

**Summary of the Status of Creosote-Treated Crossties in Regard to the
Non-Hazardous Secondary Materials Rule**

Prepared by Martin Rollins, P. E., H. M. Rollins Company, Inc., on Behalf of the Creosote
Council

The Non-Hazardous Secondary Materials (NHSM) rule determines which materials when burned for fuel in a boiler are considered to be fuels, and which materials when burned would be considered waste. Boilers that burn any material classified as waste lose their characterization as boilers and become subject to the permitting requirements for Commercial, Industrial and Solid Waste Incinerators.

Under the provisions of the original NHSM rule many treated wood residuals would be characterized as wastes and, therefore, the present practice of burning these materials in boilers for fuel would have to cease. Of particular import in this regard is the status of creosote-treated crossties taken out of service and burned for energy recovery. Several industry groups, including the forest products industry, sued the EPA over various provisions in the original NHSM rule. The railroad, forest product, and treated wood industry groups have been working with EPA to attempt to get the Agency to agree that creosote-treated crossties should be considered a fuel, not a waste, when burned for energy recovery in a boiler. A formal petition requesting that creosote-treated railroad ties be considered to be fuel was submitted to the Agency in December of 2012. A second petition covering a broader range of treated wood, but also including creosote-treated wood, is about to be sent to the Agency.

Revisions to the Non-Hazardous Secondary Materials (NHSM) rule were signed by the EPA Administrator on December 20, 2012. These revisions contained some important improvements to the rule, including the inclusion of some important wood residuals, such as resinated wood, in the list of materials considered to be fuels, not wastes. The preamble discussion to the rule also made specific reference to the industry petition on creosote-treated crossties, and stated that if the additional information requested of the industry by the Agency supported the positions taken in the petition that EPA expected that it would initiate a rulemaking to formally classify creosote-treated crossties and several other biomass secondary materials as fuels.

Industry is working to provide the Agency with the additional information that it requested and will keep pressure on the Agency to begin the rulemaking process in a timely fashion. Until a proposal and final rule are completed the outcome remains somewhat uncertain, but the fact that the Agency specifically discussed this issue in a somewhat favorable tone in the December 2012 final rule is a very positive sign.