

The Honorable Richard G. Lugar
United States Senate
306 Hart Senate Office Building
Washington, D.C. 20510

Attention: Darlee McCollum

Dear Senator Lugar:

Thank you for your letter of February 10, 2004, forwarding an e-mail from your constituent, Dolores Pieper for our review. I appreciate the opportunity to assist you in responding.

Ms. Pieper asks about a proposed change to the hazardous waste management regulations under the Resource Conservation and Recovery Act (RCRA) that was published in the Federal Register on October 28, 2003 (68 FR 61558). Subsequently, on December 29, 2003, we published a notice extending the public comment period for the proposal to February 25, 2004 (68 FR 74907).

This proposal, if finalized, would make changes to the 'definition of solid waste,' the portion of the regulations that governs how hazardous secondary materials are regulated when recycled. The proposed rule is a continuation of more than 10 years of work on this issue, and a response to a decision of the D.C. Circuit Court in *Association of Battery Recyclers v. EPA* (ABR decision), which addresses the scope of EPA's authority over recycling under its hazardous waste program. The proposal has two major components:

1. A regulatory exclusion for materials that are recycled in a "continuous process within the generating industry" based on the ABR decision and other previous court decisions; and
2. A codification of long-standing criteria used to determine whether

recycling is “legitimate.” This is not required by the ABR decision.

We estimate that this proposal, if finalized as proposed, will encourage recovery and reuse of valuable constituents remaining in hazardous secondary materials, which will help us toward reaching our goal of improved resource conservation. We also estimate that average annual cost savings from the proposal would be approximately \$170 million. Please see www.epa.gov/epaoswer/hazwaste/dsw/abr.htm for summary information, a copy of the proposal, and a fact sheet.

During the public comment period for the proposal, we received a large number of comments addressing the general direction, as well as the specific approaches we proposed. A copy of the e-mail from Ms. Pieper has been placed in the rulemaking docket for the proposed rule. We are just beginning the process now, but as we move forward with decisions on how to proceed with the final rule we will carefully consider all of the comments, including those made by Ms. Pieper, on the proposal.

Again, thank you for your letter. If you have further questions or concerns, please contact me, or your staff may contact Holly Smithson in the Office of Congressional and Intergovernmental Relations at (202) 564-1609.

Sincerely yours,

Marianne Lamont Horinko
Assistant Administrator

Enclosure

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