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Non-Hazardous Secondary Material Standard: U.S. Environmental Protection Agency Response to American Forest and Paper Association Petition

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The United States Environmental Protection Agency (“EPA”) published in the January 28th Federal Register a response to an American Forest and Paper Association (“AFPA”) petition to revise the National Hazardous Secondary Materials (“NHSM”) regulations. See 87 Fed. Reg. 4536.

EPA is proposing:

- To deny the requested revisions in the AFPA petition
- Propose regulatory revisions to the definition of paper recycling residuals under the authority of Sections 202(a)(1) and 1004(27) of the Resource Conservation and Recovery Act (“RCRA”)

Section 129 (a)(1)(D) of the Clean Air Act requires that EPA establish standards for commercial and industrial solid waste incinerators which burn solid waste. The term solid waste is defined by Section 129(g)(6) of the Clean Air Act to provide that the term solid waste is established by EPA under RCRA. The NHSM regulations provide the standards and procedures for identifying when non-hazardous secondary materials burned in combustion units constitute solid waste.

AFPA’s petition requested certain amendments to the NHSM regulations which include:

1. Change from mandatory to “should consider” a legitimacy criterion for comparison of contaminants in the NHSM to the traditional fuel the unit is designed to burn found at 40 CFR 241.3(d)(1)(iii)
2. Remove associated designed to burn and other limitations for creosote-treated railroad ties found at 40 CFR 241.4(a)(7)-(a)(10)
3. Revise the definition of paper recycling residuals that can be burned as non-waste found at 40 CFR 241.2 to remove the limit on non-fiber materials

Additional petitioners included:

- Association of American Railroads
- Treated Wood Council
- American Short Line Regional Railroad Association

- American Wood Council

EPA is proposing to deny the requested amendments. However, as an alternative to granting the third request, it is proposing to change the definition of paper recycling residuals. It proposes to set a numerical limit on the amount of non-fiber materials that may be included for the residuals to be considered a non-waste fuel.

A copy of the Federal Register notice can be downloaded [here](#).