

Definition of Solid Waste

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Redefinition

- Decades-long process to define solid waste under RCRA
- October 2003 – “same industry” approach
- October 30, 2008 – New final rule
 - 73 Fed. Reg. 64,668
- Effective: December 29, 2008



DSW: Major Provisions

- Exclusion for secondary materials generated and reclaimed under control of the generator
 - “Generator-control exclusion”
- Exclusion for hazardous secondary materials generated then transferred to another for reclamation
 - “Transfer-based exclusion”
 - Certification from reclaimer
- Petition process for case-specific non-waste determinations
- Criteria for determining legitimate recycling

Exclusions Unavailable for:

- Inherently waste-like materials;
- Materials used in a manner constituting disposal or used to produce products that are applied to or placed on the land;
 - Storage: sufficient if placed in a unit that controls hazardous material migration to environment
- Burned for energy recovery

Requirements/Prohibitions

- Notice to EPA that you are using exclusion
 - Prior to using exclusion and March 1 of every even numbered year thereafter
- No speculative accumulation
- Hazardous secondary materials must be legitimately reclaimed
- Containment
- “reasonable efforts” to make sure reclaimer is legitimately recycling

Legitimate Recycling Criteria

- Two part test:
 - Must provide a useful contribution to the recycling process
 - Other non-mandatory factors
 - Managed as valuable commodity
 - Presence of hazardous constituents
 - “Toxics along for the ride”
 - Positive economic factors
 - Amount paid; revenue generated

Non-Waste Determination Process

- All 40 C.F.R. Sec. 261.4 exclusions apply
 - Wastewater discharge, irrigation return flows, pulping liquors)
- Used where:
 - Inherently waste-like
 - Used in a manner constituting disposal
 - Burned for energy recovery
- Case-by-case where:
 - Chemically indistinguishable

Outlook

- Deregulatory
 - Where a state has more restrictive program, they can, but do not have to, adopt federal regulation
 - Few states have automatic adoption
 - Only 5-7 states have adopted
- Sierra Club litigation
 - Petition for Review
 - Industry interveners
 - Petition for Reconsideration