



Representing the Interests of America's Industrial Energy Users since 1978

COMMENTS OF THE COUNCIL OF INDUSTRIAL BOILER OWNERS
on
EPA Proposed Rule
Additions to List of Section 241.4 Categorical Non-Waste Fuels

EPA-HQ-RCRA-2013-0110
79 Fed. Reg. 21006

June 13, 2014

Filed by:

Robert D. Bessette
President

Council Of Industrial Boiler Owners
6801 Kennedy Road, Suite 102, Warrenton, VA 20187
Phone: 540.349.9043 Fax: 540.349.9850
E-Mail: cibo@cibo.org

I. INTRODUCTION

CIBO is a broad-based association of industrial boiler owners, architect-engineers, related equipment manufacturers, and university affiliates with members representing 20 major industrial sectors. CIBO members have facilities in every region of the country and a representative distribution of almost every type of boiler and fuel combination currently in operation. CIBO was formed in 1978 to promote the exchange of information within the industry and between industry and government relating to energy and environmental equipment, technology, operations, policies, law and regulations affecting industrial boilers. Since its formation, CIBO has been active in the development of technically sound, reasonable, cost effective energy and environmental regulations for industrial boilers. CIBO supports regulatory programs that provide industry with enough flexibility to modernize – effectively and without penalty – the nation's aging energy infrastructure, as modernization is the key to cost-effective environmental protection.

This proposed rule is a continuation of EPA's rulemaking efforts regarding the interplay of the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA). EPA previously issued rules defining "solid waste" for purposes of CAA §129. 76 Fed. Reg. 15456 (Mar. 21, 2011), amended by 78 Fed. Reg. 9112 (Feb. 7, 2013). Litigation on those rules is currently underway in the D.C. Circuit Court of Appeals. *Solvay USA Inc. v. EPA*, No. 11-1189 (D.C. Cir.). This proposed rule responds to several industry requests for further additions to the categorical listing of non-waste fuels.

CIBO supports the addition of categories of NHSM as non-waste fuels. However, the proposed rule should go further to include legitimate fuels as non-waste fuels at multiple sources.

II. COMMENTS

A. CREOSOTE-TREATED RAILROAD TIES (CTRT)

Rail road ties are biomass materials that are treated with an energy rich substance (coal tars) to decrease insect infestation and rot in their first use. The coal tar treatment actually benefits the energy content of this biomass material, and makes them a desirable alternative fuel. These materials are not discarded. They have clear value as fuel, are sold under long term agreements for use as a fuel and should be classified as a non-waste. Their classification as non-waste should not depend on whether the unit they will be burned in is "designed to burn" certain other types of fuel. The recovery of the high energy value of CTRTs fulfills RCRA goals and protects the environment; CTRTs are properly categorized as NHSM and EPA should significantly expand the universe of CTRT that are considered non-waste fuel.

Several CIBO members own or operate facilities that use CTRTs as a critical component of their fuel mix and do so in lieu of more carbon-intensive fuel sources. These facilities rely on the availability of CTRTs as a fuel and have done so for years while fully complying with applicable emissions limits using their current fuel blends. EPA treats CTRTs as a non-waste fuel when burned in a boiler that burns fuel oil. However, EPA calls CTRTs a waste when burned for

energy recovery, managed under contract, and sufficiently processed in a unit that does not or is not designed to burn fuel oil. This is not logical. EPA establishes no clear difference between a boiler “designed to burn both fuel oil and biomass” and any other boiler that may use CTRTs in combination with natural gas. EPA should open the CTRT categorization to all boiler types and all fuel types. EPA’s approach is arbitrary and capricious and contrary to law.

First, EPA’s focus on selected contaminants is flawed. In the Final Reconsidered NHSM rule, EPA says that “non-waste fuels must be similar in composition to traditional fuels prior to combustion.” 78 Fed. Reg. 9141. In other words, the *composition* of the fuel is what is needed to determine if the material in question is comparable to a traditional fuel - not the emissions resulting from the combustion of those materials. EPA’s current proposal compares *contaminants* in CTRTs to contaminants in fuel oil and biomass. 79 Fed. Reg. 21025. For boilers that don’t have the ability to burn fuel oil, the rule requires a comparison between the contaminants in CTRTs and the contaminants in biomass only. *Id.* The rule states that the level of metals and volatiles in CTRTs are *comparable* to the levels in biomass but CTRTs have much higher levels of semi-volatile organic compounds (SVOCs or semi-volatiles) than biomass. *Id.* The rule fails to mention that the level of metals and volatiles in CTRTs are *much lower* than in biomass. EPA has arbitrarily determined that SVOCs present in the fuel are of greater importance than metals and volatiles in the fuel. This determination indicates that EPA is not adequately “weighing” the legitimacy criteria, but rather is saying that *all* contaminants have to be lower than a traditional fuel to qualify as non-waste fuel, which does nothing more than lead to arbitrary and capricious outcomes.

This proposed method of comparison also conflicts with the method for evaluating scrap tires. 78 Fed. Reg. 9154. When evaluating the composition of scrap tires, EPA did not consider volatiles or semi-volatiles in comparison to traditional fuels. Instead, EPA focused solely on metals. Materials Characterization Paper in Support of the Final Rulemaking: Identification of Nonhazardous Secondary Materials That Are Solid Waste - Scrap Tires,” EPA-HQ-RCRA-2008-0329-1822 at 13. EPA also noted the importance of reducing scrap tire stockpiles. *Id.* at 17. Finally, EPA did not include any “designed to burn” criteria when creating the scrap tires category. EPA’s changed methodology for CTRTs lacks any rational basis and EPA should revise the method to make it consistent with the method for analyzing scrap tires.

The proposed rule is also contrary to law because CTRT is a product that is not discarded and therefore cannot be solid waste. The rule wrongly focuses only on contaminants when determining whether CTRTs are waste. Other more significant and relevant factors make clear that CTRTs are highly commoditized and there is an active market for the use of CTRTs as fuel.. For example, the record for this rulemaking includes evidence that discard of CTRTs is not the motivation of the combustor and that railroad tie fuel is functionally the same as comparable traditional fuels. “Legal Analysis Supporting Listing Railroad Tie Fuel as a Nonwaste under 241.4(a),” (January 15, 2014), EPA-HQ-RCRA-2013-0110-0008. EPA should consider these “other relevant factors” when making the final determination. 40 C.F.R. § 241.4(b)(5)(ii).

In part, EPA bases its treatment of CTRT as fuel on an incorrect, arbitrary conclusion, reflected in this preamble statement: “CTRTs removed from service and stored in a railroad right of way or other location for long periods of time—that is, a year or longer, without a determination

regarding their final end use (e.g. landscaping, as a fuel or land filled) indicates that the material has been discarded and is a solid waste.” This statement reflects a complete misunderstanding of how CTRTs are processed and treated in the marketplace. Often times, CTRTs are transported a significant distance to the end user of the ties and therefore, those ties may need to be stored long enough to provide a shipment at a cost-effective freight rate. The availability of CTRTs may not always match the demand for CTRTs. Significant deconstruction of a railway could occur at a time when the marketplace for CTRTs as a fuel is flooded. Thus, storage of CTRTs is reasonable and by no means indicates that CTRTs are discarded.

EPA proposes to partially expand the CTRT category to include “CTRTRs that are: (1) combusted as part of normal operations in existing units that are designed to burn both CTRTRs and fuel oil; and, (2) combusted in units at major source pulp and paper mills that are being modified in order to use clean fuel, such as natural gas instead of fuel oil.” 79 Fed. Reg. 21028. EPA includes additional conditions on this category, requiring that “[t]he CTRTRs must be burned in an existing stoker, bubbling bed or fluidized bed boiler; The CTRTRs can comprise no more than 40% percent of the fuel that is used on a monthly basis; The boiler that burned the CTRTRs must have been designed to burn both fuel oil and biomass; and The boiler is modifying its design to also burn natural gas.” *Id.*

There is no rational basis for these proposed limits on the CTRTR category. It is unclear why EPA limits this proposed “expansion” of the CTRTR determination. If EPA chooses only to expand the category as proposed, CIBO opposes the additional requirements for the proposed category. Any percentage cap on use of CTRTRs would be arbitrary and has nothing to do with whether a material is discarded. Nor can EPA demonstrate that these proposed limits will provide any greater environmental protection.

CIBO also notes that EPA has already indicated that the level of contaminants in borate-treated wood is comparable to those found in unadulterated wood. 76 Fed. Reg. 15484. Because EPA has sufficient evidence to establish that borate-treated wood meets the legitimacy criteria, EPA should expand the determination to include borate-treated ties.

Finally, biomass-derived energy is a key component of EPA’s strategy to reduce carbon emissions 30% by 2030. *See* “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Plants,” Docket ID No. EPA-HQ-OAR-2013-0602, pre-publication copy at 509, June 2, 2014. Yet some CIBO members that use CTRTRs do not rely on or use fuel oil and would thus be considered to be burning solid waste if EPA finalizes the rule as proposed. This disincentive to burn a clean biomass product would be inconsistent with EPA’s vision of a reduced carbon future.

B. CONSTRUCTION AND DEMOLITION WOOD (C&D WOOD)

CIBO supports the inclusion of C&D wood as a non-waste fuel.

EPA should retain the inclusion of resinated wood in the definition of C&D debris. Resinated wood is a valuable fuel commodity that is legitimately used for energy recovery by CIBO members. This use provides strong economic, environmental, and societal benefits. Therefore, resinated woods are properly classified as biomass, not waste, such that they may continue to be

appropriately used as fuel. Because EPA already has identified resinated wood materials as non-waste fuel, there should be no concern with inclusion of such materials in C&D biomass residuals. Resinated wood NHSM fuel is a standalone fuel and since its invention has constituted a subset of C&D biomass residuals.

EPA also seeks comments on whether disaster debris should be included in the definition of C&D wood. CIBO supports including wood recovered from disaster debris within the definition of C&D wood. Wood recovered from disasters would be managed by processors in the same manner as any other source of C&D wood to meet customer specifications for fuel products. Thus, we believe it is important to clarify that this valuable source of fuel is included in the definition of C&D wood.

CIBO opposes the proposed written certification requirement from C&D processors because we feel that purchase agreements between the provider of product and combustor provide sufficient records related to quality of the fuel products being combusted at a facility. There is no need to increase the burden on regulated sources by requiring additional paperwork and personnel resources for a task that would largely be duplicative. EPA also lacks authority to regulate sorters and providers of C&D Wood in the context of this rule.

CIBO is concerned about the financial burden of requiring C&D processors, many of which are very small businesses, to install capital-intensive equipment such as X-ray fluorescence (XRF) to sort and remove wood with lead-based paint. Although the rule as proposed currently makes use of XRF optional, EPA should ensure that processors are not required to install or otherwise use hand-held XRF equipment. CIBO has members who support their boiler operations using C&D wood from very small processor operations (e.g. less than 50,000 tons per year) that provide a service to their community by processing C&D wood and saving landfill space for other necessary uses. These small processors may have to shut down their operations if any special monitoring equipment is required, yielding the loss of guaranteed community environmental benefit for the hypothetical gain of some occasional air emission avoidance.

CIBO believes that training processors to remove certain materials would provide sufficient certainty of removal of lead-based painted wood and other undesirable materials. However, CIBO does not support a strictly defined training program for the processors. Instead, processors should be free to design training programs that work for the individual processor. Because training should suffice to ensure the purity of C&D wood, CIBO encourages EPA not to impose additional substantial sorting or technology requirements upon C&D facilities.

C. PAPER RECYCLING RESIDUALS (PRR)

CIBO supports the inclusion of PRR as non-waste fuel. Many CIBO members routinely use PRR as an important part of their fuel mix and third party supplied PRR are reasonably self-classified as fuels (and other usable materials) by the sellers and purchasers of these materials.

CIBO supports expanding PRR to include PRR burned off-site. Differential treatment for the same material whether retained onsite or transferred is arbitrary and unreasonable. A facility can apply the legitimacy criteria and determine a material is a non-waste fuel regardless of the specific location where the material is used for fuel.

Many facilities of CIBO members routinely purchase and transport non-hazardous secondary materials generated at third party locations to their sites for legitimate use as fuel. These materials are sourced and purchased as fuels from others and thereby satisfy the first two legitimacy criteria contained in RCRA: 1) be handled as a commodity with an established market; and 2) have sufficient BTU content to support their use as fuel. The third legitimacy criterion (contain contaminants that are not significantly higher in concentration than traditional fuel products), is addressed in the user's air permit rather than in a duplicative non-waste determination process. To exclude these materials from the definition of non-waste fuel simply because they are produced at another location is not an effective or proper use of agency authority.