Scrap Tires Combusted in Cement Kilns/Non-Hazardous Secondary Materials Regulations: Environmental Protection Network Comments Addressing U.S. EPA Proposed Designation as Non-Waste Fuel

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The Environmental Protection Network ("EPN") submitted May 20th comments addressing the United States Environmental Protection Agency ("EPA") is proposal of a rule designating scrap tires (including previously abandoned scrap tires) that are combusted in cement kilns as non-waste fuel. See 91 Fed. Reg. 13804 (March 23, 2026).

EPA is also proposing to revise the definition of a tire collection program to include abandoned scrap tires that are recovered for use as fuel so they can be managed in the same manner as collected scrap tires.

EPN states it was founded in January 2017 and now has over 750 EPA alumni across the country volunteering their time to protect the integrity of EPA, human health, and the environment. The organization further states that it harnesses:

… the expertise of former EPA career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators with decades of historical knowledge and subject matter expertise.

EPN notes by way of introduction the following:

- Appreciates EPA's intent to address the significant and well-documented public health risks associated with abandoned scrap tire piles.
- Agrees that these sites present urgent hazards and that facilitating their cleanup is an important public health objective.
- Believes 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, as well as broader lifecycle materials management goals.

Further, the comments state that as proposed, the rule introduces what EPN describes as 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.

Recommendations put forth by EPN as to guardrails to incorporate into the final rule include:

- 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.

A copy of the EPN comments can be found here.