

US EPA ARCHIVE DOCUMENT

## **Fact Sheet: Identification of Non-Hazardous Secondary Materials That Are Solid Wastes Final Rule**

- EPA is issuing four rules that will provide substantial reductions in the release of hazardous air pollutants into the atmosphere, and provide substantial benefits to the many communities where these units are located.
- The four rules were developed together because of the interrelationship among them.
- Three of the rules establish emission standards under the Clean Air Act (CAA) for boilers and incinerators, while the other rule was developed under the Resource Conservation and Recovery Act (RCRA).
- The RCRA rule identifies which non-hazardous secondary materials are, or are not, solid wastes when burned in combustion units, such that:
  - Non-hazardous secondary materials considered solid wastes under RCRA would be subject to the section 129 CAA requirements
  - Non-hazardous secondary materials not considered solid wastes under RCRA would be subject to the section 112 CAA requirements
- Under the RCRA rule, traditional fuels, including historically managed traditional fuels (e.g. coal, oil, natural gas) and “alternative” traditional fuels (e.g. clean cellulosic biomass) are not secondary materials and thus are not solid wastes
- In general, non-hazardous secondary materials burned in combustion units are identified as solid wastes unless:
  - The material is used as a fuel and remains within the control of the generator (whether at the site of generation or another site the generator has control over) and it meets the legitimacy criteria;
  - The following materials have not been discarded in the first instance and meets the legitimacy criteria when used as a fuel (by the generator or outside the control of the generator): scrap tires removed from vehicles and managed under an established tire collection programs and resinated wood residuals;
  - The material is used as an ingredient in a manufacturing process (whether by the generator or outside the control of the generator) that meets the legitimacy criteria;
  - The material has been sufficiently processed to produce a fuel or ingredient that meets the legitimacy criteria; or

- O Through a case-by-case petition process, it has been determined that material handled outside the control of the generator has not been discarded and is indistinguishable in all relevant aspects from a fuel product.

## Background

- Congress added section 129 to the CAA in 1990 specifically to address emissions from burning solid waste.
- In determining which emission standards combustion units that burn non-hazardous secondary materials are subject to, section 129 of the CAA specifically states, that the term “solid waste” shall have the meaning “established by the Administrator pursuant to RCRA.”
- The Commercial and Industrial Solid Waste Incineration (CISWI) definitions rule (“Definitions Rule”), which was issued in September 2005 pursuant to CAA section 129 requirements, excluded units used to recover energy for a useful purpose from the definition of solid waste incinerators, and instead these units were subject to the applicable CAA section 112 standards.
- The Definitions Rule was subject to judicial challenge and vacated by the US Court of Appeals for the District of Columbia. The court concluded that EPA erred by excluding units that combust solid waste for energy recovery from being subject to the CISWI standards. The court determined that the CAA requires any unit that burns “any solid waste material at all,” regardless of whether the material is being burned as fuel, to be regulated under CAA section 129 as a “solid waste incineration unit.” The court also vacated and remanded the Boilers Rule, as the vacatur of the CISWI Definitions Rule would require revision of the Boilers Rule.
- In response to the court’s decision, EPA is issuing criteria which identify those non-hazardous secondary materials used as fuels or ingredients in combustion units and whether they are or are not considered solid waste.