Biomass Processed to Make Biochar Product: U.S. Environmental Protection Agency Interpretive Letter

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

08/19/2025

The United States Environmental Protection Agency ("EPA") addressed in a June 23rd Interpretive Letter a request for a non-waste determination under the non-hazardous secondary material ("NHSM") rule in 40 CFR part 241.

The Letter addressed wood wastes, yard wastes and clean lumber processed in certain non-road equipment used to produce biochar, which is stated to be a beneficially used product.

The Interpretive Letter was transmitted from Mr. Andy Crossland, EPA Director of Materials Recovery and Waste Management Division, to Robert J. Meyers of Crowell & Moring LLP.

Biochar has been described as black carbon produced from biomass sources for the purpose of transforming the biomass carbon into a more stable form. Examples of such biomass sources might include:

- Wood chips
- Plant residues
- Manure
- Other agricultural waste products

The June 23rd EPA Interpretive Letter states that the agency's guidance:

…has made it clear that as long as equipment used to produce a biochar product is only processing clean cellulosic biomass as defined in 40 CFR 241.2, the feedstock would not be considered a solid waste or secondary material for the purposes of the Clean Air Act (CAA) and therefore the processing equipment would not be subject to CAA 129 standards, including Title V permitting.

An EPA document titled Fact Sheet on Clean Cellulosic Biomass and Non-Hazardous Secondary Materials Determinations is cited. The Letter also notes that if the equipment is not producing a biochar product, that the feedstock would be considered a solid waste and the equipment may be regulated as an air curtain incinerator under the CAA.

It further states that EPA has:

…recently revised the requirements under the Other Solid Waste Incinerator (OSWI) rules for air curtain incinerators that bum only wood waste, clean lumber, yard waste, or a mixture of these three types of waste.

The revisions are stated to exempt this type of equipment from Title V permitting requirements for air curtain incinerators under the OSWI rule, citing 40 CFR 60.2966(b).

A copy of the Interpretive Letter can be downloaded here.