

## June 2012 Early Stakeholder Outreach (ESO) Comments Suggesting DMWM explore at Federal Approaches

Several commenters to the June 2012 ESO encouraged DMWM to incorporate concepts used in the federal approach to the recycling of nonhazardous and hazardous wastes. An introductory overview of these federal concepts can be found in Section IV. of the preamble to the advanced notice of rulemaking for Identification of Non-Hazardous Materials That are Solid Waste, 74 FR 41, pp. 50-53.

<http://www.gpo.gov/fdsys/pkg/FR-2009-01-02/pdf/E8-30987.pdf>

### Excerpts from June ESO comments

- **G2 Revolution:** The United States Environmental Protection Agency has an existing definition of “byproduct” [40 Code of Federal Regulations 261.1(c)(3)] that states a byproduct is “a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public’s use and is ordinarily used in the form it is produced by the process.” We have that definition in mind setting up the framework for our comments.
- **OCMA:** The federal Part 503 Biosolids rule allows the distribution of biosolids on agricultural fields in Ohio, fields where the biosolids are absorbed by corn, soybeans, etc. The Guide to the Biosolids Risk Assessments for EPA rule states that a risk factor of 1 in 10,000 was used. Why on earth would the Agency attempt to move forward with beneficial use regulations for industrial byproducts that are so extreme relative to the federal biosolids rule?
- **Ross Environmental Services, Inc:** RES strongly urges Ohio EPA to make itself intimately aware of the United States Environmental Protection Agency’s (“USEPA’s”) 2011 Definition of Solid Waste proposed rulemaking...In its 2011 proposed rule USEPA has put forward new, wide ranging safeguards for hazardous secondary materials recycling.... This includes many of the conceptual framework ideas that Ohio EPA is suggesting in its [ESO] as well as others that are not currently being considered by the State.... As such, RES recommends that Ohio EPA be mindful of the federal rules concerning this subject as it proceeds with its own regulatory program, to make sure that what is ultimately developed is consistent with and complementary to USEPA’s final rules.
- **American Coatings Association (also suggested looking at TX, NJ program):** Further, ACA suggests Ohio adopt the Definition of Solid Waste rule (Revisions to the Definition of Solid Waste Final Rule, 73 Fed. Reg. 64667 (October 30, 2008)) and/or look to the

Paint Universal Rule in Texas and the New Jersey Universal Waste regulations; the links are provided below.

- **Ohio Utilities Group (through Shumaker, Loop & Kendrick, LLP):** The timing of this action seems inopportune considering that U.S. EPA has not provided any final rules for management of Coal Combustion Residuals (“CCR”), which may ultimately impact each state’s rules and beneficial use programs. ...[T]he Utilities recommend that, should Ohio EPA move forward with these rules, the rules should be similar in nature to the used oil rules or other recycling rules as found under the RCRA.
- **City of Columbus, Department of Public Utilities:** Regarding the characterization plan, for incinerator ash, the standards for land application set forth in 40 CFR 503 could be used as a helpful guide. ...The outreach includes a certification of permit compliance requirement. The City asks that if such requirement is included, permittees that are municipalities or other public agencies be given the ability to designate employees as authorized representatives to review and sign required statements as provided under 40 CFR 122.22.
- **Ohio Water Environment Association:** We offer the following comments for consideration: The municipal solid waste landfill operators require generators of sewage sludge incinerator ash to conduct Toxicity Characteristics Leachate Procedure (TCLP) analysis on their sewage sludge incinerator ash, on an annual basis, to demonstrate it is a nontoxic material. This data can be submitted to Ohio EPA upon request.
- **Hull & Associates:** Ohio EPA should consider revising its current position that “a waste is a waste is always a waste.” We support the concept of “delisting” a waste or byproduct and reclassifying the material as a “product” if it meets standards established in the new beneficial use rules.
- **Ohio Department of Transportation:** Under item V, is OEPA proposing a characterization plan based on SW-846 and that it applies to all tier levels? However, the Tier 1 definition states these items are already known so why is there the additional burden of the characterization plan? It appears you are pointing toward a cradle to grave traceability on these materials which would be cost prohibitive, nearly impossible to comply with, and doesn’t appear to serve a beneficial purpose.
- **Ohio Contractors Association:** Adding a regulatory process will only dampen the use of this and other materials, as newly defined generators, generating facilities, distributors and end users would all have new and sometimes costly requirements to follow in order to reuse industrial by-products. While many of the products reused by our industry are in the Pre-Approved category of products, there would be new requirements for characterization of the material, which would require generators to develop and implement a materials characterization plan. According to the proposal, the plan might

be based on standard sampling, processing and analytical methodology, such as those found in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*. Another concern is the statement in the proposal that the Agency may clarify that wastes accumulated or stored in lieu of or prior to being recycled remain *wastes* until they are reused. If this means that these materials would need to be tracked “cradle to grave”, this would be a huge problem, as stockpiles of these materials – asphalt, for example - are brought from many sites over a period of time and then redistributed in pavement at potentially multiple sites. Requiring documentation of the origin and the final location will discourage use of this product and others.

- **Materion Brush Inc.:** Another example of an unnecessarily restrictive regulation would be to embrace the RCRA regulations that govern the reuse of hazardous waste as a model for an industrial waste beneficial reuse regulatory program.