

August 3, 2010

Proposed Rulemaking - Identification of Non-Hazardous
Secondary Materials That Are Solid Waste
U.S. Environmental Protection Agency
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Attention: Docket ID No. EPA-HQ-RCRA-2008-0329

Dear Sir/Madam:

The Municipal D Waste Task Force within the Solid Waste Subcommittee of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) appreciates the opportunity to provide comments on the proposed rule, Identification of Non-Hazardous Secondary Materials That Are Solid Waste, published in the Federal Register on June 4, 2010 (75 FR 31844). These comments have not been reviewed or adopted by the ASTSWMO Board of Directors. In addition, individual State or Territorial solid waste programs may also provide comments based on their perspectives and experiences. In commenting on this solid waste management proposal -- which was proposed concurrently by the U.S. Environmental Protection Agency with the air emission requirements under Clean Air Act (CAA) section 112 for industrial, commercial, and institutional boilers and process heaters, as well as air emission requirements under CAA section 129 for commercial and industrial solid waste incineration units -- we recognize that our State colleagues who regulate and administer air programs may also provide EPA with their views on issues raised in the proposed rule.

- 1) The proposed rule will identify those non-hazardous secondary materials that are solid waste as defined under RCRA Subtitle D ensuring that air permits for combustion units using solid wastes are regulated under section 129 of the Clean Air Act. Conversely, the proposed rule will identify those non-hazardous secondary materials that are NOT solid waste as defined under RCRA Subtitle D with the result being that air permits for combustion units using non-hazardous secondary materials as fuels are appropriately regulated under section 112 of the Clean Air Act. The U.S. Environmental Protection Agency (EPA) should clarify the following:
 - a) The federal rule applies only to the RCRA Subtitle D definition of solid waste specific to use as fuel or ingredients in combustion units as regulated by federal air pollution laws and regulations.
 - b) That the federal rule does not preempt any State statutory or regulatory definition of solid waste.

- c) That the federal rule need not be consistent with State solid waste laws and regulations as they apply to the same material for the purposes of use as a fuel or ingredient in combustion units as regulated by federal air pollution laws and regulations.
 - d) EPA should clarify and specify that the fuels may be simultaneously regulated as a fuel, product, or recycled material pursuant to air pollution control programs, but as a solid waste by State solid waste programs.
- 2) It is expected that EPA will specify and clarify what the immediate effect or transition will be required of existing facilities currently burning solid waste in accordance with the current 112 regulations as part of EPA's proposed rule revisions under CAA section 112 for industrial, commercial, and institutional boilers and process heaters should the proposed rule be finalized as drafted. The EPA should specify whether existing facilities that transition from compliance with CAA 112 to CAA 129 will utilize the existing compliance schedule in CAA 129.

EPA should include a provision in the proposed rule revisions under CAA section 112 for industrial, commercial, and institutional boilers and process heaters that allows individual States to adopt an implementation schedule based on their needs and available resources. [Note: the implementation schedules may be most appropriately addressed in EPA's two separate proposed rules: (1) air emission requirements under CAA section 112 for industrial, commercial, and institutional boilers and process heaters, and (2) air emission requirements under CAA section 129 for commercial and industrial solid waste incineration units]. EPA should establish an effective date for the rule which allows adequate time for implementation by the implementing agencies and the regulated industries, and the implementation schedule should include:

- a) Whether facilities that are currently burning fuels under the existing definition and requirements of 112 will be allowed to continue to burn the same materials under the same provisions until new permits are issued, and if yes, for how long?;
- b) Whether facilities that are requesting a "non-waste" exemption from the Regional Administrator and are currently burning fuels under the existing definition and requirements of 112 will be allowed to continue to burn the same materials under the same provisions until new permits are issued, and if yes, for how long? EPA should allow adequate time for facilities to complete the proposed petition process or arrange for other alternate fuel sources;
- c) How will wastes be allowed to be managed during the transition period from the current regulatory provisions and requirements to the new regulatory requirements, as additional solid waste requirements may be needed at sites previously not subject to solid waste regulations; and
- d) What provision will be made for regulatory air permit programs to adopt these rules and hire new staff to evaluate the existing air permits and the modifications to comply with the requirements in the new rule? EPA should allow for adequate time for States to plan for and make changes to existing programs (both air and solid waste) that may be affected by the implementation of the rule, and should also provide adequate time for States to review and modify any applicable facility permits.

- 3) The Task Force is concerned about the significant potential for mismanaged and illegally disposed of wastes, especially considering the “other ingredients” category of materials resulting from facilities that choose to **not** upgrade to meet the more stringent 129 requirements, but simply eliminate those fuel materials that would require their upgrade to the 129 provisions. EPA should consider the impacts on solid waste sites and facilities regarding the available disposal/recycling capacity of wastes and ingredients that will no longer be burned.
- 4) EPA recognizes that many States have programs in place to make non-waste determinations under State statute, and EPA would support the States to also make such determinations—that is, allow the States to act on behalf of EPA in making such case-specific determinations. EPA specifically solicited comment as to whether EPA can (and if so) should allow a State, for example, under a State’s beneficial use program, to also make case-specific determinations without EPA’s approval. The rule should include a States waiver provision that may be implemented at the State level without Regional Administrator input.
- 5) EPA states that the language in CAA section 129 may be interpreted to provide the Administrator with flexibility in determining the meaning of solid waste under that section. EPA is requesting comment on an option where, to determine applicability of the CAA section 129 requirements, the Agency would rely on a determination through a State’s beneficial use program that certain secondary materials are or are not solid waste. EPA states that such State programs are meant to encourage the use of non-hazardous secondary materials, provided that the uses maintain the specified State’s acceptable level of risk, protect human health and the environment, and are managed in accordance with the conditions of the determination. EPA should use the flexibility provided by CAA section 129 to rely on a determination through a State’s beneficial use program that certain secondary materials are or are not solid waste when handled in a manner approved by the State.
- 6) The ASTM standard for “relatively wire free” (see page 31878 of the proposed rule) suggests that cement kilns burn at sufficient temperatures to oxidize the wire and benefit from both the energy release from oxidation and the resultant iron oxide that becomes a critical component in cement chemistry. Therefore, removing the metal from the tires not only increases processing time and resources, but also results in the need to add the metal back in, clearly a net negative greenhouse gas and air emissions impact when considering that the metal has already been mined and processed once when fabricated into the tires. In addition, whole tires and shredded tires have the same BTU value, therefore, whole tires should be considered as valuable a fuel as shredded tires. Shredding is not necessary to use tires as a legitimate fuel. Since whole tires can be burned in cement kilns, the processing of waste tires does not have any benefit when burned in a cement kiln.
- 7) EPA should consider a specific provision regarding the burning of waste tires in cement kilns to subject the activity to the CAA section 112 provisions and not a solid waste incinerator. The proposed rule allows for a case-by-case petition to the Regional Administrator that is desirable for specific situations; we believe that it would be more appropriate to have a specific provision allowing the use of waste tires as a fuel and ingredient in a cement kiln.

Absent such a provision, given the uncertainty and time to process the petition, it is likely that an increased number of tires annually will be landfilled, illegally disposed or stockpiled. Tires cannot be burned under the control of the generator, since most generators will not have an incinerator. The provision could be made by determining whole tires used as a fuel and ingredient in a cement kiln to be legitimate “alternative” fuels. Or, alternatively, EPA could revise its proposed definition of “Processing” to recognize that in some circumstances minimal processing is acceptable if additional processing would have a detrimental effect on the fuel or ingredient characteristics, or value of the material. Such a revision might read as follows:

Processing means any operations that transform discarded non-hazardous secondary material into a new fuel or new ingredient product. Minimal operations do not constitute processing for purposes of this definition unless additional or significant operations will result in a detrimental effect on the fuel or ingredient characteristics, or value of the material. Processing, for purposes of this rule, includes, but is not limited to, operations that: remove or destroy contaminants; significantly improve the fuel characteristics of the material, e.g., sizing or drying the material in combination with other operations; chemically improve the as fired energy content; and improve the ingredient characteristics.

EPA could then note in its explanation of the definition in the preamble of the final regulation that whole tires used as a fuel or ingredient in cement kilns meets the definition of “processing” because the removal of the wire is detrimental and/or loss of value for the use of a tire as an ingredient.

- 8) EPA should delegate authority to States to make case-specific determinations with respect to whether or not a specific non-hazardous secondary material is a solid waste.
- 9) EPA should not consider the “Alternative Approach”. This approach is not viable and will have substantial detrimental effect on waste tire programs, economy, industry, human health and the environment. The Alternative Approach which defines solid wastes broadly would be resource intensive without significant environmental benefit. This approach would not allow for a case-by-case determination which could discourage cement kilns from burning tires for fuel. Instead, facilities would revert to using coal which is a less efficient fuel than tires. Illegal dumps and stockpiles could potentially increase across the State because viable outlets would be significantly reduced.
- 10) EPA is asking for comments on whether landfill gas and biogas should be considered a “traditional fuel”. The significance is if they are not considered as a traditional fuel, the combustion unit using landfill gas or biogas may be designated as a solid waste incinerator, even though the composition of these gases are similar to natural gas. Gaseous fuels are being produced from the collection of landfill gas and proposed projects using anaerobic digestion of organic-containing solid wastes to generate methane. The collected gases are managed as a fuel. We agree that these gaseous fuels have comparable composition to traditional fuel products. The proposed rule creates ambiguity for these gaseous fuels since it is unclear who determines if the gaseous fuels are managed as a valuable commodity and

have meaningful heating value. We recommend that the rule contain specific provisions to recognize these as traditional fuels and not solid wastes. Harnessing landfill gas and biogas is a sustainable fuel source; the potential of subjecting the boiler or combustion unit as a solid waste incinerator may remove the incentive for the collection of landfill gas or generation of biogas from conversion of solid wastes.

- 11) EPA should not promulgate a general rulemaking authority under Subtitle D as that authority is clearly broader than the scope of this rule and warrants broader consideration and input from impacted agencies and industries alike prior to such a rulemaking.

Thank you for your consideration of the views of the Municipal D Waste Task Force. If you have any questions about these comments, you can contact me at 303-692-3348 or charles.johnson@state.co.us.

Sincerely,



Charles Johnson, Chair
ASTSWMO Municipal D Waste Task Force