American Mining Congress
v.
United States Environmental Protection Agency

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

824 F.2d 1177

July 31, 1987, Decided

PRIOR HISTORY:

Petitioner for Review of Orders of the U.S. Environmental Protection Agency.

JUDGES: Starr and Mikva, Circuit Judges, and McGowan, Senior Circuit Judge. Mikva, Circuit Judge, dissenting.

OPINIONBY: STARR

OPINION: [*1178] STARR, Circuit Judge:

These consolidated cases arise out of EPA's regulation of hazardous wastes under the Resource Conservation and Recovery Act of 1976 ("RCRA"), ... Petitioners, trade associations representing mining and oil refining interests, challenge regulations promulgated by EPA that amend the definition of "solid waste" to establish and define the agency's authority to regulate secondary materials reused within an industry's ongoing production process. [P]petitioners maintain that EPA has exceeded its regulatory authority in seeking to bring materials that are not discarded or otherwise disposed of within the compass of "waste."

I

RCRA is a comprehensive environmental statute under which EPA is granted authority to regulate solid and hazardous wastes. RCRA was enacted in, and amended in 1978, 1980, and 1984. * * * [*1179] * * *.

Congress' "overriding concern" in enacting RCRA was to establish the framework for a national system to insure the safe management of hazardous waste. * * *. In passing RCRA, Congress expressed concern over the "rising tide" in scrap, discarded, and waste materials. * * *. As the statute itself puts it, Congress was concerned with the need "to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices." * * *. Congress thus crafted RCRA "to promote the protection of health and the environment and to conserve valuable material and energy resources." * * *.

RCRA includes two major parts: one deals with non-hazardous solid waste management and the other with hazardous waste management. Under the latter, EPA is directed to promulgate regulations establishing a comprehensive management system. * * *. EPA's authority, however, extends only to the regulation of "hazardous waste." Because "hazardous waste" is defined as a subset of "solid waste," *id* § 6903(5), the scope of EPA's jurisdiction is limited to those materials that constitute "solid waste." That pivotal term is defined by RCRA as

> any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution

> control facility *and other discarded material*, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining, and agricultural operations, and from community activities. . . .

42 U.S.C. § 6903(27) (emphasis added). As will become evident, this case turns on the meaning of the phrase, "and other discarded material," contained in the statute's definitional provisions.

EPA's interpretation of "solid waste" has evolved over time. On May 19, 1980, EPA issued interim regulations defining "solid waste" to include a material that is "a manufacturing or mining by-product and sometimes is discarded." * * *. This definition contained two terms needing elucidation: "by-product" and "sometimes discarded." In its definition of "a manufacturing or mining by-product," EPA expressly *excluded* "an intermediate manufacturing or mining product which results from one of the steps in a manufacturing or mining process and is typically processed through the next step of the process within a short time." * * *.

In 1983, the agency proposed narrowing amendments to the 1980 interim rule. * * *. The agency showed especial concern over *recycling* activities. In the preamble to the amendments, the agency observed that, in light of the interlocking statutory provisions and RCRA's legislative history, it was clear that "Congress indeed intended that materials being recycled or held for recycling can be wastes, and if hazardous, hazardous wastes." * * *. The agency also asserted that "not only can materials destined for recycling or being recycled be solid and hazardous wastes, but the Agency clearly has the authority to regulate recycling activities as hazardous management." * * *..

While asserting its interest in recycling activities (and materials being held for recycling), EPA's discussion left unclear whether the agency in fact believed its jurisdiction extended to materials recycled in an industry's on-going production processes, or only to materials disposed of and recycled as part of a waste management program. [The] EPA stated that "the revised definition of solid waste sets out the Agency's view of its jurisdiction over the recycling of hazardous waste . . . Proposed section 261.6 then contains exemptions from regulations for those hazardous waste recycling activities that we do not think require regulation." * * * [*1180] * * *. The amended regulatory description of "solid waste" itself, then, did not include materials "used or reused as effective substitutes for raw materials in processes using raw materials as principal feedstocks." * * *. EPA explained the exclusion as follows:

> [These] materials are being used essentially as raw materials and so ordinarily are not appropriate candidates for regulatory control. Moreover, when these materials are used to manufacture new products, the processes generally are normal manufacturing operations. . . . The Agency is reluctant to read the statute as regulating actual manufacturing processes.

* * *. This, then, seemed clear: EPA was drawing a line between discarding and ultimate recycling, on the one hand, and a continuous or ongoing manufacturing process with one-site "recycling," on the

other. If the activity fell within the latter category, then the materials were not deemed to be "discarded."

After receiving extensive comments, EPA issued its final rule on January 4, 1985. * * *. Under the final rule, materials are considered "solid waste" if they are abandoned by being disposed of, burned, or incinerated; or stored, treated, or accumulated before or in lieu of those activities. In addition, certain recycling activities fall within EPA's definition. EPA determines whether a material is a RCRA solid waste when it is recycled by examining both the material or substance itself and the recycling activity involved. The final rule identifies five categories of "secondary materials" (spent materials, sludges, by-products, commercial chemical products, and scrap metal). These "secondary materials" constitute "solid waste" when they are disposed of; burned for energy recovery or used to produce a fuel; reclaimed; or accumulated speculatively. * * *. n1 Under the final rule, if a material constitutes "solid waste," it is subject to RCRA regulation *unless* it is directly reused as an ingredient or as an effective substitute for a commercial product, or is returned as a raw material substitute to its original manufacturing process. n2 * * *. In the jargon of the trade, the latter category is known as the "closed-loop" exception. In either case, the material must not first be "reclaimed" (processed to recover a usable product or regenerated). * * *. EPA exempts these activities "because they are like ordinary usage of commercial products." * * *.

n1 [Footnote omitted.].

n2 [Footnote omitted.]

II

Petitioners, American Mining Congress ("AMC") and American Petroleum Institute ("API"), challenge the scope of EPA's final rule. Relying upon the statutory definition of "solid waste," petitioners contend that EPA's authority under RCRA is limited to controlling materials that are *discarded* or *intended for discard*. They argue that EPA's reuse and recycle rules, as applied to in-process secondary materials, regulate materials that have not been discarded, and therefore exceed EPA's jurisdiction. n3

n3 [Footnote omitted.]

[*1181] To understand petitioners' claims, a passing familiarity with the nature of their industrial processes is required.

Petroleum. Petroleum refineries vary greatly both in respect of their products and their processes. Most of their products, however, are complex mixtures of hydrocarbons produced through a number of interdependent and sometimes repetitious processing steps. In general, the refining process starts by "distilling" crude oil into various hydrocarbon streams or "fractions." The "fractions" are then subjected to a number of processing steps. Various hydrocarbon materials derived from virtually all stages of processing are combined or blended in order to produce products such as gasoline, fuel oil, and lubricating oils. Any hydrocarbons that are not usable in a particular form or state are returned to an appropriate stage in the refining process so they can eventually be used. Likewise, the hydrocarbons and materials which escape from a refinery's production

vessels are gathered and, by a complex retrieval system, returned to appropriate parts of the refining process. Under EPA's final rule, this reuse and recycling of materials is subject to regulation under RCRA.

Mining. In the mining industry, primary metals production involves the extraction of fractions of a percent of a metal from a complex mineralogical matrix (i.e., the natural material in which minerals are embedded). Extractive metallurgy proceeds incrementally. Rome was not built in a day, and all metal cannot be extracted in one fell swoop. In consequence, materials are reprocessed in order to remove as much of the pure metal as possible from the natural ore. Under EPA's final rule, this reprocessed ore and the metal derived from it constitute "solid waste." What is more, valuable metal-bearing and mineral-bearing dusts are often released in processing a particular metal. The mining facility typically recaptures, recycles, and reuses these dusts, frequently in production processes different from the one from which the dusts were originally emitted. The challenged regulations encompass this reprocessing, to the mining industry's dismay.

Against this factual backdrop, we now examine the legal issues presented by petitioners' challenge.

III

We observe at the outset of our inquiry that EPA's interpretation of the scope of [*1182] its authority under RCRA has been unclear and unsteady. . . ., EPA has shifted from its vague "sometimes discarded" approach of 1980 to a proposed exclusion from regulation of all materials used or reused as effective substitutes for raw materials in 1983, and finally, to a very narrow exclusion of essentially only materials processed within the meaning of the "closed-loop" exception under the final rule. We emphasize, therefore, that we are confronted with neither a consistent nor a longstanding agency interpretation. Under settled doctrine, "an agency interpretation of a relevant provision which conflicts with the agency's earlier interpretation is 'entitled to considerably less deference' than a consistently held agency view." *I.N.S. v. Cardoza-Fonseca* * * *.

A

Because the issue is one of statutory interpretation, the principles enunciated in *Chevron U.S.A., Inc. v. NRDC*, . . ., and its progeny guide our inquiry. n4 In *Chevron*, a unanimous Supreme Court laid out a now familiar, general framework for analyzing agency interpretations of statutes. First, the reviewing court is to consider whether Congress "has directly spoken to the precise question at issue." * * *. This inquiry focuses first on the language and structure of the statute itself. If the answer is not yielded by the statute, then the court is to look to secondary indicia of intent, such as the measure's legislative history. As the *Chevron* Court emphatically declared: "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." * * *.

n4 [Footnote omitted.]

In cases where Congress' intent is not clear, the Supreme Court set forth a second analytical step: "If the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute. . . . In such a case, a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Id.* at 843-44.

We thus begin our inquiry with the first step of *Chevron's* analysis: did Congress clearly intend to limit EPA's regulatory jurisdiction to materials disposed of or abandoned, as opposed to materials reused within an ongoing production process? * * *.

* * * [*1183] * * *.

As we are confronted in this case with a "pure" question of statutory construction, we remain mindful of the fact that "the judiciary is the final authority on issues of statutory construction. . . . If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue,that intention is the law and must be given effect." * * *. n5

n5 [Footnote omitted.]

B

Guided by these principles, we turn to the statutory provision at issue here. Congress, . . ., granted EPA power to regulate "solid waste." Congress specifically defined "solid waste" as "discarded material." EPA then defined "discarded material" to include materials destined for reuse in an industry's *ongoing* production processes. The challenge to EPA's jurisdictional reach is founded, . . ., on the proposition that in-process secondary materials are outside the bounds of EPA's lawful authority. Nothing has been *discarded*, the argument goes, and thus RCRA jurisdiction remains untriggered.

1

The first step in statutory interpretation is, of course, an analysis of the language itself. As the Supreme Court has often observed, "the starting point in every case involving statutory construction is 'the language employed by Congress.'" * * *. n6 In pursuit of Congress' intent, we "start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used." * * *. These sound principles governing the reading of statutes seem especially forceful in the context of the present case. Here, Congress defined "solid waste" as "discarded material." [*1184] The ordinary, plain-English meaning of the word "discarded" is "disposed of," "thrown away" or "abandoned." n7 Encompassing materials retained for immediate reuse within the scope of "discarded material" strains, . . ., the everyday usage of that term

n6 [Footnote omitted.]

n7 The dictionary definition of "discard" is "to drop, dismiss, let go, or get rid of as no longer useful, valuable, or pleasurable." Webster's Third New International Dictionary, G. & C. Merriam Co. (1981). * * *.

Although the "ordinary and obvious meaning of the [statutory] phrase is not to be lightly discounted," . . ., we are hesitant to attribute decisive significance to the ordinary meaning of statutory

language. . . . [O]ur inquiry might well and wisely stop with the plain language of the statute, since it is the statute itself that Congress enacts and the President signs into law. But as the Supreme Court recently observed, the "more natural interpretation" (or plain meaning) is not necessarily determinative. n8 * * *. And it is not infrequently said, . . ., that a matter may be within the letter of a statute but not within its spirit. * * *.

n8 [Footnote omitted.]

We hasten to add that this is by no means to say that language employed by a legislative body in that which we call *law* is doomed to remain inherently unclear and ambiguous. The Supreme Court has held, in a variety of contexts, that the statutory terms themselves can and do clearly express Congress' intent. * * *. [W]e dare accord the ordinary meaning of "discarded" -- i.e., disposed of -- considerable, but by no means conclusive, weight in our interpretive task.

n9 [Footnote omitted.]"

In short, a complete analysis of the statutory term "discarded" calls for more than resort to the ordinary, everyday meaning of the specific language at hand. For, "the sense in which [a term] is used in a statute must be determined by reference to the purpose of the particular legislation." * * *. n10 The statutory provision cannot properly be torn from the law of which it is a part; context and structure are, as in examining any legal instrument, of substantial import in the interpretive exercise. * * *.

n10 [Footnote omitted.]

As we previously recounted, the broad objectives of RCRA are "to promote the protection of health and the environment and to conserve valuable material and energy resources. . . ." * * *. But that goal is of majestic breadth, and it is difficult, . . ., to pour meaning into a highly specific term by resort to grand purposes. Somewhat more specifically, we have seen that RCRA was enacted in response to Congressional findings that the "rising tide of scrap, discarded, and waste materials" generated by consumers and increased industrial production has presented heavily populated urban communities with "serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes." * * *. In light of this problem, Congress determined that "federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices was necessary." * * *. Also animating Congress were its findings that "disposal of solid and hazardous waste" without careful planning and management presents a danger to human health and the environment; that methods to "separate usable materials from solid waste" should be employed; and that usable energy can be produced from solid waste. * * *.

The question we face, then, is whether, . . ., Congress was using the term "discarded" in its ordinary sense – "disposed of" or "abandoned" – or whether Congress was using it in a much more open-ended way, so as to

encompass materials no longer useful in their original capacity though destined for immediate reuse in another phase of the industry's ongoing production process.

For the following reasons, we believe the former to be the case. RCRA was enacted, as the Congressional objectives and findings make clear, in an effort to help States deal with the ever-increasing problem of solid waste *disposal* by encouraging the search for and use of alternatives to existing [*1186] methods of disposal (including recycling) and protecting health and the environment by regulating hazardous wastes. To fulfill these purposes, it seems clear that EPA need not regulate "spent" materials that are recycled and reused in an *ongoing* manufacturing or industrial process. n11 These materials have not yet become part of the waste disposal problem; rather, *they are destined for beneficial reuse or recycling in a continuous process by the generating industry itself*.

> n11 EPA argues that a narrow reading of "discarded" would "vitiate" RCRA's remedial purpose. * * *. We cannot agree. EPA provides no explanation for this remarkable proposition, and we fail to see how not regulating in-process secondary materials in an on-going production process will subvert RCRA's waste disposal management goals. Our difficulty in discerning the stated necessity of this regulatory outreach is reinforced by the fact that the agency itself previously concluded that its regulatory authority did not extend to ongoing production processes of a manufacturer.

. . . [I]n *Riverside Bayview*, . . . the [Army] Corps of Engineers had defined "the waters of the United States" within the meaning of the Clean Water Act, . . ., to include "wetlands." Recognizing that it strained common sense to conclude that "Congress intended to abandon traditional notions of 'waters' and include in that term 'wetlands' as well," the Court performed a close and searching analysis of Congress' intent to determine if this counterintuitive result was nonetheless what Congress had in mind. * * *. The Court based its holding (that the agency's expansive definition of "waters of the United States" was reasonable) on several factors: Congress' acquiescence in the agency's interpretation; provisions of the statute expressly including "wetlands" in the definition of "waters"; and, importantly, the danger that forbidding the Corps to regulate "wetlands" would defeat Congress' purpose since pollutants in "wetlands" water might well flow into "waters" that were indisputably jurisdictional. * * *. Thus, due to the nature of the water system, the very evil that Congress sought to interdict – the befouling of the "waters of the United States" – would likely occur were the Corps of Engineers' jurisdiction to stop short of wetlands. *Riverside Bayview*, 106 S. Ct. at 463.

The present case, on the other hand, seems to us more analogous to *Dimension Financial*, in which a unanimous Court rebuffed the attempt of the Federal Reserve Board to extend its jurisdiction to so-called "non-bank" banks, financial services institutions that were, . . ., functional equivalents of banks. The Court looked to the language and purpose of the governing statute and concluded that Congress' intent was clear: its definition of "bank" did not confer regulatory power over "non-bank banks." * * *. n12 * * *. . . . EPA's regulation of in-process materials, like the Fed's attempted regulation of "non-bank banks," seems to us an effort to get

at the same evil (albeit, very broadly defined) that Congress had identified by extending the agency's regulatory compass, rather than, as with the regulation of wetlands, an attempt to reach activities that if left unregulated would sabotage the agency's regulatory [*1187] mission. n13 We are thus not presented with a situation in which Congress likely intended that the pivotal jurisdictional term be read in its broadest sense, detached from everyday parlance; instead, we have a situation in which Congress, perhaps through the process of legislative compromise which courts must be loathe to tear asunder, employed a term with a widely accepted meaning to define the materials that EPA could regulate under RCRA. * * *. And it was that term which the Congress . . . passed and the President ultimately signed into law.

n12 [Footnote omitted.]

n13 [Footnote omitted.]

2

Our task in analyzing the statute also requires us to determine whether other provisions of RCRA shed light on the breadth with which Congress intended to define "discarded." As the Supreme Court reiterated a few years ago, in interpreting a statute, "we do not . . . construe statutory phrases in isolation; we read statutes as a whole." * * *. The structure of a statute, in short, is important in the sensitive task of divining Congress' meaning.

In its brief, EPA directed us to a number of statutory provisions, arguing that they support its expansive definition of "discarded." This turned out, however, to be a wild goose chase through the labyrinthine maze of 42 U.S.C., for as counsel for EPA commendably recognized at oral argument, those statutory provisions speak in terms of "hazardous" (or "solid") waste." n14 In consequence, EPA's various arguments based on the statute itself are, upon analysis, circular, relying upon the term "solid waste" or "hazardous waste" to extend the reach of those very terms. This, all would surely agree, will not do.

n14 [Footnote omitted.]

EPA has, however, advanced two arguments of potential merit based on specific RCRA provisions, and these therefore deserve our careful attention. *First*, EPA argues that § 6924(r)(2) of RCRA implicitly authorizes the agency to regulate recycled secondary materials. That subsection, we note at the outset, is highly specific; it exempts from a general labelling requirement fuels produced from petroleum refining waste containing oil if such materials (1) are "generated and reinserted on-site into the refining process" and (2) meet two other requirements, not relevant for our purposes. n15 It cannot go unnoticed that [*1188] this subsection can be interpreted to come into play only where the material has become "hazardous waste" by being disposed of, and then is generated and reinserted on-site into the refining process. This * * *.

* * *.

n15 [Footnote omitted.]

n16 [Footnote omitted.].

Second, EPA argues that § 6924(q)(1) evinces Congressional intent to include recycled in-process materials within the definition of "solid waste." . . .[T]his

provision is . . . a subsection of § 6924 and is therefore directed towards hazardous waste treatment facilities. The ever-present circularity problem thus looms here as well. But that is not all. EPA's argument is deficient in other respects too. Section 6924 (q)(1) commands the agency to promulgate standards applicable to persons who produce, market, distribute, or burn fuels produced from or otherwise containing hazardous waste. The final sentence of that subparagraph states:

> For purposes of this subsection, the term "hazardous waste listed under section 6921 of this title" includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component [*1189] of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel.

Congress apparently added this language to override a then-existing EPA regulation which provided that unused commercial chemical products were solid wastes only when "discarded." * * *. "Discarded" was at that time defined as abandoned (and not recycled) by being disposed, burned, or incinerated (but not burned for energy recovery). * * *.

We think it likely that in this provision Congress meant only to speak to the specific problem it identified – the burning of commercial chemicals as fuels, contrary to their original intended use. * * *. n17

> n17 [Footnote omitted.]

After this mind-numbing journey through RCRA, we return to the provision that is, after all, the one before us for examination. And that definitional section, we believe, indicates clear Congressional intent to limit EPA's authority. First, the definition of "solid waste" is situated in a section containing thirty-nine separate, defined terms. This is definitional specificity of the first order. The very care evidenced by Congress in defining RCRA's scope certainly suggests that Congress was concerned about delineating and thus cabining EPA's jurisdictional reach.

Second, the statutory definition of "solid waste" is quite specific. Although Congress well knows how to use broad terms and broad definitions, as for example, "waters of the United States" in *Riverside Bayview*, . . ., the definition here is carefully crafted with specificity. It contains three specific terms and then sets forth the broader term, "other discarded material." . . ., [W]here general words follow the enumeration of particular classes of things, the general words are most naturally construed as applying only to things of the same general class as those enumerated. Lest the * * *. Here, the three particular classes – garbage, refuse, and sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility – contain materials that clearly fit within the ordinary, everyday sense of "discarded." It is most sensible to conclude that Congress, in adding the concluding phrase "other discarded material," meant to grant EPA authority over similar types of waste, but not to open up the federal regulatory reach of an entirely new category of materials, *i.e.*, materials neither disposed of nor abandoned, but passing in a continuous

stream or flow from one production process to another. n18

n18 [Footnote omitted.]

In sum, our analysis of the statute reveals clear Congressional intent to extend EPA's authority only to materials that are truly discarded, disposed of, thrown away, or abandoned. EPA nevertheless submits that the legislative history evinces a contrary intent* * *.

* * *.n19 Although we find RCRA's statutory language unambiguous, and can discern no exceptional circumstances warranting resort to its legislative history, [*1191] we will nonetheless in an abundance of caution afford EPA the benefit of consideration of . . . secondary materials

n19 [Footnote omitted.]

4

EPA points first to damage incidents cited by Congress in 1976 as justification for establishing a hazardous waste management system. * * *. n20 Neither of the incidents noted by EPA, however, involved commercial, in-process reuse or recycling activities. Instead, both incidents provide clear examples of waste *disposal*, which, of course, indisputably falls within EPA's jurisdiction conferred by RCRA.

n20 [Footnote omitted.]

EPA next asserts that the "most significant" aspect of the 1976 legislative history is the sense that Congress enacted broad grants of regulatory authority in order to "'eliminate[] the last remaining loophole in environmental law.'* * *. EPA, however, neglects to favor us with the entire sentence, and thereby misses the thrust of this passage. In pertinent part, the Report states as follows: "[The Committee] believes that the approach taken by this legislation eliminates the last remaining loophole in environmental law, that of *unregulated land disposal of discarded materials and hazardous wastes*." *Id.* (emphasis added)

* * *.

n21 [Footnote omitted.]

n22 [Footnote omitted.]

n23 [Footnote omitted.]

To the contrary, a fair reading of the legislative history reveals intimations of an intent to regulate under RCRA only materials that have truly been discarded. Not only is the language of the legislative history fully consistent with the use of "discarded" in the sense of "disposed of," but it strains the language to read it otherwise. Most significantly, in discussing its choice of the words "discarded materials" to define "solid waste," the House Committee stated:

> Not only solid wastes, but also liquid and contained gaseous wastes, semi-solid wastes and sludges are the subjects of this legislation. Waste itself is a misleading word in the context of the committee's activity. *Much industrial and agricultural waste is reclaimed or put to new use and is therefore not a part of the discarded materials disposal problem the committee addresses*.

H.R. Rep. No. 1491, 94th Cong., 2d Sess. at 2 (emphasis added). The Committee then went on to explain that

"the term discarded materials is used to identify collectively those substances often referred to as industrial, municipal or post-consumer waste; *refuse, trash, garbage, and sludge*." * * *. (emphasis added.) Later in the Report, the Committee stated: "The overwhelming concern of the Committee, however, is the effect on the population and environment of the *disposal* of discarded hazardous wastes. . . . Unless neutralized or otherwise properly managed in their *disposal*, hazardous wastes present a clear danger. . . ." * * *. (emphasis added). Throughout the Report, the Committee refers time and again to the problem motivating the enactment of RCRA as the *disposal* of waste.

In the Senate, a brief discussion took place as to the scope of the definition of "solid waste." In response to Senator Domenici's expression of concern that RCRA be aimed only at "the *disposal* of municipal and industrial wastes and not at the regulation of mining," Senator Randolph, the chairman of the Committee, unequivocally stated: "The bill definitely is directed at the *disposal* of municipal and industrial wastes." * * *. (emphasis added). To the extent this colloquy has probative value, . . ., it cuts squarely against expansive agency notions of the breadth of its jurisdictional reach.

After all is said and done, we are satisfied that the legislative history, rather than evincing Congress' intent to define "discarded" to include in-process secondary materials employed in an ongoing manufacturing process, confirms that the term was [*1193] employed by [Congress] in its ordinary, everyday sense. n24

n24 [Footnote omitted.]

IV

We are constrained to conclude that, in light of the language and structure of RCRA, the problems animating Congress to enact it, and the relevant portions of the legislative history, Congress clearly and unambiguously expressed its intent that "solid waste" (and therefore EPA's regulatory authority) be limited to materials that are "discarded" by virtue of being disposed of, abandoned, or thrown away. n25 While we do not lightly overturn an agency's reading of its own statute, we are persuaded that by regulating in-process secondary materials, EPA has acted in contravention of Congress' intent. n26 Accordingly, the petition for review is

n25 EPA also argues that this court has previously rejected the contention that a RCRA "waste" must first be discarded or thrown away. * * *. We disagree. In *Brewers*, petitioners challenged the "Solid Waste Management Guidelines for Beverage Containers" promulgated by EPA pursuant to the Solid Waste Disposal Act, as amended by the Resource Recovery Act of 1970, and the 1976 enactment of RCRA. The beverage container guidelines required manufacturers, in effect, to mark containers as returnable. Noting that the Guidelines did not require a change in design or materials, the court stated:

> We fail to discern from the record any support for the suggestion that marking containers requires interference with decisions as to product or package design or materials.

Id. at 983. * * *.

n26 Petitioner AMC also advances an arbitrary-and-capricious challenge to certain provisions of EPA's final rule. Because we decide that EPA exceeded its statutory authority in regulating in-process secondary materials, we do not reach AMC's arbitrary-and-capricious claims. * * *.

Granted.

DISSENTBY: MIKVA

DISSENT: MIKVA, Circuit Judge, dissenting:

The court today strains to overturn the Environmental Protection Agency's interpretation [*1194] of the Resource Conservation and Recovery Act to authorize the regulation of certain recycled industrial materials. Under today's decision, the EPA is prohibited from regulating in-process secondary materials that contribute to the ominous problem that Congress sought to eradicate by passing the RCRA. In my opinion, the EPA has adequately demonstrated that its interpretation is a reasonable construction of an ambiguous term in a statute committed to the agency's administration. We therefore are obliged to defer to the agency's interpretation under the principles of *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984), and *INS v. Cardoza-Fonseca*, 480 U.S. 421, 107 S. Ct. 1207, 94 L. Ed. 2d 434 (1987). I dissent.

I.

I agree with the majority that the case turns on the definition of solid waste as "discarded material" in RCRA. *See* 42 U.S.C. § 6903(27). On its face, this definition would not necessarily encompass the in-process secondary materials at issue in this case. However, the EPA has pointed us to an important statutory provision and a key passage from the legislative history that strongly support the agency's interpretation. At a minimum, they establish that the issue is ambiguous, so that we must defer to the agency's solution if it is reasonable.

* * *.

The legislative history of the 1984 RCRA amendments also cuts firmly in EPA's favor. The version of the bill passed by the House contained a section directing the agency to regulate hazardous wastes that are used, reused, recycled, or reclaimed. H.R. 2867, § 8. (This provision eventually was deleted on the ground that RCRA already provided the EPA with authority to regulate these materials. * * *. The report accompanying this provision explained:

> This provision is intended to reaffirm the Agency's existing authority to regulate as [sic] hazardous waste to the extent it may be necessary to protect human health and the environment. The Committee affirms that RCRA already provides regulatory authority over these activities (which authority the Agency has exercised to a limited degree) and in this provision is amending to clarify that *materials being used, reused, recycled, or reclaimed can indeed be solid and hazardous wastes and that these various recycling activities may constitute hazardous waste treatment, storage, or disposal*.

H.R. Rep. No. 198, 98th Cong., 2d Sess. (1984) (emphasis added).

* * *.

In sum, EPA has adduced support for its interpretation of the pivotal RCRA provision in other sections of the statute and in the accompanying legislative

history. Moreover, contrary to the majority's gratuitous suggestion that passages from committee reports are of questionable value in discerning legislative intent, *see* maj. op. at 1191, n.22, such reports afford us valuable guidance. They usually provide a considered and bipartisan commentary that illuminates the close issues courts are frequently called upon to adjudicate.

I acknowledge that the majority cites other evidence that casts some doubt on the agency's interpretation. But this is a concession that the agency can afford, while the majority cannot. EPA need demonstrate only that its definition of solid waste does not clearly contradict congressional intent. Section 6924 as well as the key piece of legislative history cited above provide ample evidence for that modest proposition. *Chevron* therefore requires us to give effect to the agency interpretation if it is reasonable.

In my opinion, the EPA's interpretation of solid waste is completely reasonable in light of the language, policies, and legislative [*1196] history of RCRA. *See United States v. Riverside Bayview Homes*, ... Congress had broad remedial objectives in mind when it enacted RCRA, most notably to "regulat[e] the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on the environment." * * *. The disposal problem Congress was combatting encompassed more than just abandoned materials. RCRA makes this clear with its definition of the central statutory term "disposal":

> the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

42 U.S.C. § 6903(3). This definition clearly encompasses more than the everyday meaning of disposal, which is a "discarding or throwing away." *Webster's Third International Dictionary* 654 (2d ed. 1981). The definition is *functional*: waste is disposed under this provision if it is put into contact with land or water in such a way as to pose the risks to health and environment that animated Congress to pass RCRA. Whether the manufacturer subjectively intends to put the material to additional use is irrelevant to this definition, as indeed it should be, because the manufacturer's state of mind bears no necessary relation to the hazards of the industrial processes he employs.

Faithful to RCRA's functional approach, EPA reasonably concluded that regulation of certain in-process secondary materials was necessary to carry out its mandate. * * *.

* * *.

I believe this case is controlled by *United States v. Riverside Bayview Homes*, 474 U.S. 121, ... In *Riverside Bayview*, the EPA offered an interpretation of "waters" that appeared at some tension with everyday usage. * * *. The Court therefore turned to the statutory scheme and legislative history of the Clean Water Act. It considered the agency's interpretation against the background of Congress' goals in

enacting the statute. The Court found in the statute "a broad, systemic view of the goal of maintaining and improving water quality." *Id.* It then evaluated the reasonableness of the agency's interpretation in light of that goal. The Court wrote:

> [*1197] We cannot say that the Corps' conclusion that adjacent wetlands are inseparably bound up with the "waters" of the United States – based as it is on the Corps' and EPA's technical expertise – is unreasonable. . . . The Corps has concluded that wetlands may affect the water quality of adjacent lakes, rivers, and streams even when the waters of those bodies do not actually inundate the wetlands. . . . We cannot say that the Corps' judgment on these matters is unreasonable.

Id. at 463.

Similarly, in this case the EPA has interpreted solid waste in a manner that seems to expand the everyday usage of the word "discarded." Its conclusion, however, is fully supportable in light of the statutory scheme and legislative history of RCRA. * * *.

I dissent.