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Modification to the Definition of Solid Waste Aims To Increase Recycling

EPA is streamlining its regulation of hazardous secondary materials to encourage beneficial recycling via reclamation and help conserve resources. By doing so, recycling these materials will not only be safe, but also less costly and more efficient.

Action

In October 2003, EPA proposed a regulatory exclusion from the definition of solid waste which would streamline requirements for the recycling of hazardous secondary materials. After evaluating public comments and conducting independent analyses, the Agency published a supplemental proposal in March 2007. This rule finalizes the March 2007 supplemental proposal by establishing streamlined requirements for the following:

- Materials that are generated and legitimately reclaimed under the control of the generator (i.e., generated and reclaimed on-site, by the same company, or under “tolling” agreements);
- Materials that are generated and transferred to another company for legitimate reclamation under specific conditions; and,
- Materials that EPA or an authorized state determines to be non-wastes through a case-by-case petition process.

The rule also contains a provision to determine which recycling activities are legitimate under the new exclusions and non-waste determinations. This provision ensures that only authentic recycling, and not treatment or disposal under the guise of recycling, receives the benefits of these streamlined regulations. In order to be legitimately recycled under these exclusions, the hazardous secondary material (1) must provide a useful contribution to the recycling process; and (2) the recycling must make a valuable new intermediate or final product. Two additional factors must also be taken into account: (1) whether the recycled material is managed as a valuable product; and (2) whether the recycled product contains toxic constituents at significantly greater levels than a non-recycled product made from virgin materials.

These exclusions are not available for materials that are: (1) considered inherently waste-like; (2) used in a manner constituting disposal; or (3) burned for energy recovery.

The restrictions for the exclusions in this final rule are substantially similar to those contained in the supplemental proposal published on March 26, 2007 (72 FR 14172) with certain modifications regarding:

- Reporting and recordkeeping;
- Reasonable efforts required of generators to ensure that their hazardous secondary materials are safely and legitimately recycled;
- Intermediate facilities storing hazardous secondary materials for more than 10 days are eligible under the transfer-based exclusion; and
- Tailoring the financial assurance requirements to intermediate facilities and reclaimers of hazardous secondary materials.

The Agency estimates that about 5,600 facilities handling approximately 1.5 million tons of hazardous secondary materials annually may be affected by this proposed rule. The activities most affected are metals and solvent recycling. This action is expected to result in cost savings of approximately \$95 million per year for all affected industry sectors.

For More Information

More information about the Definition of Solid Waste:
<http://www.epa.gov/epawaste/hazard/dsw/index.htm>. To find out more detailed information or to ask a question, please go to <http://waste.custhelp.com> and click on Find an Answer or Ask a Question.