

## DRAFT

### Comment Outline on Non-Hazardous Solid Waste Definition Rule

1. Use of Secondary Materials and Definition of Solid Waste (vs Fuel/Ingredient)
  - Would like more “bright lines” - develop both list of materials that are fuels/ingredients, as well as specific criteria that define fuels/ingredients (legitimacy criteria as proposed will be hard to meet in terms of “contaminant” levels)
  - List and criteria for fuels/ingredients should be broad to include as many as possible
  - Several materials are clearly identified as fuel or solid waste in preamble, but not in rule
  - Increase in materials used as secondary fuels/ingredients is beneficial both socially and economically
    - Current political interest to increase use of renewable fuels – this parallels reuse of secondary materials
    - Less solid waste in landfills
    - Materials are being burned in well controlled units
  - Include materials legitimately used for their heating value (qualitative approach)
2. Materials Characterization Papers
  - Review papers for comments
3. Legitimacy Criteria and Contaminant Issue
  - “Sham” recycling
    - Although applicable to hazardous wastes, this is a minimal issue for non-hazardous materials; EPA should account for this.
  - RCRA criteria should not be applied to non-hazardous secondary materials/fuels/ingredients
  - Hazardous waste determinations are not straightforward, so to apply this methodology to non-hazardous solid waste will not be straightforward either
  - Materials/ingredients containing “significantly higher” contaminants (e.g., chemical process liquid organics)
    - contaminants list should not include Appendix VIII constituents,
    - potentially higher or lower levels than “traditional” fuels

- specific levels of compounds in fuels/ingredients should not be set; combustion of these materials is occurring in well-controlled units
  - combustion will destroy many organic compounds and substances, so need to focus on air emissions and not contaminant level if this item is going to be one of the criteria
  - should be allowed to compare post-control emissions of secondary materials in fuels/ingredients with emissions from “traditional” fuels
- How is “significantly higher” defined - increased health risk? Is this less restrictive?

#### 4. Subpart C Exclusions

- Materials excluded as a solid waste under Subpart C should also be excluded in this rule

#### 5. “Discard” definition

- Identify materials that were once discarded, but due to changes in technology, markets, corporate economic justifications, etc., these materials are no longer discarded, but rather reused.
- Materials are not “discarded” if they are destined for beneficial reuse or recycling
  - Non-waste if you are selling it, waste if paying someone to take it?
- Some secondary materials are not “discarded”, as they are purposefully collected and managed as fuel streams
- Discarded materials that are reprocessed lose their solid waste status. Reuse of materials without reprocessing should also lose the solid waste status.
  - How much reprocessing is required to lose the waste status?
  - If material is usable “as is” as a fuel, shouldn’t have to reprocess
  - Example is yard waste that homeowners put out on the curb, is taken to a landfill, is collected and sold to facilities that burn biomass – has this been discarded and is it now solid waste because it wasn’t processed, even though it is clean biomass?
  - Another example that EPA asks for comment on are tires recovered from landfills

#### 6. Traditional fuels

- Identify other valuable fuels to comment to EPA – include constituents and comparison to traditional fuels (e.g., biofuels)

- Include materials that a state approves as a fuel or determines that it can be beneficially reused

#### 7. Used Oil

- Material is purposefully collected and managed as fuel stream
- Heating value of off-spec oil is comparable to on-spec oil
- Well-controlled emissions under Boiler MACT and other rules (compare emissions, not constituents)

#### 8. Petition Process

- Allow case-by-case determinations by states
  - Base on criteria in rule or environmental equivalence demonstration
  - Include time frame where if no determination is received, material is not solid waste
- Industry concern regarding “self-determination” – EPA may enforce against if not clearly defined and a facility makes the wrong determination (e.g., facility assumes it is operating a boiler and complying with Boiler MACT when in reality it has been operating a solid waste incinerator and should have been complying with CISWI)
- If the petition process is going to be used, need a clearing house of determinations that others can use

#### 9. CCRs (fly ash, boiler ash, boiler slag)

- Support use as ingredient
- High volume of material used (provide stats)

#### 10. Heating Value

- Changes in technology, markets, corporate economic justifications, etc. can increase the range of materials considered to have a “meaningful” heating value, so need qualitative approach rather than a written limit
- Materials with heating value lower than proposed limit can legitimately offset fossil fuels, so shouldn’t be labeled as solid waste solely due to low heating value
- If minimum limit is developed, base it on as-fired long-term average to account for variance in fuel characteristics

#### 11. De Minimis Amounts

- Allows practical management of materials

- Excess toxics would be minimized through strict emission control requirements

#### 12. Within Control of the Generator

- Source of fuels/ingredients should not be a restriction
- Emissions are the same whether you generated the material or someone else did

#### 13. Report/Notify under both RCRA and CAA

- Redundant reporting is a waste of resources and an opportunity for confusion

#### 14. "Processing" Definition

- Minimal operations explained to avoid solid waste applicability
  - Does not provide enough flexibility
- If material is usable "as is" as a fuel, shouldn't have to reprocess

#### 15. Reasonable Time Frame

- Support proposed wording which allows flexibility

#### 16. "Contained" Definition

- EPA states that landfill gas and biogas are not solid wastes.<sup>1</sup> "EPA does not consider these materials to be wastes in themselves, when used as fuel, but rather materials derived from wastes."
- Additionally, these materials are not contained gaseous materials so do not meet the RCRA statutory definition of "solid waste." Therefore, biogases should already be considered fuels when burned for energy.

#### 17. Alternative Approach

- Definition of solid waste is too broad under the alternative approach
- This approach would result in too many materials being labeled as solid waste and a large increase in volume of landfilled materials
- Inconsistent with RCRA concepts
- Support overall EPA proposed approach

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<sup>1</sup> Materials Characterization Paper in Support of the Advanced Notice of Proposed Rulemaking - Identification of Nonhazardous Materials That Are Solid Waste Biomass - Animal Manure and Gaseous Fuels, EPA, March 18, 2010