



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

August 5, 2011

OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

Ms. Sue Briggum  
Vice President, Federal Public Affairs  
Waste Management  
701 Pennsylvania Ave., NW  
Washington, DC 20004

Dear Ms. Briggum:

I appreciated the opportunity to meet with you and others from Waste Management and the Delaware Solid Waste Authority on July 8, 2011 to discuss your concerns related to EPA's final rule entitled, *Identification of Non-Hazardous Secondary Materials (NHSM) That Are Solid Waste*. 76 FR 15456 (March 21, 2011). In addition, thank you for your July 12, 2011 letter and attachments, which provided additional information regarding Waste Management's positions and concerns related to the NHSM rule's characterization of landfill gas. Specifically, we understand that several of the responses in the *Response to Comments Document for the Identification of Non-Hazardous Secondary Materials that are Solid Waste* (February 2011) (notably at 3b-I3-1, 3b-I3-2, and 3b-I3-4) have raised questions as to whether the Environmental Protection Agency (EPA) has changed its interpretation of what constitutes a "contained gaseous material," as well as its position regarding the regulation of landfill gas.

As you are aware, representatives from other industry sectors have raised concerns about the contained gas language in the Response to Comments Document. In a letter to Mr. Tim Hunt dated May 13, 2011, a copy of which is enclosed, we clarified that EPA was not changing any of its previous positions regarding what constitutes a "contained gaseous material" for purposes of defining the term "solid waste" under the Resource Conservation and Recovery Act (RCRA) and that the Agency's previous statements and interpretations remain in place.

Similarly, I would like to clarify that the Agency is not changing any of its previous statements and interpretations concerning landfill gas. As we noted in the May 13, 2011 letter to Tim Hunt regarding contained gas, EPA did not solicit comment on landfill gas in the NHSM proposal, and did not analyze or address it in the preamble to the final rule because the Agency did not intend to issue a different interpretation than it had in the past.

Finally, I would like to clarify one of the Agency's responses in the Response to Comment Document that you identified as raising questions.<sup>1</sup> Specifically, Comment [3b-13-2] discussed comments requesting the Agency clarify that landfill gas and sewage digester gas are "traditional fuels" that are not solid wastes when combusted in any type of boiler. EPA responded by stating that the Agency disagrees that landfill gas or sewage digester gas are traditional fuels. They may be considered commodity fuels that have been processed from waste materials, but they would have to meet all the requirements necessary to be considered a processed commodity fuel.

EPA continues to believe that landfill gas is not a traditional fuel when it is generated from the landfill. However, as indicated in the comment response, and as you explained further during our meeting, landfill gas is processed (filtered, dewatered, and compressed) before it can be used on-site or off-site. For certain uses, landfill gas must be even further processed before it is used as a fuel.

EPA also notes that landfill gas may be subject to work practice standards for gases that are comparable to natural gas and refinery gas (Gas 1), as opposed to numeric emission limitations for Gas 2 fired boilers and process heaters, under the Clean Air Act emissions standards issued for major source boilers and process heaters (the "Boiler MACT").

Information that Waste Management provided to EPA regarding landfill gas compared to natural gas and refinery gas,<sup>2</sup> suggests that landfill gas may meet the requirements for other Gas 1 fuels, and if so, would be required to meet work practice standards under the Boiler MACT. See 76 FR 15668-9 (section 63.7521(f)-(i) and Table 6) for specific regulatory requirements.

Thank you for your continued interest in protecting the environment. If you have further questions, please contact James Berlow, Director of ORCR's Program Implementation and Information Division, at [berlow.jim@epa.gov](mailto:berlow.jim@epa.gov) or (703) 308-8404.

Sincerely,



Suzanne Rudzinski, Director  
Office of Resource Conservation and Recovery

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<sup>1</sup> The other two responses that you identified in the Response to Comments document do not relate directly to landfill gas and thus, we do not address them in this letter.

<sup>2</sup> See memorandum from Tom Kraemer of CH2MHill to Amy Banister, Waste Management, July 7, 2011.