



US Army Corps
of Engineers

HTRW Center of Expertise Information - Fact Sheets

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HTRW Center of Expertise Fact Sheet FY 07-01

Proposed Revisions to the Definition of Solid Waste

Purpose

This summary provides basic information about a proposed federal rule with potential impact on DoD hazardous waste management operations.

**Rule/
Regulation
Identification**

Title: Revisions to the Definition of Solid Waste

- Status: Supplemental proposed rule
- Date: March 26, 2007
- Reference: 72 FR 14172
- Affected regulations: 40 CFR 260 and 40 CFR 261

Link:

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-5159.pdf>

**Deadline
Executive
Summary**

Comments on this proposal are due to EPA by May 25, 2007.

This supplemental proposal would impact the regulatory status of certain recyclable hazardous secondary materials (i.e spent materials, listed sludges, and listed byproducts) by codifying exclusions from the definition of solid waste. It also proposes a petitioning process for obtaining "non-waste" determinations from regulators and solicits input regarding whether to codify criteria for distinguishing legitimate recycling from sham recycling.

This supplements an October 28, 2003 proposed rule. EPA initiated that action in response to a court decision which, in effect, found that certain recyclable materials are not "discarded" and therefore should not be regulated as solid nor hazardous waste. The previously proposal would have based discard determinations on whether hazardous secondary material was reused within the same industry. After considering comments received, a different approach is described by this supplemental proposal. A modification to the definition of solid waste is proposed which would clearly state that hazardous secondary material is not discarded if generated and reclaimed in the United States or its territories provided the material is only handled in non-land-based units, is generated and

	reclaimed under the control of the generator, and is not speculatively accumulated. Three conditional exclusions are also proposed (1) for material reclaimed under the control of the generator and managed in land-based units; (2) for material transferred to another person for reclamation; and (3) for exported material.
Potential Impact	This rule is deregulatory in nature. If finalized, secondary hazardous materials may be eligible to be recycled without being considered either solid waste or hazardous waste.
Key Elements of the Proposed Rule	<p><u>Revision to the Definition of Solid Waste</u></p> <p>The definition of solid waste in 40 CFR 261.2 is proposed to be modified to clearly state hazardous secondary material is not discarded if generated and reclaimed within the United States or its territories, provided it is only handled in non-land-based units (tanks, containers, containment buildings), is generated and reclaimed under the control of the generator, and not speculatively accumulated.</p> <p><u>Conditional Exclusion for Hazardous Secondary Materials Reclaimed Under the Control of the Generator</u></p> <p>This proposal would provide a conditional exclusion from the definition of solid waste under 40 CFR 261.4(a)(23) for hazardous secondary materials managed in land-based units, provided as follows:</p> <ul style="list-style-type: none"> • The materials are generated and legitimately reclaimed in the United States or its territories. • The materials are contained. • The material are generated and reclaimed under the control of the generator. "Under the control of the generator" would not be limited to reclamation at the generator's facility, but would also include materials reclaimed at companies under the same ownership or under a tolling contract with a batch manufacturer where ownership and responsibility for the recyclable material is retained by the tolling contractor. • Materials are not speculatively accumulated. • A one-time notice is submitted to EPA or the authorized State <p><u>Conditional Exclusion for Hazardous Secondary Materials Transferred for Reclamation</u></p> <p>This proposal would provide a conditional exclusion from the definition of solid waste under 40 CFR 261.4(a)(24) for hazardous secondary material transferred to a different person or company. The conditions for this</p>

inclusion are as follows:

- Material can not be speculatively accumulated.
- The material can not be handled by any person or facility other than the generator, transporter, or reclaimer.
- Generators and reclaimers need to submit one-time notices to EPA or the authorized State for material previously subject to hazardous waste regulation; must make reasonable efforts to ensure the reclaimer intends to legitimately recycle the materials; and must maintain shipment records for 3 years.
- Reclaimers must maintain records of excluded shipments received for 3 years, must manage material in a protective manner (it must be contained), and comply with financial requirements of 40 CFR 264, subpart H.

Conditional Exclusion for Exported Hazardous Secondary Material

This proposal would provide a conditional exclusion from the definition of solid waste under 40 CFR 261.4(a)(25) for hazardous secondary material to be exported from the United States and recycled at a reclamation facility in another country. In addition to meeting the standards described above for transferred materials, notice would need to be provided to EPA and the receiving country would need to consent to the intended export.

Petition Process for Non-Waste Determination

Under this proposal, non-waste determinations could be sought via a formal petitioning process. Both the State and EPA would be involved in the evaluation process. Determinations would consider factors such as whether material is part of a continuous primary production process, whether the production process capacity indicates material would be used in a reasonable timeframe, and whether hazardous constituents are reclaimed rather than discarded to the environment in excess of amounts that would otherwise be released by the production process.

Legitimacy

EPA request comments on the benefits and drawbacks of codifying legitimacy criteria with respect to recycling. Legitimacy criteria under consideration include the following:

- Whether the hazardous secondary material is managed as a valuable commodity.
- Whether the hazardous secondary material provides a useful contribution to the recycling process or to a product of the recycling

	<p>process.</p> <ul style="list-style-type: none"> • Whether the recycling process yields a valuable product or intermediate. <p>Whether the product of the recycling process contains significant amounts of hazardous constituents not found in the analogous products or exhibits a hazardous characteristic not exhibited by the analogous product.</p>
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