

## Transcription of the November 1, 2023, Virtual Public Meeting about the Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking

Speaker Number and Time	Transcription
S1: 00:00	Well, hello and good morning, everybody. I wanted to thank you all for joining us this morning for today's public meeting held by EPA on our advance notice of proposed rulemaking regarding used drum management and reconditioning. And an advance notice of public rulemaking, our acronym is ANPRM. And that's our chance to sort of get ahead of engaging in the details of a rulemaking process to get feedback from you and from everyone on what direction we might take. So, we very much appreciate you all taking the time to join us this morning and help us address this important issue and look forward to hearing your comments. My name is Andy Crossland and I'm the Director of the Materials Recovery and Waste Management Division here at EPA in our Office of Resource Conservation and Recovery. And we have a good group from our team with us today from EPA, including Kaitlin Franssen, Tracy Atagi, Marybeth Sheridan, Patrick Wise, and Jessica Young. And we also have our contractor ERG with us today helping us out in the form of Katie Harrison.
S1: 01:13	So, with that, just a word of setting the stage and background here. Excuse me. On August 11th, this past summer, EPA issued this advance notice of proposed rulemaking for used drum management and reconditioning. And that is to help assist us in addressing concerns that we've been seeing develop over the years about used industrial containers and how they're managed. And those are containers that previously held hazardous chemicals or hazardous waste. From the ANPRM, we're seeking information to better understand the issues and impacts that we've identified with how these containers are being managed and get early feedback on potential solutions that we might pursue in order to adequately protect human health and the environment. And that can include a number of different approaches, whether they are non-regulatory approaches like best management practices or revisions to our regulations that govern these types of drums. So very excited to have you here today and I invite you to give us your comments verbally here. I think we're about ready to get started. And I'm going to turn it over, I believe, to Kaitlin Franssen of our group to sort of talk a little bit about how the meeting is organized and take us forward. Kait?
S2: 02:39	All right. Good morning, everyone. And thank you, Andy. As Andy said, I'm going to go over some of the meeting logistics before we get started with the presentation and speakers. So, today's meeting will work as follows: there will be two EPA informational presentations to kick off each session, which will be the same information. And the first one will run from 11:00 AM to 11:30 AM Eastern Time, and the second one will run from 1:00 PM to 1:30 PM Eastern Time. Each EPA informational presentation will be followed by a 60-minute verbal public comment session for registered speakers. And we will break for lunch from 12:30 PM to 1:00 PM Eastern Time. Please note that the meeting will be recorded, and a transcript will be posted to EPA's website once it's made available to us. So, about a moment prior to each speaker's turn, the meeting facilitator, which is our contractor ERG, will elevate the speaker to a host and panelist position. EPA will call on each speaker when it's their turn to speak, and speakers will be called on in the order in which they were registered. I don't think you

can, but please do not unmute your microphone or turn on your camera until we've called your name. And after your name is called, we will ask that you state your name and your affiliation, if any, and we do encourage all participants to turn on their camera when they are speaking.

S2: 03:50

In order to accommodate all speakers and provide all speakers with the same speaking opportunity, public comment is limited to up to 10 minutes, although we anticipate some speakers might take less than 10 minutes. Speakers will not be able to share screens or presentations. EPA will provide a verbal warning when there's about one minute left for the allotted speaker time if necessary. And after each speaker has concluded, they will be returned to listening-only participant status. Everyone who has pre-registered will have an opportunity to speak, and we will do our best to accommodate speakers that have not pre-registered. We encourage all speakers to sign into the meeting at least 10 minutes before their allotted session to ensure they're connected and ready to speak. If we run out of time for speakers in the first session, we will automatically place you to speak in the second session at the top of the list. If speakers in the second session go past 2:30 PM, we are prepared to extend the meeting time by an additional 30 minutes to accommodate all registered speakers, and we will let you know if that happens. Should a speaker miss their time slot, we will try to accommodate the speaker at the end of the second session if time allows. If you'd like to speak after listening but have not yet registered to do so, please send us a message via the question box at the bottom of the Zoom screen and we'll do our best to fit you into the schedule.

S2: 04:59

We are here today to hear your comments on EPA's ANPRM, like Andy mentioned. And this is a listening session for EPA, and as such, there's no time allotted for questions. If you have a technical issue or a logistical question, we do ask that you place the question in the question-and-answer box at the bottom of the Zoom screen that I mentioned, and our contractor will try to work things out for you. Only the host and panelists will be able to review and respond to questions. No one registered has requested translation services, but in the event that any comments are spoken in languages other than English, they will be translated into English and provided when we provide the written transcript. If you have additional comments after today, please follow the instructions in the Federal Register Notice for this proposal. And please submit your comments by November 22<sup>nd</sup>. If you do submit oral comments today, you may also provide written comments, and written comments on the proposal will be given the same weight as the oral public comment. So, we do ask for your patience as we proceed. We may need to make some minor adjustments as the meeting progresses, and if so, we'll make the appropriate announcements. Now I will move on to the first informational portion of the meeting. All right. So, again, welcome today for our Used Drum Management and Reconditioning virtual public meeting.

S2: 06:15

All right. So just a little bit of outline about what we'll be talking about today. First, we're going to go over what is an industrial container and what is a drum reconditioner. A little bit about what our regulations say, a summary of our damage case report, and then a summary of our advance notice of proposed rulemaking. A little bit about EPA's Path Forward, and then just a couple of brief slides on how to submit a public comment and how to write an effective comment. All right. So, for those of you who don't know, we'll go over what an industrial container is. An industrial container, such as a 55-gallon drum, they're used to transport thousands of different types of materials, including industrial chemicals, acids, oils, solvents, paints, adhesives, soaps, food waste-- or food and waste and residues. And reusable drums and containers can be made of fiber. The ones that are refurbished are

normally made of steel or plastic, high-density polyethylene or HDPE, or a combination of plastic and steel. So those big plastic 275 totes with the steel cage around them. And once used, these containers are either discarded in a landfill, recycled or reconditioned or refurbished for reuse. And reconditioning and reusing industrial containers does provide a very important economic and environmental advantage because it uses less energy and less resources than making new containers, and we're keeping things out of landfills.

S2: 07:32

However, if we don't do it in an environmentally safe manner, it can negatively impact surrounding communities and the environment. A little bit about what a drum reconditioner is. So, these are facilities that specialize in the reconditioning of industrial containers. They do recondition steel and plastic drums and the intermediate bulk containers that I mentioned for resale and reuse. And they do this by cleaning, restoring, testing, and then certifying the containers. These containers may have contained hazardous chemicals and other materials also listed on the previous slide. And the two main processes for the reconditioning are burning off residuals from metal drums in a drum furnace or washing the metal or plastic drums in containers with a caustic solution to clean out the residue. And operators who manage and ship containers that once held hazardous chemicals or materials and waste send to drum reconditioners. They must ensure that the drums do comply with the RCRA empty container provision, which I'll go over in a moment. All right. So, what do our regulations say? The empty container provision that I mentioned is in 40 CFR 261.7. This does exempt hazardous waste residues that remain in drums or other containers-- empty drums or containers, as long as certain provisions in the regulations are met. So empty as much as possible, pour as much as possible out, and then no more than one inch of non-acute hazardous waste remaining in the drum.

S2: 08:55

There's a bunch of other things in there that can be found in the regulations. And despite this empty container provision, drum reconditioners are still receiving non-empty containers and as such are likely accepting drums of hazardous waste that are not actually RCRA empty. And additionally, even if drum reconditioners do only receive RCRA empty containers that meet the conditions of the regulations, they may still be receiving and managing significant quantities of cumulative hazardous waste because of the sheer volume of containers they process. So even if there's only one inch in a lot of these drums, the cumulative nature of it makes that there's a lot of waste in the drums. Excuse me. So as a result, these facilities are potentially managing large quantities of hazardous waste without a provision in the regulations that do allow them to store the rejected non-empty hazardous waste containers and without being subject to substantive hazardous waste regulations. So now a summary of our drum reconditioner report. We published the Drum Reconditioner Damage Case Report in September of last year, and this was the first step to examining the issues that we are being made aware of that were happening at drum reconditioning facilities. We did find from our report that this is a persistent issue. It's not just a historical issue that's going on.

S2: 10:13

And of the 181 drum reconditioning facilities that we did identify, this is both active and inactive facilities, 86 had one or more reported damage case. So, this represented about 47.5% of the industry. And just wanted to note that this was only from publicly available information. The damage cases included fires, groundwater, air, and soil contamination. Also, employee injury, and unfortunately, loss of life. And as part of the report, we did do a preliminary EJSscreen analysis using our EJSscreen tool. And this indicated that about 94% of the reconditioning facilities with damaged cases were located in communities that already bear an environmental burden from other sources of pollution. It exhibits characteristics of social vulnerability or had both of these issues. And then many of the facilities were also

located where people of color or low-income populations were specifically impacted. Just a few examples of damage cases from our report. The larger photos on what I'm assuming is everybody's left is from a fire at a reconditioning facility in Jessup, Pennsylvania. This occurred when a forklift punctured a sodium chlorite drum. Obviously caused an explosion and a large fire. And when firefighters showed up to the site and started spraying water on it, the water ran purple. They were unaware of what the materials in the drums contained.

S2: 11:36

And then the smaller photos on the other side. The top two are historical photos from a drum explosion that occurred from mixing incompatible chemicals. And this, unfortunately, was a fatal explosion. And then the lower photo is from production line at IndyDrum that showed the mixing of unidentified chemicals. This is a brief map of the damaged locations that we found. Most of the damage cases occurred in the northeast or the Ohio River Valley and close to waterways. The lighter green symbols on the map do represent one damage case at one facility, and then the darker symbols indicate multiple facilities with cases. And then just an overview of what is the risk. So nearly all of these damage cases in our report did include harm to human health or the environment, whether it's the workers or the nearby neighborhood and on and off-site contamination. Some specific examples that we found were shelter-in-place orders from the neighborhoods. Obviously, you can see in the photos on this slide, this is some additional photos from the fire at the reconditioning facility in Jessup, Pennsylvania. It's happening close to neighborhoods, some drum explosions that are killing and burning employees, and then exceedances in things like wastewater discharges and soil of chromium and other heavy metals. There's hazardous air pollution discharges from the drum furnaces and discharges into multiple water bodies, including municipal storm systems, creeks, rivers, and even groundwater supplies.

S2: 13:04

And lastly, the continuous volatile organic compound, VOC, exceedances surrounding these facilities. So, the damage case report was our first step. And as I said, we use this to analyze the drum reconditioning facility operations. We found the damage cases that caused harm to human health and the environment. And we did note that some of these could be caused or attributed by upstream generators of used drums. And so next, we published our ANPRM on August 11, 2023, as Andy had mentioned. And we're using this to solicit information and request comment to help us come up with options that would ensure the proper management of the industrial containers that held hazardous chemicals or waste, and we're looking up to and including the reconditioners. We wanted to look at issues across the span of the container management. So, from the used drum generators and transporters to the reconditioners to end of life. And we are requesting comment on a wide variety of possible regulatory and non-regulatory solutions, potentially revising the RCRA regulations or some other non-regulatory options such as best management practices, SOPs. And we'll go over some of the things in our report in the charts in the next few slides. So just to note, these slides are a little crowded. This chart is included in the beginning of our ANPRM. So, if folks have trouble reading it off the slides, they can go check it out in the Federal Register.

S2: 14:40

And I'm not going to go over every single item, but just some examples to take a look at. So, the way we organized it was by potentially affected parties, the issues that we would like to see addressed, and then the possible actions that we would take or that we could take. And the first affected party we looked at was the used drum generators and transporters. And some of the issues here that we noticed were the risk posed by contamination from the residues remaining in the non-RCRA empty containers, non-RCRA empty drums being sent to the reconditioners, and then the risks of fire explosions, incompatible, reactive, or ignitable residues. And some of the potential actions we had discussed in our report were

maybe reducing the one-inch regulatory limit for defining what a non-RCRA empty container is. Requiring rinsing of all the containers. Requiring different regulations for the used drum generators to ensure that all waste had been removed from the containers. So, some SOPs for drum emptying, certification empty drums, better employee training. We could add some things to also require generators to better keep track of records of shipments of the empty drums or require some sort of labeling to convey the hazard that is in these drums. Again, I know there's a lot of text on this slide, but then we looked at the drum reconditioners themselves.

S2: 16:04

And some of the issues we looked at were also the non-RCRA empty drums being sent to the reconditioners, again, the risk posed by the residues, emissions from drum furnaces, the environmental releases, and then some of the other risks that we mentioned that were similar for the used drum generators and transporters. And some of the actions that we looked at here, we're adding some regulatory requirements for the reconditioners when they do receive these non-RCRA empty containers, maybe some SOPs for screening the drums, designated RCRA empty storage container areas with secondary containment, discrepancy reports, requiring things like regular inspections or an inventory of the non-RCRA empty drums-- RCRA empty drums and non-RCRA empty drums, requiring some emission controls, wastewater management, and contingency planning or training for employees, and then up to requiring a RCRA Subtitle C permit or variance. And lastly, we took a look at the end-of-life management. So, when the drums go to scrap yards and landfills, and then the risk from contaminated scrap metal and plastic when it's land disposed. And here we could take a look at limiting the empty container provision to containers sent to the drum reconditioners, requiring the drums to be truly empty, not just RCRA empty. So, everything has to come out of them before they go to scrap recycling or disposal.

S2: 17:31

And then requiring any amount of hazardous waste residues to meet the hazardous debris alternative treatment standards. So as far as our Path Forward, the comment period for the ANPRM, after several requests, has been extended to November 22nd, 2023. So, there's about three weeks left. And we wanted to host this meeting as an opportunity for members of the public to provide us with more information so we can better understand the issues associated with industrial container facilities and really just help us in the development and evaluation of the options to ensure the safe management of these containers up to or including proper management of residuals from these containers. And we do welcome the verbal comment today. And like I said, the meeting will be recorded, and a transcript will be provided. You can also provide written comments in the docket. So just briefly about how to submit a written public comment. And after this meeting, we will post the PowerPoint slides to our website. So, all of these links, if you can't write them down, that's fine. They'll be available on EPA's website. Like I mentioned, the public comment period is August 11th to November 22nd. And there's the link to the Federal Register. You can also Google Used Drum Management Reconditioning EPA or Used Drum Management Reconditioning ANPRM, and it'll pop up for you.

S2: 18:53

And here is also our mailing address. That is also available if you Google EPA Docket Center. That address comes up for you. And then we briefly wanted to just discuss how to write an effective comment, how to write something that would be super helpful for us when we're going through everything. And one of the most important things when commenting is to use a heading that states the rulemaking name and the docket ID. EPA puts a lot of stuff out there, so it's super helpful for us to be able to track things, especially when the docket

number and ID is in there. It's helpful for us if you explain your experience in the area that you're commenting on and include any research data or empirical information. If you work with used drums, if you're a reconditioner, if you are an academic, anything that can explain context for us is super helpful. If you could be really clear with your organization and formatting, use precise language. So, it's helpful for us if things are bullet-pointed or you call out the section in the ANPRM that you're specifically talking about. That's really helpful. Paying attention to special requests for data. So, there's several places in the ANPRM. We're at the end of the section that we're discussing. We specifically ask questions about things that we're looking to potentially change. So, if you could let us know what section of the ANPRM that you're commenting on, that is super helpful.

S2: 20:18 Yeah, like I said, cite and include the part of the section that you're commenting on. And I just wanted to make note too that I think something that's really helpful for us is-- obviously, there will be things that people don't like, but if you could also provide comment on things that you really do like, that is also very helpful for us in deciding how to move forward. And then if you include any outside information or references, including that in your comment, is also quite helpful for us as well. And we also wanted to note that individual comments that share personal experiences are sometimes more helpful if you have-- like I said, if you work for a reconditioner or if you work for an industry, or if you're in a community that has experienced damage cases, giving us that personal information, that personal experience, help us provide context to the comments. And regulations.gov does have some extra information about how to provide comments and how to provide an effective comment. It's at the bottom in their FAQ section. And there's also the EPA Data Center that I mentioned has a section on the bottom that's also about commenting. All right. So, we moved a little quickly through that, but I think we're ready to start going through our speakers. And I will call the first speaker here. Up first, we have Duke McCall.

[silence]

S3: 21:54 There we go. Hey, Duke, I just gave you your microphone. So, when you're ready to speak, go for it.

S4: 21:59 Thank you very much. Again, Duke McCall, name is spelled D-U-K-E M-C-C-A-L-L. I'm with the Morgan Lewis law firm, speaking today on behalf of the Reusable Industrial Packaging Association and its members. I'd like to start by thanking the agency for scheduling this meeting and soliciting input on a potential rulemaking that has huge implications both for the regulated community and human health and the environment. Before addressing the substance of the ANPRM itself, I do want to briefly address what we understand to be the premise, our hypothesis that underlies ANPRM, and that is EPA's 2022 from Reconditioner Damage Case Report. RIPA previously submitted a detailed written response to the agency on the damage case report. I'm not going to attempt to reiterate that in full, but I do want to address what we view as three fundamental flaws in that analysis. First, it incorrectly assumes that reconditioners have a built-in economic incentive to accept non-empty containers. Second, it wrongly concludes that there is a growing problem of container mismanagement at reconditioning facilities. And finally, it assumes without any evidence that drum reconditioners are managing millions of gallons of hazardous waste each year. EPA's conclusions in the damage case report, which EPA admits were based on anecdotal feedback and a paper review of these facilities are simply put, incorrect.

S4: 23:37 RIPA and its members, which reconditioned 90% of all containers in the US, have spent substantial sums to provoke compliance with the EPA's empty container rule, precisely

because they have indeed a very strong economic incentive to avoid the receipt of non-empty containers. Non-empty containers cost reconditioners time and money. The damage cases EPA identified in that report also do not support a conclusion that there's a growing problem requiring regulatory action targeting reconditioners. As we noted in our response, many of the damage cases EPA identifies are not and never were reconditioning facilities. Many of the reconditioning facilities identified ceased operations decades ago, even before the promulgation of EPA's empty container rule. And still, others involve issues that are wholly unrelated to container management. In short, EPA's damage case report does not demonstrate a need for or indeed even provide support for regulatory action. At best, it supports a conclusion that the agency should do more to promote compliance with the existing regulatory scheme. As EPA concluded more than 40 years ago, when it first considered the same issues before the agency today, and I quote, "The small amount of hazardous waste residue that remains in individual, empty, unlined containers does not pose a substantial hazard to human health or the environment." EPA was right.

S4: 25:22

The empty container rule EPA promulgated in 1980 works to the extent there is an issue with noncompliance. As the agency posits in its damage case report, the solution is not new regulation, but identifying measures to promote compliance with existing regulation. RIPA has sought to engage with the agency on this very issue before, again, precisely because reconditioners do not want to receive non-empty containers. Most recently, in 2019, RIPA presented the agency with proposed reconditioning facility environmental guidelines for the inspection and management of containers. These guidelines sought to, first, promote compliance with the empty container rule. Second, to promote the safe and environmentally sound disposition of any residues contained in used industrial containers. And third, 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. To date, the agency has declined to engage with RIPA in promoting compliance with empty container rule for reasons that are unclear to us. But we respectfully submit that doing so will address the very issues the agency identifies, both in its damage case report and in the ANPRM as warranting action.

S4: 26:59

RIPA would support additional non-regulatory options for compliance with existing regulations, which we will outline in greater detail in our written comments. But we do want to stress today that the regulatory options the agency has identified in the ANPRM will, at best, be ineffective to drive compliance. And some could have dire consequences for human health in the environment because they would largely curtail, if not end altogether, the beneficial reuse of industrial containers. As noted in the introductory comments, that would lead to increased emissions to both particulate matter and greenhouse gas emissions that would be associated with the manufacture of new single-use containers, which would also lead to increases in waste disposal that would accompany the end of the beneficial reuse of containers. In closing, on behalf of RIPA, I would strongly encourage the agency to focus its efforts on identifying means to promote compliance with the existing regulations, which as EPA recognized more than 40 years ago, are protective of human health and the environment. RIPA stands ready to partner with the agency in this effort and will provide additional concrete proposals and has written comments on how to achieve these objectives. Again, I thank you. RIPA thanks you for the opportunity to speak to these very important issues.

S2: 28:39

Thank you. Next up, we have Holly Alfano.

[silence]

S3: 29:06 All right. Holly, I just gave you your microphone and camera, whenever you're ready.

[silence]

S2: 29:35 Holly, are you having difficulties or are you able to unmute yourself?

[silence]

S5: 29:49 Okay, there we go. Can you hear me now?

S2: 29:52 Yes, we can.

S5: 29:53 Okay. Good morning. My name is Holly Alfano. I'm the CEO of ILMA, the Independent Lubricant Manufacturers Association. Thank you for the opportunity to share our comments on the empty drum ANPRM. I will submit a written copy of my comments for the record and will provide detailed comments later this month. ILMA's bottom line is that the EPA should not alter the existing RCRA regulatory program, the current guardrails in the empty drum provision work. Trying to change them appears to be a solution in search of a problem. To the extent that EPA has anecdotal information that container reconditioners occasionally take possession of containers that are not RCRA empty shows only that the existing regulations need to be better enforced. ILMA was established in 1948, and today it represents over 330 lubricant manufacturers, distributors, and suppliers. The global economy cannot function without the products made by our industry. ILMA members produce and sell over 70% of the metalworking fluids and 25% of all lubricants utilized in North America. The average ILMA member company uses roughly 355-gallon drums and larger intermediate bulk containers IBCs or totes per month both to receive raw materials from suppliers and to ship finished lubricants to customers. For decades, ILMA members have handled and recycled empty drums and IBCs in a safe and environmentally responsible manner.

S5: 31:42 Based on the ANPRM, it appears that the predicate for the current regulatory review is EPA's 2022 Drum Reconditioner Damage Case Report. ILMA disagrees with the assertion in the report that there is a quote "built-in economic incentive" unquote, for generators to provide and for reconditioners to accept non-RCRA empty containers. To the contrary, ILMA members, as used drum generators, have significant economic and legal incentives to ensure that their drums and totes are RCRA empty. The cost of lubricants and their components alone dictates that they fully empty containers. EPA's used oil management standards at 40 CFR Part 279, make it advantageous for our members to manage their used oil as a non-RCRA hazardous waste. We will leave it to our colleagues at the Reusable Industrial Packaging Association to detail the flaws in EPA's damage case report as it applies to the container reconditioning industry. We believe the damage case report does not justify imposing any of the regulatory options outlined in the ANPRM. I would like to highlight three matters that relate specifically to drum generators, including ILMA members. First, EPA suggests that it could redefine the RCRA empty container provision by lowering or eliminating the current one-inch residue threshold for 55-gallon drums and the 3% by weight limit for IBCs. EPA seems to believe that the existing rule allows used drum generators to dispose of millions of gallons of waste in small increments.

S5: 33:40 However, as I stated earlier, used drum generators have no economic incentive to give non-empty drum containers to reconditioners. These empty containers do not contain waste.

Instead, they hold expensive products. Should ILMA members contain used oil, EPA's used oil management standards provide cost and legal incentives for them to ensure that the drums and totes are properly managed. ILMA members make every effort to get the most product out of every drum. They use sophisticated equipment such as vertical lift pourers and below-hook carriers to remove viscous products from drums. They routinely provide employee training on best practices for drum and tote emptying and compliance with relevant laws and regulations, including the RCRA empty container provision. In addition to the value of the drum or the IBC's contents, companies take these steps because they know that improperly handling used drums not only opens them up to EPA enforcement actions. It also exposes them to various other federal and state laws and regulations, including potential liability under CERCLA or the Superfund law. Second, EPA asks for comment on the suggestion to add a requirement for generators to rinse used or empty drums and totes prior to their shipment to reconditioners. This approach is untenable. On one hand, many ILMA members have indicated that they simply do not have the capacity to add container rinsing stations at their facilities.

S5: 35:31

ILMA members leave the rinsing of containers to the reconditioners who have specifically designed processes to rinse empty containers efficiently and cost-effectively. On the other hand, ILMA members caution that using water for rinsing at the generator level would strain volume limits on their existing water usage and corresponding wastewater discharges set by government authorities. Rinsing also raises various ESG concerns and conflicts with ESG factors that seek to reduce, not increase, water consumption along with lowering power consumption from water withdrawal and wastewater discharges. 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 new significant source of wastewater that ILMA member 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 while investing in additional on-site treatment equipment. Neither route makes sense economically or otherwise. Many ILMA members' drums and IBCs, because of their petroleum contents, would have to be rinsed with the petroleum distillate instead of water. The rinsate would likely fall outside EPA's used oil management standards and would have to be managed as a RCRA hazardous waste.

S5: 37:17

Based on member feedback, we estimate that an ILMA member rinsing an average of 3,500 drums annually with a petroleum distillate would incur additional costs of at least \$116,375 per year. Along with my statement for the record, I will include an attachment showing how ILMA arrived at this cost estimate. Keep in mind that the cost for rinsing IBCs will be greater since they are larger. Third, and finally, EPA states in the ANPRM that is considering requiring generators and transporters to adopt more stringent packaging and inspection procedures. The aim, ostensibly, is to ensure that used containers will not leak or spill residual product enroute to reconditioning facilities. This would be redundant as an existing RCRA regulations already require similar practices. Inevitably, ILMA members' used drums and totes will contain some residue because of the viscosity of the products stored in these containers. However, the current used container management and reconditioning practices are successful in controlling drum residue issues. Generators, transporters, and reconditioners are under ample regulatory oversight and have every incentive to safely handle and process used drums and IBCs. ILMA encourages EPA to abandon any further rulemaking. I appreciate this opportunity to share our views on the ANPRM. We look forward to continuing the dialogue with EPA on this issue. Thank you.

- S2: 39:13 Thank you, Holly. Next up, we have Ronald Harvey.  
[silence]
- S3: 39:32 Hey, Ronald, I have promoted you to a panelist. So go ahead and unmute and turn your camera on if you would like.
- S6: 39:40 Just a moment. All right. You got me there?
- S3: 39:47 Yep, we can see and hear you.
- S6: 39:49 Okay, wonderful. I can't see what you see, but I literally just drove back in from the field on a job, and I'm in my truck right now. So, the conditions being what it is. My name is Ronald Harvey, and I'm speaking on my own behalf as a hazardous waste chemist who's been on the front lines of the environmental service industry for 39 years. I've worked at three TSDFs at four waste brokers. I've been inside thousands of businesses, and I've personally handled well more than 400,000 drums of hazardous waste. So, I feel I wanted to make some comments there. As far as the rationale for the proposal that you folks have is that it's all based on these damage reports that you've collected. And the EPA's major concern is that the danger posed by these reconditioning facilities to employees and the environment and the community. The data provided in Appendix B of the damage report indicates that this concern is overemphasized, in my opinion. Looking at just the facilities that have had damage cases, here's my summary of the data. There were a total of 86 facilities that had damaged cases. Prior to 1980, there were eight damage cases, and six of those facilities are now currently closed. Let me just make an adjustment there. Oh, gosh. Okay, I hope you still have me.
- S3: 41:31 Yep. We can see and hear you.
- S6: 41:33 Okay. Excellent. From 1981 to 2000, there were 43 facilities that you had reported with damage cases. Only four of those facilities are still open. So, 90% of the facilities in that date range are closed as far as bad actors are concerned. From 2001 to the present, there were 35 damage cases, and fully 40% of those bad actors are now closed. So, in total, 59 of the 83 damage cases that you reported from before 1980 up to the present, 59 of those facilities are now closed. 70% of the bad actors are now gone. And so, yes, there have been some significant problems at these drum reconditioning facilities in the past, but the current rate of damaged cases for open facilities is almost certainly going to be far lower now than it was in the past, simply because of increasing pressure for facilities to be good actors regarding injuries and environmental damage. Painting the drum reconditioning industry with a brush of these damage case reports I feel is an unfair characterization of the industry, which I'm very familiar with, and it's an oversimplification of the data. Therefore, EPA seems to have overstated the current potential risks associated with the drum reconditioning facility operations, and the need for additional regulation and control of these facilities is not warranted.
- S6: 43:29 Okay. Now a central problem here as far as this whole issue is the definition of RCRA empty drum. 2.5 centimeters of residue in the bottom of a 55-gallon drum, I can tell you from personal experience, is not very easily measured. Considering that the bottom of a 55-gallon drum is not flat, it's concave. If you stick a drum-- if you stick a drum with a measuring device through the two-inch bunghole, you're going to get two different measurements if you measure it on the inside of the-- on the outside of the drum or towards the inside of the drum. You're going to get two different measurements of the depth of the residue at the

bottom of the drum if you're trying to make your RCRA empty determination. And then poly drums have the same problem because hand holds at the bottom of these drums are placed directly underneath the bung holes. And there are significant indentations, maybe three-quarters of an inch at the bottom of the drum. So, making measurements is unreliable is my bottom line there. The only reliable way to measure the amount of residue in a drum is to weigh the drum and subtract the tare weight of the drum. And that is a very cumbersome process and certainly not very practical at all. And since there are no reasonable alternatives to the one-inch rule, I recommend that EPA leaves the definition of RCRA empty drum as is.

S6: 45:18

Because, I don't know, if trying to come up with other definitions of a RCRA empty drum is really going to be problematic one way or the other. And then of course, once you measure your drums, the issue becomes which drums are non-RCRA empty being more than 2.5 centimeters of residue. Based on a 55-gallon drum dimension, which do vary a little, if a drum still contains one inch of residue on the bottom, that works out to be about 0.63 gallons of residue. The volume of waste in a non-RCRA-regulated drum, okay? That's what's left in a non-RCRA drum. If the same drum contains 1.2 inches, which still is a little bit difficult to measure on the bottom of a drum, it contains about 0.75 gallons of waste. And that volume of material is now, since it's over the one-inch limit, is fully regulated. And I mean, honestly, in the real world of waste management, this is obviously an insignificant difference. So, if the additional 0.12 gallons of waste, which is about a pint in my example, it turns it from a non-regulated waste into a potentially significant risk to workers and the environment, to quote your proposal. And realistically, millions of non-RCRA empty drums have been processed over the years at these non-permitted drum reconditioning facilities. Then it seems that the lack of RCRA permitting has not resulted in massive and substantial environmental damage.

S6: 47:17

So, then I submit to the EPA that the concern about the management of non-RCRA empty drums at reconditioning facilities is overstated. And that requiring the drum reconditioning facilities to get Part B permits, which is one of the regulatory options you were exploring, is an overreaction to the proposed-- and the proposed changes in the regulations I feel are unnecessary for these reasons. Okay, I got one more little statement here. Let me get that around. Okay. And so then in conclusion, I and everyone on this call, and everyone in the chemical and manufacturing sectors, knows that the residual content of empty containers must be properly managed. If DEA-- pardon me, if EPA deems that the risk of the drum reconditioning facilities currently is so high that you have to do something, then I would suggest that instead of taking this very broad and pretty aggressive regulatory stance that instead you would consider setting up, say, an industry certification council. And this organization would hold drum reconditioners accountable. Now of course, I know that's not a perfect system either, but it certainly would be a whole lot less burdensome to the drum reconditioners and to the drum generators, which I haven't even gotten a chance to mention here, but I'm sure somebody else will cover that. So overall, the proposed regulatory solutions in the ANPRM are excessive, unwarranted, and would put the entire drum reconditioning cycle at risk, in my opinion. And so that's what--

S2: 49:29

One minute remaining, Ronald.

S6: 49:31

Okay. Well, I'm done. Thank you very much. And I would like to thank all the others that have joined us here today because I really view this as a pretty important issue. And so, thank you all very much. Have a good day.

- S2: 49:49 Thank you, Ronald. Up next is Jennifer Gibson.  
[silence]
- S3: 50:12 All right. Jennifer, I've promoted you to a panelist. Feel free to unmute and turn your webcam on if you'd like.
- S7: 50:24 Hello. Can you hear and see me?
- S3: 50:26 Yes.
- S7: 50:28 All right. Great. Well, good morning. It's still morning here. My name is Jennifer Gibson, and I am Senior Vice President of Regulatory Affairs for the National Association of Chemical Distributors, or NACD. I really appreciate this opportunity to provide input on the Used Drum Management and Reconditioning Advance Notice of Proposed Rulemaking, or ANPRM. NACD and our over 440 member companies are vital to the supply chain, providing chemical products to over 750,000 end-users each year. NACD members are leaders in health, safety, security, and environmental performance through participation in Responsible Distribution, a third-party verified management practice that is a condition of membership in NACD. It is standard practice for NACD members and their customers to generate used drums and transport them to reconditioners. They do this with great care, ensuring that they meet each of their regulatory obligations and their operating procedures as required by NACD's Responsible Distribution Program. Many also supplement these procedures with their own best practices. NACD respectfully requests that the EPA reconsider many of the regulatory changes that are considered in this ANPRM. The current Resource Conservation and Recovery Act or RCRA regulations have been highly effective in ensuring the safe and proper preparation, transport, and reconditioning, recycling, or disposal of used containers that held hazardous product.
- S7: 52:05 NACD fears that adopting new regulations that significantly changed the drum reconditioning industry would result in reconditioners closing their doors or significantly increasing their prices, which would cause fewer drums to be reconditioned and end up causing more waste and emissions and producing new drums that would be needed. Instead, NACD urges the EPA to focus on improving agency guidance and outreach to reconditioners' used drum generators and transporters to better ensure that the current regulations are followed. One significant change considered in this proposal is the altering of the existing empty container provision. This includes changing the one-inch threshold and requiring used drum generators to rinse certain empty containers. NACD is extremely concerned with any change to the current definition of RCRA empty, as it would make it much more difficult for used drum generators to have their containers considered empty after use. We are concerned that this would force used drum generators to simply dispose of containers that do not meet the new standards. NACD sees this as counterproductive as it will cause fewer containers to be reconditioned and create more waste when the containers are disposed of or required to be rinsed. This is especially concerning as it does not address the issue the ANPRM intends to solve.
- S7: 53:34 Containers that currently meet RCRA empty requirements are not the cause of the environmental and regulatory issues raised by EPA, instead, the reason for these problems is the shipment of non-RCRA empty containers. However, the proposed changes to the empty container definition do not address the cause of this real issue at hand. So instead of making changes to the regulations, the EPA should focus on improving compliance with the current

RCRA empty regulations through guidance, outreach, and education. Additionally, the EPA is also considering requiring reconditioning facilities to obtain RCRA Subtitle C permits. This would force reconditioners to essentially become treatment, storage, and disposal facilities. This is not necessary and would force reconditioners to invest significant sums of capital to acquire these permits, as the cost of submitting permit applications can exceed \$60,000 and must be done every five years. Combining these application costs with those of bringing facilities into compliance could force reconditioners to pay well over \$100,000 just to receive the permit. NACD strongly urges the EPA not to propose any changes that would require drum reconditioners to obtain RCRA permitting or variances. Adding these requirements would completely upend the drum reconditioning industry, forcing more containers to be prematurely recycled or sent to landfills instead of reconditioned while also adding significant financial strain on those who do remain in the business.

S7: 55:09 Lastly, we are concerned that several provisions in this ANPRM are duplicative of existing regulations. These include changes to air emission and wastewater requirements for reconditioning facilities, container packaging requirements, container labeling requirements, and more. Each of these requirements are already covered by regulations under the EPA's Clean Air Act and Clean Water Act, the Department of Transportation's Hazardous Materials Regulations, and the Occupational Safety and Health Administration's various standards. NACD urges the EPA not to make any regulatory changes to these processes as the established regulations have proven to be successful. Any additional requirements would not only impose unnecessary burdens on those required to comply but could also cause confusion among regulated entities. NACD strongly urges the EPA to focus on ensuring that the current regulations are being followed through enforcement, guidance, and outreach by working together with regulated entities to ensure they understand their obligations. And by incorporating non-regulatory strategies such as performance-based standard operating procedures, the EPA can improve compliance with the current regulations. This should be the EPA's goal as the agency's concerns, as outlined in the ANPRM, occur when the regulations are not followed. So NACD really appreciates the opportunity to participate in this meeting today, and we will definitely be following up with more detail in our written comments. Thank you.

S2: 56:45 Thank you, Jennifer. Next up, we have Joshua Prouty.

[silence]

S8: 57:12 Good morning. My name is Joshua Prouty, spelled J-O-S-H-U-A P-R-O-U, T as in Tom, Y. I'm with Alachua County Household Hazardous Waste, which is a division of a local government down here in Alachua County, Florida, near the city of Gainesville. We actually provide a unique perspective on this issue because we're at both parts of the life cycle of used drums. We are a purchaser of reconditioned drums, and we also fill them with the hazardous waste that goes to a proper facility for removal of the hazardous waste, incineration of their waste, and then those drums return back to a drum reconditioner for recycling. We only do about maybe 1,500 drums a year, but our reach is a lot further than that. We accept waste everywhere from Jacksonville, Florida, in the northeast area of the state all the way down to the Gulf near Tampa. We provide a service to rural communities throughout the whole area, collecting their household hazardous waste, which is everything from pesticides and cleaners to paint, old mercury thermostats, and even small laboratory waste for the area.

S8: 58:30 So, we really like what we're able to do with our program since we used reconditioned drums, able to keep our costs down. Current cost for our vendor is around \$30 per

reconditioned drum, which includes them being certified to DOT standards to haul hazardous waste, compared to a potential cost of \$100 per drum for a new drum, which is the goal of actually giving new life to these drums. So, we have an incentive in keeping these types of reconditioning companies functional. It provides our goal of pollution prevention as well as our goals as a county of zero-waste initiatives. What we see in this whole thing is the current regulations, I believe, are good the way they are as is. These companies should be reconditioners to really be incentivized to maintain their very small quantity generator, formerly known as conditionally exempt status. They have a strong financial incentive to keep that status. So, by forcing more regulations on these companies, you're missing the problem.

S8: 59:42 If they're receiving drums that are not RCRA empty or containing hazardous waste, the incentive needs to be gone. Finding the companies that are generating this waste and sending them to the reconditioners, not punishing the reconditioners for having to deal with it. So, all these regulations I really think should be focused on the opposite end, the generator side, not the middleman. That's pretty much where I see this issue is, that the focus should be really on helping these reconditioning companies maintain their very small quantity generator status. And any companies that are having the issues that were the anecdotal, that's why you have insurance and bonding. And if those companies are repeat violators of best practices in the industry, you should go after them that way with fines and possibly requiring higher insurance and bonding on the companies. Address the small violators and not necessarily go after the whole industry. That's it for my time.

S2: 01:00:51 Thank you, Joshua. Next, we have Peter Downing.

[silence]

S3: 01:01:14 All right. Peter, I've given you your microphone, and you are welcome to turn on your webcam whenever you're ready.

S9: 01:01:27 Okay, thank you very much. I appreciate it. Good afternoon. My name is Pete Downing, and I am the Founder and President of Environment & Safety Solutions, a consulting firm based in New Jersey that works with chemical manufacturers and chemical distributors throughout the nation. I've been in the chemical industry for over 35 years, first 12 in manufacturing and the balance of those in consulting. I'd like to thank you for the opportunity to share my thoughts on the advance notice of proposed rulemaking. Comments I present today are my own, although they are consistent with many that you have heard or will hear today. The drum reconditioning industry is comprised of distributors and manufacturers who work diligently to develop and utilize a sustainable package process, one which includes the reuse of empty containers. In the case of this proposed rule, the ability of companies to reuse packaging will become severely limited as the standards are becoming more stringent and relatively impractical. Companies will be forced to send packaging to landfills and buy new containers instead. As an unintended consequence, precious non-renewable resources such as plastic, which is made from the oil, will be drained.

S9: 01:02:37 Furthermore, the cost of production will increase, and this will be reflected in the consumer's product costs. My first concern surrounding this proposal, though, is the redefinition of the RCRA empty container. In the EPA's Advance Notice of Proposed Rulemaking, it was made clear that the agency finds that that current definition is insufficient. As such, the EPA has proposed the current one-inch threshold be lowered, and an additional rinsing of drums may be required. A major pitfall with lowering the current

threshold is the fact that used drum generators already remove all possible residues within their ability, and those who don't are failing to meet the RCRA empty rule. The technologies and the in-house procedures utilize the properly empty drums have been developed to meet the one-inch or no-flowable product threshold. To suggest that generators could simply remove an additional quarter inch or half inch of oftentimes viscous and coagulated material from the bottom of drums just isn't realistic. Not only would the new threshold be arbitrary and capricious, but lowering the threshold would cause additional problems for the agency. Thousands of used drum generators would be forced to send drums to landfills, which are already losing capacity, as they would be unable to meet such an unsuitable requirement.

S9: 01:03:55 One consideration to be made here is if the material that will not flow from the bottom of the drums when facilities are trying to empty them, it also will not flow from the drums in transportation or in storage. Overregulating that stagnant viscous material will not create any productive or tangible change for our environment. My second concern is with the premise of requiring the rinsing of drums, which held non-acute hazardous waste in order to make them RCRA empty. A basic oversight with this proposition is that the equipment and the technology needed to perform this task are not typically available drum-generating facilities. Creating a need for such equipment would give rise to huge financial undertakings for the drum users, many of whom are smaller businesses that just don't have the financial capital to make such a sizable investment. Considering that many chemical manufacturers, frankly, most chemical distributors strive to maintain zero discharge facilities. The requirement for drum generators to rinse empty drums before shipping to reconditioners would lead to the need to either A, install storage tanks where rinse water may be stored until disposal off-site, or B, to install complex wastewater treatment facilities at these facilities.

S9: 01:05:14 Each come with their own administrative and economic burdens, but both have the same inherent safety risk, the potential for inadvertent mixing of products. Drum reconditioners are typically larger companies who have the technical expertise to properly manage the different streams and materials being generated while rinsing the drum safely. Another significant change under consideration by the EPA is the possibility that drum reconditioning facilities should be required to obtain full RCRA Subtitle C TSD permits. This is generally impractical and will lead to unintended consequences that would come following its institution, making it one of the largest inhibitors of drum reconditioning as a practice. Drum reconditioners would have to amass hundreds of thousands of dollars to obtain a permit, which is a feat that would shut down many of the facilities. Those facilities which would be able to obtain a permit would have to significantly increase the cost of their services to offset not only the lifetime commitment of maintaining the full permit but also to enhance their equipment to process those drums that would go to other facilities. A permit is not just a binding document as you know, but a document that dictates certain behaviors for facilities to maintain its possession.

S9: 01:06:31 Drum reconditioners would have to wear the hat of a TSD facility, which demands a facility-wide internal overhaul of many of the practices and procedures, including waste profiling and sampling plans, and the obligations that come with those. The sheer costs both in permit maintenance and man hours devoted to implementing new operating procedures would undoubtedly cause fewer drum reconditioning facilities to remain open and thus, fewer drums to be reconditioned, completely disregarding the economic incentives at work in the current drum reconditioning industry. And considering this one area, especially to be

a shortcoming, that really impacts the ultimate goal of EPA to handle drums safely. And if that ultimate goal in this case is to protect our environment through the reforming of the drum reconditioning industry, maybe we've misjudged the efficacy of the proposal. This proposal would undeniably impede drum reconditioning as a standard practice. The EPA's evolving regulatory proposals create an unstable and unpredictable environment in which drum reconditioners are expected to operate. Creating a regulatory environment for drum reconditioning that's independent from the economic sphere that governs drum reconditioners will have deleterious effects.

S9: 01:07:49 Through examining the proposed rulemaking, I have found that EPA's focus on the new regulations regarding drum reconditioning rather than focusing on enforcing current known regulations may prove to be misguided and could lead to the eradication of drum reconditioning and the environmental benefits that stem from it. As noted, I believe that instead of creating new regulations, one way for the EPA to achieve their goal without damaging the reconditioning industry would be a turn to the already existing regulations, which address every single issue the EPA wishes to enforce. The rules already in place through the EPA, as well as the Department of Transportation and OSHA, when fully implemented and followed, perpetuate an occupationally and environmentally conscious drum reconditioning industry. Focusing on education and awareness of these rules and regulations will present the solutions the EPA is seeking. Just to be clear, overregulation will lead to the desensitization of drum reconditioning in general, and the consequences will create irreconcilable challenges which are sure to jeopardize the integrity of our environment and our economy. Again, I'd like to thank you for the opportunity to speak today. I really look forward to continued conversations with the agency to work through these comments as well as those expressed by others now and later today. And again, thank you for your time.

[silence]

S2: 01:09:26 Thank you. That is it for our speakers for the morning session. Is there anybody else at this time who would like to speak? Otherwise, we will resume after, I believe it's 1 o'clock. All right, I do not see anybody messaging in the question-and-answer box. So, for now, we will take our break and we will see folks back at 1 o'clock. Oh, welcome back. And it's the top of the hour so we'll have Andy Crossland come online to usher us in.

S1: 01:10:13 Thanks, Kait. Hi, everybody. Welcome to the second half of today's virtual public meeting. We are the Environmental Protection Agency, and we're here to talk today about an advance notice of proposed rulemaking that we have put out. And the topic is Used Drum Management and Reconditioning, an advance notice of public-- potential-- proposed rulemaking. I'm sorry, tripping on my words. We call an ANPRM is our acronym. And this is really the stage when we're just sort of stepping into having identified some concerns in drum management and how it's impacting human health and the environment, and we're at the stage where we're sort of contemplating what steps EPA can take. And at this advanced stage, we want to make sure that we reach out to get folks' input on the direction that we might take in order to address some of these issues that we're seeing. So very much appreciate folks taking the time to be with us to talk about this important issue, and looking forward to hearing what your comments and thoughts are.

S1: 01:11:23 Again, I'm Andy Crossland, and I'm the Director of the Materials Recovery Waste Management Division here at EPA headquarters within our Office of Resource Conservation and Recovery. And we have our full drum team crew with us today, including Kaitlin

Franssen, Tracy Atagi, Marybeth Sheridan, Patrick Wise, and Jessica Young. And we're also joined by Katie Harrison who works for ERG, a contractor of ours. Katie's been helping us with some of the logistics today. So, with that sort of big picture setting the stage here, it was just this past August-- on August 11th last summer, EPA issued this ANPRM on used drum management and reconditioning. And from that, we're hoping to get a better understanding of the issues that we've sort of initially identified, as well as impacts that folks are seeing from drum management. And from there, we can go in whatever direction sort of the information guides us. And some of the solutions may be non-regulatory approaches, like best management practices or revisions to the regulations of how these drums and containers are managed. So very excited to invite you to hear a little bit more about the ANPRM today. We have a presentation that we're going to give. And then we'll look forward to hearing your comments. And I think with that, we're ready to get started. And I'm going to turn it back over to Kaitlin.

S2: 01:13:02 Great. Thank you. Thank you, Andy. Good afternoon, and welcome to those of us who are just joining us, and welcome back to those who are still logged on. As Andy said, I'm going to go over some of the meeting logistics before we get started with the rest of the presentation and speakers. The rest of today's meeting will work as follows. There will be an informational presentation to kick off this second session, which will be exactly the same as the first. This will run from about 1:00 PM to approximately 1:30 PM Eastern Time. And this informational presentation will be followed by a 60-minute verbal public comment session for registered speakers. Please note that the meeting will be recorded, and a transcript will be posted on EPA's website once it's made available to us. About a moment prior to each speaker's turn, the meeting facilitator will elevate the speaker to a host and panelist position. EPA will then call on each speaker when it's their turn to speak, and the speakers will be called on in the order which they registered. Please do not unmute your microphone or turn on your camera until EPA has called your name. After your name is called, EPA asks that you state your name, your affiliation, if any, and we do encourage all participants to turn on their camera when they're speaking.

S2: 01:14:09 In order to accommodate all speakers and provide all speakers with the same speaking opportunity, public comment is limited to up to 10 minutes, although we anticipate some speakers will take less than 10 minutes. Speakers will not be able to share their screens or presentations, and EPA will provide a verbal warning when there is one minute left for the allotted speaker time if necessary. After each speaker has concluded, they'll be returned to the listening-only participant status. Everyone who has pre-registered will have the opportunity to speak, and we'll do our best to accommodate speakers that have not pre-registered. We do encourage all speakers to sign into the meeting at least 10 minutes before their allotted session to ensure they're connected and ready to speak. And if speakers in this second session go past 2:30 PM, we are prepared to extend the meeting by an additional 30 minutes to accommodate all registered speakers. Should a speaker miss their time slot, we will try to accommodate the speaker at the end of this session if time allows. And if you'd like to speak after listening but you have not registered to do so, please do send us a message in the question box at the bottom of Zoom, and we will do our best to fit you into the schedule.

S2: 01:15:10 We are here today to hear your comments on EPA's ANPRM that Andy had mentioned. This is a listening session for EPA, and as such, there's no time allotted for questions. If you do have a technical issue or a logistical question, we do ask that you place it in the question box that I had mentioned on the bottom of the Zoom screen, and only the host and panelists will

be able to view and respond to questions. No one registered has requested translation services, but in the event that any comments are spoken in languages other than English, they will be translated into English and provided in the written transcript. If you have additional comments after today, please follow the instructions in the Federal Register notice for this proposal and submit your comments by November 22nd of this year. If you submit oral comments today, you may also provide written comments, and written comments on the proposal will be given the same weight as the oral public comment. We do ask for your patience as we proceed. We may need to make some minor adjustments as the meeting progresses, and if so, we'll make the appropriate announcements. And now, we will move on to the second informational portion of the meeting.

S2: 01:16:12 All right. So, as I said, welcome. We'll be going over a few things here as I have in the outline. What is an industrial container? What is a drum reconditioner? What do our RCRA regulations say? Give a recap of the Drum Reconditioner Damage Case Report. A high-level summary of our advance notice of proposed rulemaking. We'll discuss a little bit about EPA's Path Forward, and then just a couple slides on how to submit a written public comment and how to write an effective comment for us. Great. So just to recap what an industrial container is. An industrial container is such as a 55-gallon drum. They're used to transport thousands of different types of materials, including industrial chemicals, acids, oils, solvents, paints, adhesives, soaps, food, and waste and residues. Reusable drums or containers can be made of fiber. They're primarily made of steel and plastic or high-density polyethylene or HDPE or a combination of plastic and steel, which we call intermediate bulk containers. So, the plastic 275-gallon containers that are surrounded by the steel cage. Once used, these containers are discarded in a landfill. They're recycled, or they can be reconditioned or refurbished for reuse.

S2: 01:17:27 And the reconditioning and reusing industrial containers does provide an important economic and environmental advantage because it uses less energy and resources than it does to make brand-new containers. However, if not done in an environmentally safe manner, the reconditioning process can negatively affect surrounding communities and the environment. All right. So, a brief overview about what a drum reconditioner is. These facilities specialize in reconditioning industrial containers. They primarily recondition steel and plastic drums and IBCs, like I had mentioned, for resale. And they do this by cleaning, restoring, testing, and certifying the containers. These containers may have contained hazardous chemicals or waste materials, or other materials listed in the previous slide that I had mentioned. The two previous uses are-- sorry, the two main processes for reconditioning are burning off residuals in metal drums or in a drum furnace or washing metal and plastic drums or containers in a caustic solution to clean out the inside residue. Operators who manage and ship the containers that held hazardous materials or hazardous wastes and ship them to drum reconditioning facilities must ensure that the drums do comply with the RCRA empty container provision.

S2: 01:18:45 So, what is the RCRA empty container provision? The RCRA empty container provision is in 40 CFR 261.7, and it does exempt hazardous waste residues that remain in an empty drum or container as long as certain conditions in the regulation are met. So emptied as much as possible by pouring or other means, and no more than one inch of non-acute hazardous waste remaining in the drum. And despite this empty container provision, we found that drum reconditioners are still receiving non-empty containers and, as such, are likely accepting drums of hazardous waste that are not actually RCRA empty. And additionally, even if drum reconditioners receive only truly RCRA empty containers, they may still be

receiving and managing significant quantities of cumulative hazardous waste residues because of the large number of drums that reconditioners process every year. So as a result, these facilities are potentially managing large quantities of hazardous waste without a provision in our regulations that allow drum reconditioners to store the non-empty hazardous waste containers and also without being subject to substantial RCRA hazardous waste regulations.

S2: 01:19:52 So, on to a summary of our drum recondition report. We published the damage case report in September of last year. And this was our first step in examining issues at drum reconditioning facilities we were being made aware of. And our findings from the report do indicate a persistent number of damage cases, so it's not just a historical issue. And of the total 181 drum reconditioning facilities we identified, those are both active and inactive facilities, 86 had one or more reported damage case, which is about 47 and a half percent of the industry. Damages included fires, contamination of groundwater, air, and soil, employee injury, and unfortunately, loss of life. I wanted to make note that these cases were found by only public information. And as part of the report, we also did a preliminary analysis using EPA's EJScreen tool. And we did find that about 94% of drum reconditioning facilities with these damaged cases are located in communities that already bear an environmental burden from other sources of pollution or exhibit characteristics of social vulnerability or both. And many of these facilities are located in areas where people of color or low-income populations are specifically impacted.

S2: 01:21:01 So just to go over some of the examples of the damage cases from the report. The larger photos on, I think, the left of the slides are from a fire at a reconditioning facility in Pennsylvania. This was caused by a 55-gallon drum being punctured that held sodium chlorate. Obviously, the first top of the photo is from the explosion and the fire. And the bottom photo is from when the firefighting water hit the facility, the water started to run purple because the materials were unknown. And the second set of photos. The top two are some historical photos from the mixing of incompatible chemicals. This, unfortunately, caused a fatal explosion. And the bottom photo is from the production line at IndyDrum showing the mixing of unknown chemicals. So here we have a map of our damage case locations. Most of the damages that we found occurred in the northeast in the Ohio River Valley, and almost all occurred close to waterways. The lighter green symbols indicate a single facility in one area with a damage case, and the darker symbols are multiple facilities also with damage cases. So, what is the risk? Nearly all of these damage cases in our report did include harm to human health and the environment, whether it's the workers at the facilities or the nearby neighborhoods or the environment on and off-site.

S2: 01:22:26 Specific examples of harm we found were shelter-in-place orders for neighborhoods adjacent to fires. The photos on this slide are some additional photos from the fire at the Jessup facility. Obviously, you can see it's very close to neighborhoods. Drum explosions killing or burning employees, exceedances in wastewater and discharges in soil that were high in things like lead, chromium, other heavy metals, hazardous air pollution discharges from the drum furnaces, and then discharges into multiple different types of water supplies, groundwater wells, multiple municipal storm systems, creeks, and rivers. And then continuous volatile organic compound exceedances in air surrounding facilities, especially ones with drum furnaces or that experienced fires. So, as I said, the drum reconditioner report was our first step to analyzing issues during facility operations. And we did find and document the damage cases that have caused harm to human health and the environment. And we noted that some of these could be attributed to upstream generators of used

drums. And so, our next step was to publish the ANPRM that Andy mentioned on August 11th.

- S2: 01:23:36 And we wanted to publish this and put this out there to solicit information and request comment that would help us in the development of options that would better ensure the proper management of industrial containers, specifically ones that held hazardous chemicals or hazardous waste up to and including the drum reconditioning process. So, we did look at issues spanning across the life of container management all the way from the used drum generators and transporters to the reconditioners to the end-of-life management of the containers. And we did look at a wide variety of possible solutions, regulatory and non-regulatory options, such as revising the RCRA regulations or other non-regulatory options such as best management practices, SOPs. And we'll go over some of those in the next couple of slides. So, this is a chart from our report. I know some of the slides might be a little bit difficult to read and see, but you can go to the Federal Register and see that chart and look at it more carefully yourself. I'm just going to go over some of the things on this next series of charts. But the way we organized this chart and the rest of the ANPRM was by potentially affected parties, issues that we would like to see addressed, and then potential ways to address those issues with future regulatory action.
- S2: 01:24:50 The first thing we looked at were the used drum generators and transporters. And for that, we looked at the risk posed by contamination from the residues remaining in non-RCRA empty containers, the RCRA empty containers being sent to the drum reconditioners, and then the risks of fires and explosions from incompatible mixing. One of a couple of the things we looked at here were potentially reducing the one-inch regulatory limit for the non-RCRA empty containers, requiring rinsing, and strengthening some regulatory requirements for the generators to have SOPs for drum emptying, certifying of empty drums, better employee training, or requiring some sort of tracking or labeling of the drums to better understand hazards posed by the drum residues. Next, we took a look at drum reconditioners themselves. Some of the issues we looked at were similar for the generators and transporters. So, the non-RCRA empty drums being sent to the drum reconditioners, the risk posed by contamination from the residues remaining in the containers, emissions from drum furnaces, the environmental releases to soil and groundwater and other media, and then the risks of fire explosions and such.
- S2: 01:26:00 And some of the actions we looked at here were adding regulatory requirements for the drum reconditioners that do receive these non-empty containers, whether it's SOPs for screening, designated non-RCRA empty storage areas, a rejection process for shipments for the non-empty containers, requiring them to do regular inspections and inventories, adding things for drum furnaces like emission controls, prohibiting sewerage of rinsate, limiting discharges, and then all the way up to requiring a RCRA Subtitle C permit or variance. And then lastly, we took a look at the end-of-life management for the drums, so scrap yards and landfills. The issues here that we would address would be risks from the contaminated scrap metal and plastic when it's going to recycling or land disposal. And some of the options are limiting the empty container provision to drums that are just sent to reconditioners, requiring the drums to be truly empty before going to scrap or recycling, or requiring containers with any amount of residues to meet the hazardous debris alternative treatment standards.
- S2: 01:27:05 So, a little bit about our Path Forward. The ANPRM, the comment period has been extended to November 22nd after several requests. And this meeting today is an opportunity for

members of the public to provide us with information so we can really better understand the issues associated with the industrial container reconditioning process and facilities. And to help us develop and evaluate options to better ensure the safe management and reconditioning of these industrial containers, including proper management of residues in the containers. EPA does welcome verbal comments today, like I said, which will be recorded, and a transcript provided. And we also are looking forward to our official written comments via the docket for the ANPRM. And the last couple of slides here, we're just going to go over how to submit a written public comment. Like I said, the public comment period is August 11th to November 22nd of this year, and there is a link to the Federal Register. I also wanted to note that this presentation will be available on our website after today's meeting, so you don't have to write down any of the links that you can get to it from the presentation link. But you can also mail us your comments at the Docket Center. If you can't copy down this or find it online, you can Google EPA Docket Center, and this address also populates.

S2: 01:28:24 So lastly, just a little bit on how to write an effective comment, how to write things that are helpful for us. When commenting, using a heading that states the rulemaking name and docket ID is really important. EPA puts out a lot of things, and I'm sure a lot of you comment on different items that we put out. So, making sure that we're on the right rule is super helpful. Explaining your experience in the area that you're commenting on and including any research data or empirical information. It really helps when there's some context for us about why you're making certain comments that you are, whether you're in industry, reconditioning, you're an environmental group. Any of that information can be super helpful for us when we're analyzing the comments. If you could be as clear as possible, using an organized format, bullet points, or clear language, letting us know exactly where you're commenting on the ANPRM. I know in the chart, in the report, we have certain sections. So, stating which section you're commenting on is super helpful. And paying attention to any requests for data or information or questions that we actually post in the ANPRM.

S2: 01:29:26 So, I know we structured it with these are the issues, these are the things we can do. And then in several sections, we ask specific questions. So having answers to those specific questions would be very helpful. And like I said, citing or including the part or section that you're commenting on is helpful, and also citing and including outside sources or material that you wish to present to us. And individual comments that do share personal experiences are also most helpful for us. Like I said in an earlier point, providing context for us is really helpful to figure out where you're coming from. And I wanted to note as well that I'm sure many of you have thoughts about things that you don't like in the ANPRM, but it's also super helpful for us to hear things that you do like. So, any input on that is greatly appreciated. And lastly, just a link to regulations.gov. That has some also helpful information on providing comment. Or Docket Center as well has several links that are also helpful. All right. So, we're a little bit early, but we're going to be moving on to the speakers here. Like I said, I will call your name in order. So first up, we have Mike Ellenbecker.

[silence]

S3: 01:30:54 All right. Mike, I have given you your microphone, and you're welcome to turn on your webcam whenever you're ready.

S10:  
01:31:02 All right, can you hear and see me?

- S3: 01:31:05      Yep.
- S10:  
01:31:06      All right. Thank you. Hey, I just want to make it clear that I'm speaking on behalf of myself and not my employer. But I am someone that has 33 years and counting of hazardous waste regulatory experience with a state hazardous waste program, which has included the inspection of over 1,000 facilities, including drum reconditioners, rule writing, policy development, staff training. So here are some of my thoughts on this rule or proposed rule. I would suggest not adjusting the current definition of RCRA empty requirements or requiring generators to rinse the drums. I would suggest adding regulatory language, further clarifying the commonly employed practices and distinguishing between pourable and non-pourable waste. I would suggest adding regulatory language that makes it clear that when hazardous waste is removed from a RCRA empty container, that is a new point of generation and a hazardous waste determination is required. In other words, the hazardous waste in a RCRA empty drum is only exempt while it remains in the container.
- S10:  
01:32:10      I would suggest adding regulatory language that distinguishes the difference between a container received by a drum reconditioner that contains a commercial chemical product versus a container received by a drum reconditioner that contains actual waste as a hazardous waste because the commercial chemical product may have been sent to the drum reconditioner accidentally. Maybe it's half full that if it's usable by the generator, then it really is not a waste yet. I would suggest adding regulatory language in subpart A of 40 CFR 264 as a conditional exclusion from a drum reconditioner having a TSD permit. Some of these conditional exclusions would include a notification through the 8700-12 form, complying with the container standards of subpart I of part 264, a limited WAP to identify containers that contain hazardous waste, a storage limitation of how long those containers can remain on-site, identifying the steps the facility must take when they receive containers of hazardous waste.
- S10:  
01:33:20      Having them subject to the manifesting requirements under subpart E of part 264 regarding rejected and unmanifested loads, some type of customer education to their customers, financial responsibility, and record-keeping requirements. So, if they follow these conditional exclusions, then that drum reconditioner would not need to have a TSD permit. And then finally, I would suggest expanding the scope of the proposed rule to include other non-hazardous waste facilities that inadvertently receive containers of hazardous waste. That's not their business model. When these non-hazardous waste facilities inadvertently receive containers of hazardous waste, they are automatically auto-compliant with the hazardous waste requirements. By having something like I was discussing earlier in place, there is a way for them to stay in compliance. And that is all that I have. Thank you so much for your time.
- S2: 01:34:19      Thank you, Mike. Next up, we have Reggie Robinson.  
[silence]
- S3: 01:34:38      I don't see Reggie.
- S2: 01:34:41      Okay. Thank you, Katie. We'll move on to the next. Next, we have James Williams.  
[silence]
- S11:  
01:35:06      Yes, I'm here. Can you hear and see me?

- S3: 01:35:09 Yes.
- S11: 01:35:10 Great. Thank you. As indicated, my name is James Williams, J-A-M-E-S W-I-L-L-I-A-M-S. I serve as Executive Director at the Environmental Technology Council, also known as ETC. The ETC is the leading trade association that represents all sectors of the industrial hazardous waste management industry. Our members are responsible for about 95% of all treatment, transport, and disposal of hazardous materials in the country. Some of our members also have operations abroad as well. While many of the chemicals in hazardous waste that our members manage or receive at their facilities in containers and drums, the members are not drum reconditioners nor do they own or operate drum furnaces. Our member companies-- or customers of these facilities, and therefore we submit these comments from a customer perspective. In looking at the ways to address the agency's concerns with the drum-reconditioning community, EPA is considering both non-regulatory and regulatory options. Regarding the non-regulatory options, ETC provides the following comments.
- S11: 01:36:27 EPA is interested in whether increasing compliance assistance and enforcement of the empty container regulations for used drum generators could help reduce the number of non-RCRA empty containers that are shipped to drum reconditioners and other waste management facilities. The ETC believes that the current regulations are adequate to address many of EPA's concerns. However, we support additional compliance, assistance mechanisms, and enforcement of the current regulations simply because the current regulations on RCRA empty containers are very clear. Now, I will admit there are some outliers out there, and therefore, we believe that more compliance assistance and enforcement of the current regulations would be useful. To address issues surrounding unintended releases, explosions, and other emergencies, the agency is also looking at other non-regulatory solutions, such as increased inspections, voluntary standards, and best practices, and the development of standard operating procedures for drum generators, transporters, and drum reconditioners.
- S11: 01:37:45 ETC member companies support SOPs for drum generators. However, regarding SOPs for transporters and reconditioners, we recommend that the agency refer to the comments that will be submitted by the Reusable Industrial Packaging Association, also known as RIPA. Given how important addressing EJ concerns are to all of us, ETC and its members strongly support the many steps the agency has taken to address environmental justice concerns throughout the nation. Ensuring that communities of color, low-income, and indigenous communities have clean air to breathe and clean water to drink should be a top priority for all federal agencies and all industries doing business in the United States. EPA should use its current compliance-assistance programs and enforcement options to ensure that drum reconditioning facilities are in compliance with federal regulations, and operating in a manner that is aimed at protecting human health and the environment, particularly in communities that face environmental injustice.
- S11: 01:38:53 We do not believe new regulations are needed to address the EJ concerns that EPA has expressed. In terms of used drum generators and transporter issues, ETC and its member companies support the use of guidance rather than regulatory language as a tool to emphasize the fact that all parts of the RCRA empty definition must be met. The agency could save time and resources by using guidance to clarify and assist in implementing the current RCRA empty regulations. Additionally, we believe the use of guidance would serve as an adequate platform for explaining the types of practices commonly used to remove

residue from containers for both solid and liquid materials. By using guidance rather than the-- excuse me. By using guidance rather than going through the formal regulatory process, EPA would have greater flexibility to assist regulated entities that wish to understand the current thinking of the agency. EPA also seeks comment on whether the empty container regulation should be modified to account for different characteristics that may make up some materials harder to remove than others.

S11: 01:40:17 ETC does not believe the empty container regulations need to be modified. The current regulations are very clear as to what procedures need to be followed to make a container RCRA empty. As such, we recommend that EPA focus on enforcement of the current regulations. On the topic of labeling, ETC supports the use of labels to communicate that the drum is RCRA empty and thus meets the definition at 40 CFR 261.7. While we support the use of labels, we recommend that the agency does not implement a uniform standard label. Facilities should be allowed to determine which type of label they wish to use for the purpose of certifying drums are RCRA empty. In closing, ETC and its member companies do not support removing the empty container provision. Instead, we recommend that the agency work with the drum reconditioning industry via compliance assistance programs to ensure regulations are being followed. And in instances where they are not, the agency should use its enforcement authority to encourage compliance.

S11: 01:41:36 As noted earlier, there are some outliers, not many, as previously stated by some of the other speakers. And therefore, we support increased oversight by EPA compliance assistance enforcement options and ensuring that these options are exhausted before opting to move to empty container-- to remove the empty container provisions. Additionally, requiring all drum reconditioning facilities to obtain a RCRA permit could potentially put them out of business. Many of these companies are small businesses and cannot absorb the high cost associated with obtaining a RCRA permit. Further, the hazardous waste management industry that the ETC represents relies heavily on drum reconditioning facilities, especially those on the national approval list as they are deemed the most reliable and compliant with federal regulations. I would like to thank the EPA for the opportunity to provide comments today, and we encourage you to look at the full set of comments that will be formally submitted by the ETC. Thank you very much.

S2: 01:42:54 Thank you, James. Next up, we have Clark Weaver.  
[silence]

S3: 01:43:11 I don't see Clark.

S2: 01:43:14 Thank you, Katie. All right. In that case, we are at the end of our registered speaker list. I'm going to pause for a few moments here just in case any folks who are listening have decided that they'd like to provide comment today. If you'd like to do so, please make a note in the question and answer box, and Katie can elevate you to a speaker or host position. We'll just give that a minute just in case folks want to have that option. All right. It seems like we don't have any other speakers for today. So, we do sincerely appreciate everybody attending today, especially those who have chosen to speak. The slides and the transcript, once it's ready, will be provided on our Used Drum Management and Reconditioning website, as well as the subpage that's specifically for this meeting. Thank you again, and we look forward to also reading any written comments that are provided via the Federal Register. Take care.