



United States
Environmental Protection
Agency

October 2003
EPA530-F-03-035
www.epa.gov/osw

Regulatory Changes Proposed For Certain Hazardous Waste Recycling Activities

The Environmental Protection Agency (EPA) is proposing to modify the hazardous waste management regulations in order to increase recycling and conserve resources. These changes make it easier to recycle more than 1 million tons of hazardous waste, and to recover from these wastes metals, solvents, and other usable materials worth an estimated value of nearly \$1 billion. The Agency believes that this proposal will also reduce natural resource use and associated pollution, and conserve energy and water.

Action

EPA is proposing to exclude certain types of activities involving hazardous secondary materials from the federal hazardous waste regulations. By removing regulatory controls over these recycling practices, EPA expects that beneficial recycling of hazardous secondary materials will increase. This action conforms with the Agency's long-standing policy of promoting materials reuse and recovery over land disposal. It also is a component of EPA's Resource Conservation Challenge (RCC). RCC is a major cross-Agency initiative that identifies and uses innovative, flexible, and protective ways to conserve natural resources.

EPA proposes to exclude hazardous waste from regulation when it is generated and reclaimed in a continuous process within the same industry. Under these provisions, these recycled materials do not have to be managed like hazardous waste being disposed of. The Agency estimates that the majority of materials affected by this proposal are generated by the following industries: inorganic chemicals, plastic materials and resins, pharmaceutical preparations, cyclic crudes and intermediates (specialty chemicals), industrial organic chemicals, secondary smelting of nonferrous metals, plating and polishing, and printed circuit boards. These proposed changes represent potential savings of \$178 million a year at more than 1700 plants nationwide.

This proposal does not apply to recycled materials that are considered inherently waste-like; used in a manner constituting disposal; burned for energy recovery; or recycled by a commercial or third-party recycler. Any materials recycled in these ways must comply with the federal hazardous waste regulations.

Criteria to distinguish legitimate hazardous waste recycling activities from sham recycling also are proposed. EPA and our state partners believe that now is a good time to clarify and simplify the basic principles that underlie the hazardous waste recycling

regulations. New language is added to the definition of solid waste that specifies four general criteria that determine legitimate hazardous waste recycling. These criteria would be grounds for EPA enforcement:

- The secondary material to be recycled must be managed as a valuable commodity.
- The secondary material must provide a useful contribution to the recycling process or to a product of the recycling process.
- The recycling process must yield a valuable product or intermediate that is sold or used under specific conditions.
- The product of the recycling process must not contain significant amounts of hazardous constituents and other things.

Recycled materials must meet these legitimacy criteria to be eligible for the proposed exclusion. The same criteria apply to already-excluded hazardous secondary materials and to hazardous secondary materials requiring special recycling under current rules.

EPA is requesting comment for 90 days following publication of this proposal in the *Federal Register*.

Background

This action results from both a continuation of more than 10 years of work on the regulatory definition of solid waste, and a response to decisions by the United States Court of Appeals for the D.C. Circuit which address the issue of federal jurisdiction over various kinds of recyclable materials. The latest of these decisions was issued in the case of *Association of Battery Recyclers v. EPA*, 208 F.3rd 1047 (2000). The Court stated that hazardous secondary materials, which are generated and reclaimed in a continuous process within the same industry, were clearly not being discarded and hence were not solid wastes.

For More Information

This fact sheet and other information related to this proposal are available on the Internet at <http://www.epa.gov/epaoswer/hazwaste/dsw/abr.htm>. For additional information, or to order paper copies of any documents, call the RCRA Call Center. Callers within the Washington Metropolitan Area please dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). Long-distance callers please call 1-800-424-9346 or TDD 1-800-553-7672. The RCRA Call Center operates weekdays, 9:00 a.m. to 5:00 p.m. Address written requests to: RCRA-Docket@epa.gov or RCRA Information Center (5305T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0001.