

**Congress of the United States**  
**Washington, DC 20515**

November 17, 2009

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Administrator Jackson:

On January 2, 2009 the Environmental Protection Agency (EPA) published in the Federal Register, Vol. 74 No.1, an Advanced Notice of Proposed Rulemaking (ANPRM) for the identification of non-hazardous materials that are not solid waste when combusted. This ANPRM is in direct response to a D.C. Circuit Court of Appeals decision, *NRDC v. EPA*, 489 F.3d 1250 (D.C. Cir. 2007). Under that decision, any material that EPA defines as “solid waste” under its authorities for *non*-hazardous waste (Resource Conservation and Recovery Act (RCRA) Subtitle D; see also, Section 129(g)(6) of the Clean Air Act (CAA)) would trigger applicability of “solid waste incineration” standards set under Section 129 of the CAA.

We are concerned that EPA may propose a rule under RCRA that would impose new barriers to environmentally sound resource conservation and recovery. Because we understand that EPA’s proposal would exclude “processed” or shredded tires from the new Subtitle D definition of solid waste, we are specifically concerned about how that proposal may affect the use of whole scrap tires as a non-hazardous alternative fuel, particularly in cement kilns. If whole tires (regardless of origin) were not excluded from the new definition, any cement kiln that used such a “solid waste” material as fuel would be subject to CAA §129 standards in addition to the numerous highly protective standards to which cement kilns are already subjected. These standards would unnecessarily make compliance very burdensome and impose excessive costs.

The result of such regulation will provide an incentive for cement kiln operators to avoid using any fuel that would subject their kilns to these inappropriate standards. We believe that this would be contrary to what EPA is trying to achieve, as EPA has long recognized the substantial environmental and economic benefits of using energy-bearing secondary materials as fuels in industrial processes.

The greatly expanded use of scrap tires as alternative fuel in industrial devices such as cement kilns has been instrumental in dramatically increasing the recycling rate of scrap tires from 11% in 1990 to 87% by 2005. Tire-derived fuel facilities in the state of Oklahoma utilize over 50 % of the state of Oklahoma’s waste tires for energy recovery. Not only is this a good recycling practice that conserves our natural resources, it also frees up much needed landfill space by removing tires from the waste stream, prevents the concentration of pests such as rats and mosquitos, and resolves the fire threat

that piles of used tires present. This practice is an environmental and economic success story that should not be discouraged.

Cement kiln operators nationwide are utilizing technologies that enable the use of whole scrap tires as fuel. These technologies avoid the significant cost of shredding and are a particularly economically efficient method for managing scrap tires. Of the roughly 40 U.S. cement plants that use scrap tires for energy recovery, 29 of them use whole tires. Excluding only shredded or processed from the definition of “solid waste” tires will discourage the reuse of tires as alternative fuel and will drive cement kiln operators to consume more fossil fuels instead.

This proposal would also preclude the recovery of discarded tires from landfills and illegal disposal sites because state scrap tire recovery programs rely almost exclusively on cement kilns that use whole tires as fuel. To encourage cleanup of illegally disposed tires, some states, including Oklahoma, require users of scrap tires to acquire a certain percentage of their tires from land disposal sites. It would severely damage many if not all of these programs if cement kilns would no longer use whole tires as fuel.

We believe that the inclusion of whole tires in the definition of “solid waste” for Subtitle D purposes and consequently CAA Section 129, may be based on the need for factual information which we may be able to provide. EPA and the cement industry working cooperatively is the best chance to avoid counter-productive results. We realize that RCRA’s definition of solid waste includes “discarded material” (RCRA §1004(27)) and that whole tires placed in piles might be deemed to have been discarded at the time they were placed there. But just because a material has been discarded in the past (whether legally or illegally), there is no reason to assume that it must be deemed “discarded” forever, particularly when a valuable and beneficial use is found for it.

Additionally, including whole tires in the exclusion will not prevent states from regulating solid waste. The Oklahoma Department of Environmental Quality wrote in an April 13, 2009, letter to the EPA, that “A state’s ability to regulate solid waste under their own authority is not prohibited by the proposed Federal Rule. If tires were not considered a solid waste we would still be able to regulate tires either through our tire statute or as a public nuisance.”

Tire-derived fuel facilities, especially cement kilns, are a great recycling story in Oklahoma and throughout the nation. EPA should develop a balanced, environmentally sound proposal that endorses the current practice of recovering energy from whole tires while ensuring that Congress’ intent for RCRA and CAA is honored.

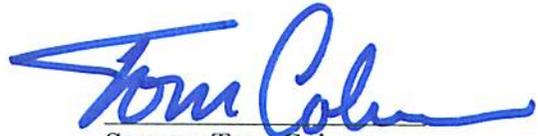
We hope that you keep our concerns in mind as you continue to develop a proposed rule. We would appreciate an update on this rule by November (two weeks from signed day). If you have any questions, please contact Matthew Hite on the Senate EPW staff at (202)224-6328.

Thank you for your service to our great country.

Sincerely,



Senator James M. Inhofe



Senator Tom Coburn



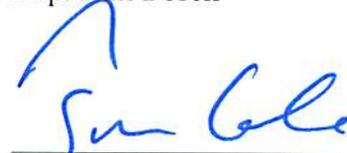
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