

February 21, 2012

Lisa P. Jackson, Administrator  
U.S. Environmental Protection Agency  
Mailcodes: 6102T and 28221T  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Attention Docket ID Nos.: EPA-HQ-OAR-2003-0119 and EPA-HQ-RCRA-2008-0329

Re: *Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Proposed Amendments; Non-Hazardous Secondary Materials That Are Solid Waste; Proposed Rule*

Dear Administrator Jackson:

The Northeast States for Coordinated Air Use Management (NESCAUM) offers the following comments on the proposed rulemaking and reconsideration of final rules by the U.S. Environmental Protection Agency (EPA), entitled *Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Proposed Amendments; Non-Hazardous Secondary Materials That Are Solid Waste; Proposed Rule* published on December 23, 2011 in the Federal Register (76 FR 80452-80530).

NESCAUM is the regional association of air pollution control agencies representing Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont.

NESCAUM supports efforts to substantially reduce emissions of hazardous air pollutants (HAPs) such as mercury, other heavy metals, acid gases, and dioxin and furans from commercial and industrial solid waste incinerators. We also support the setting of similar standards for similar equipment across use categories to encourage best practices in all industries. NESCAUM expects that there will be substantial health benefits in our states associated with the emission reductions expected to result from this rule. It is with this in mind that we offer the following comments on the rules for Commercial and Industrial Solid Waste Incineration (CISWI) units, and on the definition of Non-Hazardous Secondary Materials (NHSM) that are solid waste, which has large implications for CISWI units and emissions. These rules have been proposed concurrently with new proposed rules for major and area boiler sources, on which NESCAUM is commenting in a separate letter.

## Consistency Issues

### *Inconsistencies between the Area Source Rule, Major Source Rule, and CISWI Rule Definitions*

The EPA is proposing several definitions in the area source boiler rule, major source boiler rule (both under consideration separately), and CISWI rule that are designed to clarify the applicable fuels under the appropriate section of the Clean Air Act regulating a combustion device (i.e., Section 112 or 129). NESCAUM notes that there are inconsistencies between the area source rule, major source rule, and CISWI rule, and requests that the EPA harmonize the definitions between the rules so there is no ambiguity as to which rule a source is subject. For example, the following definitions for liquid fuel are inconsistent between the three rules:

1. In the proposed area source boiler rule, liquid fuel is defined as follows:

*Liquid fuel* includes, but is not limited to, distillate oil, residual oil, any form of liquid fuel derived from petroleum, on-spec used oil, liquid biofuels, biodiesel, and vegetable oil.

2. In the proposed major source boiler rule, liquid fuel is defined as follows:

*Liquid fuel* includes, but is not limited to, distillate oil, residual oil, on-spec used oil, biodiesel and vegetable oil.

3. Under the CISWI and NHSM rules, liquid fuel is classified under “traditional fuel” as follows (excerpted as noted):

*Traditional fuels* means materials that are produced as fuels and are unused products that have not been discarded and therefore, are not solid wastes, including: (1) ... fossil fuels (e.g., coal, oil and natural gas)...; and (2) alternative fuels developed from virgin materials that can now be used as fuel products, including used oil which meets the specifications outlined in 40 CFR 279.11....

NESCAUM understands that all of these definitions are intended to encompass all non-waste liquid fuels that the EPA has deemed to be traditional fuels when burned in a combustion device and should be regulated under Section 112. NESCAUM recommends that the definitions be harmonized to all say the same thing (i.e., reference 40 CFR 279.11 for defining used oil) to the extent possible and list the same examples (i.e., list liquid biofuels and vegetable oil in all three definitions).

## Fuel Categories

### *Alternative Fuel Guidance*

NESCAUM believes that new EPA rules affecting the viability of alternative fuels must be carefully crafted to be flexible enough to accommodate new alternative fuels. As new fuels gain popularity, NESCAUM recommends that the EPA develop clear guidance in the rules to encompass future alternative fuels.

For example, some NESCAUM states have seen increased interest in use of re-refined oil. Provided that re-refined oil meets the contaminant limits detailed in 40 CFR 279.11 (e.g., 4,000 ppmw of total halogens, which are typically higher in re-refined oil than in traditional oil), then it should meet the definition of “used oil” (a “traditional fuel” under the CISWI rule) rather than solid waste. While individual sources can request a formal determination, the NESCAUM states suggest that the definition of used oil be clearly defined in the CISWI rule (as well as the area and major source boiler rules) to include used or re-refined oil that meets the specifications outlined in 40 CFR 279.11. Clarity and consistency between the rules will reduce confusion and will treat alternative fuels fairly.

### *De Minimis Levels in the Definition of Clean Cellulosic Biomass*

As part of the EPA's changes in the definition of clean cellulosic biomass (CCB), it is proposing to consider treated or painted wood the same as “virgin” wood if it has lower than *de minimis* levels of contamination. Such limits would be applied to “clean” construction and demolition (C&D) material, for instance, among other potential fuel types. The term *de minimis* is not defined numerically in the proposed rule. Without a specific numerical *de minimis* limit, sources may not have a clear understanding of whether they fall under the CISWI or hazardous waste incinerator rules. NESCAUM recommends that the EPA define and allow for public comment on the levels associated with the term *de minimis*, and base the *de minimis* levels on contaminant levels found in typical “virgin” wood. States should have discretion about how to determine appropriate fuel quality, but it should be no less stringent than limits set by the EPA. There should be a distinction between *de minimis* levels and a fuel quality standard. While adoption of new numerical values in the rule would require additional provisions for measurements and would require an additional comment period, the NESCAUM states believe that such clarity is required for successful implementation of the rule.

### *Wood Pellets in the Definition of Clean Cellulosic Biomass*

As part of the EPA's changes in the definition of CCB, it is proposing to consider wood pellets the same as “virgin” wood. In tests of the composition and quality of materials marketed as pelletized wood, NESCAUM found that wood pellets can vary in quality and contents, and may sometimes include plastics and other non-wood materials.<sup>1</sup> NESCAUM recommends that EPA specify that pelletized wood classified as CCB may not include non-wood materials such as

---

<sup>1</sup> NESCAUM, (pending), “Analysis of Elemental Composition and Emission Impacts of Biomass Pellets and Wood Chip Fuels.”

paint, plastic, or metal. NESCAUM further suggests that wood pellets included in CCB that do contain any non-wood materials should be required to meet the legitimacy criteria and requirements under 40 CFR 241.3(b)(3).

### **Contaminant Comparison Methodology**

#### *Contaminant Legitimacy Criterion for NHSM Used as Fuels*

In the proposed rule, the EPA is codifying the following language:

The non-hazardous secondary material must contain contaminants or groups of contaminants at levels comparable in concentration to or lower than those in traditional fuel(s) which the combustion unit is designed to burn. In determining which traditional fuel(s) a unit is designed to burn, persons can choose a traditional fuel that can be or is burned in the particular type of boiler, **whether or not the combustion unit is permitted to burn that traditional fuel.** In comparing contaminants between traditional fuel(s) and a non-hazardous secondary material, persons can use ranges of traditional fuel contaminant levels compiled from national surveys, as well as contaminant level data from the specific traditional fuel being replaced. Such comparisons are to be based on a direct comparison of the contaminant levels in both the non-hazardous secondary material and traditional fuel(s) prior to combustion. (FR 76 80471) [emphasis added]

The revised contaminant legitimacy criterion process allows sources to conduct a contaminant comparison against any traditional fuel the boiler *could* burn rather than against those that the boiler is permitted to burn. A possible consequence of this change in methodology is that sources may opt to install boilers capable of burning dirtier fuels to take advantage of this rule. This important language change creates a loophole where units may compare contaminants from a non-permitted fuel to a potential fuel in order to sidestep the CISWI control requirements. This new methodology wrests authority away from the states and allows sources to select dirtier fuels than the state authority would otherwise allow. States should retain the authority to control which fuels sources may burn through the permitting process, and we request that EPA adjust the rule language to allow states to retain such authority.

#### *Rulemaking Petition Process for Other Non-Waste Determinations*

The EPA is proposing to allow sources to petition the EPA Administrator for a categorical non-waste determination on a particular type of fuel (FR 76 80472), as described in the proposed Section 241.4(b). The NESCAUM states support the idea that such determinations must go through a public comment and review process, as detailed in the proposal. NESCAUM also advises that no site-specific determination should be treated as precedent for any categorical determination, as site-specific determinations are not subject to public comment and review requirements.

## Summary

The NESCAUM states share with the EPA the mutual goals of reducing air toxics and protecting public health as expeditiously as possible. We look forward to working with the EPA to ensure that the proposed rules are effective and can be implemented by the states in a manner that maximizes resources and achieves our shared goals.

If you or your staff has any questions regarding the issues raised in these comments, please contact Lisa Rector of NESCAUM at 802-899-5306.

Sincerely,



Arthur N. Marin  
Executive Director

cc: NESCAUM Directors  
Ian Cohen, EPA Region 1  
Juiyu Hsieh, EPA Region 1  
Joseph Malki, EPA Region 2  
Anthony Gardella, EPA Region 2  
Toni Jones, EPA SPPD  
George Faison, EPA ORCR