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Submitted via: www.regulations.gov

Ms. Kaitlin Franssen
Office of Resource Conservation and Recovery (MC 5303P)
Materials Recovery and Waste Management Division
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking, Docket ID No. EPA-HQ-OLEM-2023-0320

Dear Ms. Franssen:

The Independent Lubricant Manufacturers Association (“ILMA” or “Association”) submits the following comments on the Environmental Protection Agency’s (“EPA” or “Agency”) Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking¹ (“ANPRM”).

The Resource Conservation and Recovery Act’s (“RCRA”) existing “empty container provision” should not be modified or eliminated. The system for recycling used 55-gallon drums and intermediate bulk containers (collectively, “industrial containers” or “containers”), which has been built on a regulatory scheme that has been in place for more than 40 years, works well across the entire supply chain for reconditioned containers. EPA’s September 2022 Drum Reconditioner Damage Case Report (“Report”), cited in the ANPRM, does not justify regulatory changes, including the options set forth in the ANPRM and under consideration by the Agency.

Reconditioned containers play an important role in ILMA members and other used container generators’ sustainability and environmental, social, and corporate governance (“ESG”) activities. Reconditioned containers typically cost less than new ones. Accordingly, EPA needs to understand clearly what will happen to the reconditioned container market if the Agency modifies or eliminates the RCRA empty container provision and/or requires all container reconditioners to become licensed-RCRA TSD facilities. With the stroke of pen, EPA will destroy this market overnight, which manages empty containers in a safe and environmentally sound manner, by

¹ 88 FR 54537 (Aug. 11, 2023).

increasing the cost of reconditioned industrial containers and by eliminating their historical price advantage over new ones.

Consistent with sustainability and ESG goals, the regulatory option to require used drum generators to rinse empty containers before they are shipped to reconditioners should be dropped immediately from consideration by EPA. This option unnecessarily creates more wastes, adds to compliance costs with no environmental benefits, and would not improve social justice outcomes for many communities.

Every stakeholder in the reconditioned container supply chain has economic and legal incentives to ensure that industrial containers are “RCRA empty.” If a noncompliance situation arises periodically (*e.g.*, receipt of non-RCRA empty containers), it should be addressed by EPA and RCRA-authorized states through their existing enforcement mechanisms rather than by upending the entire supply chain for reconditioned containers. ILMA and its members support working with the Agency and other stakeholders to develop “best practice” materials and other non-regulatory guidance to promote RCRA compliance and encourage the reconditioning of used industrial containers.

I. Introduction of ILMA

A. The Association

ILMA, established in 1948 and headquartered in Alexandria, Virginia, currently represents 355 lubricant manufacturers, distributors, and suppliers across North America. The overwhelming majority of the Association’s member companies are “small businesses,” as defined by the Small Business Administration. As a group, ILMA Manufacturing Member companies manufacture and sell over 70% of the metalworking fluids and 25% of all lubricants utilized in North America. Many member companies export finished lubricants from the U.S. or maintain business arrangements for the international use of their proprietary formulae.

Independent lubricant manufacturers are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base oils or that produce chemicals for use as lubricant additives. Base oils are purchased from refiners and re-refiners, while lubricant additives are purchased from chemical companies. Independent lubricant manufacturers combine these components to manufacture high quality, often specialized, lubricants. The Association’s Manufacturing Members routinely compete against their raw material suppliers in the finished lubricants market.

The global economy cannot function without the products made by the lubricants industry, including by ILMA member companies. A 2020 study of the U.S. lubricants market by IHS Markit reveals that ILMA member companies in 2018 had \$14.6 billion in sales activity,

contributed \$7.2 billion to GDP, and maintained 26,000 jobs that paid a total of \$2.7 billion in wages.

B. ILMA’s Interest in the ANPRM

ILMA and its members have a significant interest in the ANPRM and any regulatory action by EPA to modify or eliminate the RCRA empty container provision or impose new requirements on used container reconditioning facilities. In addition to these comments, ILMA’s CEO Holly Alfano spoke at EPA’s November 1, 2023 “listening session” on the ANPRM.² The Association’s Used Drum Task Group also met virtually with the Agency staff on November 14, 2023.

The Association’s members are considered by the Agency in the ANPRM to be “used container generators.” They employ steel and polyethylene drums and intermediate bulk containers to receive and store raw materials and to package finished lubricants and related manufactured products for delivery to their customers and end users.

After the publication of the ANPRM in the *Federal Register*, ILMA conducted a survey³ of its members to approximate and better understand the extent of their use of industrial containers. The survey revealed that, on average, ILMA members use just over 1,600 industrial containers per month or approximately 19,000 containers each year. Most (75%) of these industrial containers are 55-gallon steel drums. Intermediate bulk containers (“IBCs”) and 55-gallon polyethylene drums account for 16% and 9% of ILMA members’ remaining container use, respectively.

ILMA members report that most (78%) of the industrial containers they use to ship finished products to customers and end users are intended for “one-way” use — that is, the price of the drum or IBC is built into the price of the lubricant product, the container becomes the property of the customer or end user upon delivery, and the customer or end user is responsible for the disposal or reconditioning of the container after the contents have been emptied.

“Two-way” use covers 22% of the industrial containers shipped by ILMA members to their customers or end users. These containers, particularly stainless-steel IBCs, are shipped back to ILMA members after the contents have been emptied by the customer or end user. In many instances, the containers are simply refilled with the same lubricant product and are returned to the same customer or end user.

Based on the survey data, ILMA estimates that the average member company sends 431 used containers per month to reconditioners, or just over 5,100 containers every year. ILMA

² A copy of Ms. Alfano’s statement has been added to the ANPRM docket.

³ Based on 30 responses to an internal survey distributed to ILMA Manufacturing Member companies between October 7, 2023, and November 6, 2023. ILMA considers the survey results to be statistically significant.

members, thus, collectively handle millions of industrial containers each year. Importantly, these containers are managed in a safe and environmentally responsible manner and within the current regulatory framework under RCRA’s Hazardous Waste Regulations (40 C.F.R. Parts 260–273) and Used Oil Management Standards (40 C.F.R. Part 279).

II. EPA’s Damage Case Report Does Not Support Regulatory Action

A. *The Agency Needs to Reevaluate or Scrap Its Damage Case Report*

The predicate for the ANPRM is EPA’s September 2022 Drum Reconditioner Damage Case Report (“Report”). The Report, which details issues with drum reconditioning facilities from the 1960s to the present day, is full of conjecture on economic incentives and is simply wrong. On its face, the Report does not justify the regulatory options being considered by EPA and set forth in the ANPRM.

ILMA supports, and has added its name as a signatory to, the comments on the ANPRM submitted by the Reusable Industrial Packaging Association (“RIPA”). Based on ILMA’s own analysis of the Report, which addresses only container reconditioning facilities, some 70% of those reconditioning facilities cited in the document are out of business, including many sites that ceased operation prior to the promulgation of the RCRA empty container rule over four decades ago. Moreover, ILMA agrees with RIPA’s assessment that the cited problems in the Report with “newer” reconditioning facilities appear wholly unrelated to RCRA compliance.

EPA, therefore, needs to seriously reassess and revise, or even scrap entirely, the Report. It just does not hold up to peer review and cannot be the sole or predominant basis for regulatory action by the Agency. Additionally, before proposing any rulemaking based on the Report, EPA needs to undertake an appropriate economic analysis of the cost effects across the entire supply chain for industrial containers. Eliminating the price advantage for reconditioned containers likely will not produce greater environmental benefits. With no price advantage, used containers have a greater chance of being sent to scrap yards with few environmental protections in place, if not reused in other non-environmentally beneficial ways.

B. *Generators Have No Incentive to “Mask” the Disposal of Hazardous Wastes*

ILMA disagrees strongly with EPA’s conclusion in the Report that there is a “growing number of incidents at drum reconditioner facilities.”⁴ The Agency bases its conclusion on “anecdotal feedback” that reconditioners “are likely accepting many [containers] that are not actually RCRA ‘empty’”⁵, implying that used drum generators, including ILMA members, have an

⁴ 2022 EPA Drum Reconditioner Damage Case Report at 5 (emphasis added).

⁵ *Id.*

economic incentive to dispose of millions of gallons of incremental hazardous wastes with reconditioners in both RCRA empty and non-RCRA empty containers.

EPA’s conclusion is simply incorrect. Used drum generators including ILMA members have both economic and legal incentives to provide RCRA empty containers to reconditioners. Moreover, as discussed in Section III below, the RCRA empty container provision itself provides substantial regulatory incentives.

(1) *Used drum generators incur financial harm if they provide non-RCRA empty containers to reconditioners.*

ILMA members have every economic incentive to completely empty containers of the raw materials they use to compound or blend finished lubricants. ILMA members, on average, pay approximately \$1,600 (or \$28.46 per gallon) for a 55-gallon drum of their most frequently purchased raw materials, which are viscous liquids.⁶ Some members report paying as much as \$5,500 to \$6,600 for a 55-gallon drum of certain chemical additives. An ILMA member does not benefit by leaving *any* amount of material in a used container when it is sent for reconditioning.

To illustrate, one inch of product in a typical 55-gallon drum equates to 1.6 gallons. This is the amount of residual product allowed under EPA’s empty container provision. If, as EPA suggests in the ANPRM, ILMA members are taking advantage of this regulatory “loophole” by leaving one inch (or more) of product in every used drum sent for reconditioning (or disposal), they would be “losing” some 670 gallons of product each month — or just under 8,050 gallons per year. Considering that ILMA members pay, on average, \$28.46 per gallon for their most frequently purchased raw materials, leaving one inch in every used container sent for reconditioning would result in some \$227,500 annually in raw material losses.⁷

ILMA members, therefore, expend considerable effort to completely drain containers of raw materials. Because these raw materials are mostly viscous products, they employ sophisticated draining equipment, such as vacuum pumps, vertical lift pourers, and below-hook carriers to ensure as much product as possible is emptied from *each* container. Many companies also provide their employees with training in the best emptying practices, and they routinely inspect the used containers before being sent to reconditioners to ensure that “every last drop” that can be removed, in fact, has been removed.

By extension, the same “economics” applies to ILMA members’ customers and end users. The per-gallon cost of finished lubricants provides the same economic incentive to ensure that the containers are completely empty. These customers and end users employ similar equipment and practices to ensure that their used containers are empty.

⁶ Chemical additives typically use lubricant base oils as a diluent.

⁷ The calculations in this section are based on ILMA members, on average, sending 431 empty containers per month to reconditioners.

(2) *The Used Oil Management Standards Create Legal or Regulatory Incentives*

EPA promulgated its RCRA Used Oil Management Standards⁸ in 1992 to provide regulated entities, including ILMA members, with legal or regulatory incentives to manage “used oil” as non-RCRA hazardous wastes. These regulations have proven to be extremely effective over the past three decades, and along with the RCRA empty drum provision, have increased the volume of used oil across the country that is properly recycled. The Agency fails to consider or even mention its Used Oil Management Standards in the ANPRM. If EPA decides to pursue the modification or elimination of the RCRA empty container provision, then the Agency needs to address in any proposed rule the interplay between the regulatory change and its Used Oil Management Standards.

ILMA would like to provide two of many examples of how the Used Oil Management Standards come into play with the empty container provision. First, some ILMA members provide “used oil services” to their customers that fall within the regulatory ambit of the Used Oil Management Standards. Metalworking fluids (“MWFs”) are typically used machines with sumps to cut or shape metal. Periodically, the MWFs are drained from the machine sump into containers that are then returned to the ILMA members’ facilities for “polishing.” Metal swarf, contaminants, and other impurities are filtered from the fluid. The MWF is then re-additized. The “reconditioned” or “polished” MWF is then returned to the customer for use again in its metalworking machines. Such “polishing” through off-site shipments as a non-RCRA hazardous is permitted and occurs under the Used Oil Management Standards.⁹ EPA should not interfere with this cost-effective used oil practice, which it already recognizes in another section of RCRA.

Second, and as previously noted, some ILMA members’ customers, typically using more expensive stainless-steel IBCs, will fully empty the container of the purchased lubricant and will ship the empty IBC back to the ILMA member for refilling with the same lubricant. If this empty IBC would have to be shipped as a RCRA hazardous waste because of any residue, the customer would need to find a licensed transporter at a higher cost. EPA should not disrupt such closed loop use of these containers.

III. Modifying or Eliminating the RCRA-Empty Container Rule is Unwarranted.

EPA solicits comments in the ANPRM on whether the one inch or 3% by weight volume “caps” in the RCRA empty container provision at 40 C.F.R. 261.7 should be modified or eliminated. ILMA says an emphatic, “no,” to both regulatory alternatives. EPA, when it promulgated the RCRA empty container provision, deemed these “caps” to be protective of human health and the

⁸ 40 C.F.R Part 279.

⁹ 40 C.F.R. Section 279.24(c).

environment.¹⁰ A robust used container supply chain has since developed and operates effectively around the RCRA empty container provision. So, what has changed? In its Report, EPA suggests that the problem is reconditioners may be accepting non-RCRA empty containers. If this indeed is “the” problem, EPA and RCRA-authorized states currently have appropriate authority to address it (and should) without a rule change. Additionally, and as discussed below, “best practices” and other guidance materials will have a greater effect on changing behaviors, if needed.

Section II above detailed ILMA members and other used container generators’ strong economic and regulatory incentives to provide reconditioners with RCRA-empty containers. The current RCRA empty container provision enhances these incentives. Used container generators are incentivized to store and ship only RCRA empty drums to reconditioners to avoid compliance costs with RCRA Subpart C requirements (*e.g.*, small- or large-quantity generator standards) and drum disposal (as opposed to recycling) costs. If EPA reduced or eliminated the one inch or 3% by weight thresholds in the RCRA empty container provision, these incentives simply will go away along with the market for reconditioned containers.

If EPA were to reduce the volume “caps” or eliminate the RCRA empty container provision altogether, used container generators, including ILMA members, likely would be faced with three choices: (1) dispose of used containers instead of sending them for reconditioning because of increased compliance and reconditioned container costs; (2) invest in additional, specialized on-site emptying operations; or (3) treat all their used containers as RCRA hazardous wastes. The latter two options would be markedly expensive and would erode the fundamental economic incentive for used container generators to engage with reconditioners. The first option provides no environmental benefits. If EPA proceeds to a rulemaking, it needs to carefully assess the effects from each of these options.

The third option warrants some additional explanation. RIPA estimates that a change in the RCRA empty container provision would force all its members to obtain RCRA TSD status, increasing the cost of used container reconditioning by \$1 billion annually. These costs would have to be passed through to purchasers of reconditioned industrial containers, including ILMA members. If the cost advantage of purchasing reconditioned containers goes away, ILMA members and others simply would buy “new”, and the reconditioned container market will collapse.

¹⁰ The one inch or 3% by weight thresholds were adopted by EPA because they provide generators with a reasonably attainable definition of “empty” and management as non-hazardous wastes within a protect human health and the environment standard. The viscosities of the raw materials used by ILMA members and their finished lubricants make it difficult to completely empty industrial containers without specialized operations like rinsing.

Additionally, while ILMA did not survey its membership on the question, many members are small-quantity generators of hazardous waste. They try to avoid becoming large-quantity generators, in part, because of more stringent regulatory requirements and greater compliance costs. If the RCRA empty drum provision is amended to subject their handling of used containers as RCRA hazardous wastes, it is probable that most ILMA members would become large-quantity generators.¹¹

The Association, therefore, recommends that EPA undertake an appropriate economic analysis of how the regulatory options under consideration by the Agency will affect the entire used container supply chain.

IV. A Rinsing Requirement for Used Drum Generators is Bad Public Policy.

EPA requests comment in the ANPRM on whether used container generators should be required by rule to rinse the used containers before they are shipped to reconditioners.¹² ILMA's response is an emphatic "no." Instituting a rinsing requirement at the used container generator level is a policy mistake for at least four reasons.

First, many used container generators, including ILMA members, would have to deploy scarce capital to install, maintain, and staff in-house rinsing operations. Even if the capital and operational costs are manageable, many ILMA members do not have the physical space at their facilities to add container rinsing stations. Moreover, ILMA members are in the business of blending and compounding finished lubricants and related products. If they had to implement container rinsing activities, ILMA members effectively would become reconditioners and there would be no reason, other than brokerage, to use the services of a reconditioner.

Second, a rinsing requirement would strain volume limits on ILMA members' existing water usage and corresponding wastewater discharges set by their local governmental authorities. With respect to wastewater, ILMA members carefully tailor their operations to meet strict effluent limits for oil and grease. A rinsing requirement would add a significant new source of wastewater that ILMA members' facilities would be forced to manage. Many companies fear that, to remain compliant with their discharge limits, a rinsing mandate would compel them to scale back production of lubricants to meet their water usage volume limits.

ILMA surveyed its members and asked if their facilities could process the additional volumes of wastewater that would be generated. About 93% of the respondents said, "no." A

¹¹ ILMA assumes that, if facilities across many industries become large-quantity generators, it would increase the resources demand on RCRA-authorized states to monitor and inspect compliance. Instantly creating large-quantity generators also affects social justice outcomes for communities.

¹² EPA's motivation for the requirement appears to be the current triple rinsing mandate for containers that held P-listed or acutely hazardous waste.

rinsing mandate does fly in the face of ESG and climate change goals to reduce water and electricity usage.

Third, most containers that housed petroleum-based substances would have to be rinsed with a petroleum distillate instead of water. The rinsate discharge would likely fall outside EPA's Used Oil Management Standards because of the intentional mixing. If the resulting mixture is a non-hazardous waste, there is a question of EPA's RCRA jurisdiction (instead of Clean Water Act).

Based on member feedback, and more important than the question of EPA jurisdiction, ILMA estimates that rinsing one 55-gallon drum with a petroleum distillate would cost \$33.25. Given that ILMA members send an average of 431 industrial containers per month to reconditioners, the incremental rinsing costs would be \$14,331 per month or \$171,969 per year.

Fourth, and importantly for EPA and the states, the rinsing requirement at the used container generator will shift regulatory oversight from a limited number of reconditioning facilities to a huge universe of used container generators. In addition to social justice concerns, it does not seem to be an effective means to leverage limited agency resources, especially when the apparent problem from the Report is that reconditioners may be accepting non-RCRA empty containers.

Accordingly, ILMA recommends that EPA immediately cease any further consideration of requiring container rinsing at the used container generator level.

V. Improving Compliance with the RCRA Empty Container Provision Should be Promoted through Best Practices Guidance.

EPA asks for comment in the ANPRM on requiring used container generators to develop and maintain standard operating procedures ("SOPs") that would have to be followed before shipping used containers offsite for reconditioning. It makes more sense instead for EPA, ILMA, and other stakeholders to develop non-regulatory "best practices" guidance across industries on how to determine whether a used container is empty, rather than having each used container generator drafting its own SOP. ILMA and its members are prepared to assist EPA and other stakeholders with such non-regulatory materials.

Further, the ANPRM discusses requiring generators to certify that the containers they send to reconditioning facilities are "RCRA empty". Such certification would accomplish little, as most empty container generators believe their containers are RCRA empty. Again, appropriate "best practices" guidance should be sufficient.¹³

¹³ On November 14, 2023, EPA representatives met with ILMA and some member companies to discuss the ANPRM. EPA officials asked what percentage of used containers sent to reconditioners by ILMA members contain residue that can be categorized as hazardous wastes. Following this meeting, ILMA distributed a limited survey to

Finally, the ANPRM considers mandating added labeling requirements to disclose the nature of the residual material in a used container, the container's origin, and "any other information deemed critical." The information required to be labeled may include waste identification, warning placards, or information on the container's previous contents and non-regulated residues in the container. Labeling may be required to remain on the container until it is fully reconditioned. However, EPA is open to integrating these additional labeling requirements to existing documents such as bills of lading or hazardous waste manifests. The Agency is also interested in potentially manifesting this information through bar or QR codes on the containers.

ILMA has concerns with adding layers of labeling and container tracking mechanisms. ILMA members already add batch codes to their container labels to trace blends if there are quality or other issues that may arise with a customer. Most products sold or distributed by ILMA members are accompanied by safety data sheets ("SDSs") required by the Occupational Safety and Health Administration's ("OSHA") Hazard Communication Standard ("HCS").¹⁴ The SDS has a section on environmental matters, and the HCS requires pictograms on the container labels describing physical and health hazards. EPA's layering another set of label requirements could have counter-productive effects on appropriate warnings to employees and others handling the containers.

ILMA, therefore, disagrees with EPA's proposition in the ANPRM that generators, transporters, and reconditioners should all be mandated to provide additional labeling on used containers. The ANPRM cites the labeling requirements for large quantity hazardous waste generators at 40 C.F.R. Section 262 as a potential model. Mandating these labeling requirements for used container generators would be redundant. Even as the ANPRM acknowledges that labels on used containers are already required by Department of Transportation regulations such as those at 49 CFR Part 172 subpart E. As noted above, similar additional label specifications are mandated by OSHA's HCS. EPA needs to study in greater detail the costs and efficacy of a used container labeling and tracking regime.

ILMA supports the Agency's efforts to promote RCRA compliance across the entire reconditioned container supply chain. However, the best avenue to pursue these objectives is not by rulemaking. Instead, EPA and stakeholders have an excellent opportunity to use the ANPRM as a springboard to develop meaningful non-regulatory best practices guidance that address these concerns.¹⁵

its members to better answer EPA's question. The survey results found that, on average, 6% of the used containers sent to reconditioners by ILMA members likely contain hazardous waste residue. This confirmed ILMA's initial estimate during the meeting that the volume of hazardous wastes is likely low.

¹⁴ 29 C.F.R. Section 1910.1200.

¹⁵ ILMA has a demonstrated history of working with EPA and other federal agencies to develop effective best practices. A metalworking fluids best practices guide has been on OSHA's website for more than 20 years. ILMA's counsel worked with EPA on the small-quantity generator guidance that has been in use for more than 30 years.

In this instance, to promote better compliance with the RCRA empty container provision, the Association envisions the development of documents and training modules that will educate used container generators on applicable RCRA provisions — specifically what constitutes “RCRA empty,” detailing best inspection practices, and providing recommendations on effective draining methods and equipment. Other non-regulatory guidance can include YouTube, Tik Tok, and Instagram videos, as well as social media posts. ILMA also would support working with the Agency to develop standard operating procedures that provide members with efficient and uniform instructions on emptying used containers.

VI. Conclusion

The current regulatory framework created over 40 years ago under RCRA works well, is fully protective of human health and the environment, and has resulted in an effective supply chain for reconditioned industrial containers. EPA should not modify or amend its RCRA empty container provision without more than some container reconditioners may be receiving non-RCRA empty containers. EPA and the states can, and should, use existing authorities to address this problem, if it truly exists, without disrupting, or possibly collapsing the used container supply chain.

EPA’s Report does not justify the regulatory options under consideration by EPA and set forth in the ANPRM. To the extent that the Agency decides to pursue modifying or eliminating the RCRA empty container provision, it needs better regulatory and economic analyses to support a rulemaking. Additionally, EPA should immediately drop from consideration any requirement for rinsing used containers at the used container generator level.

ILMA appreciates the opportunity to comment on the ANPRM and EPA’s willingness to engage stakeholders on the RCRA empty container provision. As the Agency digests the submissions to the docket, the Association and its members remain available to discuss any questions generated by these or other comments. ILMA and its members also stand ready to engage with EPA and other stakeholders on developing effective non-regulatory best practices and other guidance.

Sincerely,

A handwritten signature in black ink that reads "Holly Alfano". The signature is written in a cursive, flowing style.

Holly Alfano
CEO