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February 27, 2004

OSWER Docket  
Environmental Protection Agency  
Mail Code 5305T  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-0001

ATTN: Docket ID No. RCRA – 2002 – 0031

**RE: Proposed Rule, Revisions to the Definition of Solid Waste (68 FR 61558)**

Dear Sir/Madam:

The Board of Directors of the Association of State and Territorial Solid Waste Management Officials (herein referred to as “ASTSWMO”) has reviewed the October 28, 2003 proposed rule (68 FR 61558) containing suggested revisions to the definition of solid waste. The ASTSWMO Board is comprised of 14 senior-level State waste program experts representing all geographic and regional areas of the country, and the comments contained herein reflect their collective technical opinions regarding major aspects of the rule proposal. The Board is submitting this letter stating its support of separate comments submitted to the Docket by ASTSWMO’s Hazardous Waste Recycling Task Force (“Task Force”) regarding three areas discussed in the proposal of significant importance to States: notification, legitimacy criteria, and exclusion of on-site recycling. Individual States will also submit comments reflecting their own unique perspectives on the proposed components of the rule.

The Board strongly encourages EPA to carefully consider the comments received from the Task Force and individual States as it analyzes the positions taken on various aspects of the proposal by industry, environmental groups, the public, and other stakeholders. States will be the ultimate implementers of any final regulation arising from this proposal, if they choose to adopt it, and State suggestions and recommendations should be heavily weighed in the final decision-making process.

The Board would like to call your attention to three primary aspects of the proposal which we strongly support and deem as essential elements of the fundamental framework upon which a pragmatic, effective rule should be built. We believe it is both critical and necessary that these

provisions remain in any final rule promulgated by EPA to ensure that legitimate recycling is taking place at bona fide facilities.

### Notification

There is nearly unanimous support amongst task force members that a notification provision in the final rule is necessary to ensure that the States are aware of those hazardous secondary materials that are legitimately recycled and excluded from regulation under the hazardous waste rules. A notification requirement serves two goals: 1) to inform the regulating agency that the exclusion is being implemented by a generator of hazardous secondary material so that the regulating agency can ensure that the exclusion is appropriately and properly implemented, and 2) to provide the regulating agency with meaningful information that can be compiled into a credible report to be shared with the regulated community and the public to further promote legitimate recycling of hazardous secondary materials.

Considering the purposes of why notification is essential, it is imperative that the information received by the regulating agency is comprehensive with regards to who is involved in the recycling activity. The task force States strongly support a requirement that the information provided in the proposed notification regarding recycling also include the name and address of the recycler and a re-notification requirement to ensure the information maintained remains meaningful. Otherwise, it is impossible for the States to accomplish the goals that notification should serve.

### Legitimacy Criteria

All task force members strongly support the codification of criteria that define legitimate recycling of hazardous secondary materials. Codification of criteria is needed to establish clear regulatory jurisdiction that delineates beneficial use of a hazardous secondary material from waste treatment; to ensure enforceability of the criteria and to ensure that both the regulated community and overseeing agencies are aware of the criteria applicable to legitimate recycling.

All of the proposed criteria are important in evaluating a recycling activity. The generator of the hazardous secondary material should address all four criteria when claiming that their material is being legitimately recycled and document how each criterion is met by the recycling activity. If one or more of the criteria are not applicable, the generator should document why the criteria is not appropriate. The above mentioned records need to be maintained on-site by the recycler and available upon request by the regulatory agency.

The legitimacy criteria that EPA proposed provide a good basis on which to build meaningful criteria. The Task Force offers suggestions for revising the criteria in an effort to remove ambiguity for the purpose of promoting consistent application of the criteria by generators, recyclers and the overseeing agencies.

### Regulatory Option for On-site Recycling

The Task Force strongly supports the exclusion of hazardous secondary materials that are legitimately recycled on-site regardless of the NAICS codes applicable to the generating and

recycling processes. If the product of the recycling process continues to be used on-site in the manufacturing process or a process that supports facility operations, it should not be considered a separate establishment and hence, a different industry for the purposes of the exclusion. Such an approach matches the common meaning of the “the same industry” and would significantly reduce the complexity of the proposed exclusion. Further, on-site recycling provides the generator the opportunity to maintain oversight and responsibility of the material, reduces his liabilities due to the transportation and disposal of secondary materials, and reduces the need to purchase feedstock materials.

The ASTSWMO Board of Directors fully supports the comments submitted by the Hazardous Waste Recycling Task Force on these three critical components of the proposed rule. We also appreciate the opportunity to provide input to EPA on this important proposal, and look forward to continuing to work with EPA on definition of solid waste issues of mutual interest. Please direct any questions about these comments to the Hazardous Waste Recycling Task Force chair, Karen Hale (OH), at 614-644-2927.

Sincerely,

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Jay Ringenberg (NE)  
ASTSWMO President

cc: Marianne Horinko, OSWER  
Charlotte Mooney, OSW  
ASTSWMO Board of Directors  
ASTSWMO Hazardous Waste Recycling Task Force