

Advocacy Comments on EPA’s Proposed Response to Petition to Revise NHSM

On January 28, 2022, EPA published its proposed response denying an industry petition to revise the Non-Hazardous Secondary Material (NHSM) regulations. The NHSM requirements consist of standards and procedures that are used to identify whether non-hazardous secondary materials are solid wastes when used as fuels or ingredients in combustion units. The denied requests included removing the mandatory “contaminant comparison” in the rule’s legitimacy criteria and removing associated “designed to burn” and other limitations for creosote-treated railroad ties (CTRTs).

On March 29, 2022, Advocacy filed public comment on this proposed response. Advocacy is concerned that EPA overlooked important relevant factors in its proposed decision to retain the limitation on the use of CTRTs. Advocacy believes the agency has the discretion to increase the capacity to use CTRTs as a fuel source. Advocacy recommends EPA:

1. Take the necessary actions to promote the productive and less impactful use of CTRTs as a fuel source.
2. Address the one-year railroad tie storage timeframe by providing compliance flexibilities for the affected small entities.

A complete copy of [Advocacy’s letter to EPA](#) is available. For more information, please contact Tayyaba Zeb, Assistant Chief Counsel, at tayyaba.zeb@sba.gov.

