



October 26, 2007

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

THE
ENVIRONMENTAL
COUNCIL OF
THE STATES

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South Carolina Department of
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R. Steven Brown
Executive Director

Dear Ms. Bodine:

I am writing on behalf of the ECOS Waste Committee to ask for your support of the states in opposing a petition by the Electronic Industries Alliance (EIA) to the Department of Transportation (DOT) to preempt some Maine regulatory requirements related to transportation of cathode ray tubes.

On May 8, 2007, the EIA applied to the Pipeline and Hazardous Materials Safety Administration of DOT for a determination that certain requirements related to the transportation of cathode ray tubes (CRTs) imposed by the Maine Department of Environmental Protection are preempted by the Federal Hazardous Materials Transportation Law and the Hazardous Materials Regulations. The EIA objects to Maine regulations concerning intact and broken CRTs. Maine regulations subject broken CRTs and CRT glass to hazardous waste transport requirements and intact CRTs to state universal waste requirements.

As a basis for its petition, EIA argues that CRTs do not qualify as hazardous wastes or hazardous materials under federal hazardous materials transportation regulations. EIA cites EPA guidance that CRTs destined for use, reuse or repair, and unused CRTs destined for reclamation are not solid wastes. EIA also cites EPA's conditional exclusion of CRTs from the definition of solid waste. EIA claims that, in the absence of a characterization as a federal hazardous waste, CRTs do not meet the definition of "hazardous material" for the purpose of federal hazardous material transportation regulations.

The states have several concerns with EIA's petition and argument. First, states believe that the EIA petition is an attack on their ability, under Section 3009 of RCRA, to impose standards that are more stringent than federal standards. In the same vein, states are concerned with the corollary argument made in the EIA petition that if the United States Environmental Protection Agency relaxes federal hazardous waste regulations, states are compelled to follow suit.

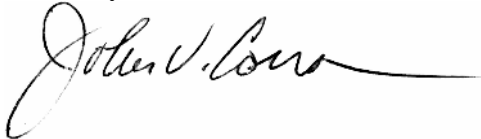
Also, EIA's argument conflicts with past precedents as EPA has determined that a waste identified as universal waste by EPA but not by an authorized state must be managed in accordance with the full range of hazardous waste regulations, not as a universal waste, while it is being transported in or through the State that has not yet designated it universal waste. In other words to receive the benefit of reduced universal waste regulations, states along the transportation route must have adopted the universal waste designation. In essence EIA is asking to undermine the central tenet of EPA's universal waste program, which is a deregulation scheme in nature.

Additionally, states are concerned that the EIA position, if accepted, could limit a state's ability to add state-specific universal wastes to the state's regulations, since a similar preemption argument could be made for state requirements for any waste that EPA has not identified as a federal universal waste – even though EPA has clearly provided states with the authority to expand the list of universal wastes to meet state-specific needs.

Finally, states have a specific concern about EIA's argument that Maine's CRT universal waste requirements are "broader in scope" rather than "more stringent" for authorization purposes. This is directly refuted by EPA in the preamble discussion of state authorization issues for the EPA rule that granted conditional exclusion for CRTs from the definition of solid waste. Quoting from the EPA Federal Register notice, "States currently regulating CRTs as hazardous waste, including under the universal waste rule, would not have to amend their programs, since their programs are more stringent than the federal requirements." (71 Fed. Reg. 42944, 7/28/2006)

As a result of these various issues between EIA's petition and EPA rules and precedents, the ECOS Waste Committee asks for your support in opposing the petition. We appreciate your consideration of our concerns and your help in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John V. Corra", with a long, sweeping horizontal line extending to the right.

John V. Corra
Director, Wyoming Department of Environmental Quality
Chair, ECOS Waste Committee

Cc:

Matt Hale, Director
Office of Solid Waste