

## **Meeting Requested By Nisus Corporation**

### **RIN 2050-AG74 (EPA Final Rule) (Additions To List of Section 241.4 Categorical Non-Waste Fuels)**

September 29, 2015

#### Representing Nisus Corporation

Kevin L. Kirkland, President and CEO

Gregory J. Baumann, Vice President, Technical Services & Regulatory Affairs

Lawrence S. Ebner, Partner, Dentons US LLP

#### Discussion Points

1. Nisus Corporation—company background and interest in listing of treated-wood railroad ties and other out-of-service industrial treated-wood products as categorical non-waste fuels
2. Reasons why the impending final rule's categorical listing of "creosote-treated railroad ties"—a categorical listing that is essential but does not include borate dual-treated creosote or copper naphthenate ties, or other industrial wood products treated with borate or copper naphthenate—is too narrow
  - (a) Rapidly growing marketplace importance of borate dual-treated ties (see 2014 Railroad Ties Survey (Aug. 2015) prepared by the Railway Tie Association with the cooperation of the Association of American Railroads and the American Short Line and Regional Railroad Association)
  - (b) Application of EPA categorical non-waste fuel "legitimacy criteria" to borate dual-treated ties
  - (c) Practical reasons why the categorical listing of wooden railroad ties as a non-waste fuel should not be limited to ties treated with creosote alone
3. EPA's lack of responsiveness to industry concerns about the narrow scope of the final rule
  - (a) EPA's continually shifting positions at meetings with the railroad and treated-wood industry representatives
  - (b) EPA's unwillingness to extend the January 2016 effective date for regulating non-hazardous secondary materials as solid waste for Clean Air Act

combustion emission standards purposes unless categorically  
listed as a non-waste fuel

4. Need for OIRA's intercession