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of Engineers ®

EMCX Center of Expertise Information - Fact Sheet

Fact Sheet 18-02

Additions to List of Categorical Non-Waste Fuels: Other Treated Railroad Ties

Purpose of this Fact Sheet

This fact sheet summarizes the final rule, 83 Federal Register (FR) 5317, February 7, 2018, entitled “Additions to List of Categorical Non-Waste Fuels: Other Treated Railroad Ties”, <https://www.gpo.gov/fdsys/pkg/FR-2018-02-07/pdf/2018-02337.pdf>.

Effective Date of Rule

The effective date is February 7, 2018.

Who Should Read this Rule?

This rule is of interest to generators and handlers of railroad ties treated with creosote-borate or mixtures of creosote, borate, and/or copper naphthenate; copper naphthenate; and/or copper naphthenate-borate as they may qualify as non-hazardous secondary material when used as fuel. Generators would not have to manage OTRTs as hazardous waste provided they were managed in accordance with the “legitimacy criteria” discussed herein and sent to certain facilities for fuel use.

Background

The EPA lists particular NHSMs as “categorical” non-waste fuels. Categorical non-wastes, when burned as fuel, do not require evaluations under the general case-by-case standards and procedures that would otherwise apply to non-hazardous secondary materials (NHSMs) used in combustion units.

In a February 8, 2016 rule, 81 FR 6742, the EPA listed creosote-treated railroad ties (CTRT) that are processed and then combusted in certain types of units to the list of categorical non-waste fuels. The EPA received comments asking to add other treated railroad ties (OTRTs) to the list of categorical non-waste fuels because they were being used as an alternative to CTRTs. In this February 7, 2018 rule, 83 FR 5317, the EPA added OTRTs to the list of categorical non-waste fuels.

What is a Non-Hazardous Secondary Material?

The definition of a NHSM is found in 40 CFR 241.2. A Non-Hazardous Secondary Material means a secondary material that, when discarded, would not be identified as a hazardous waste under Part 261.

What Does Processing Mean?

According to 40 CFR 241.2, processing means any operations that transform discarded non-hazardous secondary material into a non-waste fuel or non-waste ingredient product. Processing includes, but is not limited to, operations necessary to: Remove or destroy contaminants; significantly improve the fuel characteristics of the material, e.g., sizing or drying the material in combination with other operations; chemically improve the as-fired energy content; or improve the ingredient characteristics. Minimal operations that result only in modifying the size of the material by shredding do not constitute processing for purposes of this definition.

Legitimacy Criteria

A key concept under this rule is that NHSMs used as non-waste fuels must meet legitimacy criteria specified in 40 CFR 241.3(d)(1). Legitimacy criteria for NHSM used as a fuel in a combustion unit include the following:

1. The NSHS must be managed as a valuable commodity based on the following factors:
 - a. The storage of the non-hazardous secondary material prior to use must not exceed reasonable time frames;
 - b. Where there is an analogous fuel, the non-hazardous secondary material must be managed in a manner consistent with the analogous fuel or otherwise be adequately contained to prevent releases to the environment;
 - c. If there is no analogous fuel, the non-hazardous secondary material must be adequately contained so as to prevent releases to the environment.
2. The NHSM must have a meaningful heating value and be used as a fuel in a combustion unit that recovers energy.
3. The NHSM must contain contaminants or groups of contaminants at concentrations comparable to those in traditional fuels which the combustion unit is designed to burn.

Summary of the Rule

The EPA codified determinations that certain NHSMs are non-wastes when used as fuels. If a material is categorically listed as a non-waste fuel, persons that generate or burn these NHSMs do not need to make individual determinations, as required under the previous rules, provided that these NHSMs meet the legitimacy criteria. Except as otherwise noted, combustors of these materials are not required to provide further information demonstrating their non-waste status. NHSMs that are not solid wastes when burned as a fuel in combustion units are categorically listed in 40 CFR 241.4(a).

This rule amends Non-Hazardous Secondary Materials (NHSM) regulations and adds the following OTRTs to the categorical non-waste fuel list in 40 CFR 241.4:

- Creosote-borate treated railroad ties and mixtures of creosote, borate and/or copper naphthenate treated railroad ties that are processed and then combusted in certain types of units.
- Copper naphthenate treated railroad ties that are processed and combusted in units designed to burn biomass, biomass and fuel oil or biomass and coal.
- Copper naphthenate-borate treated railroad ties that are processed and then combusted in units designed to burn biomass, biomass and fuel oil, or biomass and coal.

The impact of the changes to the NHSM rule not only establishes a non-waste determination for OTRTs, it also determines whether emissions from the combustion unit are subject to requirements under Section 112 (e.g., National Emission Standards for Hazardous Air Pollutants [NESHAPs]) or Section 129 (e.g., Emission Guidelines or New Source Performance Standards [NSPS] for Solid Waste Incinerators) of the Clean Air Act (CAA). The emission standards and requirements for solid waste incineration units under CAA Section 129 are typically considered to be more stringent and onerous than those of commercial, industrial, and institutional boilers under CAA Section 112.

Conclusion

This rule expanded the list of NHSMs that categorically qualify as non-waste fuels. This rule allows additional OTRTs that meet legitimacy criteria to be combusted as a fuel product in units subject to the CAA 112 emission standards without being subject to a detailed case-by-case analysis of the material by individual combustion facilities.

Technical Assistance

For questions regarding this Fact Sheet, contact the USACE Environmental and Munitions Center of Expertise at (402) 697-2624.