

CREATING BALANCE

RCRA Definition of Solid Waste – Rule Exclusion Offers Opportunities

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West Michigan Chapter
Air & Waste Management Association
June 5, 2009 Meeting

The footer consists of a horizontal bar divided into three colored segments: red on the left, green in the middle, and blue on the right. The letters "RMT" are printed in white on the red segment.

Why did EPA develop the DSW rule?

- **To encourage resource conservation by streamlining regulation of hazardous secondary materials that are reclaimed.**
- **Streamlining the regulations, while maintaining critical controls, will make recycling these materials not only safe but also easier and more cost-efficient.**

3

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Definition of Solid Waste Rule

- Removes unnecessary controls over certain hazardous secondary materials (HSM).
- Provides explicit and consistent factors of determining legitimate practices.
- Encourages and expands safe beneficial recycling of HSM.
- Protective of human health and environment.
- Promotes economic sustainability and efficient use of resources.

4

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Definition of Solid Waste (DSW) Applicability

- **EPA Regulatory Impact Analysis estimates:**
 - 5,600 facilities and 1.5 million tons of hazardous waste will be affected annually, providing a cost savings of approximately \$95 million per year
 - Affected materials include 23,000 tons of new recycling
 - 280 Industries in 21 Economic Sectors

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5

When can I start using the rule?

- **The federal rule became effective on December 29, 2008 (60 days after October publication)**
 - However, the Rule does not go into effect in an authorized state unless and until the state adopts the Rule
 - Currently effective in Alaska, Iowa, New Jersey, and Pennsylvania
 - Michigan examining an interim response to most of the Rule

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6

Most Common Waste Streams and Why Look at this Regulation?

- Metal-bearing wastes for commodity recovery
- Organic chemical liquid for solvent recovery
- Large Quantity Generator may become Small or Conditionally Exempt Small Quantity Generator
- Cost savings
- Waste minimization

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7

Recycled Materials Defined as Solid Waste

- **RCRA Statute:** EPA regulates some recycled materials - same threats to environment
- **Problems in initial RCRA history**
 - 1/3 of first 60 RCRA imminent and substantial endangerment authority filings
 - 20 CERCLA initial sites
- **EPA overstepped authority – 1987**
- **Need for balance**

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8

Definition of Solid Waste (DSW) Rule Content

Key Areas of Final Rule by EPA:

1. **“Under Generator Control” Exclusion**
Self-implementing exclusion for materials generated and reclaimed under the control of the generator.
2. **Transfer-based Exclusion**
Self-implementing exclusion for materials generated and transferred to another company for reclamation.
3. **Non-waste Determination Procedure**
Materials that are non-wastes (determined through a petition process)
4. **“Legitimate” Recycling Provision**

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9

Definition

- **Hazardous Secondary Material (HSM)**
 - A material that is not regulated, because it is being recycled, that would be a hazardous waste if disposed.
 - Means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as a hazardous waste under Part 261 of this chapter.

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10

Materials Reclaimed Under Generator's Control

- **HSM generated and reclaimed...**
 - at the same facility, which includes facilities leased by the generator and onsite contractors
 - by the same company (even at different facilities) if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are under common control
 - under written toll manufacturing arrangements between a tolling contractor and a toll manufacturer (this is a specific industry!)

11

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Materials Reclaimed Under Generator's Control (cont.)

- **Under this exclusion, generators must:**
 - Generated and legitimately reclaimed within the U.S.
 - Not speculatively accumulate materials
 - Ensure materials are "contained"
 - Recycled legitimately
 - Submit notifications (using the Site ID form)

12

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Five Exceptions Under Reclamation (261.4 material-specific requirements)

- Spent wood preserving solutions*
- Shredded circuit boards
- Mineral processing spent materials
- Spent caustic solutions from petroleum refining liquid treating
- Cathode ray tubes

* Current – limited to onsite recycling so new exclusion will apply to offsite reclamation.

13

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HSM Not Eligible To New DSW

- **Spent hydro-treating (K171) and hydro-refining (K172) catalysts**
- **Spent lead-acid battery recycling**

- **HSM burned for energy recovery**
- **HSM used “in a manner constituting disposal”**
- **HSM that are inherently waste-like under current regulations**

14

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Land-based Generator Reclamation

“An area where hazardous secondary materials are placed in or on the land before recycling”

- **New 261.4(a)(23) conditional exclusion**
 - Containment
 - No speculative accumulation
 - Legitimate
 - No material specific management
 - Notification
 - Does not include production units

15

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Transfer-Based Exclusion

- **New 261.4(a)(24) conditional exclusion**
 - Similar conditions
 - Recordkeeping requirements for all facilities documenting shipments and receipt
 - Due diligence requirement if not a TSDF
 - Rule requirements to determine reasonable efforts
 - Maintain records of reasonable efforts
 - Repeat every three years

16

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Transfer-Based Exclusion (cont.)

- **Reclaimers and Intermediate Facilities**
 - Management in a manner at least as protective as analogous “raw materials”
 - Characterization of residuals
 - Financial Assurance
 - Under new 261 Subpart H

17

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Notifications

- **Notification requirement for hazardous secondary materials (new 260.42)**
 - Generators, tolling contractors, toll manufacturers, reclaimers, intermediate facilities
 - Must notify by March 1 of each even numbered year using notification form
 - Specific information
 - Must notify within 30 days if they stop
- **HSM exported for reclamation (60 days before initial shipment)**

18

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Notifications (cont.)

Notifications must include the following information:

- (1) Name, address and EPA ID number (if applicable);
- (2) Name and telephone number of a contact person;
- (3) NAICS code;
- (4) Type of exclusions the facility is claiming;
- (5) Whether the reclaimer/intermediate facility has financial assurance;
- (6) When the facility expects to begin managing materials;
- (7) A list of hazardous secondary materials to be managed;
- (8) Whether the materials will be managed in a land-based unit;
- (9) The quantity of materials to be managed annually; and
- (10) The certification (included in EPA form 8700-12) signed by an authorized representative.

19

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Financial Requirements

- **Financial assurance required under DSW is very similar to that required for interim status facilities, with some modifications:**
 - A terminology change to reflect the nature of the materials (e.g., “hazardous secondary materials” instead of “hazardous waste”)
 - Financial requirements revised to allow a unit at the end of its operating life to be released from financial assurance, if all hazardous secondary materials have been removed.
 - There is no requirement for post-closure financial assurance, because post-closure is only intended to apply to waste management units designed to maintain waste in place after the unit closes (e.g., in a landfill).

20

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Non-Waste Determinations

- Materials that are reclaimed and reused within the original production process in which they were generated
- Hazardous secondary materials that are reclaimed in a continuous industrial process
- Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate

21

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Non-Waste Determinations (cont.)

- **Non-Waste Determination Process**
 - Existing 40 CFR 260.33 for variance from solid waste classification, and
 - Addition of 40 CFR 260.34
 - Standards and Criteria for non-waste determinations
 - Includes legitimate recycling determination
 - Submittal for Agency approval

22

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Legitimate Recycling Provision

- **Two mandatory factors**
 - Materials must provide useful contribution to the recycling process or to a product or intermediate
 - Recycling must produce valuable product or intermediate
- **Two factors must be considered**
 - Materials must be managed as valuable commodities
 - Products of recycling must not contain significantly higher levels of hazardous constituents (part 261, Appx VIII) than are in analogous products

23

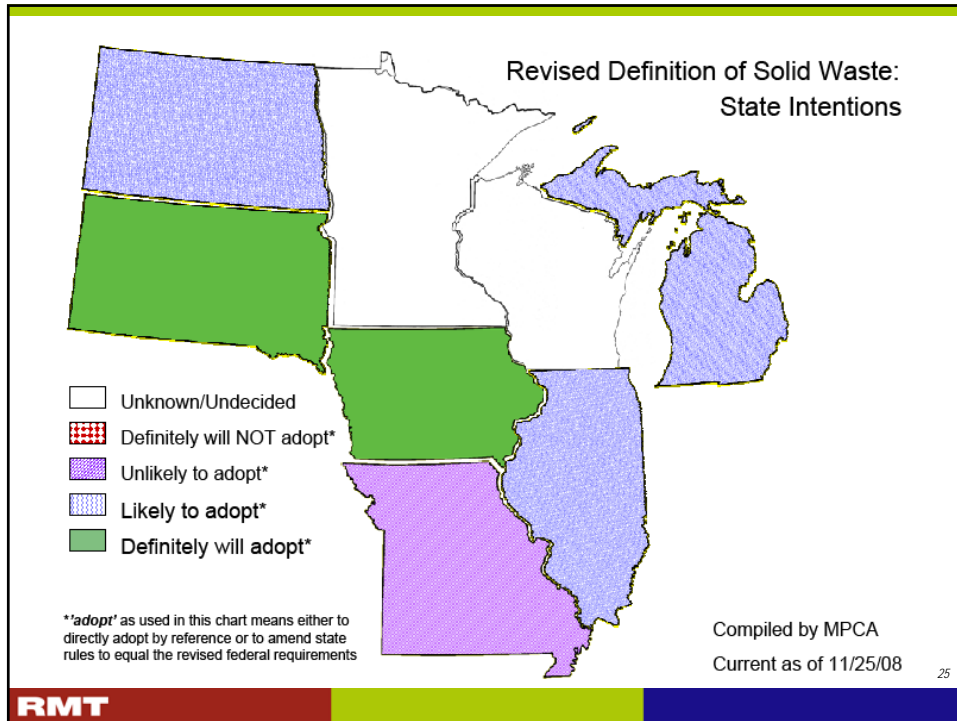
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Legitimate Recycling Provision (cont.)

- **Ways to address the mandatory factors:**
 - **Material provides a useful contribution to the recycling process or a product or intermediate if it:**
 - Contributes valuable ingredients;
 - Replaces a catalyst or carrier in the recycling process;
 - Is a source of a valuable constituent recovered;
 - Is recovered or regenerated; **OR**
 - Is used as an effective substitute for a commercial product

24

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Current News

- EPA Public Meeting on June 30, 2009 – EPA Potomac Yard Conference Center, Arlington, VA
- EPA to respond to the Sierra Club petition
- Gives everyone a chance to weigh in on public comment
- What next?

26

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Good Resources

- **EPA DSW web page**
 - <http://www.epa.gov/epawaste/hazard/dsw/rulemaking.htm>
- **EPA contact**
 - Tracy Atagi
703-308-8672
atagi.tracy@epa.gov
- **MDEQ contact**
 - Jack Schinderle
517-373-8410
schinderlej@michigan.gov

27

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Questions/Comments?



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28

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