

Supplemental Revisions to the Definition of Solid Waste

Proposed Rule
72 FR 14172-14218
March 26, 2007

What is this Federal Register About?

This is a supplemental proposal to the proposed revisions to the definition of solid waste that were proposed on [October 28, 2003](#) in the Federal Register.

U.S. EPA is proposing supplemental revisions to the definition of solid waste, 40 Code of Federal Regulations (CFR) part 261.2, that would exclude hazardous wastes from regulation if they are reclaimed under the control of the generator or by another person when certain conditions are met. Also, a generator or reclaimer has the option to obtain a non-waste determination from the overseeing agency (i.e., it's similar to a variance from classification as a waste).

The types of hazardous wastes that would be eligible for the exclusions include listed and characteristic spent materials, listed by-products and sludges and scrap metal.

However, the exclusion does not apply to the recycling of materials that are inherently waste-like, used in a manner constituting disposal or burned for energy recovery.

In addition, U.S. EPA is proposing to codify two criteria to define the legitimate recycling of hazardous wastes and two criteria that the reclaimer needs to consider. The two required criteria are 1.) The hazardous secondary material must provide a useful contribution to the process or product and 2.) the product must be valuable. The two criteria that need to be considered by the reclaimer are 1.) the management of the hazardous secondary material as a valuable material and 2.) the presence of toxic constituents contained in the product.

Summary of proposal

A. Hazardous secondary material (HSM) reclaimed under the control of the generator

1. HSM generated and reclaimed under the control of the generator at the generating facility. The reclamation can be done by the generator, a person who comes on-site with a mobile reclamation unit or at a fixed facility on the generator's property that is operated by someone other than the generator.

2. HSM generated and reclaimed by the same person, as defined in 40 CFR 260. It does not matter where in the United States the reclamation is done however, the reclamation must be done by a person who is part of the same company as the generator. A condition of this particular exclusion is that the generator must certify that it and the reclaimer are the same person.

3. HSM reclaimed according to a contract between a tolling contractor and a batch manufacturer. This type of reclamation is common in the speciality chemical manufacturing industry.

The conditions applicable to the three reclamation scenarios given above are:

1. Notification to the overseeing agency by the generator and reclaimer;
2. No speculative accumulation of HSM;

3. HSM must be legitimately recycled; and

4. If HSM is stored on the land, it must be contained within the unit.

B. HSM that is generated and transferred to another person for reclamation

Under this reclamation scenario, the parties do not need to be related. However, the following conditions apply:

1. HSM must be legitimately recycled;

2. No speculative accumulation of HSM;

3. Notification to the overseeing agency by the generator and reclaimer;

4. No middleman/broker may manage the HSM;

5. HSM must be managed in a protective manner;

6. Export notice to US EPA for HSM reclaimed outside of USA;

7. Reclaimer must have financial assurance, 40 CFR part 264, Subpart H; and

8. Generator must evaluate reclaimer to ensure HSM is legitimately being reclaimed

What does this mean to the regulated community?

If finalized, hazardous wastes reclaimed as described above would not be considered discarded. Therefore, such materials would not be defined as a solid or a hazardous waste and would not be subject to regulation.

With the codification of legitimacy criteria, any generator who recycles a hazardous secondary material or hazardous waste would need to ensure that the recycling of the material meets the two criteria of legitimate recycling and demonstrate that the other two criteria were considered. If the two required criteria are not met, then the recycling activity would be considered hazardous waste treatment and possibly subject to hazardous waste permitting.

Will Ohio EPA be commenting on this Federal Register?

Yes. We will be commenting on the rule in participation with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). We may comment separately if we have additional comments.

Link to Federal Website about proposal, includes proposed rule and guidance document:

<http://www.epa.gov/epaoswer/hazwaste/dsw/abr.htm>