



August 12, 2009

OSWER Docket  
EPA Docket Center  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

William F. Cass  
Executive Director

Terri L. Goldberg  
Deputy Director

To: [RCRA-docket@epa.gov](mailto:RCRA-docket@epa.gov), Attention Docket ID No. EPA-HQ-RCRA-2009-0315.

Dear Sir or Madame:

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The Northeast Waste Management Officials' Association (NEWMOA) appreciates the opportunity to comment on the Agency's recent regulation on the definition of solid waste (DSW) under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The NEWMOA-member states support EPA's goal of promoting and encouraging the legitimate recycling of hazardous secondary materials (HSMs). The member states also endorse the codification of legitimacy criteria, and continue to believe that application of all four criteria should be mandatory. Specifically, NEWMOA states believe that if EPA decides to retain the exclusion of HSMs that are recycled on-site from the definition of solid waste that there needs to be appropriate notification, specific containment, and record keeping requirements to demonstrate conformance with mandatory legitimacy criteria, with specific guidance concerning the level of diligence and record keeping required. The NEWMOA states continue to have a variety of concerns regarding the new revisions that, if adopted by states, would allow HSMs to move off-site without many of the protections formerly provided under the RCRA hazardous waste regulations.

As NEWMOA has previously commented, the movement of HSMs off the site of generation as commodities raises serious concerns about accountability, tracking, and transparency that states fear will 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.

The regulated community in most NEWMOA states consists largely of small businesses that, generally, have limited capability regarding compliance matters. The

clear responsibilities embodied in the full RCRA regulatory scheme have served a particularly valuable purpose for this group. State recommendations to remedy the new rule range from more robust/detailed notification requirements, accompanied by specific mandatory record-keeping requirements, to streamlined recycling permit requirements, such as several NEWMOA states currently 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. Another area of continued state concern relates to 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 requirements will, if implemented, 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 present problems for states and EPA.

The NEWMOA states would also like to register concern about language in the Preamble to the October 30, 2008 DSW Rule (page 64737, Section XVII.D.). The Preamble states that "EPA is not allowing reclaimers to manage manifested federal hazardous waste under the [transfer-based] exclusion." If this statement is implemented, there are many generators in states that have not adopted the rule that will be precluded from sending their hazardous secondary materials to facilities in other states for recycling if the receiving facility's state has adopted the rule and the facility is operating under the exemption. Several NEWMOA states have provided detailed comments about the negative impact that this could have on recycling of hazardous secondary materials in their states. They also believe that the preamble statement should have been codified in the rule if it accurately describes EPA's intent. Without codification, the NEWMOA states question whether the preamble statement is enforceable.

Finally, the added uncertainty and risk that would follow widespread adoption of the DSW rule comes at a time when 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 many states are presently planning to maintain more stringent state requirements for generators in their states, they are powerless to address the influx of HSMs that is expected to follow the promulgation of these regulations 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. This reality should be seriously considered as EPA decides about re-visiting the DSW rule.

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 DSW rule. 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 "Gary Gulka". The signature is fluid and cursive, with the first name "Gary" written in a larger, more prominent script than the last name "Gulka".

Gary Gulka (VT DEC)  
NEWMOA Chair

Cc: ASTSWMO  
NEWMOA Board of Directors  
NEWMOA Hazardous Waste Workgroup