

# Arranging for Recycling

The Superfund Recycling Equity Act (SREA)\* defines "Arranging for Recycling" differently depending upon the recyclable commodity.

**NOTE:** There are several exclusions that apply to any recyclable commodity that are outlined at the bottom of is page. It is important that you review them in context of each circumstance.

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## TITLE VI--SUPERFUND RECYCLING EQUITY

SEC. 6001. SUPERFUND RECYCLING EQUITY.

``SEC. 127. RECYCLING TRANSACTIONS.

### **SCRAP PAPER, PLASTIC, GLASS, TEXTILES, OR RUBBER (other than whole tires)**

``(c) Transactions Involving Scrap Paper, Plastic, Glass, Textiles, or Rubber.— Transactions involving scrap paper, scrap plastic, scrap glass, scrap textiles, or scrap rubber (other than whole tires) shall be **deemed to be arranging for recycling** if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that **all of the following criteria were met at the time of the transaction:**

``(1) The recyclable material met a commercial specification grade.

``(2) A market existed for the recyclable material.

``(3) A substantial portion of the recyclable material was made available for use as feedstock for the manufacture of a new saleable product.

``(4) The recyclable material could have been a replacement or substitute for a virgin raw material, or the product to be made from the recyclable material could have been a replacement or substitute for a product made, in whole or in part, from a virgin raw material.

``(5) For transactions occurring 90 days or more after the date of enactment of this section, the person exercised reasonable care to determine that the facility where the recyclable material was handled, processed, reclaimed, or otherwise managed by another person (hereinafter in this section referred to as a 'consuming facility') was in compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable material.

``(6) For purposes of this subsection, 'reasonable care' shall be determined using criteria that include (but are not limited to)--

``(A) the price paid in the recycling transaction;

``(B) the ability of the person to detect the nature of the consuming facility's operations concerning its

handling, processing, reclamation, or other management activities associated with recyclable material; and

``(C) the result of inquiries made to the appropriate Federal, State, or local environmental agency (or agencies) regarding the consuming facility's past and current compliance with substantive (not procedural or administrative) provisions of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, storage, or other management activities associated with the recyclable material. For the purposes of this paragraph, a requirement to obtain a permit applicable to the handling, processing, reclamation, or other management activity associated with the recyclable materials shall be deemed to be a substantive provision.

#### **SCRAP METAL**

``(d) Transactions Involving Scrap Metal.--

``(1) Transactions involving scrap metal shall be deemed to be arranging for recycling if the person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction--

``(A) the person met the criteria set forth in subsection (c) with respect to the scrap metal;

``(B) the person was in compliance with any applicable regulations or standards regarding the storage, transport, management, or other activities associated with the recycling of scrap metal that the Administrator promulgates under the Solid Waste Disposal Act subsequent to the enactment of this section and with regard to transactions occurring after the effective date of such regulations or standards; and

``(C) the person did not melt the scrap metal prior to the transaction.

``(2) For purposes of paragraph (1)(C), melting of scrap metal does not include the thermal separation of 2 or more materials due to differences in their melting points (referred to as 'sweating').

``(3) For purposes of this subsection, the term 'scrap metal' means 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, except for scrap metals that the Administrator excludes from this definition by regulation.

#### **SCRAP BATTERIES**

``(e) Transactions Involving Batteries.--Transactions involving spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries shall be deemed to be arranging for recycling if the

person who arranged for the transaction (by selling recyclable material or otherwise arranging for the recycling of recyclable material) can demonstrate by a preponderance of the evidence that at the time of the transaction--

((1) the person met the criteria set forth in subsection (c) with respect to the spent lead-acid batteries, spent nickel-cadmium batteries, or other spent batteries, but the person did not recover the valuable components of such batteries; and

((2) (A) with respect to transactions involving lead-acid batteries, the person was in compliance with applicable Federal environmental regulations or standards, and any amendments thereto, regarding the storage, transport, management, or other activities associated with the recycling of spent lead-acid batteries;

((B) with respect to transactions involving nickel-cadmium batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of spent nickel-cadmium batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto; or

((C) with respect to transactions involving other spent batteries, Federal environmental regulations or standards are in effect regarding the storage, transport, management, or other activities associated with the recycling of such batteries, and the person was in compliance with applicable regulations or standards or any amendments thereto.

## EXCLUSIONS

The exemptions for transactions involving any of the recyclable materials referenced above shall not apply if--

A) The person had an objectively reasonable basis to believe at the time of the recycling transaction--

- (i) that the recyclable material would not be recycled;
- (ii) that the recyclable material would be burned as fuel, or for energy recovery or incineration; or
- (iii) for transactions occurring before 90 days after the date of the enactment of this section, that the consuming facility was not in compliance with a substantive (not procedural or administrative) provision of any Federal, State, or local environmental law or regulation, or compliance order or decree issued pursuant thereto, applicable to the handling, processing, reclamation, or other management activities associated with the recyclable material;

B) the person had reason to believe that hazardous substances had been added to the recyclable material for purposes other than processing for recycling; or

C) the person failed to exercise reasonable care with respect to the management and handling of the recyclable material (including adhering to customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances).

For purposes of this subsection, an objectively reasonable basis for belief shall be determined using criteria that include (but are not limited to) the size of the person's business, customary industry practices (including customary industry practices current at the time of the recycling transaction designed to minimize, through source control, contamination of the recyclable material by hazardous substances), the price paid in the recycling transaction, and the ability of the person to detect the nature of the consuming

\*SREA was enacted on November 29, 1999, amending the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) 42 U.S.C. § 9601 *et seq.* SREA may also in some uses be referenced as the "D.C. Appropriations Act 2000, § 6001," the "Consolidated Appropriations Act for FY 2000, § 6001," or [P.L. 106-113](#), Section 6001, and is codified at 42 U.S.C. § 9627.