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December 22, 2017

VIA E-MAIL

Barnes Johnson, Director
Office of Resource Conservation
and Recovery
Office of Land and Emergency Management
US Environmental Protection Agency Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Mail Code: 5301P
Washington, DC 20460

Re: Importation of Spent Precious Metal Material

Dear Mr. Johnson:

Thank you again for meeting with Sabin Metal Corporation about potential ways of reducing the barriers to importation of precious metal bearing catalysts for reclamation at its state-of-the-art facility in North Dakota.

Based on our discussion, the “transfer-based exclusion” (as described in the 2008 “definition of solid waste” rule, 73 Fed. Reg. 64,668 (Oct. 30, 2008)) appears to be a promising option for facilitating the importation of precious metal bearing material by exempting it from the definition of “solid waste” (and therefore from the definition of “hazardous waste”). Sabin Metal’s understanding of the conditions for use of that exclusion is as follows:

- The “transfer-based exclusion” would need to be reinstated following resolution of all issues in *API v. EPA*, No. 09-1038 (D.C. Cir. panel decision July 7, 2017). Depending on the how the court shapes the final remedy in that case, the transfer-based exclusion may or may not include K171 and K172 wastes (which typically do not contain precious metals), but even if those materials are deemed to be ineligible for the reinstated exclusion, it still would cover other spent catalysts.
- All requirements set out in the 2009 version of 40 C.F.R. § 261.4(a)(24) would need to be satisfied, including maintenance of necessary financial assurance for the reclamation facility.
- The importer of record could satisfy the generator responsibilities under the exclusion and could be an affiliate of, agent of, or otherwise related to the reclaimer.

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- The transfer-based exclusion would need to be recognized by an authorized state where a reclamation facility is located, such as North Dakota.

Under those circumstances, spent precious metal bearing catalysts would not be considered hazardous waste under U.S. law and could be shipped to a reclaimer without using a hazardous waste manifest. Furthermore, EPA would be expected to take the position that any such spent precious metal bearing catalysts imported into the United States were not hazardous wastes such that there would be no U.S.-related impediment to an exporting country releasing such materials pursuant to the Basel Convention when the exporting country also does not classify them as hazardous waste.

Sabin Metal would very much appreciate receiving confirmation from your office that its understanding of the transfer-based exclusion in the import context is correct.

Very truly yours,



Roger W. Patrick
Counsel for Sabin Metal