

DEFINITION OF SOLID WASTE
KEY ISSUES FOR THE NATIONAL MINING ASSOCIATION

- *Complete the final rule in a timely manner to promote regulatory certainty and focus on core element of statute and case law: whether a material has been discarded (thrown away, abandoned, disposed of). The final rule must also recognize the interdependency of the different segments of the primary metals industry. Splitting beneficiation and processing of minerals into separate industries, as contemplated in the October 2003 proposal, ignores the fact that secondary materials routinely flow between these segments as part of normal primary metals production processes. Viewing "reclamation" and "recycling" as "waste management activities" inhibits the extractive industry's ability to obtain maximum target metal recovery, and substantially disrupts the primary metals industry's production operations.*
- *Denying the exclusion to secondary materials reused/recycled at facility that also handles hazardous waste from another industry is environmentally counter-productive option offered in the October 2003 proposal. For example, a copper smelter that can recover metals values from F006 electroplating sludge uses the F006 as a small part of its feedstock (about 1 percent total feedstock). Although EPA properly considered encouraging metals recovery from F006 via separate rulemakings, the October 2003 proposed rule would have denied exclusion to a much larger volume of secondary materials because a smelter also uses a small amount of F006.*
- *The final rule should maintain the "legitimacy criteria" used to determine if a practice is sham recycling as factors for EPA to consider, and not establish rigid regulatory requirements. EPA should recognize that which legitimacy criteria are "key" to evaluating varying types of recycling practices will vary case-to-case. Therefore, the legitimacy criteria should remain guidance and should be applied flexibly in the context of real world operations.*
- *No retroactive liability should be imposed on secondary materials generators based on actions of unrelated, downstream handlers of those materials. Otherwise a generator would be penalized for actions of a third party, even though it has no control over that party's actions.*
- *Based on technical considerations relating to industry production processes, 24 months is a more appropriate speculative accumulation period for the primary metals industry. EPA could follow the Arizona state regulatory practice where secondary materials are considered to be "in-process" materials for 12 months following their generation; thereafter the 12-month speculative accumulation period is triggered and 75 percent of the accumulated materials must be used within that 12-month period.*