



August 2, 2010

Proposed Rulemaking—Identification of Non-Hazardous
Secondary Materials That Are Solid Waste
Docket ID No. EPA–HQ–RCRA–2008–0329
U.S. Environmental Protection Agency
Mailcode: 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

**Re: Comments of the Southern California Alliance of Publicly Owned Treatment Works (SCAP)
on the Proposed Rule on Identification of Non-Hazardous Secondary Materials That Are Solid
Wastes, Docket ID No. EPA–HQ–RCRA–2008–0329**

Dear Sir or Madam:

SCAP appreciates the opportunity to comment on the United States Environmental Protection Agency's ("EPA" or "Agency") proposed rule titled "Identification of Non-Hazardous Secondary Materials That Are Solid Waste (40 CFR Part 241)" that was published in the Federal Register on June 4, 2010 (Proposed Rule). SCAP is an alliance of cities and special districts from Southern California that represents 86 public agencies that provide both water and wastewater treatment to nearly 18 million people in parts of Los Angeles, Orange, San Diego, Santa Barbara, Riverside, San Bernardino and Ventura counties. We treat and safely reuse or dispose of over 1 billion gallons of wastewater each day and deliver over 1.7 billion gallons of drinking water per day. Our members generate more than 70% of the biosolids produced annually within California and are among the leaders in developing renewable energy from wastewater and biosolids.

SCAP has several concerns with the Proposed Rule. First, we request that EPA preserve the current successful regulatory framework under 40 CFR Part 503 (Use or Disposal of Sewage Sludge) by excluding sewage sludge that is combusted from the Agency's definition of non-hazardous solid waste in the final rule. EPA seeks comment on this option in the preamble of the Proposed Rule and SCAP believes that EPA has the discretion to provide this regulatory exclusion. In fact, EPA has used this discretion previously.

Ignoring the existing regulatory framework will result in tremendous capital expenditures and operational and maintenance cost increases for publicly owned treatment works (POTWs) that incinerate sewage sludge, which ultimately will be passed on to their rate-payers. This increase in spending with little or no demonstrated improvement in environmental or public health protection is troubling, particularly in light of the investment already committed by these communities to meet existing Clean Water Act requirements and basic facility expansion needs.

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The Part 503 regulations, in conjunction with the regulations under Section 112 of the Clean Air Act (CAA) and other CAA provisions, have provided, and will continue to provide, strong, risk-based protections for public health and the environment from the combustion of sewage sludge.

Second, EPA must recognize that sewage sludge is a legitimate secondary fuel. Based on outdated and erroneous information presented in the Proposed Rule regarding contaminant levels, EPA has concluded that all sewage sludge does not meet the Agency's legitimate fuel criteria. EPA must reconsider its blanket determination in light of the most recent data found in the 2009 Targeted National Sewage Sludge Survey (TNSSS). Failure to exclude sewage sludge that is combusted from the Agency's definition of non-hazardous solid waste and/or failure to correct the Agency's blanket determination that all sewage sludge will not meet the legitimate fuel criteria will significantly limit energy recovery from sewage sludge incinerators (SSIs) and will decrease the use of sewage sludge as a renewable fuel source in other combustion units.

Third, EPA should classify the energy recovery and energy production processes employed by POTWs that practice incineration as legitimate energy recovery systems.

Fourth, EPA must strengthen the language in the Proposed Rule to clearly indicate that its determination that sewage sludge is a non-hazardous solid waste does not apply to other sewage sludge management options regulated under the Part 503 Regulations.

Furthermore, the State of California is in the process of implementing comprehensive climate change mitigation legislation while also leading the effort to develop alternative sources of green energy. Wastewater infrastructure, which includes wastewater treatment, sludge treatment, and biosolids management are integral components of this ongoing effort. As evidence of the widespread application of these efforts, many wastewater treatment plants are accepting fats, oils, and grease (FOG) and food waste to increase methane production in anaerobic digestion as a renewable fuel. Likewise, wastewater treatment plants, including SSIs, are moving toward utilizing the energy potential in biosolids through the increased use of biosolids as a renewable fuel. If EPA proceeds to abandon the long-standing and highly successful Part 503 regime for SSIs and declines to consider sewage sludge a legitimate fuel, SCAP and many similarly situated clean water agencies will simply lack the resources to undertake the massive investments that promote the beneficial use of sewage sludge and biosolids for energy recovery and production.

SCAP also supports the detailed comments on the Proposed Rule as submitted by the National Association of Clean Water Agencies (NACWA). SCAP joins NACWA in urging EPA to adhere to the Agency's Part 503 program that recognizes Congress' intent to provide for the safe use and disposal of sewage sludge, to preserve local control over these management choices, to promote the beneficial use of sewage sludge (including energy recovery and energy production), and to preserve incineration as a safe, viable, and cost-effective management practice for sewage sludge.

Please contact me at (760) 479-4121 with any questions concerning our comments.

Sincerely,



John Pastore, Executive Director

cc: Enrique Zaldivar, SCAP President
Mike Sullivan, Biosolids Committee Chair