

Specific Provisions

More Stringent Hazardous Waste Recycling Requirements (apply where EPA's base program is in effect and must be adopted by States delegated to administer base program)

- Solid waste definition now incorporates provision long recognized in EPA policies that hazardous secondary material is a hazardous waste if found to be “sham recycled”.
- Definition of “accumulated speculatively” now incorporates provision that recycled material must be placed in storage unit labeled to indicate date when accumulation commenced (or other appropriate means must be used when labeling is impractical).
- Legitimacy determination for all recycling requires demonstration of all four factors (versus two in 2008 final rule) (Legitimacy Determination):
 - recycled material makes useful contribution to recycling process, product, or intermediate;
 - recycling process produces valuable product or intermediate;
 - material being recycled is managed as valuable commodity by both generator and recycler; and
 - product of recycling process is comparable to legitimate product or intermediate (alternative procedure including documentation, certification, and notice to regulatory authority where last showing can't be made).
- Variances and non-waste determinations to cover no more than 10 years (same as RCRA Part B permit), and facility operating under variance or non-waste determination must provide notification with updated facility information to EPA or delegated State authority (1) every even numbered year, and (2) if circumstances change (so authority can decide if new variance or non-waste determination is needed).
- Facilities seeking new variances for recycled materials must demonstrate that recycling is legitimate (see below); meet restrictions on enforcement actions or otherwise demonstrate ability to engage in safe recycling; have the proper equipment and trained personnel and permits and/or contracts to handle any residuals that are generated; meet financial assurance and emergency response and preparedness requirements; and address potential risks to nearby populations posed from unpermitted releases to the environment of hazardous secondary materials.
- All new variances for partially reclaimed hazardous secondary material must meet legitimacy criteria discussed below and additional criteria to confirm “commodity-like” status.

New and Revised Recycling Provisions (apply where EPA's base program is in effect and may be adopted by States delegated to administer base program)

- New provisions in revised exclusion and related provisions covering generator's “onsite” recycling (including recycling at other facilities under generator's control or under tolling agreement):
 - definition of “contained” (no definition in 2008 final rule) to ensure containment integrity, compatibility of contained materials, and proper labeling of those materials;
 - compliance with “speculatively accumulated” prohibition now requires documentation of when recycled material was first stored (see above);

- generator must notify EPA or delegated State authority before commencement of recycling and on even numbered years thereafter with specified (and updated) information about recycling, and also provide notification within 30 days after ending all recycling (Notification Requirements);
 - generator must document its Legitimacy Determination for recycling process and keep it onsite until three years after recycling operation ceases; and
 - generator must comply with emergency response and preparedness requirements set forth in recycling regulations.
- New provisions in replacement exclusion for offsite recycling by verified recycler:
 - offsite recycler must be in U.S.;
 - offsite recycler must be “verified reclamation facility”, which is a facility with variance, Part B RCRA permit, or interim status covering material involved in recycling;
 - definition of “contained” (no definition in 2008 final rule) to ensure containment integrity, compatibility of contained materials, and proper labeling of those materials;
 - compliance with “speculatively accumulated” prohibition now requires documentation of when recycled material was first stored (see above);
 - generator and offsite recycler must comply with Notification Requirements;
 - reclamation must meet Legitimacy Determination requirements; and
 - generator must comply with emergency response and preparedness requirements set forth in recycling regulations.
- New exclusion for certain remanufactured higher value solvents:
 - exclusion covers 18 spent solvents (acetonitrile, n-butyl alcohol, chlorobenzene, chloroform, chloromethane, cyclohexane, dichloromethane, NN-dimethylformamide, ethylbenzene, ethanol, n-hexane, methanol, methyl isobutyl ketone, methyl tert-butyl ether, tetrahydrofuran, toluene, 1,2,4-trimethylbenzene, and xylenes) originating from certain processes (reacting, extracting, purifying, or blending chemicals or rinsing out process lines used for such functions) where commercial grade of such material is used in one of four types of manufacturing (pharmaceutical, basic organic chemicals, plastics and resins or paints and coatings) and sent by generator to remanufacturer in one of those four manufacturing sectors remanufactured solvent is return for use in the same processes noted above;
 - remanufactured solvent may not be used in cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles;
 - generator and remanufacturer must notify EPA or delegated State authority of activity and update notification every two years;
 - generator and remanufacturer must have up-to-date remanufacturing plan that contains specified information, including types and estimated annual volumes of solvents being remanufactured;
 - remanufacturing plan must include certification that only designated manufacturing sector is accepting solvent, and only for use in allowed process categories (see above), and that remanufacturing equipment, vents, and tanks are compliant with air emission control requirements imposed under federal Clean Air Act or, in their absence, with

standards set forth in recycling regulations that track those imposed on facilities with RCRA permits;

- generator and remanufacturer must maintain records of shipments for three years; and
- prior to remanufacture, solvent must be stored in tanks and containers compliant with tank and container standards in RCRA regulations covering permitted facilities.

Other Provisions and Information Contained in New Rule

- Spent petroleum catalysts now eligible for verified recycler exclusion.
- Spent lead acid batteries remain ineligible for coverage under any of three new/revised exclusions.
- No change in universe of recycling activities that could be exempted from federal Superfund liability.
- EPA has deferred proposed action to require containment and notification by facilities covered by pre-2008 recycling exclusion or exemption.