

Treated Railroad Ties/Non-Hazardous Secondary Material Rule: U.S. Environmental Protection Agency Final Rule



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The United States Environmental Protection Agency (“EPA”) in a February 7th Federal Register notice issued a final rule amending the Non-Hazardous Secondary Material Rule (“NHSMR”) to add certain treated railroad ties (“TRTs”) to the list of Categorical Non-Waste Fuels. See 83 Fed. Reg. 5317.

The TRTs added are processed creosote-porate, copper naphthenate, and copper naphthenate-borate.

By way of background, Section 129(a)(1)(B) of the Clean Air Act directs the EPA to establish standards for Commercial and Industrial Solid Waste Incinerators (“CISWI”) which burn solid waste. The Clean Air Act further provides in Section 129(g)(6) that the term “solid waste” is to be established by the agency under the Resource Conservation and Recovery Act (“RCRA”). Section 2002(a)(1) of RCRA authorizes the agency to promulgate regulations as are necessary to carry out its functions under the statute.

The statutory definition of “solid waste” is found in Section 1004(27) of RCRA. Previous RCRA rulemakings identified certain hazardous materials that the agency decided were not solid waste when burned in combustion units. Processes or operations that burn these non-hazardous secondary materials are not required to be evaluated under general case-by-case standards and procedures that would otherwise apply to non-hazardous secondary material burned in combustion units.

The eligibility of these TRTs for being considered Categorical Non-Waste Fuels is dependent upon certain conditions and chemical treatment.

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