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### *I. Statutory Authority*

These regulations are proposed under the authority of sections 2002, 3001, 3002, 3003, and 3004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924.

### *II. Background*

#### *A. What Is the Intent of Today's Proposed Rule?*

Today's proposed rule is intended to revise and clarify the RCRA definition of solid waste as it pertains to certain types of hazardous secondary materials that are not considered to be discarded, and thus are not considered wastes subject to regulation under RCRA Subtitle C. This regulatory action was initiated primarily in response to decisions by the United States Court of Appeals for the D.C. Circuit, which, taken together, have provided the Agency with additional direction in this area. Specifically, this proposal would define those circumstances under which materials would be excluded from RCRA's hazardous waste regulations because they are generated and reclaimed in a continuous process within the same industry.

This proposal represents an important restructuring of the RCRA regulations that distinguish wastes from non-waste materials for Subtitle C purposes, and that ensure environmental protections over hazardous waste recycling practices. As such, it is also an opportunity for the Agency to clarify in a regulatory context the concept of "legitimate recycling," which has been and is a key component of RCRA's regulatory program for hazardous material recycling, but which to date has been implemented without specific

regulatory criteria. Today's proposal thus includes specific regulatory provisions for determining when hazardous wastes and other hazardous secondary materials are recycled legitimately.

Today's proposal is de-regulatory in nature, in that certain recyclable materials that have heretofore been subject to hazardous waste regulations would no longer be regulated under the hazardous waste regulatory system. The proposed criteria for legitimate recycling codify existing principles, without increasing regulation. This proposal is not intended to bring new wastes into the RCRA Subtitle C regulatory system.

By removing hazardous waste regulatory controls over certain recycling practices, and by providing more explicit criteria for determining the legitimacy of recycling practices in general, EPA expects that this proposed rule will encourage safe, beneficial recycling of hazardous secondary materials by industry. This regulatory initiative is thus consistent with the Agency's longstanding policy of encouraging the recovery and reuse of valuable resources as an alternative to land disposal. It is also consistent with one of the primary goals of the Congress in enacting the RCRA statute (as evidenced by its name), and with the Agency's vision of how the RCRA program could evolve over the longer term to promote sustainability and more efficient use of resources.<sup>1</sup> Finally, this regulatory proposal is an important component of EPA's recently announced "Resource Conservation Challenge," which is designed to encourage and provide new incentives for increased reuse and recycling of materials, including hazardous wastes and hazardous secondary materials (for further information on this initiative see <http://www.epa.gov/epaoswer/osw/conserves/index.htm>).

It should be understood that today's proposal does not attempt to resolve all issues surrounding the current RCRA Subtitle C recycling regulations. Since the current regulations were put in place in 1985 (*see* 50 FR 614-668, January 4, 1985), many of the program's stakeholders have expressed the view that the current system is unnecessarily restrictive, and imposes regulatory controls that often discourage legitimate recycling opportunities by industry. These stakeholders have often argued

that the Agency should commit itself to fundamentally restructuring the current rules, to ease controls over a wide range of recycling practices. On the other hand, other stakeholders have argued that the current regulations are in some ways too lenient, and that greater accountability and tighter controls should be built into the system.

EPA has participated with a variety of stakeholder groups in several initiatives aimed at exploring and developing comprehensive new approaches to regulating hazardous material recycling. Unfortunately, these initiatives have been largely unsuccessful. In EPA's view, these unsuccessful efforts to comprehensively revise the RCRA recycling system are in large part attributable to the fundamental difficulty of trying to distinguish wastes from non-waste materials in a national regulatory framework that applies to an exceptionally broad array of industries, materials and recycling practices.

Today's proposal, which addresses a particular set of recycling activities, is prompted by concerns articulated in the D.C. Circuit Court's opinions. Together with the legitimacy criteria also discussed today, the proposed exclusion is crafted to cover those cases where discard most likely does not occur because materials are being truly reused or recycled in a continuous process within the generating industry. EPA intends to continue exploring whether further initiatives aimed at encouraging legitimate recycling of hazardous secondary materials are warranted. We invite comment on this issue. Specifically, we are interested in stakeholder views as to whether EPA should undertake additional actions to encourage recycling of materials that would remain regulated as wastes under today's proposal. In this regard, most helpful would be comments describing what specific actions might be appropriate for this purpose, and the potential environmental and economic impacts that might be associated with such actions.

#### *B. Who Would Be Affected by Today's Proposed Rule?*

Today's proposal would most directly affect those who generate, reclaim and reuse hazardous secondary materials in a continuous process within the generating industry, in accordance with the provisions of today's proposal. These materials would not be considered to be discarded under the proposal (and thus would not be wastes), so those who manage them would no longer be subject to hazardous waste regulatory requirements. EPA estimates that approximately 70% of the

<sup>1</sup> The Agency's long-term "vision" of the future of the RCRA program is discussed in the document "Beyond RCRA: Prospects for Waste and Materials Management in the Year 2020," which is available on the Agency's Web site at <http://www.epa.gov/epaoswer/osw/vision.htm>.