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EPN Comments on Protecting Public Health and Unleashing American Energy by Facilitating Scrap Tire Pile Cleanups

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The Environmental Protection Network (EPN) harnesses the expertise of more than 750 former Environmental Protection Agency (EPA) career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators and scientists with decades of historical knowledge and subject matter expertise. EPN has reviewed the proposed revision to 40 CFR Part 241 regarding procedures for the management of scrap tires used as fuel in cement kilns. We have the following comments for the record.

Overview

EPN appreciates EPA's intent to address the significant and well-documented public health risks associated with abandoned scrap tire piles. We agree that these sites present urgent hazards and that facilitating their cleanup is an important public health objective. At the same time, we believe the proposed revisions to the Non-Hazardous Secondary Materials (NHSM) regulations must be carefully bound. Without clear guardrails, the proposal risks unintended consequences that could undermine long-standing protections under the Resource Conservation and Recovery Act (RCRA) and the Clean Air Act (CAA), as well as broader lifecycle materials management goals.

As proposed, the rule introduces a narrow exception that, if not clearly limited, could:

- Enable reclassification of discarded materials as fuel without sufficient safeguards;
- Create a pathway that may effectively bypass CAA Section 129 protections through definitional changes rather than equivalent environmental performance;
- Increase localized exposure to hazardous air pollutants, particularly in communities already experiencing disproportionate environmental burdens;
- Shift system incentives toward combustion, rather than prevention, reuse, and material recovery; and
- Establish a precedent that could be cited for other non-hazardous secondary materials, including plastics and similarly complex waste streams.

EPN's concern is not with the targeted use of this approach for legacy tire piles, but with the potential for broader application beyond this specific context. Maintaining the integrity of the NHSM framework requires that regulatory distinctions continue to reflect actual lifecycle outcomes and public health protections, not solely material classification.

Background

Tire stockpiles can swiftly become hazardous for communities. Due to the round, hollowed shape of tires, stockpiled scrap tires, particularly those stored outdoors, can collect rainwater and debris within their curves, leading to the accumulation of mold and grime. While this in itself would make the stockpile a sanitation hazard, the presence of still water and grime allows the stockpiles to serve as ideal breeding grounds for insects and rodents carrying harmful diseases. In addition to the aforementioned health hazards, the

improper disposal or storage of scrap tires is also a fire hazard. While tire fires themselves are difficult to ignite, they are not uncommon, and when they do occur, they are often difficult to control. Additionally, once a tire fire ignites, the rubber can burn for months before it goes through the available fuel, even in smaller stockpiles. This leads to expensive cleanups that can cost communities and governments millions of dollars.

The Sulaibiya tire cemetery in Kuwait, which accumulated over 50 million used tires over two decades, was once considered the largest tire dump in the world, but is now one of the best examples of a sustainable program for the management of scrap tires. This site was four miles from a residential suburb. The massive, concentrated pile of black rubber created a distinct, colossal scar in the desert, which was frequently visible from satellite imagery and presented significant dangers to both the environment and human health. The dump experienced three large fires in 2012, 2019, and 2020 fueled by high temperatures, causing thick black smoke that affected air quality across the region. Uncontrolled burning tires released toxic substances, including carcinogens like dioxins, furans, sulfur dioxide, and heavy metals. As tires degraded or burned, they released oil and hazardous materials that polluted the soil and threatened groundwater supplies. Stagnant water collected inside the stacked tires created a prime breeding ground for insects and mosquitoes.

To address this problem, the Kuwaiti government began a massive relocation and recycling initiative between 2012 and 2020. The tires were relocated to a new processing plant in Al-Salmi near the Saudi border that can process up to 3 million tires per year. The materials are used in manufacturing products such as rubber flooring for sports facilities and asphalt. As of 2025, the original, cleared site in Sulaibiya is now being prepared for the construction of 25,000 new residential homes. Kuwait's successful cleanup of the Sulaibiya dump has been recognized as a model for handling large-scale industrial waste management and transforming a significant environmental liability into a sustainable, functional resource.

Processing Changes and Reverse Incentives

On March 23, 2026, EPA issued the proposed rule "Protecting Public Health and American Energy by Facilitating Scrap Tire Pile Cleanups."[1] The proposal amends both the definition of established tire collection programs and the level of processing required for abandoned scrap tires to be used as fuel in cement kilns. As discussed above, fires and disease from abandoned tire piles pose an ongoing threat to human health and the environment. EPA believes these revisions would facilitate removal and remediation of these tire piles.

EPN agrees that scrap tire piles pose an ongoing threat and supports the proposed rule as discussed below. EPN is concerned, however, that the limited processing required for scrap tires under the proposal may establish a level of processing that could inappropriately be applied to other NHSM.

Overall, the proposal amends the March 2011 Base NHSM Regulations titled "Identification of Non-Hazardous Secondary Materials that are Solid Waste,"[2] which provided the standards for determining whether NHSM are solid wastes or non-solid waste under RCRA when used as fuels or ingredients in combustion units. Under the rule, and as outlined in the proposal, materials determined to be solid wastes must be burned in units meeting CAA 129 standards, while non-wastes must meet CAA 112 standards. The CAA 112 standards are thought to be less stringent than the CAA 129 standards. To define solid waste, the

[1] 91 FR 13804
[2] 76 FR 15456

rule cited section 40 CFR 258.2, which states that solid waste is "any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material*" (emphasis added). Discarded NHSM, however, are not solid waste under this definition if they are "processed" into a legitimate non-waste fuel based on specific legitimacy criteria outlined in the 2011 rule. Such fuel products "are, in effect, reclaimed or extracted products from a recycling process and considered to be "new" products that have not been discarded and are therefore not solid waste."[3]

The terms "discard" and "processing" are key to any determinations regarding use of abandoned scrap tires as a solid waste or non-waste fuel. As discussed in the proposal, 40 CFR 261.2 defines "discard," in part, as "abandoned or thrown away." "Processing" under 40 CFR 241.2 is defined as "operations necessary to remove or destroy contaminants, significantly improve the fuel characteristics of the material, e.g. sizing or drying the material in combination with other operations; chemically improve the fuel characteristics or improve ingredient characteristics." The definition goes on to state that "minimal operations that result only in modifying the size of the material by shredding do not constitute processing for purposes of this definition." Importantly, with regard to processing scrap tires, the 2011 final rule preamble stated that, "the Agency does not believe that simply shredding whole tires, or removing some dirt, is adequate to produce a non-waste fuel." The Agency contended that a sufficient amount of processing, including shredding /chipping and wire removal must occur to produce a non-waste product from secondary material.

EPA is now changing its position regarding the degree of processing required for abandoned tires to be combusted in cement kilns and managed in established tire collection programs. Under the current proposal, discarded scrap tires will no longer be required to be shredded or de-wired. Sufficient processing would now be considered as removal from the tire dump, together with removal of other solid waste that may be commingled including soil and organic material.

EPN's concern is not with the targeted use of this approach for legacy tire piles, but with the potential for broader application beyond this specific context. Maintaining the integrity of the NHSM framework requires that regulatory distinctions continue to reflect actual lifecycle outcomes and public health protections, not solely a material classification. EPN agrees with the proposed rule's conclusion that the previous processing requirements for scrap tires may have exceeded the degree of processing needed to render the material useful to cement kilns, resulting in regulatory hurdles to cleaning up abandoned waste piles. The characteristics of cement kilns, such as the high temperatures needed for the kiln process, and the use of scrap tire metal in the kiln process makes these units uniquely suitable for using scrap tires (whole or chipped) as fuel. Now, by requiring only minimal processing, an increased economic incentive is created for use of scrap tires as fuel by cement kilns. Such increased use could result in the number of abandoned tires being reduced, an important strategy to address the health and environmental risks posed by abandoned tire piles.

However, EPN believes that the limited degree of processing required to be a legitimate non-waste fuel is a significant departure from that required under the 2011 rule, by reducing the level of processing required for scrap tires to qualify as non-waste fuel. Under the proposed revisions, minimal handling, primarily removal from a tire pile and basic separation from debris, would be sufficient. If applied to other NHSM, considerable economic incentive to manage those materials as non-wastes could result, with a clear potential for handlers claiming they are recycling when, in the absence of processing, they are actually conducting

[3] 76 FR 15537

waste treatment or disposal in the guise of recycling. EPN is particularly concerned that the combination of reduced processing requirements and reclassification of discarded materials could create unintended reverse incentives within the materials management system. While appropriate for addressing legacy tire stockpiles, similar approaches applied more broadly could:

- Encourage diversion of materials toward lower-value combustion pathways;
- Create economic signals that favor waste generation as a fuel source; and
- Blur the line between legitimate recycling and disposal through energy recovery.

This risk is especially relevant for plastics and other emerging NHSM streams, where similar arguments for fuel designation are already being advanced. Without clear limitations, the proposal could be interpreted as establishing a policy precedent that extends beyond its intended scope. Accordingly, EPN urges the Agency to clearly state in the rule that the minimal processing outlined is specific only to abandoned scrap tires, and would not be appropriate for other NHSM.

Lifecycle Alternatives and System Balance

EPN also encourages EPA to more explicitly contextualize this proposal within a broader lifecycle materials management framework. Scrap tires represent not only a waste management challenge but also a recoverable material resource, and long-term strategies should continue to prioritize:

- Waste prevention and improved product design;
- Retreading and reuse;
- Material recovery and recycling markets.

Facilitating the cleanup of legacy tire piles is an important and necessary objective. However, combustion pathways should remain carefully circumscribed to ensure they do not inadvertently displace or discourage higher-value circular solutions or shape long-term infrastructure and market expectations in ways that are inconsistent with sustainable materials management goals that favor disposal over recovery. EPN emphasizes that addressing legacy tire piles is necessary, but combustion should be treated as a limited, last-resort option, not enabled through regulatory reclassification that may distort broader system incentives.

Environmental Justice and Public Health Considerations

EPN is also concerned about disproportionately high and adverse human health or environmental effects of EPA programs and policies on minority populations and low-income populations in the United States. As outlined in the March 2011 rule, NHSM diverted to alternative recycling or landfills may lead to adverse environmental impacts. Low-income and minority populations, more likely to be located near such sites, could be adversely affected.[4] In light of the considerable time since issuance of the 2011 rule, however, EPN urges the Agency to revisit the analysis of the impact of the rule on these communities and consider any new information regarding impacts on minority and low-income populations through a current environmental justice lens, including consideration of cumulative impacts. While addressing tire piles provides clear community benefits, increased use of combustion pathways in cement kilns could also result in incremental increases in localized emissions. EPA should assess whether such impacts may fall

[4] 76 FR 15549

disproportionately on already overburdened communities and ensure that the net outcome is protective of public health. Because these facilities are often located near low-income communities and communities of color, EPA should assess whether the proposal might:

- Increase cumulative pollution burdens;
- Disproportionately impact already overburdened populations;
- Undermine the Agency's commitments to environmental justice.

EPA should ensure that the net effect of this rule is protective of public health, particularly for the communities most affected.

Recommendations

EPN recommends that EPA incorporate the following guardrails into any final rule:

- Explicitly limit applicability of reduced processing requirements to abandoned scrap tires only, and prohibit extension to other NHSM streams (e.g., plastics);
- Ensure that any combustion of scrap tires does not result in regulatory circumvention of CAA 129 protections;
- Require demonstration that combustion pathways do not increase net public health risk, particularly in overburdened communities;
- Incorporate a lifecycle materials management framework into decision-making, prioritizing waste reduction, reuse, and material recovery;
- Evaluate and prioritize non-combustion alternatives as part of a comprehensive strategy for addressing scrap tire stockpiles;
- Conduct an updated environmental justice and cumulative impacts analysis reflecting current data and conditions.

Conclusion

EPN supports EPA's goal of addressing the serious public health risks posed by abandoned scrap tire piles. With appropriate safeguards, this proposal can contribute to meaningful progress in remediating these sites.

However, without clear guardrails, the rule risks creating a broader precedent in which waste streams are increasingly redefined as fuels, weakening key protections under RCRA and the CAA and shifting the system toward disposal-based outcomes.

With the recommended clarifications and limitations, EPA can address an urgent environmental challenge while maintaining the integrity of the NHSM framework, protecting public health, and avoiding unintended consequences for the broader materials management system.