

Expansion of RCRA Comparable Fuel Exclusion

Final Rule
73 FR 77954
December 19, 2008

What is this Federal Register About?

This is a Final rule. It was effective in unauthorized States and Territories on January 20, 2009.

EPA adopted new provisions to exclude from classification as a waste (and a hazardous waste) fuels derived from hazardous secondary materials that produce emissions comparable to fuel oils when burned in an industrial or utility boiler. Such fuels are known as “emission comparable fuels” (ECF). Neither the ECF nor the boiler is subject to the full set of hazardous waste regulations if the conditions of the exclusion are met.

The major conditions of the exclusion include:

1. ECF must be burned in a hazardous waste combustor, operating under a hazardous waste permit, or an industrial or utility boiler meeting the design and operating conditions given in the rule;
2. Generators and burners must meet the following:
 - * store ECF in tanks, tank cars or tank trucks (ECF is prohibited from being stored in underground tanks);
 - * maintain a SPCC plan, emergency procedures and response plan, generator waste analysis plan; sampling and analysis plan;
 - * maintain secondary containment and leak detection for tanks;
 - * control fugitive air emissions;
 - * notify state RCRA and air programs;
 - * maintain records; and
 - * notify overseeing agency when tank and container storage areas are no longer used to store ECF.
3. Burners must provide public notice to the community prior to burning EFC and provide a one-time certification to the generator stating that the burner will meet the ECF conditions and that the State in which the burner is located is authorized.
4. ECFs must meet the specifications given in the rule when generated by the original generator; it may not be treated or blended to meet specifications. Fuel specifications include: Minimum heating value of 8,000Btu/lb; constituent specifications for comparable fuels given in 261.38, (except for 37 hydrocarbons and oxygenates) and a maximum viscosity of 50 cs.

5. The boiler must fire at least 50% primary fuel and that primary fuel must be fossil fuel or tall oil with a Btu value of 8,000 or higher.
6. Generators of ECF must complete reasonable efforts to ensure that an unaffiliated burner complies with the conditions of the exclusion in order not to be liable should the burner discard ECF.

Finally, these rules are optional and self-implemented by the ECF generator and burner. Therefore, all the conditions of the rule must be met before the ECF can be managed outside the hazardous waste rules.

What does this mean to the regulated community?

Generators and burners of ECF that meet the conditions of the ECF exclusion may benefit from lower (or eliminated) waste management fees and lower operating costs since they would not be subject to the full host of hazardous waste management requirements. If the ECF is burned by the generator, the ECF will substitute for a fuel that the generator would otherwise have purchased.

What does this mean to DHWM and/or Ohio EPA?

These rule changes are considered by U.S. EPA to be less stringent than the current hazardous waste rules. Therefore, since we have an authorized RCRA program, we are not required to adopt the changes.

If we decide to adopt these rule changes, we anticipate that inspectors will need training to learn and enforce the rules, and additional resources will be expended to develop specialized inspection checklists. However, these rules do not increase the number of entities subject to regulation under the hazardous waste rules.

When would the regulatory changes be effective in Ohio?

The rule changes will be effective in Ohio when Ohio EPA adopts them. U.S. EPA cannot implement and enforce these rules prior to us adopting and being authorized for the changes. This is because we are not required to adopt the rules since they are not more stringent than the current rules.

When will Ohio EPA adopt the state version of this rule?

At this time, Ohio EPA is not planning to adopt this rule. This is because the new rule was appealed to the U.S. District Court of Appeals in the District of Columbia by a stakeholder groups. As a result, the future of the rule is uncertain and could be in threat of being remanded or vacated. Ohio EPA will watch how the situation proceeds and reconsider adoption when the future of the rule is known.

Federal Guidance Document and Final Rule:

<http://www.epa.gov/osw/hazard/tsd/td/combust/compfuels/exclusion.htm>