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**By Electronic Mail
And First-Class Mail**

Jessica Young
Branch Chief, Office of Resource Conservation and Recovery
United States Environmental Protection Agency
William Jefferson Clinton Building
1301 Constitution Avenue, N.W.
Washington, DC 20004

Re: EPA Drum Reconditioner Briefing and Advance Notice of Proposed Rulemaking

Dear Ms. Young:

On behalf of the Reusable Industrial Packaging Association, I want to thank you and your team again for the briefing you provided to our members last October on the United States Environmental Protection Agency's Drum Reconditioner Report and anticipated Advance Notice of Proposed Rulemaking. We truly appreciate the Agency's willingness to engage with us on these issues.

In keeping with that spirit of engagement, I write on behalf of RIPA's more than 70 member companies to address three critical issues that we submit the Agency must consider as it moves forward. First, as EPA acknowledged at our October meeting, the reconditioning industry serves a valuable, indeed vital, role in sustaining the environmentally beneficial practice of industrial container reuse. Second, for decades, RIPA and its members have sought to promote compliance with RCRA's empty-container rule, and in recent years, have sought to engage the Agency in addressing the very issue that is the focus of the Drum Reconditioner Report—the management of non-empty containers. Third, the Agency's Drum Reconditioner Report reflects, in many respects, a misunderstanding of industry practices, assuming incorrectly that unrelated operations, historic practices, and isolated incidents reflect broader systemic issues.

Viewed objectively, we submit EPA's Report confirms what RIPA has long advocated: that promoting compliance with the empty-container rule and developing a uniform and consistent framework for managing non-empty containers are the keys to the environmentally safe and beneficial reuse of industrial containers. We briefly address these issues below and invite further dialogue on each to ensure the Agency proceeds with an accurate understanding of the industry and the practices the Agency is evaluating.

The Environmental (and Economic) Benefits of Container Reconditioning

It is undisputed that the reconditioning industry plays a critical role in facilitating the beneficial reuse of industrial containers. Based on RIPA's 2021 industry survey, reconditioners collect approximately 28 million industrial containers each year and, after reconditioning, sell about 90% of these containers (25.2 million annually) for reuse. The reuse of these containers results in a substantial reduction of industrial wastes, carbon emissions, and economic costs.

In real terms, the reconditioning industry accounts for approximately 50% of the steel drums and IBCs and about 25% of the plastic drums used in commerce each year. The reuse of these containers substantially reduces the volume of waste deposited in our nation's overburdened landfills. The large difference between the energy and raw materials needed to produce new containers and the reconditioning of used containers also means that reconditioning significantly reduces greenhouse gas emissions. Reconditioning an IBC, for example, creates about 70 percent less greenhouse gas emissions than producing a new IBC. Reconditioning steel drums results in about 60 percent less greenhouse gas emissions than manufacturing new drums, and reconditioning plastic drums produces about 15 percent less greenhouse gas emissions than producing new, single-use drums of the same type. In total, the reconditioning industry reduces greenhouse gas emissions by almost 2 billion pounds of CO₂e each year, roughly equivalent to removing 200,000 greenhouse gas emitting cars from our nation's roads each year.

The reconditioning of industrial containers also provides substantial economic benefits. Pricing varies around the country, but in 2018 Capital Policy Analytics estimated that, on average, reconditioned IBCs cost \$35 less than new containers, reconditioned 55-gallon steel drums cost \$10 to \$13 less than new steel drums, and reconditioned plastic drums cost \$10 less than new plastic drums. In today's economy, the cost-savings of industrial container reconditioning likely approaches a half billion dollars annually.

These cost savings and the *substantial* environmental benefits (both in terms of waste reduction and carbon emission reductions) are factors that must be considered in assessing regulatory changes that could discourage (or eliminate) the beneficial reuse of industrial containers.

RIPA's Efforts to Promote Compliance with EPA Regulations

RIPA and its members have been a leading voice, if not the leading voice, in promoting compliance with EPA's regulations. RIPA launched a national "Responsible Container Management" campaign more than 40 years ago to educate drum fillers and emptiers about the life-cycle of these containers and to explain to container users and reconditioners the RCRA-empty container rule. This education program and successor articles and documents have been presented to hundreds (if not thousands) of companies in the United States over the years.

RIPA also developed an empty-container certification form that is intended to ensure that all containers are "RCRA-empty" before customers present used industrial containers for transportation and reconditioning. In addition, RIPA developed a "rejected" sticker to identify the occasional non-empty container that is inadvertently included with RCRA-empty containers sent for reconditioning. Although perfect compliance remains elusive, these efforts have succeeded in driving substantial compliance with the RCRA-empty container rule.

Not satisfied with substantial compliance, however, RIPA and its members have sought to do more, developing guidelines: (i) for the receipt and inspection of industrial containers that customers

present as RCRA-empty; and (ii) for the management and disposition of non-compliant containers, *i.e.*, those that are found during inspection to contain residue exceeding the amounts specified in 40 CFR 261.7(b)(ii) or (iii). Nearly three years ago, RIPA provided these “Reconditioning Facility Environmental Guidelines for the Inspection and Management of Containers” to the Agency, explaining that the purpose of the proposed guidelines (which extend beyond RCRA’s regulatory requirements) is to: (i) promote compliance with the empty-container rule; (ii) promote the safe and environmentally sound disposition of any residues contained in used industrial containers; and (iii) to provide clarity, certainty, and uniformity for the reconditioning industry and its industrial customer base on the management of containers that do not meet the requirements of the empty-container rule.

RIPA invited the Agency to meet and discuss how these guidelines, and perhaps other initiatives, could be used to promote RCRA compliance and environmentally safe practices within the reconditioning supply chain. At the time, the Agency declined to do so.

EPA’s Drum Reconditioner Report

The Agency chose instead to prepare, without consulting with industry, a report that “aims to provide an analysis of the regulatory and waste issues surrounding drum reconditioning issues.” Based on “anecdotal feedback,” the Agency posits that there is a “built-in economic incentive for accepting non-empty drums, which has contributed to the number of damages cases EPA has observed.”¹ The Agency concludes, apparently 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.” (emphasis added). The Agency’s conjecture about economic incentives and speculation about what *may* be occurring is, simply put, wrong.

Reconditioners have an *incredibly strong* economic incentive to *promote compliance* with the empty container rule because any receipt of a non-empty container costs reconditioners time and money. Discovery of a non-empty container requires the reconditioner to slow or halt the unloading and processing of empty containers to manage the non-empty container. Industry practice is to apply a “rejected” label to the non-empty container and segregate it in a safe location. The reconditioner must then contact the customer to make arrangements for the retrieval and/or shipment of the non-empty container to the customer in accordance with DOT regulations. If the customer fails to retrieve or arrange for the return of the non-empty container, the reconditioner must incur the time and cost to dispose of the container and its contents in accordance with applicable regulations. These compelling economic incentives are what drove the industry, through RIPA, to *spend substantial sums* (i) to develop and promote the “Responsible Container Management” campaign, (ii) to develop and implement the empty-container certification form, (iii) to develop and distribute the “rejected” sticker to be applied to any non-empty container, and (iv) to develop and propose the “Reconditioning Facility Environmental Guidelines for the Inspection and Management of Containers.”

¹ 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--any more than the willingness of a few to rob banks supports a conclusion that all people have a built-in economic incentive to become bank robbers.

Notably, the Agency’s speculation about reconditioners accepting “many” non-empty containers is not founded on data developed through systematic inspections or other comparable data collection efforts.² Instead, it is a speculative conclusion drawn from a paper review of facilities at which environmental and/or safety issues have been documented--some related to alleged non-compliance with the RCRA empty-container rule and some not. These facilities, at which environmental and/or safety issues have been documented, are not representative of the overwhelming majority of active facilities at which no issues have been identified. In addition, the focus of the Drum Reconditioner Report on when environmental and safety issues are *identified*, rather than when the reconditioning operations at the facilities *occurred*, leads to the inaccurate and misleading conclusion that there is a “growing number of incidents at drum reconditioner facilities.”

The Agency’s Report reveals the following:

- Many of the facilities identified as damage cases *are not and never were reconditioning facilities*. For example:

<u>Facility Reviewed</u>	<u>EPA Description of Operations</u>
○ Aqua-Tech Environmental, Inc.	“general dumping ground,” “municipal landfill,” “state-permitted hazardous waste treatment, recycling, storage, and disposal”
○ Arkla Terra Property	“Underground Storage Tank (UST) refurbishing facility”
○ Chief Supply/Greenway Environmental	“RCRA treatment, storage, and recycling facility”
○ County Line Auto Parts	“salvage yard recovering drums”
○ Drumco Drum Dump	“operator accumulated a large number of drums with the intent of recycling them”
○ Environmental Waste Resources, Inc.	“treatment storage and recycling facility . . . [that] accepted hazardous and non-hazardous waste in bulk and container shipments”
○ JC Pennco Waste Oil Service	“received used barrels and various chemicals . . . Most of the oil and other chemicals were sold to recyclers, and the drums were sold for use as animal feeders, trash barrels, and barbeque pits”

- Many of the facilities identified as damage cases have a history of industrial uses unrelated to reconditioning and/or are located adjacent to other operations that are a likely source of environmental contamination. (e.g., Albert Steel Dum Co., Inc., Barrels, Inc., Bay Area

² The Agency asserts that it “has observed a systematic compliance issue with drum reconditioners managing drums that do not meet the 40 CFR 261.7 definition of ‘empty,’” but does not identify when or how it made such an observation or how it possibly could be “systematic” when more than half of the reconditioning facilities the Agency has identified are not the subject of a detailed review.

Drum Company/Peak Oil, Bayonne Barrel & Drum Co., Celadon Recycling Solutions, Container Recycling, Inc., etc.)

- 70% (60 of 86) of the identified damage cases involve facilities that operated before 1980 (*i.e.*, before enactment of the empty-container rule) and/or involve facilities that are no longer operating (many of which ceased operating decades ago). None of these facilities represent a “growing number of incidents at [active] drum reconditioner facilities.”
- 50% (13 of the 26) remaining damage cases involve non-RCRA compliance issues (e.g., alleged non-compliance with Clean Air Act recordkeeping requirements) and/or events unrelated to the handling of container residues (e.g., an employee falling into a tank of caustic solution).
- Only 13 of the identified damage cases, which represent only 7% of the 181 reconditioning facilities EPA identified, appear to involve the alleged mishandling of container residues by a currently operating reconditioning facility.

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The Path Forward

RIPA renews its invitation to the Agency to work with RIPA to identify ways to promote RCRA compliance and environmentally safe practices within the reconditioning supply chain. RIPA continues to believe that its proposed Reconditioning Facility Environmental Guidelines for the Inspection and Management of Containers are a key to that end and welcomes feedback from the Agency on that guidance as well as a discussion of other initiatives that will promote compliance with the empty-container rule.

Sincerely,



Paul Rankin, President

cc: Tim O’Bryan, RIPA
Rick Schweitzer, RIPA
Duke McCall, Morgan Lewis
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