

Outline of Regulatory Approach to Determine Materials Considered Fuels – not Solid Wastes -- under RCRA

For purposes of Clean Air Act Section 129, when burned for energy or chemical recovery, materials are fuels -- not solid waste -- under RCRA if they meet the criteria in Section A or are listed in Section B. Section C provides that a person may petition the State, the EPA Administrator or Regional Administrator to list a material in Section B. Section D places the obligation of making the regulatory determination on the owner/operator of the boiler. Section E establishes a de minimis exemption for emissions from the combustion of solid waste.

A. Criteria for a Material Be Considered a Fuel

Owners or operators of combustion devices should consider the following factors to determine whether such materials qualify as a fuel. Not all of the factors listed below are necessarily applicable to the legitimate use of a material as a fuel and therefore not all of these factors have to be satisfied for the material to qualify as a fuel. Owners or operators should evaluate, on a case-by-case basis, which factors have been satisfied and determine, based on these factors, whether the material is being legitimately handled as a fuel.

1. Are the materials handled and stored in a manner to minimize loss?
2. Are the materials used within a reasonable period of time or is there a plan in place for their use within a reasonable period of time?
3. Is the material valuable? For example, is there a market for the material as a fuel -- either internally (within the facility or company) or externally?
4. Is material managed and treated as a commodity?
5. Is the material processed to enhance its fuel value?

B. Specifically Listed Materials that Are Fuels

1. Traditional/historical fuels, such as coal, fuel oil, pet coke, coal refuse, used oil fuel regulated under 40 CFR Part 279, synfuel¹, tire-derived and biomass fuel (e.g., wood, sawdust, wood product panel/board trim, vegetative agricultural and silvicultural materials, and bagasse), biofuel, and gas pipeline condensate.
2. Materials that are specifically excluded from the solid waste regulations under RCRA Subtitle C and have a beneficial fuel value.

¹ Synfuels include biomass materials that result from the processing vegetative matter for consumption or other uses, e.g., byproducts from biological transformation processes such as those used to produce biofuels or biomaterials

3. Materials combusted for chemical recovery—*e.g.*, pulping liquors reclaimed in a recovery furnace and reused in the pulping process, spent sulfuric acid used to produce virgin sulfuric acid, wood and coal combusted to produce charcoal, and organic compounds from foundry sand, fly ash, petroleum impacted soils or other materials for use in cement processing;
4. Materials that are modified or processed to produce a product of significant fuel or feedstock value, *e.g.*, tires combusted to obtain metals for reclamation/reuse, processed used cooking oil, fats and greases, solvents, off-spec used oil.
5. Biomass materials from agricultural and forest resources that are not the primary product of an industrial process. These materials may include rice hulls, corn husks, nut shells, straw, other forest-derived materials, and log yard debris.
6. Tires reclaimed in compliance with a state tire recovery program.
7. Materials that had once been discarded but , because of new technology applications or revised economic justification, can be processed and/or used as a fuel or feedstock, *e.g.*, tires that have been managed in piles or coal mining/production rejects.
8. Materials that a state approves as fuel or determines can be beneficially reused.

C. Petition for Listing under Section B

A person may petition the State, the EPA Administrator or Regional Administrator to specifically list a material under Section B.

1. The criteria in Section A shall be the basis for such listing. However, not all of the factors in Section A have to be satisfied for the material to qualify as a fuel.
2. Alternatively, a person may submit additional information to demonstrate the environmental equivalence of the material to other accepted/listed fuels listed in Section B.

D. Demonstration That a Material Meets the Criteria

A material need not be specifically listed under Section B in order for it to be considered a fuel and not a solid waste as long as the owner/operator of a combustion unit can demonstrate that the material meets the criteria set out in Section A. The owner/operator must maintain records to demonstrate that the criteria are met.

E. De Minimis Provision

A boiler is not considered a Commercial and Industrial Solid Waste Incinerator if it burns solid waste in de minimis amounts or that contributes only de minimis emissions..