

US EPA ARCHIVE DOCUMENT

## Chapter IV. Comments on the Revision to 40 CFR 261.3 for Mixed Wastes

The MW codes identify all comments that address the issue of revising the MDF rules and the conditional exemption for mixed waste or any other issue related to mixed waste. Comments on the MW exemption were broken down further into the following specific issue codes:

MW1	General comments on conditional exemption from MDF rules for mixed waste
MW2	Proposed regulatory language is not an appropriate approach for implementing mixed waste exemption
MW3	All other comments on mixed waste

On the following pages, each MW comment issue is summarized, and then followed by EPA's response. A list of all the specific comments (including the comment number assigned by the EPA docket, the page, and the paragraph) that are linked to each comment issue summary is also included. The full text of these comments appear in Appendix C.

The detailed responses to comments coded as MW3 are included in a separate document, titled *Comment Summary and Response Document: HWIR Mixed Waste-Related Comments*. These comments were approached separately because the responses were an outgrowth of the mixed waste final rule, which is being published in a separate Federal Register Notice. However, because these comments were submitted as part of the 1995 HWIR proposal, they are included in this final rule docket and referenced here.

**Issue Code:** MW1: General Comments on the Conditional Exemption from the MDF Rules for Mixed Waste

**Comments:** WH2P-00007, 3, 1; WH2P-00007, 7, 1; WH2P-00008, 2, 2; WH2P-00010, 4, 5; WH2P-00010, 11, 1; WH2P-00016, 3, 1; WH2P-00022, 3, 3; WH2P-00022, 6, 2; WH2P-00033, 2, 1; WH2P-00033, 17, 4; WH2P-00041, 2, 4; WH2P-00047, 1, 4; and WH2P-00050, 2, 5

**Comment Summary:**

The Agency received comments from nine commenters in response to the 1999 HWIR proposal concerning the conditional exemption from the mixture and derived-from (MDF) rules for mixed waste. Of those comments, five were received from utility companies or associations, one was from an industry association, two were from industry, and one was from a Federal Government Agency.

All of the commenters supported EPA's proposed conditional exemptions for low-level mixed waste (LLMW). Many commenters believed that such an exemption was implicit in the mixed waste proposal and necessary for the proposed mixed waste conditional exemptions to function effectively. Many commenters noted that EPA's proposal would help eliminate much of the current regulatory overlap associated with LLMW. Florida Power and Light added that since the implementation of LLMW management under RCRA, it had been difficult to find treatment/disposal capacity for its limited quantities of mixed waste, and the proposal would improve safety, efficiency, cost and timeliness of LLMW management. Several commenters encouraged EPA to expedite its implementation.

**Agency Response:**

EPA agrees with the comments and appreciates the support expressed for the conditional exemption for mixed waste mixtures and derived-from wastes.

**Issue Code:** MW2: Proposed Regulatory Language is not an Appropriate Approach for Implementing the Mixed Waste Exemption

**Comments:** WH2P-00007, 7, 1; and WH2P-00017, 10, 1

**Comment Summary:**

The Agency received comments from DOE and DoD in response to the 1999 HWIR proposal concerning the proposed regulatory language for implementing a conditional exemption from the mixture and derived-from (MDF) rules for mixed waste.

The commenters believed it would be more appropriate to pursue regulatory relief for low-level mixed waste (LLMW) via the standards proposed for 40 CFR 266, Subpart N rather than within the definition of hazardous waste in 40 CFR 261.3. This proposed exemption within 40 CFR 261.3 would provide an inconsistency in the application of the MDF rules between wastes mixed with or derived-from the treatment of hazardous wastes and wastes mixed with or derived-from the treatment of LLMWs. The commenters noted that the proposed regulation for the transportation/disposal conditional exemption for mixed waste, section 266.305, exempts the waste from certain RCRA requirements (provided specified conditions are met), but does not exempt the waste from the definition of hazardous waste. This presents a problem because proposed 40 CFR 261.3(a)(2)(iii) requires that a mixture be excluded from the definition of hazardous waste before the mixture would be exempt from the mixture rule. A second problem arises in that the proposed exemption from the derived-from rule (i.e., proposed 40 CFR 261.3(c)(2)(i)) indicates that derivatives are hazardous waste except as otherwise provided in paragraph (c)(2)(ii) or (g) of this section or in part 266, subpart N. This presents a problem because, in contrast with §261.3(c)(2)(ii) and proposed §261.3(g), each of which specifically states that certain derivatives of hazardous wastes are not also hazardous wastes, proposed 40 CFR 266, subpart N contains no provisions specifically stating that derivatives resulting from the treatment, storage, or disposal of low-level mixed waste or NARM-contaminated hazardous waste are not also hazardous wastes. The commenters believed that EPA must resolve the problems mentioned above in order to implement exemptions from the MDF rules for conditionally exempt low-level mixed wastes and NARM-contaminated hazardous wastes in the manner contemplated by the NPRM. If EPA intended the transportation/disposal conditional exemption to be an exemption from the definition of hazardous waste, then the exemptions from the MDF rules could be implemented by adding a provision in 40 CFR 261.4(b).

**Agency Response:**

EPA agrees that 40 CFR 266 Subpart N is the primary mechanism for providing relief for mixed waste, but will also plans to include a cross-reference in 40 CFR 261.3 (h) to clarify that these wastes (including mixtures and derivatives) are conditionally exempt from the definition of hazardous waste. In response to the apparent confusion about how the proposed regulatory language applies to these conditional exempt mixed wastes, EPA has created a new section to 40 CFR 261.3, section (h), which more carefully explains how the definition of hazardous waste interacts with the mixed waste conditional exemption.

**Issue Code:** MW3: Other Comments on Mixed Waste

**Comments:** WH2P-00011, 4, 4; WH2P-00044, 1, 4; WHWP-00213, 3, 2;  
 WHWP-00072, 27, 5; WHWP-00198, Cvr. Ltr.; WHWP-00078, 9, 4;  
 WHWP-00143, 1, 2; WHWP-00072, 65, 4; WHWP-00072, 69, 6;  
 WHWP-00072, 1, 1; WHWP-00072, 68, 2; WHWP-00239, 3, 6;  
 WHWP-00072, 9, 1; WHWP-00072, 15, 2; WHWP-00072, 13, 3;  
 WHWP-00072, 69, 2; WHWP-00072, 69, 4; WHWP-00200, 25, 3;  
 WHWP-00060, 5, 2; WHWP-00054, Cvr. Ltr.; WHWP-00170, 3, 7;  
 WHWP-00198, 11, 1; WHWP-00228, 1, 1; WHWP-00228, 1, 2;  
 WHWP-00228, 2, 1; WHWP-00228, 2, 3; WHWP-00226, 2, 13;  
 WHWP-00202, 12, 3; WHWP-00029, 2, 2; WHWP-00247, 6, 6;  
 WHWP-00109, 6, 1; WHWP-00178, 1, 2; WHWP-00178, 4, 2;  
 WHWP-00178, 4, 1; WHWP-00178, 4, 4; WHWP-00112, 1, 2;  
 WHWP-00025, 1, 1; WHWP-00120, 24, 4; WHWP-00120, 25, 2;  
 WHWP-00119, 11, 1; WHWP-00024, 11, 1; WHWP-00249, 7, 3;  
 WHWP-00206, 25, 1; WHWP-00206, 26, 4; WHWP-00206, 27, 1;  
 WHWP-00250, 3, 3; WHWP-00213, 1, 2; WHWP-00246, 2, 1;  
 WHWP-00246, 2, 2; WHWP-00029, 2,3; WHWP-00116, 1, 1;  
 WHWP-00116, Cvr. Ltr.; WHWP-00116, 3, 1; WHWP-00116, 2, 2;  
 WHWP-00116, 2, 4; WHWP-00089, 18, 8; WHWP-00089, 18, 3;  
 WHWP-00089, 24, 1; WHWP-00089, 26, 2; WHWP-00052, 1, 1;  
 WHWP-00020, 1, 2; WHWP-00020, 2, 2; WHWP-00020, 2, 3;  
 WHWP-00177, 16, 3; WHWP-00177, 16, 4; WHWP-00239, 5, 1;  
 WHWP-00239, 4, 1; WHWP-00208, 2, 4; WHWP-00208, 2, 5;  
 WHWP-00208, 5, 1; WHWP-00208, 3, 4; WHWP-00189, 1, 2;  
 WHWP-00231, 5, 2; WHWP-00046, 1, 1; WHWP-00158, 3, 2;  
 WHWP-00158, 1, 3; WHWP-00166, 2, 2; WHWP-00198, 8, 4;  
 WHWP-00198, 8, 5; WHWP-00066, 6, 5; WHWP-00167, 5, 4;  
 WHWP-00072, 70, 3; WHWP-00177, 17, 4; WHWP-00089, 72, 1;  
 WHWP-00072, 4,2; and WHWP-00216, 1,2

**Comment Summary:**

In EPA's 1995 HWIR proposal, we included a discussion of possible conditional exemptions for mixed wastes based on EPA's HWIR modeling, or on other conditions outlined in a proposal developed by the Department of Energy (DOE). EPA received comments from 45 commenters regarding this discussion, many of whom urged EPA to separate mixed waste from the HWIR rulemaking. DOE has since withdrawn its proposal, and EPA has developed a separate mixed waste exemption, which will be published separately in the Federal Register. For a more detailed explanation of these mixed waste comments, please see the *Comment Summary and Response Document: HWIR Mixed Waste-Related Comments*.