UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

Ms. Mary McAuliffe, Esq.
Office of Regional Counsel
EPA Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3507

Dear Ms. McAuliffe,

Thank you for your March 28, 2000 email to Richard Kinch requesting a clarification of the Bevill status of electric arc furnace slags.

The Bevill exclusion (Section 3001(b)(3)(A)(ii)) to the Resource Conservation and Recovery Act (RCRA) was passed in 1980. This section excludes "solid waste from the extraction, beneficiation, and processing of ores and minerals" from regulation as hazardous wastes under subtitle C of RCRA. In Environmental Defense Fund v. EPA, 852 F.2d 1316 (D.C. Cir 1988), cert. denied, 109 S. Ct. 1120 (1989), the Court directed the Agency to further define the scope of the Bevill exclusion. On September 1, 1989 at 54 FR 36592, the Agency promulgated a final rule that established definitions of extraction, beneficiation, and mineral processing. The September 1, 1989 rulemaking at 54 FR at 36619 also established the criteria the Agency would use to determine if a process was defined as mineral processing.

A mineral processing facility must meet the following criteria:

> Operation uses feedstock that is comprised of less than 50 percent scrap materials. The 50 percent rule applies to all materials entering a process operation that contain the mineral value rather than all materials entering the operation irrespective of function. The October 20, 1988 NPRM required that at least 50 percent of the feedstock to an operation be ore or mineral, or beneficiated ore or mineral, for the operation to be considered a primary mineral processing operation. Many commenters responding to that NPRM sought clarification concerning what materials are to be included as part of the "primary" feedstock, recommending that "in-process" materials derived from mineral processing should be considered "primary" feedstocks along with ores or minerals or beneficiated

> ores or minerals for the application of this fifty percent rule. In the preamble to the April NPRM, EPA asserted that the attribute, as presented in the October NPRM, affords (1) considerable flexibility to mineral processing operations, in that they are able to accept scrap and intermediate materials in their feedstocks and still be eligible for Bevill status, while (2) still maintaining the essential upper bound on the amount of non-ore present in a feedstock in order to ensure that wastes from operations that primarily process materials other than ores and minerals are not provided with an exclusion that Congress did not intend. EPA also clarified in the April NPRM that the 50 percent rule applies to all mineral-value containing materials entering a process operation (e.g., crushed copper ore, beneficiated copper ore, in-process materials, and scrap copper for the copper smelters), rather than to the total of all materials (i.e., mineral values plus non-mineral materials such as fuel, reducing agents, or fluxing agents) entering the operation. EPA also clarified that the accounting period over which to analyze feedstock percentages should be one year, which allows for seasonal fluctuations, and that the rule must be applied to individual processing operations (e.g., the smelter separate from the refinery) rather than to an entire plant's operations.

As stated above, only facilities processing less than 50 percent scrap are eligible for the Bevill exclusion. EPA believes that the September 1, 1989 rule provides an extremely flexible tool for screening out secondary processors from the universe of primary mineral processors (the only group eligible for the Bevill exclusion), while allowing (1) large percentages of scrap to be used in primary processing operations and (2) seasonal and other variation in the proportions of feedstock materials without affecting the potential Bevill status of associated wastes.

Steel making facilities utilizing electric arc furnaces that process more than 50 percent scrap, as do most "mini mills", are not eligible for the Bevill exclusion. All wastes from facilities which process more that 50 percent scrap are non-exempt solid wastes. Flue dust from steel making electric arc furnaces are listed hazardous wastes. All slags from steel making facilities that process more than 50 percent scrap are non-exempt solid wastes and are subject to RCRA Subtitle C if theses slags are characteristically hazardous.

If you have any questions regarding this Bevill opinion, please contact Stephen Hoffman at 703-308-843.

Sincerely,

Robert Dellinger, Director
Municipal and Industrial Waste Division