(6) A copy of all significant correspondence, reports, inspection reports, and any other communications from enforcement agencies.

(e) Methodology for evaluating the facility's performance should be developed. Evaluation procedures recommended by the U.S. Environmental Protection Agency should be used whenever possible (see bibliography).

APPENDIX TO PART 240—RECOMMENDED BIBLIOGRAPHY

1. The Solid Waste Disposal Act as amended; Title II of Pub. L. 89–272, 89th Cong., S. 306, Oct. 20, 1965; Pub. L. 91–512, 91st Cong., H.R. 11833, Oct. 26, 1970. Washington, U.S. Government Printing Office, 1971. 14 p. Reprinted 1972.

2. Seven incinerators; evaluation, discussions, and authors' closure. [Washington, U.S. Environmental Protection Agency, 1971. 40 p.] (Includes discussions and authors' closure for ''An evaluation of seven incinerators'' by W. C. Achinger and L. E. Daniels.)

3. DeMarco, J., D. J. Keller, J. Leckman, and J. L. Newton. Municipal-scale incinerator design and operation. Public Health Service Publication No. 2012. Washington, U.S. Government Printing Office, 1973. 98 p.

4. Occupational Safety and Health Act of 1970; Pub. L. 91–596, 91st Cong., S. 2193, Dec. 29, 1970. Washington, U.S. Government Printing Office, 1972.

5. Control techniques for particulate air pollutants. Publication AP–51. U.S. Department of Health, Education, and Welfare, National Air Pollution Control Administration, 1969.

6. Zausner, E. R. An accounting system for incinerator operations. Public Health Service Publication No. 2032. Washington, U.S. Government Printing Office, 1970. 17 p.

7. Achinger, W. C., and J. J. Giar, Testing manual for solid waste incinerators. [Cincinnati], U.S. Environmental Protection Agency, 1973. [372 p., loose-leaf.] [Open-file report, restricted distribution.]

8. Nader, J. S., W. Carter, and F. Jaye. Performance Specifications for Stationary Source Monitoring Systems. NTIS PB. 230 934/AS (1974).

PART 241—SOLID WASTES USED AS FUELS OR INGREDIENTS IN COMBUSTION UNITS

Subpart A—General

Sec.

241.1 Purpose.
241.2 Definitions.

Subpart B—Identification of Non-Hazardous Secondary Materials That Are Solid Wastes When Used as Fuels or Ingredients In Combustion Units

Sec.

241.3 Standards and procedures for identification of non-hazardous secondary materials that are solid wastes when used as fuels or ingredients in combustion units.

AUTHORITY: 42 U.S.C. 6903, 6912, 7429.

SOURCE: 76 FR 15549, Mar. 21, 2011, unless otherwise noted.

Subpart A—General

§ 241.1 Purpose.

This part identifies the requirements and procedures for the identification of solid wastes used as fuels or ingredients in combustion units under section 1004 of the Resource Conservation and Recovery Act and section 129 of the Clean Air Act.

§ 241.2 Definitions.

For the purposes of this subpart:

Clean cellulosic biomass means those residuals that are akin to traditional cellulosic biomass such as forest-derived biomass (*e.g.*, green wood, forest thinnings, clean and unadulterated bark, sawdust, trim, and tree harvesting residuals from logging and sawmill materials), corn stover and other biomass crops used specifically for energy production (*e.g.*, energy cane, other fast growing grasses), bagasse and other crop residues (*e.g.*, peanut shells), wood collected from forest fire clearance activities, trees and clean wood found in disaster debris, clean biomass from land clearing operations, and clean construction and demolition wood. These fuels are not secondary materials or solid wastes unless discarded. Clean biomass is biomass that does not contain contaminants at concentrations not normally associated with virgin biomass materials.

Contaminants means any constituent in non-hazardous secondary materials that will result in emissions of the air pollutants identified in Clean Air Act section 112(b) or the nine pollutants listed under Clean Air Act section

129(a)(4)) when such non-hazardous secondary materials are burned as a fuel or used as an ingredient, including those constituents that could generate products of incomplete combustion.

Contained means the non-hazardous secondary material is stored in a manner that adequately prevents releases or other hazards to human health and the environment considering the nature and toxicity of the non-hazardous secondary material.

Control means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in this section shall not be deemed to ''control'' such facilities.

Established tire collection program means a comprehensive collection system that ensures scrap tires are not discarded and are handled as valuable commodities in accordance with section 241.3(b)(2)(i) from the point of removal from the vehicle through arrival at the combustion facility.

Generating facility means all contiguous property owned, leased, or otherwise controlled by the non-hazardous secondary material generator.

Ingredient means a non-hazardous secondary material that is a component in a compound, process or product.

Non-hazardous secondary material means a secondary material that, when discarded, would not be identified as a hazardous waste under Part 261 of this chapter.

Person is defined as an individual, trust, firm, joint stock company, Federal agency, corporation (including government corporation), partnership, association, State, municipality, commission, political subdivision of a state, or any interstate body.

Processing means any operations that transform discarded non-hazardous secondary material into a non-waste fuel or non-waste ingredient product. Processing includes, but is not limited to, 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 as-fired energy content; or improve the ingredient characteristics. Minimal operations that result only in modifying the size of the material by shredding do not constitute processing for purposes of this definition.

Resinated wood means wood products (containing resin adhesives) derived from primary and secondary wood products manufacturing and comprised of such items as board trim, sander dust, and panel trim.

Secondary material means any material that is not the primary product of a manufacturing or commercial process, and can include post-consumer material, off-specification commercial chemical products or manufacturing chemical intermediates, post-industrial material, and scrap.

Solid waste means the term solid waste as defined in 40 CFR 258.2.

Traditional fuels means materials that are produced as fuels and are unused products that have not been discarded and therefore, are not solid wastes, including: (1) Fuels that have been historically managed as valuable fuel products rather than being managed as waste materials, including fossil fuels (*e.g.*, coal, oil and natural gas), their derivatives (*e.g.*, petroleum coke, bituminous coke, coal tar oil, refinery gas, synthetic fuel, heavy recycle, asphalts, blast furnace gas, recovered gaseous butane, and coke oven gas) and cellulosic biomass (virgin wood); and (2) alternative fuels developed from virgin materials that can now be used as fuel products, including used oil which meets the specifications outlined in 40 CFR 279.11, currently mined coal refuse that previously had not been usable as coal, and clean cellulosic biomass. These fuels are not secondary materials or solid wastes unless discarded.

Within control of the generator means that the non-hazardous secondary material is generated and burned in combustion units at the generating facility; or that such material is generated and burned in combustion units at different facilities, provided the facility combusting the non-hazardous secondary material is controlled by the generator; or both the generating facility and the facility combusting the non-hazardous secondary material are

under the control of the same person as defined in this section.

Subpart B—Identification of Non-Hazardous Secondary Materials That Are Solid Wastes When Used as Fuels or Ingredients in Combustion Units

§ 241.3 Standards and procedures for identification of non-hazardous secondary materials that are solid wastes when used as fuels or ingredients in combustion units.

(a) Except as provided in paragraph (b) of this section, non-hazardous secondary materials that are combusted are solid wastes, unless a petition is submitted to, and a determination granted by, the Regional Administrator pursuant to paragraph (c) of this section. The criteria to be addressed in the petition, as well as the process for making the non-waste determination, are specified in paragraph (c) of this section.

(b) The following non-hazardous secondary materials are not solid wastes when combusted:

(1) Non-hazardous secondary materials used as a fuel in a combustion unit that remain within the control of the generator and that meet the legitimacy criteria specified in paragraph (d)(1) of this section.

(2) The following non-hazardous secondary materials that have not been discarded and meet the legitimacy criteria specified in paragraph (d)(1) of this section when used in a combustion unit (by the generator or outside the control of the generator):

(i) Scrap tires used in a combustion unit that are removed from vehicles and managed under the oversight of established tire collection programs.

(ii) Resinated wood used in a combustion unit.

(3) Non-hazardous secondary materials used as an ingredient in a combustion unit that meet the legitimacy criteria specified in paragraph (d)(2) of this section.

(4) Fuel or ingredient products that are used in a combustion unit, and are produced from the processing of discarded non-hazardous secondary materials and that meet the legitimacy criteria specified in paragraph (d)(1) of this section, with respect to fuels, and paragraph (d)(2) of this section, with respect to ingredients. The legitimacy criteria apply after the non-hazardous secondary material is processed to produce a fuel or ingredient product. Until the discarded non-hazardous secondary material is processed to produce a non-waste fuel or ingredient, the discarded non-hazardous secondary material is considered a solid waste and would be subject to all appropriate federal, state, and local requirements.

(c) The Regional Administrator may grant a non-waste determination that a non-hazardous secondary material that is used as a fuel, which is not managed within the control of the generator, is not discarded and is not a solid waste when combusted. The criteria and process for making such non-waste determinations includes the following:

(1) Submittal of an application to the Regional Administrator for the EPA Region where the facility combusting the non-hazardous secondary material is located for a determination that the non-hazardous secondary material, even though it has been transferred to a third party, has not been discarded and is indistinguishable in all relevant aspects from a product fuel. The determination will be based on whether the non-hazardous secondary material that has been discarded, is a legitimate fuel as specified in paragraph (d)(1) of this section and on the following criteria:

(i) Whether market participants treat the non-hazardous secondary material as a product rather than as a solid waste;

(ii) Whether the chemical and physical identity of the non-hazardous secondary material is comparable to commercial fuels;

(iii) Whether the non-hazardous secondary material will be used in a reasonable time frame given the state of the market;

(iv) Whether the constituents in the non-hazardous secondary material are released to the air, water or land from the point of generation to the point just prior to combustion of the secondary material at levels comparable to what would otherwise be released from traditional fuels; and

(v) Other relevant factors.