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United States Environmental Protection Agency  
Washington, D.C. 20460  
Office of Solid Waste and Emergency Response

September 20, 1993

Mr. Jeffrey T. Miller, Director  
Environmental Health and Government Affairs  
Lead Industries Association, Inc.  
295 Madison Avenue  
New York, New York, 10017

Dear Mr. Miller:

This letter is written as a followup to your meeting with my staff on April 6, 1993. The Agency has recently completed review of materials submitted by the Lead Industries Association Inc. (LIA) on spent solder baths, also known as "pot dumps." Based on the information provided on pot dumps by LIA, EPA has determined that these materials, in general, meet the definition of scrap metal (see footnote 1). Thus, when these materials are reclaimed, they are currently not subject to regulation under 40 CFR Parts 262 through 266, or Parts 268, 270 or 124 (40 CFR §261.6(a)(3)(iv)). However, you should also note that respondents to enforcement actions who raise a claim that scrap metal is not subject regulation because it is being reclaimed must be able to demonstrate that the material is actually reclaimed:

"Respondents in actions to enforce regulations implementing Subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation must demonstrate that there is a known market or disposition for the material and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation ...to demonstrate that the material is not a waste, or is exempt from regulation [emphasis added]. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so." (40 CFR §261.2(f)).

You should also note that the Agency still considers scrap metal to be a solid waste, regardless of whether the scrap metal is being disposed of or recycled (50 FR 624; January 4, 1985). In addition, when the scrap metal exemption was originally promulgated, it was stated that the EPA needed to study "...types of scrap metal and types of management practices further before deciding on an appropriate regulatory regime (if any)". The effort currently underway by the Definition of Solid Waste Task Force may eventually lead to proposed rule changes for solder residues and other exempt or excluded secondary materials such as scrap metals, unlisted sludges and by products being reclaimed. In the meantime, we encourage your membership to manage lead pot dumps being recycled in a manner that minimizes potential releases to the environment. We encourage your membership not to store spent pot dumps or other solder residues on the ground or uncovered such that lead constituents of the material may leach into soil or surface water or become airborne if the material is in a dispersable form. Such a release may be considered abandonment through disposal and may cause the solder residues to become subject to RCRA Subtitle C regulation.

Please be aware that under Section 3006 of RCRA (42 U.S.C. Section 6926) individual States can be authorized to administer and enforce their own hazardous waste programs in lieu of the Federal program. When States are not authorized to administer their own program, the appropriate EPA Regional office administers the program and is the appropriate contact for any case-specific determinations. Please also note that under Section 3009 of RCRA (42 U.S.C. Section 6929) States retain authority to promulgate regulatory requirements that are more stringent than Federal regulatory requirements. If you have any additional questions regarding this matter, please contact Mike Petruska of my staff at (202) 260-8551.

Sincerely,  
Jeffery D. Denit  
Acting Director  
Office of Solid Waste

1 "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g.,

radiators, scrap automobiles, railroad box cars) which when worn or superfluous can be recycled. 40 CFR §261.1(c)(6). Spent solder baths are generally solid pieces of metal that do not contain a significant liquid component when removed from the bath. They are also different in both physical form and content than process residues such as sludges, slags and drosses. If a material is a scrap metal, it does not matter whether it is a spent material or by-product. This letter clarifies the January 7, 1992 letter from Don Clay to you which indicated pot dumps were spent materials.