

BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE

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Docket ID Number EPA-HQ-RCRA-2008-0329
United States Environmental Protection Agency
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket ID Number EPA-HQ-RCRA-2008-0329; Identification of Non-Hazardous Secondary Materials That Are Solid Waste Proposed Rule

Dear Sir or Madam:

The Blue Ridge Environmental Defense League is pleased to provide these comments on the Agency's proposed rule "Identification of Non-Hazardous Secondary Materials That Are Solid Waste". We feel that a broad, clear definition of materials that are solid wastes and comprehensive regulations under Section 129 that strictly limit the emissions from the combustion of solid wastes are critical requirements for protecting the environment and the public health of communities. The League is working in many such communities today.

Studies in North Carolina and across the United States have found that solid waste facilities are more likely to be located in low-income communities of color. While it may be true, as EPA claims in its "Preliminary Review of Environmental Justice Impacts,"¹ that this rule and the proposed rules for boilers will result in overall emissions reductions, it should be recognized that new sources of pollution are still more likely to locate in disadvantaged communities. This is particularly true for biomass facilities in rural areas.

We also note that in its review EPA did not consider exposures through contaminated drinking water, diet (including locally grown food) or the potential for ingestion by children on playgrounds.

In general, the Blue Ridge Environmental Defense League supports the broad definition of solid waste described in the alternative approach described on page 31885 of the Federal Register. However, we do not support an exemption for waste that remains in the control of the generator and meets the legitimacy criteria. Allowing case-by-case

¹ <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480ae59a9>

petitions to the EPA for solid waste determinations should not be included in the rule. If the potential of increased emissions exists, such materials should be regulated as wastes.

Establishing a minimum heating value, as suggested in the support documents, is an effective way to determine the actual motive for combusting the waste. Burning materials with a low heating value is an example of disposal, not of renewable energy generation.

Since 2007 when North Carolina passed legislation establishing a renewable energy and efficiency portfolio, the state has approached most of the regulatory issues on a case-by-case basis. Regulators are currently using guidance provided by the N. C. Attorney General's Office that listed ten criteria that the Division of Air Quality could use to determine if a material is a solid waste.² This determination was a prerequisite to permitting either under Section 112 or Section 129.

While this guidance has been used for some air quality permit applicants, for others it has not. Sawdust from a pallet manufacturer that uses virgin wood was found not to be solid waste as was saleable fat from a rendering operation. However, used mineral oil from a toothpaste manufacturer proposed for fuel in hot mix asphalt plants was found to be solid waste.

Unfortunately this guidance has not been universally applied to facilities burning waste in North Carolina. Without any guidance from EPA, states have been left with the responsibility of making solid waste determinations. In North Carolina, some applicants have requested this determination in advance of seeking a permit. Others have stipulated, at their own risk, that they will only burn "non-CISWI waste" to avoid permitting under Section 129.

Existing coal plants are converting to burn waste to qualify as renewable energy facilities and earn renewable energy credits. They have added new waste streams, such as tire derived fuel, construction and demolition debris, and pelletized paper. Others were already burning a variety of wastes including wood waste, railroad ties, particleboard, paper mill sludge, pulping liquor and poultry waste.

One such facility, Craven County Wood Energy, asserted in its application that it reserved the right to burn "any woody material allowed by its air permit" and that its "current primary fuel supply is wood material unfit for higher or better use."³ The North Carolina Utilities Commission has certified all of these wastes as renewable energy resources; the Division of Air Quality continues to issue the facilities air permits as boilers under Section 112.

For tire-derived fuel (TDF), the Commission made no determinations about the material as a waste, but did require analysis demonstrating that it contained a percentage of natural rubber. There were no restrictions on how the TDF would be processed. At least three

² <http://daq.state.nc.us/permits/memos/CISWI%20Implementation%20Memo.pdf>

³ CCWE Supplement to Registration Statement 7-1-09

facilities burning coal, wood waste and tire-derived fuel were issued permits as boilers and not as incinerators. All of these examples illustrate the need for broad definition of solid waste that results in more rigorous permits.

For several reasons, we are concerned about any expansion in the use of poultry waste combustion to generate electricity. First, poultry waste is a “dirty fuel” and while it can be burned, it presents a variety of problems. Preliminary comparisons of permitted emissions from a poultry waste power plant (Fibrominn) and a new coal-fired plant (Duke Energy’s Cliffside Unit 6) indicate more emissions per million btu from the poultry waste plant.⁴ Air toxics are also a risk and we are particularly concerned about arsenic. Arsenic is added to most poultry feed and the majority ends up in the poultry waste where it is a potential contaminant either to the air or to the land if the ash is used for fertilizer.

We will also point out that Fibrowatt, the main proponent of poultry waste combustion claims that it represents the solution to the problem of *excess* quantities of poultry waste. This excess amount qualifies as a solid waste if it is burned. The combination of low heating value, known and unknown contaminants in excess of traditional fuels, and optional uses for the material put poultry waste in the solid waste category and it should be regulated as such.

In summary, a broad, unqualified definition of solid waste and regulating solid waste combustion under Section 129 will be more protective of the environment and public health. The League appreciates the opportunity to provide comment on this very important rule.

Sincerely,

David Mickey
Blue Ridge Environmental Defense League

⁴ http://www.bredl.org/pdf/AirPollutionComparison_poultry-coal.pdf