

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MARCH 3, 1989

Jack Goldman, Ph.D.  
Manager, Environmental Services  
The Aluminum Association  
900 19th Street, Northwest  
Washington, D.C. 20006

Dear Mr. Goldman:

This in response to your letter of January 19, 1989, concerning the recent listing of spent potliners from primary aluminum reduction (K088). In your letter, you requested a response to your petition of November 19, 1988. The Agency is currently evaluating all comments and petitions received on the six smelting wastes which were listed as hazardous on September 13, 1988 (53 FR 35412). As soon as we complete this evaluation, we will provide you and the other petitioners with our response.

One issue raised in your petition and recent letter concerned the applicability of the land disposal restrictions to newly listed wastes. Under Section 3004(g)(4) of RCRA, EPA must determine whether hazardous wastes identified or listed after the date of enactment of HSWA shall be prohibited from one or more methods of land disposal, and establish treatment standards at the same time. The statute requires the Agency to make this determination within six months after the date of such identification or listing. If EPA fails to meet the six month deadline, there are no immediate land disposal restrictions (i.e., no hammer). The land disposal of spent potliners (K088) can therefore continue until such time as treatment standards (i.e., BDAT) are established. The Agency is in the process of developing a priority scheme for setting land disposal restriction standards for newly listed wastes.

Although land disposal of spent potliners may continue beyond the effective date of the listing, the Agency encourages the continued practice of beneficial reuse and recycling of spent potliners. In your letter you alleged that the listing of potliners will discourage reuse and recycling. We have found that when the Agency lists wastes as hazardous, recycling/reuse has often increased.

You also requested a response to your October 21, 1988, letter concerning the storage of spent potliner in secure buildings under interim status. A separate letter addressing this issue has been prepared and was sent to you on February 7, 1989.

As you may know, the Agency met with one of your association's members, Kaiser Aluminum, on February 14, 1989 to discuss some of their concerns. In that meeting we agreed to send Kaiser Aluminum a letter clarifying the scope of the K088 listing. The Agency basically agreed with Kaiser Aluminum's interpretation that the K088 spent potliner listing only includes the carbon portion of the

material contained inside the electrolytic reduction cell. Other materials contained in the “pot” are not considered “spent potliner” such as:

- (1) the cell’s steel shell
- (2) steel collector bars
- (3) cast iron used to place steel collector bars in pre-baked carbon blocks
- (4) thermal insulation composed of insulating brick or aluminum
- (5) the silicon carbide brick side walls and end walls of a pot
- (6) frozen aluminum metal pad and electrolytic bath

Kaiser Aluminum also provided a proposed definition for “spent” as it applies to potliners. We currently have a regulatory definition for “spent materials” in 40 CFR 261.1(c)(1). A spent material is defined as “. . . any material that has been used and as a result of contamination can no longer serve the purpose which it was produced without processing.”

I hope this letter has answered your questions. The Agency is working to address the additional concerns raised in your petition as soon as possible.

Sincerely,

Sylvia K. Lowrance  
Director  
Office of Solid Waste

## **the Aluminum Association**

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January 19, 1989

Ms. Sylvia Lowrance  
Director  
Office of Solid Waste  
U.S. EPA (WH-562)  
401 M Street, SW  
Washington, D.C. 20460

Dear Ms. Lowrance:

On September 13, 1988, the U.S. EPA listed spent potliner from primary aluminum operations as a hazardous waste. 53 Fed. Reg. 35412. In response to the notice, the Aluminum Association has submitted a petition to the Agency, dated November 9, 1988, requesting that 1) a characteristic test for spent potliner, based on free cyanide content, be established, 2) spent potliner that is reclaimed or reused not be subject to Subtitle C regulations, and 3) an administrative stay of the effective date be granted pending the completion of the Agency's review of the issues.

In footnote 8 of page 24 of the November 9, 1988 submission, we pointed out an error by the Agency and requested a correction. The Agency stated that Section 3004 (g) (4) of RCRA mandates a land disposal ban for spent potliner unless EPA develops pretreatment standards within six months of the listing. 53 Fed. Reg. 35416 col. 3. We wish to point out that for wastes listed as hazardous after the date of passage of the 1984 amendments to RCRA (November 8, 1984), Section 3004(g)(4) of RCRA states only that the Administrator shall determine, within six months of listing, whether wastes listed shall be prohibited from one or more methods of land disposal. There is no automatic prohibition of land disposal if the Agency takes no action, as is mandated by the Act in Section 3004 (g) (6) for wastes listed on or before November 8, 1984.

The Agency's language in the Preamble to the September 13 rule thus creates the impression that spent potliner cannot be land disposed after March 13, 1989. With no apparent activity by the Agency to address spent potliner pursuant to RCRA Section 3004 (g) (4), the misstatement creates problems for the industry, which is being forced to abandon reuse and reclamation, and instead increasingly rely on land disposal for managing the waste.<sup>1</sup> Many land disposal facilities believe that they will be unable to accept spent potliner after March 13, 1989.

We therefore request that the EPA issue a notice in the Federal Register before March 13, 1989 correcting the mistake in the preamble to the September 13, 1988 rule. If a notice cannot be published

in time, we request a timely letter from the Agency that accurately states the chain of events mandated by the statute.

It should also be pointed out that, with the March 13, 1989 deadline approaching, we are yet to receive responses to our letter to you of October 21, 1988, which asked the Agency for assistance in allowing storage of spent potliner in secure buildings under interim status, or our petition of November 9, 1988. We would be happy to meet with you to further discuss this and the other two submissions. Thank you very much for your attention to this matter.

Sincerely yours,

Jack H. Goldman, Ph.D.  
Manager, Environmental Services

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<sup>i</sup> We have discussed the disincentives to recycling posed by the imminent listing on pages 17-18 of the November 9, 1988 petition.