

Waste or Recycling? EPA's Legitimacy Criteria Largely Upheld

By Steven Burns*

If a material is a hazardous waste, it is subject to regulation under the Resource Conservation and Recovery Act (RCRA). If it remains a useful product, it is not a waste, and so it is not subject to RCRA regulation. However, distinguishing between the two is not always straightforward.

EPA's latest effort to articulate the difference between solid waste and reuse or recycling came in a 2015 final rule, which revised the regulatory definition of "solid waste," among other things. Both environmental groups and industry groups challenged various aspects of the rule. The federal Circuit Court for the District of Columbia recently issued its opinion (*American Petroleum Institute v. EPA*, 862 F.3d 50, July 7, 2017). In the end, the court largely upheld the approach taken by EPA, with some important qualifications.

Environmental groups took issue with two areas: containment requirements for hazardous secondary materials and a requirement that regulated entities notify EPA periodically. On both items, the groups wanted EPA to impose new regulations, but EPA postponed that decision. The court declined to rule before the agency reached the conclusion of its decision-making process on the basis that only a "final agency action" is subject to judicial review.

Industry groups focused on EPA's "legitimacy factors" to distinguish between legitimate and "sham" recycling. The factors are (1) the material must provide "a useful contribution to the recycling process"; (2) the recycling process "must produce a valuable product or intermediate"; (3) any hazardous secondary material must be managed "as a valuable commodity"; and (4) the end product must be "comparable to a legitimate product or intermediate." (40 C.F.R. § 260.43 (a))

As to Factor 3, industry objected to requirements to contain the secondary material and keep it labeled. They argued that secondary materials should be unregulated. However, the court found EPA's requirements a reasonable way to distinguish sham recycling and rejected the argument.

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As to Factor 4, industry objected to a prohibition on using hazardous secondary material for a useful product, if the hazardous component provided no “useful contribution” to the product. Where the recycled product has an analogue in the marketplace, EPA required additional showings that hazardous constituents were present at levels comparable to the analogue, or else met “widely-recognized commodity standards and specifications.” The court found EPA’s specific tests were overbroad and unlawful because they did not reflect consideration of risks to human health or the environment.

Finally, industry also objected to the Verified Recycler Exclusion in EPA’s final rule. A previous provision, known as the Transfer Based Exclusion, had allowed a generator of material to send it for reclamation to certain vendors, as long as the generator made reasonable efforts to confirm the vendor’s activities. The 2015 provision, however, added provisions for emergency preparedness at the generator’s facility and for the vendor to obtain EPA or state approval. The court found the preparedness requirement to be reasonable, but EPA had not fully explained why the “reasonable efforts” provision was inadequate and the regulatory approval requirement was necessary. The court reinstated the Transfer Based Exclusion, but with the additional emergency preparedness provisions of the Verified Recycler Exclusion.

The next step will be for EPA to take action to implement the court’s order. For more information, here are links to the source materials:

API v. EPA: <http://law.justia.com/cases/federal/appellate-courts/cadc/09-1038/09-1038-2017-07-07.html>

Federal Register notice for EPA’s rule on the definition of “solid waste”: <https://www.federalregister.gov/documents/2015/01/13/2014-30382/definition-of-solid-waste>

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Board Elections

Just to give everyone a heads up, Board Elections will take place in December, which means a call for nominations will be coming out soon. The following positions will be vacated this year: one Director position and the Vice Chair position (remember this position then transitions to the Chair and Past Chair over a three year period). If you or someone you know is interested in taking a more active role in A&WMA, then don’t hesitate to submit a name for consideration. More information to come, so stay tuned...

Determination of Condensable Particulate Matter

by: Spencer Edwards*

Particulate matter (PM) was defined in the Clean Air Act of 1970 as material with an aerodynamic size of less than 10 microns. As methods have evolved and health concerns have increased, fine particulate matter (PM_{2.5}) became the particulate species of greatest concern. This classification of pollutants is made up of filterable material less than 2.5 microns, as well as compounds that condense at ambient temperatures (65-85 degrees Fahrenheit). This group of particulates can make their way deep into the lungs and damage the alveolar wall resulting in impaired lung function.

In 1997, EPA promulgated new ambient air quality standards for fine particulates (PM_{2.5}). In 2012, they finalized a rule stating that condensable particulate matter (CPM) must be included in PSD permitting, as well as New Source Review. As such, CPM has become a common fixture in Title V permits, often with separate limits for PM_{2.5}, filterable and total particulate (CPM plus filterable). With these limits in permits and control device efficiency becoming increasingly higher, the sampling and analysis of particulate matter becomes more and more difficult.

EPA has determined that Method 5, the most common filterable particulate method, has a practical quantitation limit of 3 mg of PM and a minimum detection limit of 1 mg, meaning the minimum sample collected would need to fall within this mass range. If we assume that the 1-3 mg MDL would apply to each fraction of the Method 202 CPM train, with a 200 MW gas-fired boiler, the MDL of a 1-hr sample run would vary from 7-21 tons/year of CPM. This is complicated further by the field train recovery correction of 2.0 mg to 5.1 mg (EPA April 8, 2014 Interim Guidance Memo). These corrections can be applied to the total CPM catch, and to a 1-hour sample, which could mean as much as 15 % error in the results of the sampling.

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Condensable Particulate Matter (cont'd from previous page)

To prove compliance with a permit limit this may not be an issue, but to apply for a PSD permit, this much uncertainty will certainly bring up issues. The only way to lower this value would be to sample longer. For every hour over the 1-hr sample run, you will halve the MDL. For modeling purposes, where accurate results for every source in the facility is a must, you could see sample runs of 8 hours or more be a necessity. This increases cost and complicates the scheduling of maximum production rates during the testing program.

EPA has issued a Best Practices Handbook for Method 202. It can be found at: <https://www.epa.gov/emc/method-202-condensable-particulate-matter>.

Make sure your stack testing consultant is knowledgeable of the issues discussed in this document. Valuable time can also be saved with a preliminary discussion with your permitting agency to make sure everyone is on the same page with regard to sampling times and detection limits. It is much better to cover the issues before the test crew is on site to minimize delays.

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YOU KNOW YOU'RE AN AUBURN FAN WHEN...

~You say "War Eagle" more than "Hello"

~You don't own anything red

~You own stock in Charmin

~Aubie is the cutest mascot...ever.

No debate.





Quarterly Dinner Meeting: Brownfield Walking Tour at Pratt Mill

On August 9, 2017, the Alabama Chapter of A&WMA participated in a tour of the old Pratt Mill facility in Prattville, AL. The tour was held in conjunction with the Alabama Brownfields Conference, which was also held in Prattville on August 10-11. A brownfield is a property that is contaminated or has the potential to be contaminated by a hazardous substance or contaminant. The redevelopment of such sites is usually complicated by this contamination and the high cost to remediate it. However, through the Brownfields Program, these sites can be remediated and redeveloped to utilize existing infrastructure, lessen the development pressures of undeveloped land, all while improving the environment.

The Pratt Mill has sections that were built at various times throughout history as the Mill expanded. The tour highlighted sections built in 1912, 1898, 1848, and 1852. During the tour, plans for the Pratt Mill, which is a local brownfield site, were discussed. These plans include restoration of as much of the building structure as possible to accommodate a 145 unit apartment complex. The objective of The Mill at Prattville complex is to provide a modern living space while preserving Prattville's historic roots.



The tour concluded with an A&WMA dinner meeting and networking event held at Uncle Mick's a few blocks away in downtown Prattville. There were over 20 people in attendance, including several new members to the Alabama A&WMA chapter. New members and old members alike had the opportunity to mingle with each other, as well as with members of the ADEM Brownfield team. The dinner provided an excellent opportunity for the membership to network after the informative Pratt Mill tour. We hope to see YOU at our next event.



UPCOMING EVENTS

Sept. 20-22

Southern Section Technical Conference

Nashville, TN

www.ss-awma.org/2017-annual-meeting

*Registration closes Sept.

Oct. 30-Nov 1

Southeastern Environmental Conference

Orange Beach, AL

[www.alabamasafestate.ua.edu/
enviromental-conference](http://www.alabamasafestate.ua.edu/enviromental-conference)

Nov. 7-9

Air Quality Measurements Methods and Technology

Long Beach, CA

www.awma.org/measurements

Nov. 14-16

AWMA 7th Specialty Conference

Guidelines on Air Quality Models: The Changes

Chapel Hill, NC

www.awma.org/aqmodels

Sept. 26-28, 2018

Southern Section Technical Conference

Bridge Creek Town Center

Huntsville, AL

More info to come

PLEASE VISIT OUR WEBSITE FOR THE LATEST INFORMATION ON DINNER MEETINGS,
UPCOMING EVENTS, DUES AND HELPFUL LINKS.

WWW.SS-AWMA.ORG/ALABAMA

Tidbits



Abigail and Tim Martin, Chair



Hannah and Tim Martin, Chair

A&WMA Environmental Scholarship

The Alabama Chapter of the Air & Waste Management Association awards up to two environmental scholarships annually. This year's scholarship recipients are Abigail Whiteside and Hannah Thomascall. Abigail is a sophomore at the University of Alabama in Huntsville studying Earth System Science with a concentration in atmospheric science. Hannah is a sophomore at Auburn University studying Biosystems Engineering. Both girls have demonstrated hard-work and a commitment to academic excellence. We wish them the best of luck in their future endeavors.

YOU KNOW YOU'RE A BAMA FAN WHEN...

- ~You have a pet named "Bear"
- ~"Roll Tide" is ALWAYS an appropriate response
- ~You don't know how to listen to "Sweet Home Alabama" or "Dixie Land Delight" without adding words
- ~You despise the color orange



Are you ready for some



FOOTBALL!!!