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Improving Regulations Docket  
Environmental Protection Agency  
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**Re: Executive Order 13563 - Improving Regulation and Regulatory Review**  
**Docket Number: EPA-HQ-OA-2011-0159**

Dear Administrator Jackson:

The Retail Industry Leaders Association (“RILA”) and its membership are pleased to submit comments on the above-noted Executive Order. RILA members recommend that the EPA reconsider how the Resource Conservation and Recovery Act, and its regulations, (collectively “RCRA”) apply to the retail industry. This letter is intended to introduce this issue and RILA’s desire to work with the EPA on proposed solutions.

RILA is an organization of the world’s most successful and innovative retailer and supplier companies – the leaders of the retail industry. RILA members represent more than \$1.5 trillion in annual sales and operate more than 100,000 stores, manufacturing facilities, and distribution centers nationwide. Our member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of workers domestically and worldwide.

RILA members applaud the EPA’s effort to review and streamline existing regulations. We recognize the importance of RCRA in protecting human health and the environment, and strongly believe that RCRA serves its purpose for the industries in which it was intended, namely the manufacturing, chemical, and industrial sectors.

However, as applied to the retail sector, RCRA produces unintended consequences because under RCRA consumer goods can potentially be treated as hazardous waste (akin to manufacturing, chemical and industrial sectors) even though the risk of adverse environmental impact from consumer goods is often very low if at all. Retailers must choose to expend significant resources, or completely forego environmentally beneficial activities, to comply with the regulations. Therefore, it is often the case that environmentally or other socially beneficial opportunities are lost.

To illustrate, retailers are hesitant to collect certain used consumer goods for recycling or other disposition because RCRA is ambiguous as to who is considered the “generator” of that waste – the consumer or the retailer – and RCRA potentially puts onerous compliance and liability burdens on the retailer once they take that product back. If a retailer takes back a product from the customer at the product’s end of life, the retailer could be responsible under RCRA for proper classification, storage, disposal and recordkeeping, and face serious fines if it errs in any of these steps – even if the product was zero or low environmental risk to begin with. As a

perverse result, the risk of fines often outweighs the benefit of helping the consumer and the community deal with merchandise disposition.

Another example involves the disposal of empty aerosol cans. Although millions of empty aerosol cans are disposed of by the consumer in their daily trash, the same empty cans (at a fraction of the quantities) used within retail may be subject to RCRA as a hazardous waste. This can be resolved if the EPA expands the definition of “RCRA Empty” to include aerosol cans that have had all the usable content removed from the can as part of the intended and designed use.

RCRA also creates an uneven playing field for industry participants, as is the case for retail pharmaceutical waste. Retail pharmacies classified as Conditionally Exempt Small Quantity Generators (CESQG) are incentivized under RCRA to dispose of pharmaceutical waste to landfills rather than disposing of them as hazardous waste, while retailers classified as either a Small Quantity Generator (SQG) or Large Quantity Generator (LQG) must follow RCRA’s disposal protocol. We encourage the EPA to advance the Pharmaceutical Universal Waste Rule, which intends to correct these unequal incentives by encouraging all pharmaceutical waste to be treated as Universal Waste.

There are many more examples of opportunities to incentivize productive and environmentally-beneficial behavior. In addition to those mentioned above, a key step to ensuring that RCRA addresses truly hazardous items would be to review the disposal rules for products that are safe for consumers to ingest, use on their bodies, or use in their households with an eye toward regulating those products similar to household wastes. EPA could consider an exemption from RCRA for disposal or recycling of retail products packaged for sale to consumers, or use the Universal Waste mechanism to allow for more sensible handling of the retail product waste stream.

We recognize that this letter is only a starting point for these discussions. Therefore, RILA members wish to develop a dialogue with the EPA regarding RCRA to identify solutions that can both protect human health and the environment, while minimizing the confusing and burdensome regulation as it applies to the retail sector.

Please feel free to contact us at any point.

Sincerely,



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