



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 14 2011

THE ADMINISTRATOR

The Honorable Ron Wyden
United States Senate
Washington, D.C. 20510

Dear Senator Wyden:

Thank you for your letter regarding the U.S. Environmental Protection Agency's Non Hazardous Secondary Materials rule. Given our shared goals of protecting air quality and public health, I am grateful for your efforts to help businesses thrive and create jobs without endangering the health of the American people. It is crucial that we continue to find solutions without undermining the Clean Air Act or delaying public-health protections that have been legally required for decades.

Based on your feedback, as well as the comments of industry, the agency will initiate rulemaking proceedings to revise the NHSM rule. The EPA expects this process will produce a final rule that would provide certainty to industry by codifying provisions to avoid creating disincentives for burning clean materials, such as biomass, for fuel, while preserving the public-health protections required by the Clean Air Act.

This rulemaking will be conducted on the same time line as the reconsideration of the Boiler and Commercial and Industrial Solid-Waste Incinerator rules under the Clean Air Act. As you know, the EPA initially proposed and finalized the NHSM rulemaking to identify units that would be subject to the Boiler and CISWI rules. The Clean Air Act rules were required to be issued under an order from the U.S. District Court for the District of Columbia in *Sierra Club v. EPA* (No. 1:01 CV01537). These rules were mandated by the Clean Air Act amendments of 1990, but were not promulgated by the statutory deadline. The EPA is committed to listening to stakeholders' concerns and to addressing those concerns in a responsible manner that is consistent with the law, the science and the agency's mission.

Specifically, the EPA intends to propose the following provisions:

- Clarification that certain materials are already within the scope of biomass that is a traditional fuel under the current regulation, including the following materials as well as any others that fit the definition:
 - Agricultural and forest-derived biomass;
 - Bagasse and other crop and tree residues;
 - Biomass crops, vines and orchard trees;
 - Hugged fuel, including wood pallets, sawdust and wood pellets;
 - Wood debris from forests;
 - Wood debris from urban areas, if clean; and
 - Cellulosic biofuels

- A process for an owner or operator of a facility to petition the Administrator for a determination, based on a balancing of the legitimacy criteria and such other relevant factors that the Administrator may identify, that a nonhazardous secondary material is not a solid waste when used as a fuel or an ingredient in a combustion unit. Under such a process, if the EPA were to identify any such material as nonwaste, the EPA would be making a national determination and individual persons would not be required to make an individual showing that the nonhazardous secondary material is not a waste.
- A list of secondary materials in the regulatory text, including resinated wood products, which are nonwastes when used as a fuel or an ingredient in a combustion unit, based on a balancing of the legitimacy criteria and such other relevant factors that the Administrator may identify. These materials may be identified as nonwaste because, based on an assessment of the specific circumstances of the material stream, the agency may conclude that the combustion of the materials does not constitute discard.
- Revise the legitimacy criteria to expressly allow the comparison of groups of contaminants and clarify that contaminate comparisons may be made for any traditional fuel for which a combustion unit is designed to burn.

I look forward to continuing to work with you on this and other issues. Should you have any questions, please feel free to contact me or your staff may contact Arvin Ganesan, Associate Administrator for the Office of Congressional and Intergovernmental Relations, at ganesan.arvin@epa.gov or (202) 564-4741.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lisa P. Jackson', with a stylized, flowing script.

Lisa P. Jackson
Administrator