

## NORTHEAST WASTE MANAGEMENT OFFICIALS' ASSOCIATION

OSWER Docket  
EPA Docket Center  
Mailcode: 5305 T  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-RCRA-2002-0031

June 25, 2007

Dear Sir or Madame:

The Northeast Waste Management Officials' Association (NEWMOA) appreciates the opportunity to comment on the proposed Revisions to the Definition of Solid Waste, Supplemental Proposed Rule, including the proposed legitimacy criteria for hazardous waste recycling. The NEWMOA-member states support EPA's goal of promoting and encouraging the legitimate recycling of hazardous secondary materials (HSMs) and also endorse the codification of legitimacy criteria, although member states believe that application of all four criteria should be mandatory. Most NEWMOA-member states also support the general approach of excluding HSMs that are legitimately recycled on-site from the definition of solid waste provided that there is an effective notification requirement and sufficient record keeping is maintained by facilities to demonstrate conformance with mandatory legitimacy criteria. However, the NEWMOA states continue to have general and a variety of specific concerns regarding proposed revisions that would allow HSMs to move off-site without many of the protections provided under the current RCRA hazardous waste regulations.

Most of the NEWMOA states plan to submit detailed comments, some of which will include suggestions for addressing the specific concerns cited above. The complexity of the issues raised by EPA's proposal, especially regarding secondary materials that would move off-site, has triggered a wide-ranging response from NEWMOA and other states that makes detailed consensus-comments difficult. However, there are underlying concerns that all the NEWMOA states share.

The movement of HSMs off the site of generation as commodities raises serious concerns about accountability, tracking, and transparency that states fear would lead to abuses and releases that would be impossible to detect until damage has occurred. Enforcement in these circumstances would be difficult, complicated by removal of key waste program requirements that provide management accountability, such as tracking, notification, record keeping, and reporting.

While EPA's assumptions about deregulating HSMs may be valid for large corporations that attentively manage and document their environmental performance, the regulated community in most NEWMOA states consists largely of small businesses that, generally, have less capability regarding compliance matters than larger firms. The clear responsibilities embodied in the present regulatory scheme have served a valuable purpose for this group and should not be reduced to the extent that is now proposed. State recommendations to remedy this problem with the proposal range from more robust/detailed notification requirements, accompanied by specific mandatory record-keeping requirements, to streamlined recycling permit requirements, such as Massachusetts, Connecticut, New Jersey, Maine, and others, presently employ.

The features of widely used, and apparently successful, state recycling permit programs should be examined to determine how HSM recycling could be further encouraged, while retaining more regulatory assurances, accountability, transparency and, when all else fails, enforceability. In this regard, the NEWMOA states unanimously agree that all four elements of the legitimacy criteria should be mandatory, with specific guidance concerning the level of diligence and record keeping required.

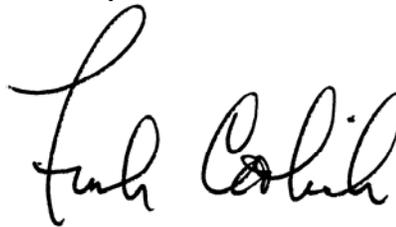
Another area of state concurrence is a common concern about the proposed petitions for non-waste classification. The NEWMOA states believe that without establishing detailed criteria, and a mechanism for close EPA oversight to ensure consistent determinations from state-to state, the present proposal would lead to problems of inconsistency. Moreover, processing the petitions would require highly trained resources, might often involve controversial issues, and could be subject to politicization, all of which would be a problem for states and EPA.

Finally, the added uncertainty and risk that would follow widespread adoption of these proposals would come at a time when most state environmental agencies have reduced hazardous waste compliance, enforcement, and permitting resources because of state budget cutbacks and the level funding of EPA state assistance grants for hazardous waste programs. While states could choose to maintain more stringent state requirements for generators in their states, they would be powerless to address the influx of HSMs that could follow the promulgation of these proposals in other states. In fact, there would be no way of knowing what HSM could be transiting a particular state, or arriving at any facility, anywhere, for any reason. This reality needs to be factored into EPA's assessment of risks and benefits.

NEWMOA is a non-profit, nonpartisan interstate association that has a membership composed of the hazardous waste, solid waste, waste site cleanup, and pollution prevention program directors for the environmental agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont. NEWMOA was established by the Governors of the New England States as an official regional organization to coordinate interstate hazardous and solid waste, and pollution prevention activities and support state waste programs, and was formally recognized by EPA in 1986.

We appreciate the opportunity to provide comments on the proposed rule-making. If you have any questions about these comments, please contact William F. Cass of NEWMOA's staff at (617-367-8558 x301) [wcass@newmoa.org](mailto:wcass@newmoa.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Coolick". The signature is fluid and cursive, with the first name "Frank" written in a larger, more prominent script than the last name "Coolick".

Frank Coolick (NJDEP)  
NEWMOA Chair

Cc: ASTSWMO  
NEWMOA Board of Directors  
NEWMOA Hazardous Waste Workgroup