and handle any non-empty containers.

Sincerely,

A handwritten signature in black ink that reads "Paul Rankin". The signature is written in a cursive, slightly slanted style.

Paul Rankin, RIPA President

Enclosures

cc:     Agricultural Retailers Association  
          American Chemistry Council  
          American Coatings Association  
          American Coke and Coal Chemicals Institute  
          American Fuel and Petrochemical Manufacturers  
          Dangerous Goods Advisory Council  
          Industrial Packaging Alliance of North America  
          Independent Lubricant Manufacturers Association