

November 18, 2020

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW, Mail Code 1101A
Washington, DC 20460

RE: Withdrawal of Portland Cement Association Petition for Determination Identifying Non-Hazardous Secondary Materials as Non-Waste for Categorical Listing under 40 CFR 241.4(a)

Dear Administrator Wheeler:

On April 1, 2019, the Portland Cement Association (PCA) submitted a Petition seeking a determination from the Environmental Protection Agency (EPA) to identify the alternative fuels of paper, plastics, and fabrics/fibers as categorical non-hazardous secondary materials (NHSM) in accordance with 40 CFR § 241.4(b). PCA appreciates EPA's time and extensive dialogue considering the Petition and discussing potential paths to allow for the industry to combust paper, plastics, and fabrics/fibers under the NHSM Rule at 40 CFR § 241. Based on these discussions, however, PCA has concluded that the data needs outlined by EPA staff to sustain the Petition are insurmountable. As a result, PCA hereby withdraws the Petition from EPA consideration.

PCA's decision to withdraw the Petition follows extensive dialogue, data development, and substantiation by PCA and its members to address EPA questions and data requests. During this process, it became clear that, under EPA's current interpretation of its legislative and regulatory framework, any path acceptable to EPA for advancing the Petition would be counterproductive to the underlying goal of expanding the use of NHSMs across the cement industry.

This withdrawal is particularly unfortunate given the demonstrated environmental, health, and sustainability benefits from the use of NHSMs as alternatives to conventional fossil fuel products used in cement manufacturing. Substituting NHSMs for coal, coke, and other fossil fuels reduces greenhouse gas and other emissions associated with generating the heat needed to manufacture cement, while contributing to EPA's broader sustainability goals by diverting municipal, industrial, commercial, and industrial secondary material streams from landfills, incinerators, and marine environments to productive use as recycled fuel products.

For these and other reasons, NHSM fuels are critical components of the cement industry's sustainability and decarbonization strategy, including its goal of reaching carbon neutrality across the full cement and concrete value chain by 2050. Indeed, within Europe, NHSMs and other alternative fuels already constitute roughly 36 percent of the fuel mix for cement facilities in Europe, while U.S. rates have lagged at only 13.5 percent in 2019. European

reliance on the use of NHSMs are a significant part of their greenhouse gas emissions reduction strategy and goals.

Unfortunately, efforts to expand the use of lower-carbon alternative fuels in the US are hampered by current EPA policies that treat valuable NHSM fuel streams as waste, subjecting many plants to the risk of regulation as waste incinerators rather than manufacturing facilities. These policies, particularly EPA's broad interpretation "discard" and narrow interpretation of "processing" under the NHSM rule, discourage reuse of lower carbon NHSMs as fuel products in favor of disposal as waste or inadvertent release into the land or marine environment. PCA would urge EPA to reevaluate the NHSM Rule at 40 CFR § 241 to encourage the reuse of lower carbon NHSMs and reduce the amount of materials being disposed as waste into land or marine environments.

Notwithstanding our withdrawal of the 2019 NHSM Petition, PCA and our members hope to maintain a robust dialogue with EPA on regulatory and non-regulatory options for harnessing the environmental and economic benefits of NHSMs as industry inputs and fuel products. In addition to continuing conversations on EPA's implementation of its coal combustion residuals beneficial use rule and NHSM rule, we are proud signatories to EPA's [America Recycles Pledge](#). As reflected in our recent comments on EPA's draft Recycling Goals and Indicators and our pending comments on the draft National Recycling Strategy, we believe there are opportunities to expand the Strategy's focus beyond traditional municipal solid waste streams and narrow definitions of recycled products. An expanded recycling approach would leverage the variety of industrial, commercial, and institutional (ICI) NHSM streams and productive end uses, both as durable and non-durable products and as processed or unprocessed alternative industrial fuels.

PCA very much appreciates EPA's time and effort to work with the cement industry on the Petition. We look forward to continuing our collaboration with the Agency to expand and maximize the productive use of our nation's resources while minimizing disposal and releases to the land and marine environments. If you have any questions regarding our withdrawal of the Petition, please feel free to contact me at 202-719-1977 or cfranklin@cement.org.

Sincerely,



Charles L. Franklin
Vice President & Counsel
Government Affairs



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