

US EPA ARCHIVE DOCUMENT

Appendix A: List of Excluded and Exempt Materials

SOLID WASTE EXEMPTIONS (§261.2)

§261.2(c)(1)(ii) – Recycled commercial chemical products (CCPs) applied to the land when that is their ordinary manner of use (e.g., the U036 pesticide chlordane placed on farm crops)

§261.2(c)(2)(ii) – CCPs recycled to produce a fuel or directly re-burned are not a solid waste if they are themselves fuels (e.g., off-specification jet fuel sent for use in making virgin jet fuel)

§261.2(c)(3) – Sludges exhibiting a characteristic of hazardous waste that are reclaimed (e.g., characteristic sludges recovered from the bottom of a wastewater treatment unit (WWTU) at a silver recovery facility sent for reclamation)

§261.2(c)(3) – By-product exhibiting a characteristic that is reclaimed (a slag from high temperature metals recovery (HTMR) sent for reclamation)

§261.2(c)(3) – CCPs listed in §261.33 and other characteristic-only chemicals and CCPs reclaimed (not including manufactured articles) (e.g., an unused bottle of Acetone with an expired shelf life is sent for reclamation)

§261.2(c)(4) – CCPs speculatively accumulated before reclamation (e.g. bottle of off-specification unused acetone on a shelf for 3 years prior to reclamation)

§261.2(e) Materials that are not solid wastes when recycled without being reclaimed:

- (i)** – Materials used or reused as ingredients to make a product without being reclaimed (e.g., carbon tetrachloride still bottoms used to produce tetrachlorethylene)
- (ii)** – Materials used or reused as effective substitutes to make a product without reclamation (hydrochloric acid by-product from chemical manufacturing used by the steel industry for pickling steel)
- (iii)** – Materials returned as a feedstock to the original process where generated without being reclaimed (e.g., emission control dust sent to a primary zinc smelting furnace)

DERIVED-FROM WASTE EXEMPTIONS (§261.3)

§261.2(c)(2)(ii)(A) – Waste pickle liquor sludge generated from the lime stabilization of spent pickle liquor from the iron and steel industry (SIC codes 331 and 332)

(B) – Waste from burning petroleum wastes exempted from regulation by §261.6(a)(iii) and (iv) (i.e., wastes from the burning of exempt hazardous waste petroleum fuels)

(C) – Non-wastewater residues, such as slag resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste

(D) – Biological treatment sludge from certain wastes listed in §261.32

(E) – Catalyst inert support media separated from one of the following wastes listed in §261.32: K171 and K172)

EXCLUSIONS FROM DEFINITION OF SOLID WASTE (§261.4(a))

§261.4(a)(1) - Domestic Sewage and Mixtures of Domestic Sewage that pass through a sewer system to a publicly owned treatment works (POTW)

Ex.: A hazardous wastewater that exhibits the characteristic of lead from a smelter is excluded from the definition of solid waste at the point that it enters the pipe where it will mix with domestic sewage and travel to a POTW

§261.4(a)(2) – Point source discharges that are subject to 402 of the Clean Water Act (CWA)

Ex.: A pipe at an industrial hazardous waste facility that is subject to 402 of the CWA releases a waste excluded from the definition of solid waste since it is already regulated under the CWA

§261.4(a)(3) – Irrigation return flow from agricultural land that returns to the water basin

Ex.: Return flows from agricultural lands carrying pesticides or fertilizers are excluded from the definition of solid waste despite the fact that these return flows may exhibit hazardous waste characteristics.

§261.4(a)(4) – Radioactive materials (i.e., source, special nuclear, or by-product materials) regulated under the Atomic Energy Act (AEA)

Ex.: a radioactive isotope at a laboratory that is only hazardous for being radioactive is excluded from the definition of solid waste when it is discarded (45 FR 33066, 33101; May 19, 1980).

261.4(a)(5) – In-situ mining waste left in place

Ex.: Solvent passes through the ground collecting the mineral deposit in the ground at a mining site and the mineral and solvent mixtures are collected at an underground well for evaluation. The solvent contaminated earth is not subject to solid waste regulation when it is left in place (45 FR 33066, 33101; May 19, 1980).

§261.4(a)(6) – Reclaimed corrosive pulping liquor reused in the pulping process

Ex.: Used pulping liquor at a pulping plant that is collected and reclaimed in a pulping liquor recovery furnace and then subsequently reused in the pulping process is excluded from the definition of solid waste provided it is not speculatively accumulated.

§261.4(a)(7) – Spent sulfuric acid that is used to produce virgin sulfuric acid by reintroduction into the sulfuric acid production process

Ex.: A chemical manufacturing plant generates spent sulfuric acid. The spent sulfuric acid is reintroduced into the production process which makes virgin sulfuric acid as a feedstock. The spent sulfuric acid is not a solid waste when recycled in this manner.

§261.4(a)(8) – Reclamation in an enclosed tank of secondary materials generated during production processes and are reusable in those same processes (Closed-Loop Exclusion)

Ex.: In an agricultural production process a waste xylene is produced which is sent to a reclamation unit via pipe where 100% of the xylene is reclaimed and piped back to the agricultural production process for use in making a product. The waste xylene is not a solid waste provided it is not stored prior to reclamation for longer than 12 months.

§261.4(a)(9) – Spent wood preservatives reclaimed through a series of drip pads connected integrally to the production process

Ex.: A drip pad collects wood preserving solutions at a facility where the pads are intimately connected with the production process. The spent preservatives are collected and reclaimed through a series of drip pads and are used again as wood preserving solution at the facility after being reclaimed. The spent solutions are not solid wastes provided the facility claiming the exclusion meets all of the criteria of the exclusion

§261.4(a)(10) – Certain coke byproduct wastes (both listed and characteristic) which are recycled to either coke ovens, the tar recovery process as feedstock or mixed with coal tar prior to coal tar refining or sale

Ex. Tar decanter sludge (listed waste K087) is recycled to the tar recovery process and is thus not a solid waste when recovered in this manner.

§261.4(a)(11) – Splash condenser dross residue (SCDR) used as a source of zinc in zinc recovery operations

Ex.: A high temperature metal recoveries operation (HTMR process) produces an SCDR which is sent off-site in drums and is never placed on the land prior to recovery in zinc recovery operations. Because the SCDR is appropriately managed and recovered it is not a solid waste.

§261.4(a)(12) – Oil-bearing secondary materials (i) and Recovered oil (ii) when this oil is generated from appropriate sources and is recycled back into the petroleum refinery

Ex. # 1: A characteristic sludge generated in the distillation step in a refining process making lubricant oils is recycled back into the refining process and is therefore not a solid waste (§261.4(a)(12)(i)).

Ex. #2: Oil recovered from petroleum industry field operations that exhibits the characteristic of ignitability is sent to a refinery where it is inserted into the coking process prior to catalytic cracking. This waste is therefore excluded from the definition of solid waste (§261.4(a)(12)(ii)).

§261.4(a)(13) – Processed scrap metal, unprocessed home scrap metal and unprocessed prompt scrap metal going for recycling

Ex.: A metal working shop generates scrap metal that is chopped and sent from reclamation, because this metal was chopped it qualifies as processed scrap metal excluded from the definition of solid waste.

§261.4(a)(14) – Shredded circuit boards being recycled

Ex.: A computer company shreds unwanted circuit boards and puts them in a container to destroy their proprietary information and to fit more metal per cubic inch of container. Provided the boards are free of mercury relays switches and batteries and are reclaimed, they are not a solid waste.

§261.4(a)(15) – Pulping condensates from kraft mill steam strippers burned on-site

Ex.: At a kraft pulping mill an air steam stripper is cleaned and methanol gas which remains is not a solid waste provided it is condensed to liquid and burned as fuel at the facility

§261.4(a)(16) – Fuels comparable to virgin fuels which are to be used in manners similar to the way fossil fuels are used (Comparable Fuels Exclusion)

Ex.: An as generated listed waste solvent at a facility with a heating value of 10,000 BTU/lb, a viscosity of 45 cs as fired, and constituent specifications below the levels in 261.38 Table 1, is excluded from the definition of solid waste when the generator and burner of the waste fuel comply with the 261.38 requirements.

§261.4(a)(17) – Secondary materials within the primary mineral processing industry that are legitimately recycled to recover minerals

Ex.: A characteristic by-product to be recycled within the primary mineral processing industry that is stored on an approved pad and not speculatively accumulated or placed on the land is not a solid waste

§261.4(a)(18) – Petrochemical recovered oil from associated chemical manufacturing facilities when the oil is recycled to a petroleum refinery

Ex.: An organic chemical manufacturing facility physically adjacent to a petroleum refinery, pipes recovered oil characteristic for benzene to the neighboring petroleum refinery. The recovered oil is not a solid waste.

§261.4(a)(19) – Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock in the production of certain acids

Ex.: Spent caustic solutions generated at a facility where they are managed carefully in tanks and shipped to a petroleum facility to be used as a feedstock to produce cresylic and naphthenic acids is not a solid waste.

EXCLUSIONS FROM DEFINITION OF HAZARDOUS WASTE (§261.4(b))

§261.4(b)(1) – "Household Hazardous Waste" generated primarily in the home and is composed of wastes generated by consumers in their homes

Ex.: Paint waste used to paint a chair in a bunkhouse is not a hazardous waste when discarded.

§261.4(b)(2) – Agricultural waste returned to the ground as fertilizer or soil conditioners

Ex.: Crop residues and manures are not hazardous wastes when they are used to fertilize farmland.

§261.4(b)(3) – Mining overburden removed to gain access to a surface mine

Ex.: Earth and rocks that exhibit a hazardous waste characteristic for lead that are removed to access an underlying gold mineral deposit being mined are not hazardous wastes.

§261.4(b)(4) – Fossil fuel combustion wastes (fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste) generated primarily from the combustion of coal or other fossil fuels

Ex.: A local electric utility boiler called a pulverizer produces hundreds of thousands of pounds of fly ash and bottom ash per year from burning coal. These wastes are contained in surface impoundments and are not hazardous wastes.

§261.4(b)(5) – Wastes associated with the exploration of natural gas and geothermal energy

Ex.: Drilling fluids and wastewater produced at an oil rig extracting crude oil from the earth, are not hazardous wastes.

§261.4(b)(6) – Wastes that fail the characteristic exclusively for chromium generated in certain processes and managed under certain conditions and are not hazardous for any other reason (note: exclusion very specific)

Ex.: The leather tanning industry produces chrome trimmings as a result of using trivalent chromium in its leather tanning processes. The chrome trimmings are not hazardous wastes when managed and disposed in non-oxidizing environments.

§261.4(b)(7) – Solid waste from the extraction, beneficiation, and processing of ores and minerals and certain solid wastes from mineral processing (note: exclusion very specific with regard to mineral processing wastes)

Ex.: At a primary mineral processing facility, a metal waste pile is produced as the direct result of performing magnetic separation (a beneficiation step). The waste metal pile is not a hazardous waste since it is produced as a result of its unique association with a beneficiation operation at a primary mineral processing facility.

§261.4(b)(8) – Cement kiln dust (CKD) waste

Ex.: CKD at an industrial cement facility is produced in cementing processes from the control of stack emissions, and contained in tanks. CKD which will eventually be sent to a landfill or for use in agricultural products is not a hazardous waste.

§261.4(b)(9) – Discarded arsenical treated wood hazardous for D004-D017 when the waste is generated by persons utilizing the wood for its intended end use

Ex.: At an industrial facility arsenical treated wood (D004 characteristic for arsenic only), is torn up from a terrace and sent for disposal. This wood is not a hazardous waste.

§261.4(b)(10) – Petroleum contaminated media and debris (D018 through D043 only) subject to Underground Storage Tank corrective action (part 280)

Ex.: A gas station with a leaking tank containing benzene is undergoing corrective action under Part 280 and therefore does not need to dispose of the soil wastestream characteristic for benzene (D018) as hazardous waste.

§261.4(b)(11) – Injected groundwater (exclusion withdrawn)

§261.4(b)(12) – Chlorofluorocarbon refrigerants (CFCs) from totally enclosed heat transfer equipment provided the refrigerant is reclaimed for further use

§261.4(b)(13) – Punctured, crushed and gravity hot drained non-terne plated used oil filters

Ex.: A light-duty automotive non-terne filter that is gravity drained for twelve hours and then crushed is not a hazardous waste.

§261.4(b)(14) – Used oil re-refining distillation bottoms used as feedstock to manufacture asphalt products

Ex.: A processor of used oil that produces a re-refining distillation bottom that it sells to asphalt producers who will use the bottom as a feedstock, has a waste which is not subject to hazardous waste regulation.

§261.4(b)(15) – Temporary exclusion for leachate or gas condensate where certain listed wastes were disposed (K169-K172), if these listed wastes are generated after February 8, 1999 and disposed before February 13, 2001 (one exception in 261.4(b)(15)(v))

Ex.: Leachate generated from a landfill containing waste codes K169 and K171 that were generated and disposed prior to February 8, 1999, is shipped to a POTW regulated under 307(b) of the Clean Water Act (CWA) and is therefore not a hazardous waste.

CONDITIONALLY EXEMPT HAZARDOUS WASTE

§261.4(c) – Conditional exemption for a hazardous waste generated and contained in a manufacturing process tank, product or raw material storage vehicle or vessel a product or raw material pipeline or a manufacturing process unit

Ex.: A manufacturing process unit that makes chemical coatings generates a sludge in the same tank where manufacturing of chemicals is conducted. The sludge is characteristic but remains in the tank for several months and is not removed until the unit ceases operation (before 90-days after the unit ceases operation). The sludge is not a regulated hazardous waste until it is removed from the tank.

§261.4(d) – Samples collected for testing during the time that they are managed correctly before their actual disposal

Ex.: A sample of soil contaminated with lead is sent to a laboratory for testing to determine whether it exhibits any hazardous waste characteristics. The soil sample is not a regulated hazardous waste (even if it proves to be hazardous) during the time that the sample is collected, transported by a licensed transporter (complying with DOT and USPS requirements), stored before and after testing at a laboratory, and appropriate records are kept. The sample becomes a hazardous waste when the laboratory determines left over sample or residue to be hazardous or when samples or residues are determined to be hazardous by

the generator to which the samples or residues were sent back under contractual agreement.

§261.4(e) – Treatability study samples collected by a generator or collector of samples for the purpose of testing to determine a wastes amenability to treatment, or a variety of other reasons listed in the definition of a treatability study in §260.10

Ex.: 1000 kg of characteristic contaminated soil is sent to a laboratory to determine whether the wastestream is amenable to treatment through bioremediation. The waste samples are not subject to regulation at the collection facility, in transport to the laboratory, during storage at the laboratory prior to treatment, and during return transportation under contract agreements. Provided the conditions of the exclusion are complied with, the generator (collector), and the waste are not subject to hazardous waste regulation during the above circumstances except if the waste is tested as hazardous at the generator facility upon return of the waste from the laboratory.

§261.4(f) – Samples undergoing treatability studies and laboratories or testing facilities conducting the studies are not subject to RCRA hazardous waste regulations

Ex.: A sample of waste that arrives at a facility for study is not subject to hazardous waste regulation during the time that it undergoes study, nor is the laboratory storing the waste subject to hazardous regulation, provided the laboratory complies with waste feed quantity limitations, storage limitations, and the notification and recordkeeping requirements of the exclusion. After the study ceases, the remaining samples and residues must be tested to determine if they are hazardous and managed according to all applicable hazardous regulation either by the laboratory or the generator if the waste samples are sent back to the generator under contract

§261.4(g) – Dredged material permitted to be managed under the Marine Protection, Research, and Sanctuaries Act (MPRSA), the U.S. Army Corps. Of Engineers (Corps) and certain permits under the Corps Civil Works projects

Ex.: The Norfolk harbor in the state of Virginia is dredged and a very large volume of material is recovered that will be disposed into the ocean at a designated site under the MPRSA. The dredged material is not subject to regulation under RCRA when it is managed and disposed under the terms of the MPRSA permit.

§261.5 – Conditionally Exempt Small Quantity Generators (CESQGs) generate less than 1kg of acute hazardous waste in a calendar month or less than 100kg of hazardous waste in a calendar month. CESQGS are not subject to substantial hazardous waste regulation provided the waste is in compliance with the standards in §§261.5(e) – (j). (e.g., A generator that produces only 50 kg of hazardous spent solvent in a calendar month is not subject to substantive hazardous waste regulation, including the

requirement to obtain an ID, number, initiate a manifest, or comply with export requirements)

RECYCLING EXEMPTIONS (§261.6)

§261.6(a)(2)(i) – Recyclable materials used in a manner constituting disposal when meeting the requirements of subpart C in part 266 (e.g., An asphalt product placed on the land made from hazardous spent materials that underwent a chemical change after being produced at a cement company)

§261.6(a)(2)(iv) – Spent lead acid batteries being reclaimed that are subject to Part 266 Subpart G (e.g., a hazardous lead acid battery generated from a facility vehicle is not subject to regulation as a hazardous waste including manifest requirements waste regulation at the generator's site, the collection facility and the recycling facility provided the recycling facility complies with a limited set of provisions)

§261.6(a)(3)(ii) – Scrap metal that is not excluded being reclaimed (e.g., a metal pipe being sent for lead smelting)

§261.6(a)(3)(iii) – Fuels produced from reinserting oil-bearing hazardous wastes into the refining process before a refining step (e.g., light oil fuel produced at a facility that recycles hazardous waste sludges generated within the petroleum industry as feedstocks with normal process streams)

§261.6(a)(3)(iv) – Fuels produced from oil-bearing hazardous wastes recovered from petroleum refining, production and transport, provided fuels meet the oil specifications in §279.11

- (A) – Fuels from processes that do not use distillation or do not produce products from crude oil (e.g., heavy gas oil produced at a facility that is not a petroleum refinery but distills recovered oil generated in the petroleum industry and combines other chemicals in a process to produce the desired fuel. Such a process would not use crude oil)
- (B) – Fuels from wastes reintroduced into the refining process after the point where contaminants are removed (e.g., jet fuel at a refinery produced from recovered oil generated in the petroleum transport process that is reinserted after the catalytic cracking step)
- (C) – Oil reclaimed from oil-bearing hazardous wastes that is not reinserted into the refining process (e.g., recovered oil from a refinery tank is declared a marketable fuel as is without refining it)

§261.6(a)(4) – Used oil that is recycled and is hazardous only because it exhibits a characteristic at the point of generation

MILITARY MUNITIONS EXEMPTIONS

§266.202 – An unused military munition being repaired reused, recycled, reclaimed, disassembled, reconfigured, or otherwise subjected to materials recovery activities is not a solid waste

§266.202 – Military munitions in transport by the government according to specific guidelines is not subject to hazardous waste regulation