



October 20, 2011

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EPA Docket Center
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Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Attn: Docket ID No. EPA-HQ-RCRA-2010-0742

The Coalition for Responsible Waste Incineration (CRWI) appreciates the opportunity to submit comments on *Definition of Solid Waste; Proposed Rule*. 76 FR 44,094 (July 22, 2011). CRWI is a trade association comprised of 27 members, some of which own and operate industrial boilers and process heaters that will be directly impacted by the proposed rule. While our member companies will individually comment on a number of the proposed changes in the definition of solid waste rule, we would like to submit comments from the organization on one issue – the proposed inclusion to require boilers and industrial furnace operators to meet the proposed legitimacy requirements in § 260.43.

EPA proposed to modify the applicability of the regulations for burning hazardous waste in boilers and industrial furnaces by adding the following sentence to § 266.100(a). “Burning for energy recovery and processing for materials recovery or as an ingredient must be legitimate recycling as specified in § 260.43 of this chapter.” If finalized as proposed, this change would require that all hazardous waste boilers and hydrochloric acid production furnaces document that they meet the legitimacy criteria in § 260.43.

CRWI understands the Agency’s desire to apply the legitimacy criteria to all area where hazardous secondary materials are recycled. However, we believe that it is unnecessary, illogical, and counterproductive to require hazardous waste boilers or hydrochloric acid production furnaces to show that they meet the legitimacy criteria in

§ 260.43. Firstly, 40 CFR Part 266 contains alternative standards for materials that are hazardous waste. It does not contain alternative standards for materials that are excluded from the definition of solid waste. Since the express purpose of this proposal is "...to revise certain exclusions from the definition of solid waste for hazardous secondary materials intended for reclamation that would otherwise be regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA)" [76 FR 44,094], this proposed change to Part 266 is not proper and should not be included in the final rule. Second, the entire purpose for the legitimacy criteria is to prevent sham recycling. Forcing facilities that have a RCRA Part B permit to show that they meet the legitimacy criteria to prove that they are not "sham recycling" is not logical. Third, the material being burned in hazardous waste boilers and hydrochloric acid production furnaces has already been designated as hazardous waste. As such, all activities associated with these materials have already been covered under the facility's RCRA and Title V permits. It is not logical to add a self-implementing documentation requirement when all of these issues have already been addressed during the public comment periods for the RCRA and Title V permitting process. Fourth, there is no reason to require these materials to be subjected to the legitimacy criteria because they have already been designated as hazardous waste. A facility would have to show that hazardous waste would meet the legitimacy criteria but if it did meet the legitimacy criteria, it would not be a solid waste and as such, not a hazardous waste. This seems like a circular argument. Finally, we believe that adding this sentence would be counterproductive in that it could push materials currently being burned for either energy recovery or materials recovery toward treatment without recovery. This is counter to the stated objectives for RCRA (resource conservation and recovery). While it might be possible to show that hazardous waste burned for either energy or materials recovery could pass the legitimacy criteria, many operators would likely take a simpler approach and divert treatment to other units where such a demonstration is not required.

CRWI believes that the proposed change in § 260.100(a) does not make sense, is redundant to requirements already imposed by RCRA and Title V permits, adds a documentation burden with no environmental benefits, is not within the scope of the stated purpose of the proposed rule, and would be counter-productive to the stated objectives of RCRA. We suggest that this sentence not be included in the final rule.

Thank you for the opportunity to comment on this proposed rule. If you have any questions, please contact me at (703-431-7343 or mel@crwi.org).

Sincerely yours,



Melvin E. Keener, Ph.D.
Executive Director

cc: CRWI members
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