



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

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MAY 13 2011

Mr. Tim Hunt
Senior Director, Air Quality
American Forest and Paper Association
1111 Nineteenth Street, N.W.
Washington, D.C. 20036

Dear Mr. Hunt:

I would like to thank you and other representatives of forest products industries for meeting with my staff on April 26, 2011, to discuss your concerns with the Identification of Non-Hazardous Secondary Materials That Are Solid Waste (NHSM) final rule. We are evaluating a number of the concerns you raised, but wanted to get back to you quickly on the "contained gas" issue that you raised in that meeting and in an issue paper that you forwarded to us on April 13, 2011. We understand that our response to the fourth comment in Part 3b.l.3. of the document *Responses to Comments Document for the Identification of Non-Hazardous Materials that are Solid Waste* (February 2011) has created concerns among the regulated community that the Environmental Protection Agency (EPA) has changed a long-standing interpretation of what constitutes a "contained gaseous material" for purposes of defining the term "solid waste" under the Resource Conservation and Recovery Act (RCRA). We have not changed our prior interpretation but would like to clarify the response.

EPA was responding to a comment requesting that we include in the NHSM final rule a definition of "contained gaseous material." The Agency does not believe that including such a definition in the rule is necessary. However, our response seems to have caused confusion about whether the Agency was changing its prior interpretations regarding the burning of gaseous materials, for example in fume incinerators, and whether or not such burning is considered to be treatment of a solid waste by burning.

The response does not change any previous EPA positions. We clarify here that the Agency's previous statements and interpretations remain effective. Thus, burning of gaseous material, such as in fume incinerators¹ (as well as other combustion units, including air pollution control devices that may combust gaseous material) does not involve treatment or other management of a solid waste (as defined in RCRA section 1004 (27)).

¹ See, for example, 47 FR 27530, June 24, 1982, where it states "Fume incinerators which are used to destroy gaseous emissions from various industrial processes, for example, are not subject to regulation under RCRA."

We also note that since the Agency did not solicit comment on this issue in the proposal, and did not analyze or address it in the preamble to the final rule or in the Regulatory Impact Analysis (RIA) for the rule, it is clear that the Agency did not intend to issue an interpretation that would change previous EPA statements regarding how "contained gaseous material" is interpreted for purposes of RCRA and for purposes of section 129 of the Clean Air Act.

Thank you for your continued interest in protecting the environment. If you have further questions you may contact George Faison, of my staff, at faison.george@epa.gov or 703-305-7652.

Sincerely,

A handwritten signature in cursive script, appearing to read "Suzanne Rudzinski".

Suzanne Rudzinski, Director
Office of Resource Conservation and Recovery