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EPA RULE WILL AFFECT FUELS DERIVED FROM WASTE

Under a court order, by the end of this year the USEPA is required to promulgate new regulations that promise to change the solid waste landscape significantly. Although there is a possibility that the deadline will be extended, significant quantities of commercial and industrial materials such as whole tires, auto shredder residue, painted and treated wood, municipal sewage sludge and construction and demolition materials previously combusted for energy recovery may be destined for new disposal outlets.

In response to the court ruling in *Natural Resources Defense Council v. EPA*, 489 F2d 1250 (CA DC, 2007), the EPA has proposed a new definition of “non-hazardous secondary materials that are solid waste when used as fuel.” 75 FR 31844. This change in definition will have the effect of requiring existing facilities which burn fuels derived from commercial and industrial wastes to come into compliance with strict emissions standards for “solid waste incinerators.” These incinerators will be subject to strict Maximum Available Control Technology (“MACT”) emissions control standards. Under current rules many of these facilities were exempted from the incinerator rules if they had the capacity to recover energy. That loophole is now being closed.

The proposed rule recognizes that not all discarded materials remain waste when used as a fuel. The rule exempts secondary material that has been “processed” and meets the following “legitimacy” criteria:

- **must be managed as a valuable commodity;**
- **must have a meaningful heating value and be used as a fuel in a combustion unit that recovers energy; and**
- **must contain contaminants at levels comparable to or lower than those in traditional fuels which the combustion unit is designed to burn.**

75 FR 31893, June 4, 2010. Unless secondary materials meet these new standards they will be considered solid wastes when used as a fuel and be subject to the incinerator rules. Consequently, these secondary materials may be searching for a new home.

In a companion rule the EPA has proposed new stricter emissions standards for commercial and industrial solid waste incinerators. 75 FR 31938. The new incinerator rules will take effect immediately for new plants. Existing facilities in states that adopt the rules will have three years to come into compliance and five years where the state does not adopt the rules. EPA does not expect any new incinerators to be built after the rule becomes effective. It also anticipates that existing plants will either stop accepting waste as fuel or incur retrofit costs to come into compliance when the new rules come into effect.

The combined effect of these rules will be to redirect industrial and commercial waste materials away from combustion, whether or not they are used for energy recovery. Previously exempt energy recovery facilities that burn materials such as used whole tires or contaminated construction and demolition debris will now be regulated as “incinerators.” Generators, processors, brokers and facility operators will be looking to demonstrate that their fuels have been “processed” and meet the legitimacy criteria in order to avoid the EPA’s strict MACT standards. While in some cases this may work, there are materials that may not be able to satisfy these standards, which will have to be disposed of in a landfill or by some other method. While this will create opportunities for landfill operators and possibly other beneficial use outlets, it will narrow the types of materials that can be used for energy recovery and promises to disrupt the existing market for fuels such as whole tires and construction and demolition debris.

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