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USEPA
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EPA
40 CFR Part 241
FRL-9149-2
RIN 2050-AG44
Identification of Non-Hazardous Secondary Materials That Are Solid Waste

RE: Comments on Proposed Rulemaking – EPA-HQ-RCRA-2008-0329

Energy Launch Developments, LLC is a renewable energy project development company focused on developing sustainable energy projects that utilize renewable secondary materials as sources of fuel/feedstock; developing projects that provide domestic alternatives to fossil fuel based energy while creating local employment opportunities. Our projects are based on proven technologies that have demonstrated excellent environmental performance with similar materials throughout Europe.

As written the proposed rule will have a negative impact on our development efforts by increasing project costs and in fact may halt the development on several on-going projects thus eliminating opportunities to utilize secondary materials in an environmentally beneficial manner.

Our specific comments are as follows:

General Comment

Comment – The overall effect of the proposed rule updating the definition of solid waste fails to meet the intent of RCRA and the goals for beneficial resource use.

As stated in the introduction, Section V. Part A.:

Within the context of RCRA, this proposal aims to facilitate materials management to the extent allowed by the statute, through the establishment of a regulatory framework that guides the beneficial use of various secondary materials, while ensuring that such use is protective of human health and the environment. EPA, in conjunction with the states, seeks to further facilitate this objective through research, analysis, incentives, and communication. (p. 31849)

The EPA fact sheet specifically states “the proposed rule significantly narrows the universe of non-hazardous secondary materials that would be identified as non-wastes under RCRA.” (6/2/2010, <http://www.epa.gov/epawaste/nonhaz/define/definition-fs.htm>) Significantly narrowing the universe of non-waste materials does not allow for beneficial use of materials. Further restricting the use of materials (defining additional materials as solid wastes under the proposed rule) limits the opportunity for seeking

beneficial use of secondary materials and further increases the quantity of waste materials that would require treatment, storage, and/or disposal, rather than finding economically viable and sustainable practices in line with the stated intent of the rule.

Suggested Revision – The proposed rule should provide for the incorporation of new technology that protects human health and the environment. Rather than expanding the universe of solid wastes, the protection of human health and the environment should rely on acceptable control of emissions comparable to current emission standards which have been proven to be protective and meet acceptable levels of risk. Realizing that the court has found that EPA must define solid waste, the definition should expand materials use by revising the legitimacy criteria.

Legitimacy Criteria

“Comparable” to Traditional Fuels and Petition Process

Comment – The legitimacy criteria should provide for a risk-based analysis rather than using contaminant levels of “traditional fuels” as a baseline.

As stated in the introduction, Section V. Part A., “The U.S. is pursuing an approach to materials management that employs the concepts of life cycle assessment and full cost accounting.” (p. 31849) Defining a solid waste simply by using the contaminant load of secondary materials in comparison to “traditional fuels” does not help to promote the intent for beneficial use, especially when considering the use of emissions controls and the lack of use alternative fuel sources. While EPA addressed and disagreed with a similar comment (p. 31872) that addressed using post-combustion levels for analysis, the fact that the process does not fall in line with the stated approach warrants additional review.

Suggested Revision – The legitimacy criteria should acknowledge the intent of the lifecycle approach by providing a more inclusive process for assessing risks and benefits from increased resource utilization. The proposed rule should allow for risk assessments and control technologies to be implemented as a measure of meeting legitimacy. The rule should allow for a submittal of documentation demonstrating risks and benefits along with associated controls and management regardless of contaminant loading. Using commercially available technology to meet emissions levels of “traditional fuels” used in boilers, a material could provide benefits while meeting the acceptable risk levels established under the CAA. Establishing a baseline with “traditional fuels” appears reasonable if the EPA also establishes a more open process for displaying benefits and weighing risks.

Lack of Information on Specific Materials

Comment – Similarly, the EPA should open the petition process to allow for more information to be used in determinations and analysis rather than relying on a belief (as stated in the text of the rule as listed below).

As stated in VII. C. 5. b.:

Although limited information was submitted in regard to painted wood or pentachlorophenol, copper-based and borate-based compound treated wood materials and their contaminant concentrations, we believe these secondary materials contain elevated levels of contaminants relative to traditional fuels, and thus do not meet legitimacy criteria and should be considered solid waste if burned in a combustion unit. (p. 31863)

The determination above does not provide sufficient justification for classification of solid waste.

Suggested Revision – The EPA should allow for demonstration of risks and benefits in a lifecycle assessment that relies on data rather than making determinations on a belief. The rule should not make determinations without the proper data. It should establish a more inclusive process for determinations and be established over time with a sufficient knowledge base.

Existing Management as a Valuable Material

Comment – The EPA proposes to use existing management practices as a condition of legitimacy which may preclude changes in management of materials. Consequently, the legitimacy criteria could prevent the development of new business models and sustainable approaches to materials management which provides benefits while still protecting health and the environment. The fact that materials have not been managed as a valuable commodity may reflect the lack of commercially available technologies for handling materials in an appropriate manner under strict regulations. However, as new technologies are developed materials that have historically been managed as a waste stream may prove to be valuable.

Suggested Revision – The rule should allow for a more inclusive petition process so that changes in technology and economic conditions may satisfy the concept of legitimate reuse. As energy prices increase, alternative sources will become increasingly viable economically. Similarly, technological improvements and development will also provide new management options. Therefore, materials that have not been managed as valuable commodities in the past should have a process by which new determinations may be made.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Ron Barmore".

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