

**Via electronic mail**

May 15, 2017

Samantha K. Dravis, Associate Administrator, Office of Policy  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Mail Code 1803A  
Washington, DC 20460

**Re: Evaluation of Existing Regulations (EPA-HQ-OA-2017-0190)**

Dear Ms. Dravis,

The Institute of Scrap Recycling Industries, Inc. (ISRI)<sup>1</sup> is pleased to submit these comments on behalf of the US-based scrap recycling industry, in response to the U.S. Environmental Protection Agency's (EPA's) notice for public comment on *Evaluation of Existing Regulations* (EPA-HQ-OA-2017-0190, 82 Fed. Reg. 17793, April 13, 2017) in support of President Trump's Executive Order 13777, "Enforcing the Regulatory Reform Agenda." With a total economic impact in the United States of nearly \$117 billion and employment of more than 530,000 Americans, the recycling industry is a vital part of the U.S economy. However, the U.S.-based scrap recycling industry's significant contributions to both environmental stewardship and the country's economic strength are dependent upon government policies that understand and recognize these benefits and that promote their growth. It is with this in mind that ISRI provides these comments, identifying the following regulations that have negatively impeded the continued growth of the industry and are in need of repeal, replacement, or modification:

- **Modification of Subtitles C & D of the Resource Conservation and Recovery Act (RCRA)** to distinguish scrap commodities destined for recycling from waste destined for disposal. The current regulatory deficiencies within 40 CFR §§261.2, 261.4, and 239-259 allow commodity

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<sup>1</sup> ISRI is the "Voice of the Recycling Industry," promoting safe, economically sustainable and environmentally responsible recycling through networking, advocacy, and education. With headquarters in Washington, DC and 21 chapters nationwide, ISRI represents the more than 1,200 companies operating in nearly 3,000 locations in the U.S. and 34 countries worldwide that process, broker, and consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles.

materials destined for recycling to be inappropriately regulated as solid or hazardous waste at the federal, states, and local levels, adding additional costs and burdens on the recycling industry. EPA should revise these regulations to free scrap commodities destined for recycling from solid waste completely, and provide associated guidance to its regional offices and states.

- **The Federal Multi-Sector General Permit (MSGP), developed pursuant to the Clean Water Act (CWA) regulations at 40 CFR §122**, contains provisions, specifically benchmark monitoring, that make achieving compliance uncertain and, at best, difficult. This uncertainty and difficulty leads to repeated cycles of monitoring, exceedances, and corrective actions and effectively encourage frivolous and costly CWA third-party lawsuits. EPA needs to revise the MSGP to account better for the unique characteristics of stormwater and to align benchmark monitoring better with the performance potential of control measures and wet-weather conditions.
- **The refrigerant management regulations at 40 CFR §82, Subpart F, pursuant to Title VI of the Clean Air Act (CAA)**, need to be revised to require removal of refrigerant from appliances and vehicles **prior** to their delivery for recycling, consistent with the specific language of § 608(b)(1) of the Clean Air Act Amendments of 1990. As currently written, the regulations place the burden of enforcement on recyclers who accept appliances and vehicles for recycling, contrary to the express language and intent of the CAA, thus imposing significant liability, compliance, and enforcement burdens on such recyclers. EPA needs to revise the 40 CFR §82, Subpart F regulations so that they follow what Congress specifically directed the Agency to do when drafting the implementing regulations to the CAA Amendments, **requiring prior removal** of refrigerant from appliances and vehicles delivered for recycling to remove these burdens from recyclers.
- **The Chemical Data Reporting (CDR) regulations at 40 CFR §711, pursuant to the Toxic Substances Control Act (TSCA)**, need to be revised to eliminate the current reporting requirements for small annual amounts of scrap metal imported for recycling—12.5 or more tons per metal per facility, a small amount compared to annual production. Such reporting is burdensome and also provides no useful information to EPA. EPA needs to revise the CDR regulations to exempt imported scrap metal from reporting.
- **Elimination of Regulatory Conflicts**. ISRI asks that EPA's Office of Policy exert greater influence on the program offices, including the Office of Land and Emergency Management and Office of Air and Radiation, to communicate among themselves during rulemaking about potential regulatory conflicts or difficulties across the regulations for which they have responsibility. Improving communication across and within the offices will result in better rulemaking and better regulations with fewer unintended negative regulatory consequences.

To provide context for the comments below, ISRI next offers background on the recycling industry.

## **INDUSTRY BACKGROUND**

The recycling industry has long been recognized as one of the world's first green industries, born out of the need to recover and conserve valuable resources. From the earliest of times, people recognized the intrinsic value of recycling and the benefits associated with using and re-using existing materials to create new products. Within the U.S., scrap recycling has a long history, dating back to the late 1600s near Philadelphia where a paper mill began using recycled cotton and fiber to make paper, and to 1776 when Paul Revere advertised for scrap metal of all kinds so that he could manufacture basic metals to help fight the War of Independence.

The modern-day scrap industry traces its roots back to the late 1800s when many of our forebears were "peddlers," collecting all types of scrap via pushcarts. The industry has evolved dramatically since then, such that it now utilizes sophisticated machinery and technology to manufacture specification-grade commodities which are critical elements to the health of domestic, as well as global, manufacturing. In fact, recyclers today are the first link in the manufacturing supply chain, supplying more than 40% of manufacturing's global raw material needs. Last year alone, the U.S.-based scrap recycling industry transformed more than 130 million metric tons of recyclable materials into specification-grade scrap products sold for productive economic use as feedstock materials by industrial consumers in the United States and throughout the world. Those commodities included:

- 67 million metric tons of iron and steel;
- 47.2 million metric tons of paper;
- More than 8 million metric tons of aluminum, copper, and other nonferrous metals;
- More than 5 million tons of electronics;
- More than 3.5 million tons of plastic scrap; and
- More than 122 million tires.

Rising global demand for scrap also provides a useful critical outlet for our excess scrap supply, with between 30 to 40 percent of the scrap processed in the U.S. annually exported to more than 150 countries around the globe. Since the year 2000, net exports of U.S. scrap have made a positive contribution to our balance of trade amounting to more than \$210 billion.

Like other manufacturers, scrap recyclers create jobs, contribute to the tax base, and improve the balance of trade. However, unlike most manufacturers, the work of scrap recyclers also inherently benefits the environment and helps prevent what would otherwise become solid waste problems.

## **COMMENTS**

ISRI requests that EPA review and revise the following regulations promulgated pursuant to the Resource Conservation and Recovery Act (RCRA), the Clean Water Act (CWA), the Clean Air Act (CAA), and the Toxic Substances Control Act (TSCA), for the reasons specified below.

**1. The Subtitle D (Solid Waste) and Subtitle C (Hazardous Waste) Regulations Pursuant to RCRA Need to Be Revised to Recognize That Scrap Materials Destined for Recycling Are NOT Solid Waste and Should Not be Regulated as Such on the Federal or State Levels**

For decades, scrap recycling has been impeded by varying and evolving interpretations of “solid waste” under RCRA Subtitle D (solid waste), especially at the state and local levels, and under RCRA Subtitle C (hazardous waste). Such interpretations have inappropriately regulated scrap materials destined for recycling as solid or hazardous waste and recycling facilities as solid or hazardous waste facilities, layering costly, burdensome and inappropriate requirements on the recycling industry.

Scrap commodities that are “destined for recycling”<sup>2</sup> should not be defined as “solid waste” under RCRA Subtitle D or RCRA Subtitle C, and the recycling facilities that process such products destined for recycling should not be considered solid or hazardous waste facilities.

Currently, the Subtitle C Definition of Solid Waste at 40 CFR §261.2 (DSW) and its Exclusions at 40 CFR §261.4, recognize that recycled processed, home, and prompt scrap metal are outside and excluded from the definition of solid waste, but do not recognize that unprocessed scrap metal destined for recycling is outside the solid waste definition (§261.2) or excluded from it (§261.4). Unprocessed scrap metal that is recycled is technically a solid or hazardous waste but exempted from Subtitle C regulation at 40 CFR §261.6(a)(3)(ii)<sup>3</sup>. While this situation is tolerable, unprocessed scrap metal destined for recycling should be outside and excluded from DSW on its merits, just as recycled processed, home, and prompt scrap metal are.

Most significantly, even if all scrap metal destined for recycling were outside or excluded from DSW under Subtitle C, they are not also automatically outside or excluded from statute-based definition(s) of solid waste under Subtitle D. In addition, nonhazardous nonmetallic scrap commodities that are recycled – including recovered fiber/scrap paper, scrap plastics, scrap textiles, scrap glass, and scrap rubber –

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<sup>2</sup> While the EPA has stated that “[t]he statute and the legislative history suggest that Congress expected EPA to regulate as solid and hazardous wastes certain materials that are *destined for recycling*” (72 Fed. Reg. 14176; emphasis added), ISRI maintains that scrap materials destined for recycling, such as scrap metal, paper, plastics, and glass, are valuable commodities that are not among those “certain materials”. “Destined for recycling” means that such scrap materials are always handled in a manner that directs them towards or keeps them in the supply chain for recycled materials and are not at any time solid waste.

<sup>3</sup> An unfortunate aspect of 40 CFR §261.6 is that it declares that “[h]azardous wastes that are recycled will be known as ‘recyclable materials.’” The term, “recyclable materials”, is commonly used to refer to scrap materials. For this reason, 40 CFR §261.6 should be revised to eliminate this declaration and its use of “recyclable materials”.

while not subject to RCRA Subtitle C<sup>4</sup> are still subject to RCRA Subtitle D. The persistent misidentification of scrap commodities as solid waste under RCRA Subtitle D has led to continual challenges and misapplications of state and local laws on the recycling industry, adding additional layers of costs and compliance burdens on individual recyclers.

Unlike the RCRA Subtitle C regulations, the RCRA Subtitle D regulations from 40 CFR §239-§259 have neither a process to determine whether a material is solid waste nor any exclusions from solid waste. There is no Subtitle D regulatory language recognizing that scrap commodities destined for recycling are outside of, or excluded from, the statute-based Subtitle D definitions of solid waste at 40 CFR §§243.101 and 246.101, among others. These Subtitle C and Subtitle D regulatory deficiencies allow scrap material destined for recycling to be inappropriately regulated as solid or hazardous waste at the federal, states, and local levels and the facilities handling such scrap material to be regulated as solid or hazardous waste facilities, to the detriment of recycling.

To be clear, recyclable materials (referred to as “scrap” by the recycling industry) are commodities—they are not waste. They are highly valuable and tradeable products, produced according to globally recognized specifications for purchase by industrial consumers—including steel mills, metal refiners, plastic manufacturers, foundries, and paper mills—to meet their raw material needs. Manufacturers value the use of scrap for the significant cost and energy savings provided. Recycled materials are routinely used as substitutes in place of virgin commodities since they are often less expensive, of comparable—if not better—quality, and save energy which are all important factors in the manufacturing process.

The numbers tell the story...

- U.S. steelmakers rely on iron and steel scrap—processed from items as diverse as automobiles, household appliances, demolished bridges, and old machinery—to make roughly two-thirds of the steel produced in the country every year;
- Recycled copper from items such as old radiators and wire and cable, accounts for more than one-third of total U.S. copper consumption;
- More than half of the U.S. aluminum usage is supplied from soda cans, aluminum siding, and other forms of aluminum scrap; and

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<sup>4</sup> “The definition of solid waste contained in this part applies only to wastes that also are hazardous for purposes of the regulations implementing subtitle C of RCRA. For example, it does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled” (40 CFR §261.1(b)(1)).

- More than half of the paper industry's needs here in the U.S. are met each year through the use of recovered fiber produced from such items as old newspapers, magazines, catalogs, office paper, and used corrugated boxes.

As one can imagine based on these examples – and there are many more – recycling is an important economic engine and very much integral to modern manufacturing. This concept was recognized by the National Lieutenant Governors Association (NLGA) last year when they adopted “*A Resolution On The Importance Of Recycling And Distinguishing Recyclable Materials As Valuable Commodities That Are Not Solid Waste.*” The Resolution concludes as follows –

*“BE IT FINALLY RESOLVED that the NLGA will be an engaged forum for collaboration among states to pursue SMM that recognizes the importance of recycling and that recyclable materials such as metals, paper, plastic, glass, rubber, and textiles that are recycled directly as a viable commercial feedstock or commodity should not be, deemed to be solid waste.”*

EPA itself acknowledged the distinction between scrap commodities and waste materials almost 15 years ago, although not in regulation. In 2003, EPA tasked staff to take a futuristic look at the Agency's work in the year 2020. Out of that effort came the work entitled, *Beyond RCRA*. *Beyond RCRA* makes clear that scrap materials are not waste. Along with the recommendation that the Agency move from materials control to a materials management focus. As such, it was important not to treat recyclables as wastes, but rather manage them for what they are - feedstock for the manufacture of new products. The Agency recognized then that with recycling such materials comes avoidance and concomitant costs of environmental degradation – the Environmental Protection Agency's primary mission.

Although published in 2003 during the Administration of President George W. Bush, *Beyond RCRA* was used by the Obama Administration to jump start a serious Sustainable Material Management (SMM) program. As EPA understood, in 2003 and beyond, that scrap materials are valuable materials and not waste materials there is no reason whatsoever why the Agency should not implement that understanding in 2017. The time has come for EPA to acknowledge in its regulations that scrap is not waste.

As such, it is very important that EPA revise its regulations and clearly recognize the distinction between scrap and waste, and recycling and disposal, within BOTH Subtitle C AND Subtitle D of RCRA. Somewhere within 40 CFR §239-259, EPA needs to recognize that scrap commodities – including scrap metal, paper, plastics, glass, textiles and rubber - destined for recycling are outside of and excluded from, the Subtitle D definitions of solid waste. And, because Subtitle D is largely delegated to state authorities, EPA needs to also provide **clear guidance** associated with these changes to its regional offices and state authorities.

**2. The Federal Multi-Sector General Permit, Developed Pursuant to the CWA Regulations at 40 CFR §122, Must Be Revised to Better Account for the Unique Characteristics of Stormwater and to Align Benchmark Monitoring with the Performance Potential of Control Measures and Wet-Weather Conditions.**

The Federal Multi-Sector General Permit (MSGP) contains provisions that make achieving compliance uncertain and, in some cases virtually impossible, thus encouraging frivolous and expensive CWA third-party lawsuits. Modelled on CWA wastewater permits, the MSGP uses benchmark monitoring to assess the effectiveness of implemented control measures specified in the MSGP. Concentrations of benchmark constituents (e.g., copper and zinc) measured in grab samples of stormwater discharges are compared to benchmark levels. *EPA has set benchmark levels much closer to dry-weather water quality standards (WQS) for receiving waters (very low) than to stormwater discharge concentrations achievable by control measures under wet-weather conditions.* This is wholly inappropriate because unlike wastewater, stormwater has highly variable flow rates, constituent concentrations, and frequencies of occurrence. Discretely measured constituent concentrations of stormwater discharges may not accurately reflect the effectiveness of implemented control measures or the actual impact of stormwater discharges on the receiving water under wet-weather conditions. *This creates a situation in which the achieving benchmarks is extremely difficult, if not impossible.* It creates a situation such that control measures specified in the MSGP, when implemented, will often be insufficient to meet benchmarks. This difficulty and uncertainty leads to repeated and costly cycles of monitoring, exceedances, and corrective actions with no easy off-ramp from such cycles.

Another problem with the use of benchmark monitoring within the MSGP is that it is viewed by some as an indicator of permit compliance even though it is clearly stated otherwise by EPA; “[t]he **benchmark concentrations are not effluent limitations; a benchmark exceedance, therefore, is not a permit violation.**” (2015 MSGP §6.2.1). Benchmark exceedances have been used as “evidence” of permit violations in threats of CWA third-party lawsuits against recycling facilities, including those with highly performing stormwater control systems. The currently established benchmark levels effectively invite CWA third-party lawsuits against recyclers, despite EPA’s view that a benchmark exceedance is not per se a permit violation. The result has been millions of dollars of costs to recyclers across the country.

Over the years, we have witnessed increased abuse of CWA citizen lawsuits filed for enrichment rather than as the Act originally intended. Many organizations have used publicly available databases to obtain information about regulated facilities and threaten to sue them under the CWA simply to extract sizable financial “donations” and “voluntary” actions from facilities not otherwise required by law to do so. These facilities settle simply to avoid the costs of litigation, while the organizations then use settlement donations to repeat the process on other facilities in a vicious cycle that was not intended by Congress. These groups are taking advantage of the benchmark levels within the MSGP to inappropriately further their efforts.

It is absolutely necessary for the EPA revise the MSGP to account better for the unique characteristics of stormwater and to align benchmark monitoring better with the performance potential of control measures and wet-weather conditions.

**3. The Refrigerant Management Regulations Need to Be Revised to Require Removal of Refrigerant from Appliances and Vehicles Prior to Their Delivery for Recycling, as Clearly Mandated in CAA Title VI, so as to Relieve Recyclers from the Compliance, Enforcement, and Liability Burdens of the Current Regulations for Which They Were Never Intended.**

The regulations promulgated by EPA in 40 CFR §82 are in direct contradiction of the clear Congressional intent and specific wording found in §608(b)(1) of the Clean Air Act Amendments of 1990, and, as a result impose significant liability, compliance, and enforcement burdens on recyclers who accept for recycling small appliances and vehicles (henceforth, “appliances”) that use refrigerants. Contrary to CAA Title VI<sup>5</sup>, which calls for removal of refrigerant from appliances **prior to their delivery for recycling**, EPA finalized so called “flexible” regulations more than 20 years ago that ignore the explicit language of the statute and have put the industry in the untenable position as both the “enforcer” and the “enforced” of refrigerant removal from recycled appliances. These regulations continue to be applied and used as enforcement actions against recyclers.

Section 608(b)(1) required EPA to promulgate regulations mandating that all CFC refrigerants "contained in bulk in appliances, machines or other goods [ ] be removed from each appliance, machine or other good prior to the disposal of such items or their delivery for recycling." The law contains two extremely important concepts:

1. That recycling is distinguished from disposal; and
2. That CFC-bearing goods which are being recycled must be evacuated “*prior to their delivery to the recycler.*” Congress left no room for interpretation as to who would be responsible for the removal of CFCs from such goods. If the CFCs are to be removed prior to their delivery for recycling it is clearly the last owner of the CFC containing item prior to that delivery who is responsible.

In fact, these words appear in the CAA Amendments of 1990 because of ISRI's success in convincing the Congress that there was no practical way to require scrap recyclers to be responsible for assuring that

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<sup>5</sup> “Requirements that class I or class II substances contained in bulk in appliances, machines or other goods shall be removed from each such appliance, machine or other good prior to the disposal of such items or their delivery for recycling” (42 USC §7671g).



CFC refrigerant has been removed. Congress understood that automobiles and appliances delivered to scrap processors frequently don't have the physical shape they had when originally purchased.<sup>6</sup> Congress understood the impracticality of ensuring that each one of thousands of such items handled by processors each day has been properly vented and Congress spoke clearly and precisely on that point.

The regulations promulgated by EPA to implement §608(b)(1) subvert the intent of Congress to insure that refrigerant is recovered upstream of the recycling industry. The statute is quite unambiguous, yet EPA promulgated regulations that put the burden on the recycler to ensure refrigerant recovery occurs. Under these regulations, recyclers must either recover refrigerant from appliances delivered for recycling, which was not a provision of CAA Title VI, or verify via signed statements or contracts that the supplier ensured removal of refrigerant from appliances prior to their delivery for recycling. If a recycler cannot adequately enforce and demonstrate compliance by others (e.g., suppliers of appliances for recycling) through signed statements or contracts, that recycler suffers enforcement for failing to do so. The penalties are potentially large even for relatively minor paperwork violations. A common outcome of enforcement is a settlement with EPA that requires the recycler to implement measures that EPA cannot otherwise require the recycler to conduct under the 40 CFR §82, Subpart F regulations, as well as a substantial monetary payment or expenditure of some kind (e.g., a supplemental environmental project).

Also, once an appliance is accepted at a recycling facility with the refrigerant properly removed, the appliance is still regulated under these regulations until it is completely processed (i.e., shredded or melted). These regulations impede the movement of appliance parts that once held or contained refrigerant during use (e.g., copper coil and steel compressor) because when these parts are further sold, perhaps several times, a signed statement or contract is required between each seller and buyer. This creates a paper trail problem with potentially tremendous compliance and enforcement implications because each buyer is responsible under these regulations for compliance by every supplier (perhaps several) associated with the appliance part and the appliance from which it originated. In such complex recycling networks, this is extremely difficult to do.

**To remove these liability, compliance, and enforcement burdens on recyclers, EPA needs to revise the 40 CFR §82, Subpart F regulations to require prior removal of refrigerant from appliances and vehicles delivered for recycling *as Congress originally directed the Agency to do.***

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<sup>6</sup> A recycler will often not receive the product until it has already been crushed or flattened, or otherwise altered for ease and economy in transport. As a result, it is frequently difficult, if not impossible, to inspect the product to determine whether or not CFCs remain.

#### **4. The TSCA Chemical Data Reporting (CDR) Regulations Need to Be Revised to Exempt Scrap Metal Imported for Recycling from Reporting as CDR Imposes Substantial Reporting Burdens on Recycling While Providing No Useful Information to EPA**

From 1986 to 2003, TSCA Chemical Data Reporting (CDR) did not apply at all to scrap metal recycling because inorganic chemical substances (e.g., elemental metals) were exempted from CDR requirements. In addition, as scrap metal recycling does not involve any chemical reactions—only physical changes in the state, shape, size, or aggregation of scrap metal— it would not be considered manufacturing for CDR purposes in any case.

The 2003 TSCA CDR Amendments (68 Fed. Reg. 848-906) changed that situation by its removal of the reporting exemption for inorganic chemical substances. The TSCA Chemical Substance Inventory lists every metal element, so scrap metal became a potentially reportable substance by way of its individual metals. While recycling scrap metal does not constitute manufacturing for CDR purposes, importing scrap metal for recycling does because the CDR definition of “manufacture” also includes importing. Scrap recyclers suddenly had a potential reporting obligation under CDR if they imported scrap metal for recycling, even from Mexico or Canada.

As a result, recyclers find themselves in the strange situation under CDR that reporting is not required for recycling domestic scrap metal, but is required for importing scrap metal for recycling above the applicable annual facility threshold of 25,000 pounds (12.5 tons) per elemental metal. For the recycling industry, a threshold of 12.5 tons is essentially zero because 12.5 tons represents a miniscule amount of annual production. This threshold can be exceeded in just one day. Reporting because of only one day of importing activity makes no sense and would not provide any useful information. However, the burden of reporting such imported scrap metal is not insignificant, and neither is the consequence for failure to report.

Any recycler importing scrap metal is very likely going to have a reporting obligation under CDR, even if such importing represents a small amount of annual production. The current CDR exemption for a “small manufacturer” (40 CFR §711.9) does not provide complete or any relief from reporting because this exemption does not often apply<sup>7</sup>.

EPA needs to revise the CDR regulations to exempt imported scrap metal for recycling from reporting requirements, especially given that no reporting is required for recycling domestic scrap metal that is processed in exactly the same way as imported scrap metal.

This same argument for a CDR exemption applies as well as to imported inorganic ingredients that are used in making alloys by mixing them with metals in the molten state without chemical reaction.

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<sup>7</sup> Earlier this year, in comments submitted on Standards for Small Manufacturers and Processors (EPA-HQ-OPPT-2016-0675), ISRI noted that the small manufacturer exemption does not provide much relief for CDR requirements.

**5. EPA's Office of Policy Needs to Communicate and Coordinate the Regulatory Activities Within EPA Better to Reduce Regulatory Conflicts and Difficulties Before they are Codified, and Correct Those Conflicts that Currently Exist**

ISRI would also like to note the following regulatory conflicts related to the 40 CFR §82, Subpart F regulations to illustrate the general problem of regulatory conflict between regulations issued under different (or even the same) statute.

- The CAA Title VI definition of “disposal” at 40 CFR §82.152<sup>8</sup> is partly inconsistent with the RCRA Subtitle C definition of “disposal” at 40 CFR §260.10<sup>9</sup>. While part of the CAA definition is consistent with the RCRA definition, the CAA definition of “disposal” also includes reuse of appliance parts and recycling of appliances. Reuse and recycling are consistent the RCRA Subtitle C definition of “recycled” at 40 CFR §261.1(c)(7)<sup>10</sup>. This CAA definition is unnecessarily inconsistent with the RCRA definition and creates unnecessary regulatory and even enforcement confusion.
- The CAA Title VI exemption from venting prohibition at 40 CFR §82.154(a) for certain hydrocarbon substances (e.g., propane and isobutane) from certain appliances is potentially severely limited by the RCRA Subtitle C regulations and state CAA regulations. Venting flammable substances may be hazardous waste disposal under the RCRA Subtitle C regulations and may cause exceedances of applicable CAA limits on emissions of volatile organic compounds. These venting exemptions were apparently offered without adequate consideration of other potentially applicable and impeding regulations.
- Under the CAA Title VI regulations, 40 CFR §82, Subpart F covers refrigerant management in appliances, and 40 CFR §82, Subpart G, Significant New Alternatives Policy Program, covers the process of approving refrigerants for use in appliances. ISRI's casual observation is that the

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<sup>8</sup> Disposal means the process leading to and including:

- (1) The discharge, deposit, dumping or placing of any discarded appliance into or on any land or water;
- (2) The disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water;
- (3) The vandalism of any appliance such that the refrigerant is released into the environment or would be released into the environment if it had not been recovered prior to the destructive activity;
- (4) The disassembly of any appliance for reuse of its component parts; or
- (5) The recycling of any appliance for scrap.

<sup>9</sup> *Disposal* means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

<sup>10</sup> A material is “recycled” if it is used, reused, or reclaimed.

regulatory processes for refrigerant management and refrigerant approval are not well coordinated, especially concerning flammable refrigerants.

As the main cross-cutting office within EPA, the Office of Policy needs to exert greater influence across and within the program offices, including the Office of Air and Radiation and the Office of Land and Emergency Management, to communicate and coordinate their regulatory activities better to reduce regulatory conflicts and difficulties before they are codified.

## **CONCLUSION**

ISRI appreciates this opportunity to identify for EPA those regulations that impede the business of recycling in the United States and are in need of repeal, replacement or modification. We would welcome the opportunity to meet with you and any other EPA staff to discuss our recommendations. Please feel free to contact me at 202-662-8533 or [DavidWaggar@isri.org](mailto:DavidWaggar@isri.org).

Sincerely,

A handwritten signature in cursive script that reads "David L. Waggar".

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