Institute of Scrap Recycling Industries, Inc. (ISRI)

To Whom It May Concern at MPCA:

The Institute of Scrap Recycling Industries, Inc. (ISRI) is pleased to submit for your consideration the attached comments on your document, "MPCA Remediation Division PFAS Guidance (Draft)".

ISRI appreciates this opportunity to provide feedback.

Sincerely,
/s/
David L. Wagger, Ph.D.
Chief Scientist / Director of Environmental Management
Institute of Scrap Recycling Industries, Inc.

Via electronic submission at https://mpca.commentinput.com/?id=i4fVFUS38

October 6, 2023

Re: *MPCA Remediation Division PFAS Guidance (Draft)*

To Whom It May Concern at MPCA:

The Institute of Scrap Recycling Industries, Inc. (ISRI), on behalf of its Minnesota members, would like to submit for your consideration the comments below on your document, *MPCA Remediation Division PFAS Guidance (Draft): Life cycle-based guidance for PFAS at Superfund, Brownfield, and RCRA sites*[1] (henceforth, "the Draft Guidance"), in response to your invitation to provide feedback.

ISRI is the *Voice of the Recycled Materials Industry*™. With headquarters in Washington, DC, 18 chapters nationwide—including the Upper Midwest Chapter with Minnesota—and more than 1,600 members, ISRI represents companies that process, broker, and consume recyclable materials, including metals, paper, plastics, glass, rubber, electronics, and textiles. ISRI provides education, advocacy, and safety and compliance training, and promotes public awareness of the essential role that recycled materials play in the U.S. economy, global trade, the environment, and sustainable development. Based on the latest annual data (2021), the U.S. recycled materials industry produces more than $117 billion annually in economic activity and supports more than 500,000 Americans with good jobs. In Minnesota, the industry produces $2.4 billion annually in economic activity, supports nearly 11,000 good-paying jobs, and generates annually $123 million in state taxes and $154 million in federal taxes.

ISRI's general and specific comments on the Draft Guidance mainly concern the framing of the document.

I. General Comments

ISRI appreciates MPCA's effort by way of the Draft Guidance to create an organized approach to investigating sites added to its Remediation Program due to concerns about releases of PFAS. If the Draft Guidance solely focused on the technical aspects of the approach, that would be fine. In fact, from a technical perspective to MPCA's credit, the Draft Guidance does discuss ambient

[1] Available for download at https://scs-public.s3-us-gov-west-1.amazonaws.com/env_production/oid333/did200071/pid_207193/project-documents/PFAS%20guidance%20document.pdf.

background concentrations of PFAS to a significant degree, noting that "[b]ackground sources of PFAS are an evolving field of research" and promising to "apply knowledge gathered from future research to evaluate how to assess background levels at remediation sites."

However, from a larger framing perspective, ISRI finds that the Draft Guidance does not fully appreciate the ubiquity of PFAS in all media within Minnesota. The Comprehensive Environmental Response Compensation and Liability Act (CERCLA; aka Superfund) and the Minnesota Environmental Response and Liability Act (MERLA) were designed to address a released hazardous substance that had well-defined sources at a site, a finite extent of contamination by that hazardous substance at and around that site, and a finite number of potentially responsible parties. (RCRA cleanups are different.) Neither CERCLA nor MERLA were designed to address a hazardous substance that is present everywhere, as is the case for PFAS in Minnesota. A recent MPCA study on ambient background concentrations[2] concluded the following concerning precipitation: "[N]early all the median PFOS precipitation concentrations identified by Pfotenhauer et al. 2022 (Table 5) exceed MPCA's site-specific water quality criterion for PFOS of 0.05 ng/L." PFAS concentrations in precipitation were generally below 0.5 ng/L (part per trillion or ppt), but reached as high as 2 ppt. It is worth noting that U.S. EPA's current non-regulatory health advisories[3] for PFOA and PFOS in drinking water are 0.004 and 0.02 ppt, respectively.

According to the Draft Guidance, "MPCA responds **whenever** a hazardous substance, pollutant, or contaminant is released or there is a threatened release which presents an imminent and substantial danger to the public health or welfare or environment" (emphasis added). It is unclear whether MPCA can actually respond to every release with limited resources or what basis MPCA uses to add a site to its Remediation Program due to PFAS. When every property in Minnesota is potentially a remediation site, a rational approach to managing this situation with limited resources is to consider relative risk across all sites and to focus resources on the most-serious risks (e.g., source facilities vs. conduit facilities[4]).

This Guidance should take relative risks across sites into account, or simply focus on the technical aspects of investigating a site in MPCA's Remediation Program due to PFAS.

[2] MPCA. "PFAS ambient background concentrations" (tdr-g1-25). May 2023.
[3] 87 Fed. Reg. 36848-36849; June 21, 2022.
[4] MPCA. *PFAS Monitoring Plan*. March 2022: 7.

II. Specific Comments

ISRI's specific comments concern references to the recycled materials industry, related issues, and technical matters.

A. MPCA Should Not Arbitrarily Lump "Scrapyards" with Industries that Make and/or Intentionally Use PFAS

Under "*Desktop Review, Milestone 1, Action 1*", the Draft Guidance states:

> *PFAS have been widely used in industrial processes and in manufacturing consumer products for several decades. The PFAS Monitoring Plan identified a list of specific industry sector codes that may be associated with PFAS use and/or release.*

This text starts out by focusing on use in "widely used in industrial processes and in manufacturing" and then suddenly mentions "PFAS use and/or release". How did "release" get there? As shown in the MPCA study on ambient background concentrations[5], it is possible for a site to release PFAS without PFAS ever having been used on or at the site (e.g., PFAS arriving to the site by air deposition and precipitation). The excerpted text is followed by a list of industries that make or intentionally use PFAS as an integral component of their materials, products, or services, with "Scrapyards" and "Waste disposal and treatment" included as the last entries in the list. In the case of "scrapyards", they do not use PFAS as part of the metal recycling process. PFAS associated with recycling processes is unintentional and passively received. PFAS provides no value to their recycling processes or to the recycled metal produced by them.

This list of industries also appears in Annex I, except that Annex I has an additional entry for "Properties where aqueous film forming foam (AFFF) was used" inserted curiously between "Scrapyards" and "Waste disposal and treatment" at the end. From a risk perspective, AFFF use seems to be an important category of "Industries and industrial practices associated with the generation, use, storage, or disposal of PFAS". AFFF concentrate is reported[6] to contain 1-6% PFAS. When mixed with water at 1:99 parts (i.e., 1% dilution)[7], the PFAS concentration in the mixture is 100-600 parts per million (ppm), which translates to 100,000,000-600,000,000 ppt. Sources of PFAS at industries that make or intentionally use

[5] MPCA. "PFAS ambient background concentrations" (tdr-g1-25). May 2023.
[6] See Interstate Technology Regulatory Council's PFAS information in Section 3.6 (AFFF Procurement and Inventory.
[7] This is a typical dilution ratio; see, for example, this product sheet.

PFAS as an integral component of their materials, products, or services could be even more concentrated.

The problem with either list is that they suggest that all of the listed types of industries are equivalent from a risk perspective. This is not true, especially in the case of "scrapyards". The Guidance should not imply such by lumping "scrapyards", for which PFAS is unintentional, with industries that make or intentionally use PFAS as an integral component of their materials, products, or services.

B. Distinguishing Between PFAS Users and PFAS Receivers is a Good Concept that MPCA Should Actually Use

Under "*Desktop Review, Milestone 1, Action 1*", shortly after the list mentioned above, the Draft Guidance states:

> *The above listed industry categories include major manufacturing and industry sources as well as waste facilities. MPCA distinguishes between facilities that directly use or have used PFAS in commercial and industrial operations and facilities that are or have been receivers of PFAS waste, such as waste disposal, recycling, or treatment facilities. However, both types of facilities are included in this list as potentially associated with PFAS release.*

ISRI agrees with MPCA that it is important to "distinguish[] between facilities that directly use or have used PFAS in commercial and industrial operations and facilities that are or have been receivers of PFAS". In fact, in its PFAS Monitoring Plan[8], MPCA notes:

> *In considering how to prevent and manage PFAS pollution, the MPCA finds it useful to differentiate between industrial facilities that may be sources of PFAS pollution and facilities that are likely conduits for PFAS releases into the environment (usually waste management, recycling, or treatment facilities).*

The distinction between PFAS Users/Sources and PFAS Receivers/Conduits is very useful from a risk management perspective. While MPCA acknowledges this important distinction in the Draft Guidance, in the next sentence above, MPCA effectively cancels it: "However, both types of facilities are included in this list as potentially associated with PFAS release." MPCA is suggesting that all releases are the same, with no regard for relative risk.

[8] MPCA. *PFAS Monitoring Plan*. March 2022: 3.

MPCA should use this important distinction in the Guidance, rather than offer it as some theoretical construct.

C. "Scrapyards", "Scrap Yards", and "Metal Salvage Facilities" are Not Solid Waste Facilities

In the list of industries under "*Desktop Review, Milestone 1, Action 1*" and in Annex I mentioned above, "Scrapyards" are properly distinguished from "Waste disposal and treatment". Shortly below the list under "*Desktop Review, Milestone 1, Action 1*", the Draft Guidance improperly states: "solid waste facilities (including municipal solid waste landfills, legacy disposal sites, scrap yards, metal salvage facilities, and unpermitted dumps)".

"Scrap yards" and "metal salvage facilities" are distinct from the rest of the entries in this parenthetical group. Unlike those others, "scrap yards" and "metal salvage facilities" produce recycled metals from their inputs and are not in the business of disposing of their inputs as a service, such as landfills do. Generating solid waste as a byproduct of an industrial process that produces useful and saleable products (e.g., recycled metals) from the majority of the input materials does not make the processing facility a solid waste facility. If that were so, then just about every manufacturing facility would be a solid waste facility.

The Guidance must properly distinguish "scrap yards", "scrapyards", and "metal salvage facilities" from actual solid waste facilities that are in the business of disposal or treatment for disposal.

In closing, ISRI and its Minnesota members appreciate this opportunity to provide feedback on your document, *MPCA Remediation Division PFAS Guidance (Draft)*, and your consideration of our comments. If you have any questions, you can reach me at DWagger@isri.org or 202-662-8533.

Sincerely,

David L. Wagger, Ph.D.
Chief Scientist / Director of Environmental Management
Institute of Scrap Recycling Industries, Inc.