



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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### MEMORANDUM

**TO:** Regional Directors  
Regional Air Permit Managers  
Regional Air Compliance Managers  
Regional Enforcement Managers  
Central Office Air Managers  
Central Office Enforcement Managers

**CC:** James Golden, Deputy Director of Operations  
Justin Williams, Director, Land Protection and Revitalization Division

**FROM:** Michael G. Dowd, Director, Air and Renewable Energy Division *MGD*

**SUBJECT:** APG-458: Air Permitting Implementation Guidance for Non-Hazardous Secondary Materials (NHSM)

**DATE:** March 14, 2017

#### Background

A combustion unit that burns solid waste is regulated as a solid waste incinerator ("CISWI") under §129 of the Clean Air Act. The definition of solid waste is contained in the Resource Conservation and Recovery Act (RCRA). However, a unit that combusts material classified as "non-hazardous secondary material" ("NHSM" or "secondary material") as determined under 40 CFR Part 241.1 is regulated pursuant to the "boiler MACT" provisions of §112 of the Act. Different air permitting requirements apply depending on whether a unit falls under §129 or §112, and a single unit cannot be subject to both sections.

#### Applicability

This guidance applies to the consideration of permit applications involving combustion units that request approval for the use of a secondary material, request a change to a previously issued permit that contains an approval for the use of a secondary material, an application for any existing unit that uses a secondary material, and any action to issue, renew, amend, or modify a Title V permit containing combustion units using secondary materials. The guidance provides a procedure for air permitting staff to follow in the review of such permit applications, although

specific circumstance may warrant certain deviations from this guidance on a case-by-case basis. One important aspect of proper implementation is early communication between regional air permit and land division managers regarding a facility's proposed use of secondary materials. While this guidance pertains to only air permitting implementation, the solid waste regulations may place requirements on a facility.

### **Implementation**

The secondary materials rule is integral to the proper implementation of the Air Programs in so far as determinations made under that rule dictate whether a unit is regulated under §129 or §112 of the Act. But because 40 CFR Part 241 is a RCRA provision, the Air Division does not implement the provisions of the secondary materials rule.

The secondary materials rule provides interested parties the following three approaches to identify whether a material they wish to combust qualifies as a NHSM:

- Petition resulting in EPA making an official determination that the material qualifies as NHSM;
- Self-determine that the material satisfies the NHSM legitimacy criteria, processing criteria, and chain-of-custody criteria as applicable and set forth in 40 CFR Part 241; or
- Ascertain whether the material has been already determined to be a NHSM under 40 CFR Part 241. EPA is currently in rule-making to list additional materials as NHSM.

The secondary materials rule, as indicated by the second criteria, can be self-implementing. And compliance with the first and third criteria is relatively simple to confirm with EPA. Therefore, air permit writers should obtain statements from applicants certifying that the material they propose is combust at their facilities is a NHSM as determined under one of the three approaches in 40 CFR Part 241. As with all information the Department relies on, the statements must be certified in accordance with 9VAC5-20-230. A form has been developed that contains the statements and the certification for ease of use (Attachment A). Language has also been developed for use in an information request letter (i.e., 30-day or supplemental information request letter).

There are two outcomes of this process: 1) Either the applicant submits the certification indicating the materials are NHSM and the combustion unit is subject to §112; or 2) the applicant determines one or all of the materials are not NHSM but are solid wastes and that §129 standards apply instead. Regardless of the NHSM outcome, the application review proceeds pursuant to the regulations and guidance for each applicable permit program. The applicant must understand the emissions from the NHSM(s) and the drafted permit must contain the necessary requirements based on current regulations and guidance.

Where a source certifies the NHSM is not solid waste, there will be no review of the §129 standards as they are not applicable. However, the permit should reflect that approval of NHSM use is not a determination regarding solid waste status. Such a determination would flow from Part 241 and come from EPA. The definition of "commercial/industrial solid waste incineration (CISWI) unit" requires certain records be maintained by the applicant. These record requirements are contained in 40 CFR § 60.2175(v) or 40 CFR §60.2750(u) for new and existing units respectively. To communicate this, language has been added to the "approved fuels" and

recordkeeping conditions of the boilerplates:

[This condition provides for the combustion of these secondary materials only to the extent they are non-hazardous secondary materials that have been determined not to be solid waste and the permittee maintains documentation required in Condition {x}.]

[The permittee shall maintain the records specified in [40 CFR 60.2740(u)][40 CFR 60.2175(v)].]

For previously issued permits in which the term “waste” was used and the fuels qualify as NHSM that are not solid waste, the following language should be added to the fuel condition in the Title V permit, where applicable, to ensure clarity regarding regulation of the unit under §112 or §129:

[The term “waste” in this condition refers to materials that are secondary materials and is not a declaration of a determination with respect to the definition of solid waste under RCRA.]

The language may be added, or the term “waste” changed, the next time the underlying permit is open; however, no change to the underlying permit is required. Regardless, the Title V permit should include the approved fuel and recordkeeping language above.

Any questions on this guidance should be directed to the Office of Air Permit Programs.

# Attachment A

## NHSM Source Certification Form

{Company Name} burns materials other than traditional fuels as defined in 40CFR241.2. These materials combusted at our facility have been evaluated in light of the non-hazardous secondary materials provisions of 40CFR Part 241. Each of the materials combusted at this facility meet at least one of the following criteria:

- Materials are “traditional fuels” as defined in 40CFR241.2;
- Materials meet one of the provisions of 40CFR241.3(b);
- Materials have received a determination in accordance with 40CFR241(c); or
- Materials are listed 40CFR241.4.

{Company Name} recognizes that failure to maintain documentation required in 40CFR60.2175(v) or 40CFR60.2750(u), as applicable, may cause the respective unit(s) to be subject to the requirements of the Commercial and Industrial Solid Waste Incineration (CISWI) rule (40CFR60 Subpart CCCC or 9VAC5-40 Article 45, as applicable).

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

COMPANY: \_\_\_\_\_

REGISTRATION NUMBER: \_\_\_\_\_