

Fact Sheet: Proposed Revisions to the Identification of Non-Hazardous Secondary Materials That Are Solid Wastes Final Rule

Action

- The Agency has re-examined the 2011 Identification of Non-Hazardous Secondary Material (NHSM) final rule and is proposing amendments and clarifications on certain issues on which EPA received new information, as well as specific targeted revisions that are appropriate in order to allow implementation of the rule as EPA originally intended. The proposed changes to the 2011 rule, include:
 - Clarifying that certain materials are already included within the scope of biomass, that is considered a traditional fuel under the NHSM rule - EPA is revising several definitions that were included in the final rule. In the case of “clean cellulosic biomass,” EPA is identifying specific materials that EPA believes are included within the current definition and would thus be considered a traditional non-waste fuel, including: agricultural derived biomass, other crop residues (including vines, orchard trees, hulls, seeds), other biomass crops used for the production of cellulosic biofuels, hogged fuel, untreated wood pallets, wood pellets, and wood debris from urban areas.
 - Adding a process for an owner or operator of a facility to petition EPA to categorically list non-hazardous secondary materials as being a non-waste when used as a fuel, including allowing other relevant factors beyond those used in the original rule - EPA is proposing to create a rulemaking petition process that would provide persons an opportunity to submit a rulemaking petition to the Administrator, seeking a categorical determination for additional NHSMs to be listed as non-waste fuels. To be successful, the petitioner would need to demonstrate that the NHSM has not been discarded, and either meets the previously established legitimacy criteria, or, after balancing the legitimacy criteria with other relevant factors, the NHSM is not a solid waste when used as a fuel.
 - Identifying two secondary materials, resinated wood products and tires managed under the oversight of established tire collection programs, as non-wastes when used as a fuel - EPA is proposing to categorically list several NHSMs as not being solid waste when burned as a fuel in a combustion unit where the Agency has sufficient information to determine that discard is not occurring when these materials are being used as fuels. The Agency recognizes that certain NHSMs may not meet the legitimacy criteria in all

instances, but after balancing the legitimacy criteria with other relevant factors, the material would still generally be considered a non-waste fuel. In addition, EPA is seeking comment on whether pulp and paper wastewater treatment sludges and coal refuse from legacy piles should also be categorically identified as non-wastes.

- Revising the legitimacy criteria to expressly allow the comparison of groups of contaminants and clarifying that contaminant comparisons may be made for any traditional fuel for which a combustion unit is designed to burn - EPA is clarifying that similar groups of pollutants (such as volatile organics, semi-volatile organics) can be compared rather than individual contaminants. The proposal also clarifies that in cases where a unit can burn traditional fuels from several categories, such as a boiler that can burn either coal or biomass, contaminant comparisons could be made using data from either fuel category at the combustor's discretion. In other words, if a facility burns biomass in its combustion unit, but that same combustion unit could also burn coal, the facility could compare its secondary material to either traditional fuel.

Background

- EPA issued the Identification of Non-Hazardous Secondary Materials (NHSM) final rule in March, 2011. The rule was developed under the Resource Conservation and Recovery Act in conjunction with three rules under the Clean Air Act.
- Together these rules were designed to provide substantial reductions in the release of hazardous air pollutants into the atmosphere from boilers and incinerators.
- The Identification of Non-Hazardous Secondary Materials final rule identifies which non-hazardous secondary materials are, or are not, solid wastes when burned in combustion units, such that:
 - Non-hazardous secondary materials considered solid wastes under RCRA would be subject to the section 129 CAA requirements.
 - Non-hazardous secondary materials not considered solid wastes under RCRA would be subject to the section 112 CAA requirements.