

February 1, 2007

Ms. Susan Bodine
U.S. Environmental Protection Agency
Assistant Administrator
Office of Solid Waste and Emergency Response
1200 Pennsylvania Ave NW
Washington, DC 20460

RE: Definition of Solid Waste Rule

Dear Ms. Bodine:

As you are aware, States have been actively involved in the on-going definition of solid waste rule-making for many years. Many individual states, as well as ASTSWMO, commented on the 2003 proposal. We await EPA's next public announcement on its path forward. We have recently been made aware through the media of two issues that are being discussed within the federal government as part of this rule-making. Since both issues are of great interest to our members, we thought it important that EPA and OMB be made aware that States are strongly opposed to what we are hearing as the proposed direction contemplated by the federal government on these two issues.

We understand that OMB proposes that the revisions of the definition of solid waste rule be deemed more stringent than the current rule and therefore, mandatory for the States to adopt. We also understand that OMB opposes codification of the legitimacy criteria for the recycling of secondary materials.

We are, frankly, mystified how the revisions to the definition of solid waste rule could be deemed to be more stringent than the current rule. Such an outcome would be illogical. Under the current rule, certain hazardous secondary materials are defined as hazardous wastes when reclaimed and therefore, subject to full regulation under the hazardous waste rules. The revisions to the definition of solid waste rule will remove these secondary materials from being subject to a number of hazardous waste rules. In short, removing or reducing regulatory requirements on previously fully regulated material, clearly renders the new rule less stringent.

Each State has unique and specific concerns about how the management and recycling of hazardous secondary materials can impact human health and the environment; and each State has a responsibility to protect human health and the environment from these concerns. Congress realized this need in 1976 when they passed RCRA and included a provision that allowed State hazardous waste programs to be more stringent than the federal hazardous waste program. In order to protect its citizens and the environment to the best of its ability, each State maintains the authority to develop and implement a hazardous waste recycling program to address state specific concerns. The OMB approach that has been described to us would, in our view, be

clearly illegal, and for that reason, would no doubt be subject to legal challenge that would further delay this important rule.

With regard to the codification of the legitimacy criteria, 25 states commented on the 2003 rule proposal and 24 states supported the codification of the legitimacy criteria.

The codification of criteria for defining legitimate recycling is necessary to establish clear regulatory jurisdiction that delineates beneficial use of a hazardous secondary material from waste treatment (i.e., sham recycling).

There are two major aspects of hazardous secondary materials recycling that do not exist in manufacturing and industrial operations that may encourage sham recycling and necessitates codification of legitimacy criteria. First, recyclers, generally, are paid to take the hazardous secondary materials, thus making the operation profitable before and without any processing or product being produced. Second, the financial success of a recycling operation is not solely dependent on the sale of the product produced as it is in manufacturing. A recycler can produce a substandard grade product that may not be salable, and, therefore, accumulate unwanted product.

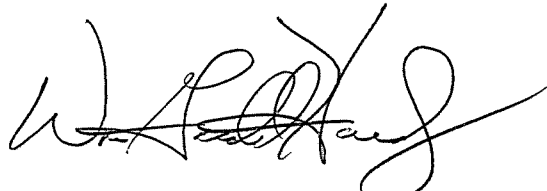
For these and other reasons, States need clear regulatory authority to intervene in situations like those described above and to take action against sham recyclers that pose a threat to human health and the environment. Such sites have become Superfund sites in the past and we all need to make sure that there are adequate safeguards to prevent this from recurring in the future.

We recognize that it is unusual to be commenting at this stage in the rule-making process. However, we thought it important for EPA to understand the strong views held by States on these two issues.

Sincerely,



John Corra, ECOS Waste Committee Chair



Wm. Gerald Hardy, ASTSWMO President