

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



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10/19/2023

The United States Environmental Protection Agency (“EPA”) published in the October 18th Federal Register a final response to an American Forest and Paper Association (“AFPA”) Petition to revise the National Hazardous Secondary Materials (“NHSM”) regulations. See 88 Fed. Reg. 71761.

EPA is:

- Denying the requested revisions in the AFPA Petition
- Revising the definition of paper recycling residuals to limit the impact non-fiber materials may have on the heat value of paper recycling residuals in order for them to be considered a non-waste fuel

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 the Resource Conservation and Recovery Act (“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:

- Change 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 C.F.R. 241.3(d)(1)(iii).
- Remove associated design to burn and other limitations for creosote-treated railroad ties found at C.F.R. 241.4(a)(7)-(A)(10).
- Revise the definition of paper recycling residuals that can be burned as non-waste found at 40 C.F.R. 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

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