

## **Advocacy Comments on EPA's Proposed Definition of Non-Hazardous Secondary Materials That Are Solid Wastes**

On July 30, 2010, the Office of Advocacy (Advocacy) filed a comment letter to the U.S. Environmental Protection Agency (EPA), discussing small entity concerns with EPA's proposed rule, "Identification of Non-Hazardous Secondary Materials That Are Solid Waste," 75 Fed. Reg. 31,844 (June 4, 2010). The proposed rule would define many common non-hazardous secondary materials (NHSM) to be solid wastes when they are combusted. At present, large volumes of NHSM such as used oil, scrap tires, biomass, and other non-hazardous production materials are burned as fuel in boilers, commercial furnaces, and cement kilns. The proposed definition of NHSM solid waste would require that most of these materials to be incinerated in a Commercial and Industrial Solid Waste Incinerator (CISWI) unit.

- EPA estimates that about 176 CISWI units currently operate in the U.S., while NHSM are burned in over 200,000 boilers, furnaces, and kilns. If these materials are required to be burned in CISWI units, businesses will no longer be able to burn them to recover energy and there will likely be insufficient CISWI capacity to incinerate them.
- EPA did not conduct a Small Business Advocacy Review (SBAR) Panel for this rule. Nor did EPA develop a Regulatory Impact Analysis. Instead, EPA certified under the Regulatory Flexibility Act (RFA) that the revised definition, by itself, would not have any regulatory impact upon any entity.
- EPA's definition of non-hazardous secondary materials is more restrictive and more complex than the solid waste definition that governs *hazardous* waste.
- EPA's should develop a Regulatory Impact Analysis for this rule, and the agency should make the NHSM solid waste definition less restrictive and less complicated. The definition should continue to allow reuse/recycling of NHSM like used oil, scrap tires, and biomass through energy recovery in boilers, furnaces and kilns.

For further information regarding this issue, visit Advocacy's web site at: [www.sba.gov/advo](http://www.sba.gov/advo) or contact Kevin Bromberg at [kevin.bromberg@sba.gov](mailto:kevin.bromberg@sba.gov) or (202) 205-6533.