



## OFFICE OF RESOURCE CONSERVATION AND RECOVERY

WASHINGTON, D.C. 20460

June 23, 2025

Robert J. Meyers  
Crowell & Moring LLP  
1001 Pennsylvania Avenue NW  
Washington, DC20004

Re: Request for Determination Regarding Biomass Processed to Make Biochar Product

Dear Mr. Meyers,

Thank you for your email regarding a previous request on behalf of your client Tigercat for non-waste determination under the non-hazardous secondary material (NHSM) rule in 40 CFR part 241 for wood wastes, yard wastes and clean lumber processed in certain non-road equipment used to produce biochar, which is a beneficially used product.

We are pleased to inform you that recent EPA 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. See EPA's [Fact Sheet on Clean Cellulosic Biomass and Non-Hazardous Secondary Materials Determinations](#), September 2024, EPA 530-F-24-013, page 3.

Please note that if the equipment were not producing a biochar product, the feedstock would be considered a solid waste and the equipment may be regulated as an air curtain incinerator under the CAA. However, EPA has also recently revised the requirements under the Other Solid Waste Incinerator (OSWI) rules for air curtain incinerators that burn only wood waste, clean lumber, yard waste, or a mixture of these three types of waste. These revisions exempt this type of equipment from Title V permitting requirements for air curtain incinerators under the OSWI rule. See 40 CFR 60.2966(b).

If you have any questions regarding the NHSM non-waste applicability determination for clean cellulosic biomass processed to make biochar, please contact Tracy Atagi of my staff at [atagi.tracy@epa.gov](mailto:atagi.tracy@epa.gov).

Sincerely,

Andy Crossland, Director  
Materials Recovery and Waste Management Division