

9441.1989(47)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

AUG 25 1989

Mr. Jack H. Goldman
Manager, Environmental Services
The Aluminum Association, Inc.
900 19th Street, Northwest
Washington, DC 20006

Dear Mr. Goldman:

This is in response to your letter of August 4, 1989 concerning your request that the Agency: (1) adopt your November 9, 1988 proposed exclusion for spent potliner in place of the Agency's definition in the March 3, 1989 letter to Kaiser Aluminum; and (2) adopt the characteristic test per your November 1988 petition for those portions of spent potliner that are not excluded from Subtitle C regulation by your proposal.

In your letter you state that you partially agree with the Agency's March 3, 1989 letter to Kaiser in which EPA determined that only the carbon portion of the material contained inside the electrolytic reduction cell constituted the "potliner" and identified by Kaiser Aluminum as contained in the "pot" (i.e., the cell's steel shell, steel collector bars, cast iron used to place steel collectors bars in pre-baked carbon blocks, thermal insulation composed of insulating brick or alumina, the silicon carbide brick side walls and end walls of the pot, and frozen aluminum metal pad and electrolytic bath). However, you indicated that by excluding the insulation from the scope of the potliner listing, this material would "thereby not be regulated as a hazardous waste under Subtitle C of RCRA". It appears that you have misinterpreted the March 3, 1989 letter to Kaiser Aluminum.

The purpose of the March 3, 1989 letter was to clarify the scope of the K088 listing only and provided no interpretation regarding the regulatory status of these other materials under Subtitle C. In fact, these wastes would be considered hazardous if they exhibit any of the characteristics of hazardous wastes as defined in 40 CFR 261. Specifically, the Agency's clarification of the K088 listing would not exclude portions of the pot containing "significant levels of free cyanide" since such waste would be expected to exhibit the characteristic for reactivity.

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Your request for adoption of the Association's proposed exclusion under 261.4 and a characteristic test for materials not covered by the exclusion was made in your comments to the September 13, 1988 final rule to list six smelting wastes as hazardous. This request will be addressed in the near future in a Federal Register notice in which we will respond to all of the issues raised in petitions submitted on the smelting waste listing rule. To address these issues, however, the Agency must propose to grant or deny the petitions and take public comment on our proposed response before a final action can be taken.

I hope this letter has clarified our earlier determination on the scope of K088 and the status of materials not covered by the listing. Should you have any additional questions, please feel free to call Denise Wright at 245-3519.

Sincerely,

Sylvia K. Lowrance
Director
Office of Solid Waste

RO 11462