



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Regional Directors
Regional Air Compliance Managers
Regional Air Permitting 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 Dowd, Director, Air and Renewable Energy Division *MDW*

SUBJECT: ACG-009:
Air Compliance Guidance regarding Non-Hazardous Secondary Materials

DATE: March 14, 2017

Purpose

The purpose of this guidance is to clarify responsibilities of Department of Environmental Quality (DEQ) staff related to applicability determinations for non-hazardous secondary materials (NHSM) under 40 CFR Part 241.¹ Specifically, the goal is to provide instructions for DEQ Air Compliance staff during compliance activities affected by NHSM determinations. Details of specific circumstances may warrant deviations from this document. Related guidance for Air Permitting staff is provided by APG-458.

Applicability

This guidance is applicable to air compliance activities for affected facilities subject to air regulations and permitting that combust NHSM.

Background

The Clean Air Act requires EPA to regulate certain units that combust solid waste. Solid waste is defined by the Resource Conservation and Recovery Act (RCRA), a statute governing the provisions of waste regulations under the purview of the Land Division. 40 CFR Part 241 (Part 241) provides the basis upon which NHSM determinations can be made.

¹ <http://www.cfr.gov/cgi-bin/text-idx?SID=1ca8841a419471807ebd98590e1ec8d6&mc=true&node=pt40.25.241&rgn=div5>

Part 241 provides the following approaches for affected facilities to ensure a material is NHSM before use:

- Petition EPA for a NHSM determination for the material in accordance with Part 241.3(c).
- Self-determine the material meets the NHSM legitimacy criteria in Part 241.3(d)(1) or (2).
- Utilize a material determined by rule to be NHSM as provided in Part 241.4.

DEQ Air Program staff are required to properly permit and determine compliance for affected facilities subject to air regulations. Air regulatory requirements for units burning NHSM are different from those applicable to units burning solid waste (i.e., whether or not a combustion unit is an incinerator pursuant to §129 of the Clean Air Act (CAA)).

However, while proper permitting and compliance activities by Air Program staff are affected by NHSM determinations made in accordance with Part 241, the Air Division does not make NHSM determinations.

Implementation

Although DEQ Air Program staff do not make NHSM determinations, DEQ Air Compliance staff determine affected facility compliance with applicable air regulations and permits. When performing air compliance activities for affected facilities that combust NHSM, Air Compliance staff should proceed as follows:

- DEQ Air Compliance staff should confirm that affected facilities maintain appropriate records of NHSM determinations in accordance with applicable air rules (i.e., Boiler MACT and CISWI). For example, 40 CFR Part 63.7555(d)(2) requires specific records regarding NHSM determinations.²
- DEQ Air Compliance staff should confirm that affected facilities maintain appropriate records that categorically address each of the legitimacy criteria of Part 241.3(d)(1) or (2).
- DEQ Air Compliance staff will not make NHSM determinations or confirm the legitimacy of the material, but should confirm that the records address legitimacy criteria of Part 241.3(d)(1) or (2).
- DEQ Air Compliance staff should address identified non-compliance with the record keeping requirements in accordance with standard guidance and procedures.

Affected facilities seeking a NHSM determination or confirmation of their self-determination must submit requests directly to EPA Region III in accordance with the petition provisions in Part 241. DEQ Air Program staff should not make that determination or confirm self-determination by affected facilities.

General questions or comments regarding this guidance should be directed to DEQ's Office of Air Compliance Coordination.³ Specific questions or comments regarding applicable air requirements for a facility combusting NHSM should be directed to the Air Permitting Manager or Air Compliance Manager in the DEQ Regional Office overseeing the area where the affected facility is located.⁴

² http://www.ecfr.gov/cgi-bin/text-idx?SID=d4ce78d988c8ef1d850cb2ed0a1cf42f&mc=true&node=se40.14.63_17555&rgn=div8

³ <http://www.deq.virginia.gov/Programs/Air/Contacts.aspx>

⁴ <http://www.deq.virginia.gov/Locations.aspx>