

February 25, 2004

Honorable Marianne L. Horinko
Assistant Administrator for Office of Solid Waste
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW, 5202T
Washington, DC 20460

Re: Proposed Rule Entitled "Revisions to the Definition of Solid Waste"; Docket No. RCRA-2002-0031

Dear Marianne:

The undersigned associations and companies wish to commend EPA for undertaking this effort to promote environmentally and economically sound recycling and are pleased to offer these collective comments regarding the proposed Revisions to the Definition Of Solid Waste, published in the *Federal Register* on October 28, 2003 (68 Fed. Reg. 61558). Many of these associations and companies also have submitted or will be submitting separate, more detailed comments on the proposal, but we wanted, as a group, to emphasize the following key points.¹

We believe that EPA has adopted an improper and unnecessarily constrained reading of the U.S. Court of Appeals for the D.C. Circuit's decisions reviewing the Agency's prior attempts to set limits on its jurisdiction under RCRA to regulate recycling activities under the definition of solid waste. As a result, EPA has taken an unduly narrow approach limiting the proposed exclusion to reclamation occurring in "a continuous industrial process within the generating industry," as defined by the use of 4-digit North American Industrial Classification System ("NAICS") Codes. This restrictive approach fails to comply with the Court's holding that a material is not subject to RCRA unless it is discarded by being disposed of, abandoned, or thrown away. Materials that are legitimately recycled are not discarded. EPA's narrow approach also excludes many legitimate and beneficial recycling opportunities and therefore will not fully achieve EPA's goal of encouraging resource conservation and recovery.

¹ It is important to note that this letter is not intended in any way to amend, contradict or diminish the more detailed comments submitted by the associations and companies whose names appear at the end of this letter.

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We strongly encourage EPA to promulgate at a minimum the broader exclusion contained in the proposal at 68 Fed. Reg. P. 61588. We believe this broader exclusion, based upon a reasonable set of legitimacy criteria, applied flexibly and holistically, as guiding principles, will promote our mutual goals of providing significant opportunities for new recycling while ensuring protection of public health and the environment. We are prepared to work with EPA in finalizing a rule, based upon the proposal, that takes this broader approach and truly promotes environmentally sound recycling.

Respectfully submitted,

Alliance of Automobile Manufacturers
American Chemistry Council
American Foundry Society
American Iron and Steel Institute
American Petroleum Institute
ChevronTexaco
Copper and Brass Fabricators Council
IPC, the Association Connecting Electronics Industries
Metals Industries Recycling Coalition
National Association of Manufacturers
National Paint and Coatings Association
National Petrochemical and Refiners Association
Specialty Steel Industry of North America
Steel Manufacturers Association
Utility Solid Waste Activities Group