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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

August 5, 2011

Ms. Tracey J. Norberg
Senior Vice President and Corporate Counsel
Rubber Manufacturers Association
1400 K Street, NW, Suite 900
Washington, D.C. 20005

Dear Ms. Norberg:

Thank you for your letter of June 24, 2011 and the meeting on July 8, 2011 regarding concerns related to the Identification of Non-Hazardous Solid Waste Secondary Materials (NHSM) rule. We appreciate your constructive engagement on these issues.

In Attachment C of the June 24th letter, as well as in our meeting on July 8th, you raised an issue regarding the solid waste status of off-spec tires (factory scrap tires). In the letter, you specifically stated:

> *"The rule language states that scrap tires used in a combustion unit that are removed from vehicles and managed under the oversight of established tire collection programs are not solid wastes when combusted if they meet the legitimacy criteria. However, tire collection programs also collect unused tires from factories that were never placed on a vehicle because they did not meet the company's standards for sale as a tire."*

We note that the Agency did not receive any comments or information regarding the management of off-spec tires on either the NHSM Advance Notice of Proposed Rulemaking or the Proposed Rule. The issue of off-spec tires has only been raised subsequent to the rule's promulgation, and thus, the Agency was not in a position to address this particular situation in the final rule.

We have requested that the industry provide EPA more detailed information regarding the management of off-spec tires, and how they are managed, including who would be generating these off-spec tires. To date, no such information has been provided to EPA, other than the general statements made in the June 24, 2011 letter, and in our conversation during the July 8th meeting. Based on the limited information available, this letter provides EPA's thoughts on how off-spec tires that are managed under the oversight of established tire collection programs may be regulated under the NHSM final rule. As we discussed in the preamble to the NHSM final rule, the intent of the requirement to be "removed from vehicles" is to distinguish these tires from those that were previously abandoned in waste piles – thus, discarded. Although off-spec tires are not removed from vehicles, you have indicated that these off-spec tires are

managed as part of a comprehensive collection system that ensure they are not discarded, and are handled as a valuable commodity. Based on your assertions, we believe that off-spec tires that are managed by the manufacturer and transferred to a combustor fit within the intent of the regulatory requirement codified in 40 CFR 241.3(b)(2)(i) and the definition of "established tire collection program."

However, the Agency is not able to provide a more definitive position without having more detailed information, such as how these off-spec tires are managed, who would generate them, whether they would be used within a reasonable timeframe, etc. Thus, we again request that you provide EPA with the relevant information.

We also understand that you believe that a regulatory change to the NHSM final rule might be needed before such off-spec tires that are managed under established tire collection programs could be considered a non-waste fuel. The Agency has not yet determined if a rule change is necessary. However, the regulations were drafted specifically to deal with the situation where the Agency was not aware (or no information was provided) that a non-hazardous secondary material that is burned in a combustion unit that was not within the control of the generator should nevertheless be considered a non-waste fuel. Thus, 40 CFR 241.3(c) allows persons to submit a non-waste determination application to EPA that a NHSM that is used as a fuel, which is not managed within the control of the generator, and is not discarded is not a solid waste when combusted.[1] The regulations lay out the criteria and process for submitting such an application, and we would suggest that you review it for your consideration.

Thank you for your continued interest in protecting the environment. If you have further questions, you may contact George Faison of my staff at faison.george@epa.gov or (703) 305-7652.

Sincerely,

Suzanne Rudzinski

Suzanne Rudzinski, Director
Office of Resource Conservation and Recovery

[1] State Agencies may also submit a non-waste determination request on behalf a person; such petition can be for a whole category of non-hazardous secondary materials in their state for a particular type of combustor, or for the specific individual combustors (76 FR 15540).