

**How to Ensure Recycled Shingles
are Not Regulated as
“Solid Waste”
Under the Clean Air Act**

Angela Morrison

Hopping Green & Sams

Attorneys and Counselors

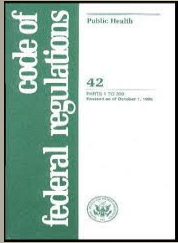
5th Asphalt Shingle Recycling Forum
October 28, 2011

Definition of Solid Waste

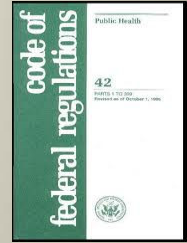
- Following a 2007 federal court decision overturning portions of the “commercial and industrial solid waste incineration” (CISWI) rule established under Section 129 of the federal Clean Air Act (CAA), EPA began a new rulemaking effort



- EPA issued a new rule under its solid waste program (RCRA) to “**identify**” solid waste (40 CFR 241) for purposes of the CAA
- The new identification rule became effective May 2011, and is entitled “Identification of Non-Hazardous Secondary Materials That Are Solid Waste”



Definition of Solid Waste



- *Solid waste* is defined under RCRA (40 CFR 258) to mean any garbage, refuse, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities
- EPA's new "identification" rule is intended to clarify that definition and help "identify" whether secondary materials might constitute solid waste

Identification of Solid Waste

- Generally, all “non-hazardous secondary material” that is combusted is a “solid waste” for purposes of the CAA with certain specific exceptions
- “Secondary material” is broadly defined as material that is not the primary product of a manufacturing or commercial process, including
 - post-consumer material
 - off-spec products
 - intermediates
 - post-industrial material
 - scrap



Traditional Fuels

Not considered “solid waste”

- Coal
- Natural gas
- Refinery gas
- Oil
- On-spec used oil
- Petroleum coke
- Clean cellulosic biomass
 - Clean C&D debris
 - Crop residues



Other Exceptions



- “Legitimacy criteria” are met **and**
- Generator maintains control of the fuel/ingredient
- Material is sufficient (to create a fuel product)
- or
- Tires are provided by established tire collection facility



“Legitimacy Criteria”

- **Managed as a valuable commodity**
 - Stored and used within a reasonable time
 - Managed in a manner consistent with the analogous fuel
 - Adequately contained to prevent releases to the environment
- Used for **energy recovery** with a meaningful **heating value**
- Contains **contaminants** “at levels **comparable** in concentration to or lower than those in traditional fuels which the combustion unit is designed to burn”



Who is Responsible?

- The owner/operator of a combustion unit is responsible for certifying whether the material being used as a fuel or ingredient is a solid waste
- Suppliers of the fuel or ingredient, however, may be required under a contract to provide a similar certification to the owner/operator



Other Exceptions

- Case-by-case exceptions may be authorized by EPA regional offices through a petitioning process



- [redacted] within which EPA must make a
- EPA will retain authority to decide without delegation to the states

Why does industry care so much about this rule?

- Material that is considered “solid waste” subjects the combustion unit to the more stringent CISWI rules under Section 129
- EPA rule language is new, vague, leaves many terms undefined, and much uncertainty remains



connect in the logic because identification rule
by the EPA Office of Solid Waste – like a
- but is implemented for purposes of CAA

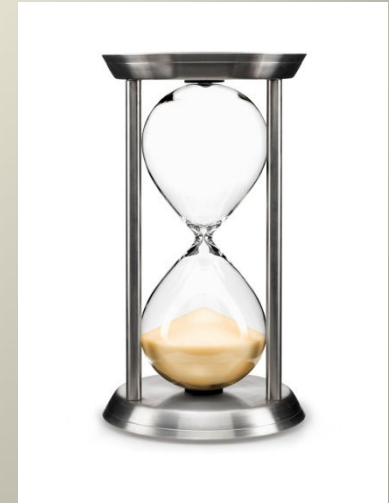
Industry Concerns

- EPA has issued what it calls “comfort letters” to clarify implementation issues for particular industry sectors or companies
- Industry has requested that EPA stay the effective date and reconsider the rule
- Industry has also formally challenged the rule in court
- Congress has introduced at least three or more bills that, if passed, would trump the new identification rule and the CISWI rule



When does all of this take effect?

- The identification rule is effective now
- CISWI rules are stayed so no immediate requirements to comply with CISWI if solid waste is used as a fuel or ingredient
- Once CISWI rules in effect, new, modified, and reconstructed units would be subject to the new standards
- Existing units would have to comply with the CISWI rules within at least 3 years of the effective date (and you would need to stop using solid waste at least 6 months prior to that date to avoid CISWI compliance)



Some good news!

- EPA is revising the CISWI rules, and they could be less stringent and closer to other MACT standards when material is used for energy recovery



ected to propose revisions to the
ion rule at the same time in an effort to
dustry's concerns

What should we expect?



Changes to identification rule as outlined in EPA's October 14th letter to Senator Wyden

- Broaden description of biomass that is considered a traditional fuel
- Improve process for petitioning EPA that would result in nationwide determinations
- Establish a new “balancing” test for legitimacy criteria
- Revise legitimacy criteria to allow for comparisons of groups of contaminants
- Clarify what is meant by “designed to burn”

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In the meantime ...

- Work with your consultants
- Consider seeking a comfort letter from EPA
- If appropriate, consider a petition
- Documentation, documentation, documentation!



Thank you!





Angela R. Morrison
Hopping Green and Sams, P.A.
amorrison@hgslaw.com

119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
850.425.2358

Hopping Green & Sams

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