

US EPA ARCHIVE DOCUMENT

Appendix A

RCRA Exclusions and Exemptions – Federal Regulatory Universe

The following table sets out the Agency's position on whether the specified materials that are the subject of either an exclusion or an exemption are within the universe of federally-regulated materials under RCRA Subtitle C. This determination is germane for the first part of the more stringent/broader in scope analysis described in the memorandum to which this table is appended.

Where the table indicates a "No", this means the material or entity is not within the federal regulatory universe and state provisions that regulate the material or entity are broader in scope; on the other hand, "Yes" indicates that the material remains within that regulatory universe and further analysis under the second part of the guidance (the federal counterpart question) is required. Where an exclusion or exemption provision includes a temporal component (such as the exemption for persons engaged in an immediate response to a hazardous waste discharge), the analysis relates to the time period covered by the provision (in this example, the inquiry into whether the entity is within the regulatory universe would relate to the time during the immediate response).

For those exclusions and exemptions that are set forth with conditions, specific terms or other types of limitations, where specified with "No", the determination is that the material is outside the regulatory universe when the applicable conditions or terms of the federal regulations are met. Therefore, where a state does not have a matching exclusion or exemption and regulates the material, the state provision would be considered broader in scope. On the other hand, where particular conditions or terms of the federal regulations are not met so that the exclusion or exemption would not be applicable, the material remains within the federal regulated universe. Regional authorization reviewers must still analyze state provisions using the second part of the more stringent/broader in scope test to inform those circumstances when the terms of conditional exclusions or exemptions are not met.

While every effort has been made to make this list of exclusions and exemptions as complete as possible, there may be additional exclusions or exemptions that appear in the regulations or that are promulgated in the future that are not included in this table and there should be nothing inferred from the lack of such inclusion. The descriptions of the exclusions and exemptions provided here as summaries and excerpts are not intended to be relied upon in lieu of the actual regulatory language. The conditions and terms that are set forth are those that are found in the regulations. This Appendix does not set out conditions or terms that may be part of regulatory interpretations or case law relating to any particular exemption or exclusion.

RCRA Exclusions and Exemptions – Federal Regulatory Universe Table

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.2(e)	Use/Reuse	Must be (a) used or reused as ingredients to make product, (b) used or reused as an effective substitute for a product, (c) returned to the original process to be used as feedstock. (Does not apply to use constituting disposal, burning for energy or inherently waste-like material). Must meet speculative accumulation limits	No
261.2 Table 1	Characteristic sludges being reclaimed	Must meet speculative accumulation limits	No
261.2 Table 1	Characteristic by-products being reclaimed	Must meet speculative accumulation limits	No
261.2 Table 1	Commercial chemical products being reclaimed	None	No
40 CFR 261.3 (a)(2)(iv)(A-G))	Headworks Exemption from Mixture Rule for specified wastes at specified concentrations	None	Not within the federal universe if specified wastes are present at or below the specified concentration; if the material is not a specified waste or is present above the specified concentration, it is within the federal universe.
261.4(a)(1),(3),(4),(5),(13)	Unconditional exclusions from regulatory solid waste universe	None	No
261.4(a)(2)	Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act	None	No This exclusion only applies to the actual point source discharge and does not exclude industrial wastewaters while they are being collected, stored or treated prior to discharge nor does it exclude industrial wastewater treatment.

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(a)(6)	Pulping Liquors	Must be reclaimed in a pulping liquor recovery furnace, reused in the pulping process and meet speculative accumulation limits	No
261.4(a)(7)	Spent Sulfuric Acid	Must be used to produce virgin sulfuric acid and meet speculative accumulation limits	No
261.4(a)(8)	Secondary Materials Processed in Closed-Loop Recycling	Only tank storage; closed process connected by pipes or similar equipment; no controlled flame combustion; must meet speculative accumulation limits; no burning for energy recovery, no land placement	No
261.4(a)(9)	Spent Wood Preservatives	Reused on-site for intended purpose; managed to prevent releases; meets drip pad standards and one-time notification requirement	No
261.4(a)(10)	Coke By-Product Wastes that exhibit only the toxicity characteristic	Recycled only to coke ovens or tar recovery process as a feedstock to produce coal tar or mixed with coal tar prior to the tar's sale or refining; no land disposal prior to recycling	No
261.4(a)(11)	Splash Condenser Dross Residue	Must be shipped in drums and not land disposed	No
261.4(a)(12)	Hazardous Oil-Bearing Secondary Materials and Recovered Oil from Petroleum Refining Operations	No land placement nor speculative accumulation prior to recycling; coke product does not exhibit characteristic	No
261.4(a)(14)	Shredded Circuit Boards that are free of mercury switches, batteries	Stored in containers sufficient to prevent release	No

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(a)(15)	Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR § 63.446(e)	None	No This exclusion applies only to combustion at the mill generating the condensates.
261.4(a)(16) ¹ 261.38	Comparable Fuels that meet requirements of 40 CFR Section 261.38. Includes minimum heating value, viscosity specifications and constituent concentrations.	Limits on blending. No impermissible dilution. Excluded fuel can only be burned in certain units. Generator must keep records necessary to document compliance with those conditions, must submit a one-time notice, must publish a notice in the local newspaper, must develop and follow a written fuel analysis plan and must conduct sampling and analysis according to the plan. Excluded fuel must be re-tested at least annually. Generator must maintain an operating record and a record of all shipments off-site and must obtain a certification from the burner.	No
261.4(a)(17)	Mineral Processing Spent Materials	Must be legitimately recycled; must meet speculative accumulation limits, storage standards, and notification requirement	No
261.4(a)(18)	Petrochemical Recovered Oil from organic chemical manufacturing facility that is only characteristically hazardous	No placement on the land; must meet speculative accumulation limits	No

¹ On June 27, 2014, the Court of Appeals for the D.C. Circuit vacated the Comparable Fuels Exclusion. As of the date of the memorandum to which this chart is appended, that vacatur had not yet become effective. If necessary, a revised chart may be distributed in the future to address the vacatur.

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(a)(19)	Spent Caustic Solutions from Petroleum Refining	No land placement; must meet speculative accumulation limits	No
261.4(a)(20)	Hazardous Secondary Materials Used to Make Zinc Fertilizers	Must meet speculative accumulation limits, a one-time notice requirement, storage standards, shipment records requirement and annual reports requirements	No
261.4(a)(21)	Zinc Fertilizers Made from Recycled Hazardous Secondary Materials that meet specified contaminant limits	The fertilizer is made from materials that meet 40 CFR § 261.4(a)(20) and the manufacturer must meet sampling, analysis and record requirements	No
261.4(a)(22) and 261.39	Used Cathode Ray Tubes (CRTs)	Must meet speculative accumulation limits For used, intact CRTs: No disposal; must meet speculative accumulation limits; meet export requirements For used, broken CRTs: Specific storage and container standards, labeling, export requirements, processing requirements. (40 CFR §§ 261.39(a) and (b)). For CRT glass: Must go to a CRT glass maker or lead smelter. (40 CFR § 261.39(c)).	No
261.4(a)(23)	Generator-controlled reclamation exclusion	Reclamation occurs onsite or within the same company or under a tolling agreement; must meet containment requirement and not be speculatively accumulate; no exports Note: notification is a requirement but not a condition	No

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(a)(24) and (25)	Transfer-based reclamation exclusion	Must send to RCRA-permitted recycler or perform audit, must maintain shipping records including confirmations of receipt, recycler must have financial assurance, containment requirement must be met, no speculative accumulation, export requirements Note: notification is a requirement but not a condition	No
261.4(a)(26)	Solvent contaminated wipes (reusable)	Stored in labeled non-leaking containers, accumulated no longer than 180 days, generators must maintain documentation, and wipes are sent to a laundry or dry cleaner whose discharge, if any is regulated under sections 301 and 402 or section 307 of the Clean Water Act.	No
261.4(b)(1)	Household hazardous waste	Exemption extends to resource recovery facilities handling municipal solid waste provided such facilities only receive and burn household waste and solid waste from commercial and industrial sources that does not contain hazardous waste; facilities cannot accept hazardous wastes and must establish contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at nor burned in such facility.	No
261.4(b)(2)	Solid waste generated from the growing and harvesting of agricultural crops or the raising of animals, including animal manure.	Must be returned to the soil as fertilizer	No
261.4(b)(3)	Mining overburden	Must be returned to the mining site	No

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(b)(4)	Fossil fuel combustion waste	Not otherwise regulated by 40 CFR § 266.112 for facilities that burn or process hazardous waste	No
261.4(b)(5)	Drilling fluids, produced waters, and other wastes associated with the exploration of crude oil, natural gas or geothermal energy	None	No
261.4(b)(6)	Trivalent Chromium Waste	Normally managed in non-oxidizing environment	No
261.4(b)(7)	Solid waste from the extraction, beneficiation and processing of ores and minerals	If the material is a residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials, the residue is exempt provided the owner or operator processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials and legitimately reclaims the secondary mineral processing materials; not otherwise regulated by 40 CFR § 266.112 for facilities that burn or process hazardous waste	No
261.4(b)(8)	Cement kiln dust waste	Not otherwise regulated by 40 CFR § 266.112 for facilities that burn or process hazardous waste	No

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(b)(9)	Solid waste consisting of discarded arsenical-treated wood or wood products which only exhibit hazard characteristics corresponding to waste codes D004 through D017	None	No
261.4(b)(10)	Petroleum Contaminated Media that have the Toxic characteristic Waste Codes D018 to D043 and are subject to corrective action requirements under 40 CFR Part 280	None	No This material is subject to 40 CFR Part 280, part of the RCRA Subtitle I program.
261.4(b)(11)	Injected Groundwater that is hazardous only because it exhibits the toxic characteristic under 40 CFR § 261.24	Reinjection must occur only pursuant to specific petroleum operations and in accordance with specified timeframes; operations must be performed pursuant to a written state agreement that is submitted to EPA and includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed	No
261.4(b)(12)	Used Chlorofluorocarbon refrigerants	Refrigerant is reclaimed for further use	No

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(b)(13)	Non-terre plated used oil filters	No mixture with listed wastes, gravity hot-drained pursuant to specified method	No
261.4(b)(14)	Used Oil Distillation Bottoms	Must be used to manufacture asphalt products	No
261.4(b)(15)	Leachate and gas condensate collected from landfills where specified waste types have been disposed	The disposed solid waste meets specified listing descriptions and was disposed prior to specified dates; the gas or leachate condensate meets specific characteristic limitations, is discharged subject to regulation under sections 307(b) and 402 of the Clean Water Act and management of the condensate is subject to specified surface impoundment storage limitations.	No
261.4(b)(18)	Solvent contaminated wipes (disposable)	Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, are stored in labeled non-leaking containers, accumulated no longer than 180 days, contain no free liquids, generators must maintain documentation, and wipes are sent to specified disposal or combustion facilities.	No
261.5	Conditional exemption for small quantity generators	Must generate no more than 100 kg of waste per month, conduct hazardous waste determination and ensure waste goes to appropriate facility	Yes; while the generators are exempt from most generator regulatory requirements found in 40 CFR Part 262, these entities are subject to some regulatory requirements (e.g., requirement to make a hazardous waste determination)? ²

² See U.S. v. South Union Company, 630 F.3d 17 (1st Cir. 2010).

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.6(a)(3)(i)	Industrial ethyl alcohol being reclaimed	If material is to be exported, specified requirements must be met	No, where the material is not exported Yes, where the material is to be exported
261.6(a)(3)(ii)	Scrap metal being recycled	None	No
261.6(a)(3)(iii)	Recycled fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at petroleum refining facility where such wastes are from normal petroleum refining, production, and transportation practices	None	No If not part of the normal process streams, the fuel needs to be analyzed to determine if it is a hazardous waste and if so, it is within the federal regulatory universe.

261.6(a)(3)(iv) (A) and (B)	Hazardous Waste Fuel produced from oil-bearing hazardous waste from petroleum refining, production, and transportation practices; • fuel production process does not use distillation • fuel production process does not produce products from crude oil • fuel must meet used oil specifications under 40 CFR 279.11 • no other hazardous wastes are used to produce hazardous waste fuel • hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed	None	No
261.6(a)(3)(iv) (C)	Reclaimed Oil Fuel that meets used oil specifications under 40 CFR 279.11	Oil is burned as fuel without reintroduction of reclaimed oil into refining process	No

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.6(a)(4)	Used oil that is hazardous only due to a hazard characteristic	Oil must be recycled	Yes The material is regulated under part 279
261.6(c)(2)	Reclaimers that do not store	No storage of recyclable materials prior to recycling; these entities are subject to Section 3010 notification, Parts 264 and 265 Subparts AA and BB, and manifest requirements	Yes ³ These entities are subject to Section 3010 notification, Parts 264 and 265 Subparts AA and BB, and manifest requirements No ⁴
261.7	Residues of hazardous waste in containers or inner liners removed from containers that meet the specified criteria for empty containers or empty inner liners	None	
261.8	PCB-containing dielectric fluid and equipment containing such PCB fluid that is hazardous only because it exhibits the toxic characteristic and is authorized for use and regulated under TSCA	None	No
261.9/273	Batteries, pesticides, mercury-containing equipment, lamps	Materials described in 40 CFR Part 273 are subject to regulation under 40 CFR Part 273 rather than full regulation	Yes

³ Note that the recycling process itself is exempt from regulation and state regulation of the recycling process is broader in scope.

⁴ Similar to conditional exclusions or exemptions, if the container or inner liner does not meet the criteria defining "empty," the material is regulated and within the federal universe.

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
262.10(f), 262.70, 264.1(g)(4)/ 265.1(c)(8)	Farmer generating waste pesticides	Must be from own use; container must be triple-rinsed; residue must be disposed of in accordance with label instructions	Yes. While a farmer to which these provisions are applicable is exempt from most generator and disposal requirements, the farmer must still manage the waste in accordance with regulatory requirements (the containers must be triple-rinsed) and the material is RCRA hazardous waste. Yes
262 Subpart K	Academic lab waste	Multiple specified Conditions	
262.10(i), 264.1(g)(8), 265.1(c)(11), 270.1(c)(3)	Persons responding to explosives or munitions emergency	Response must be in accordance with 40 CFR Sections 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv) and 270.1(c)(3)(i)(D) or (iii); activities must not continue after immediate response is over	No, during the time of immediate response if responder is non-military and not the owner/operator of the facility; Yes, if responder is owner/operator of facility and is otherwise regulated under part 265 as subparts C and D must be followed Yes, for response involving military munitions and responder is military emergency response unit as 3-year record-keeping requirements must be met
264.1(c), 265.1(c)(1), 270.60(a)	Persons disposing of hazardous waste by mean of ocean disposal subject to permit issued under Marine Protection, Research and Sanctuaries Act	To be exempt from full permitting requirements, entities must meet specified requirements as part of a permit by rule granted under 40 CFR Part 270	Yes; covered by a permit by rule granted under 40 CFR Part 270

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
264.1(g)(1), 265.1(c)(5)	State-permitted municipal or industrial solid waste facility	Facility only handles hazardous waste regulated under 40 CFR Section 261.5	No
264.1(g)(2), 265.1(c)(6)	Owner/operator of facility managing recyclable materials	Entity is exempt except to the extent it is referred to in 40 CFR Part 279 or subparts C, F, G, or H of 40 CFR Part 266	No if the entity is not covered by 40 CFR Part 279 or subparts C, F, G, or H of 40 CFR Part 266 Yes if the entity is covered by 40 CFR Part 279 or subparts C, F, G, or H of 40 CFR Part 266
264.1(g)(3), 265.1(c)(7)	Generators accumulating on-site	Must meet conditions set out in 40 CFR Section 262.34	Yes, exemption is only from storage permit requirements; waste and entity remains regulated under 40 CFR Part 262 No
264.1(g)(5), 265.1(c)(9)	Owner/operator of totally enclosed treatment unit that is directly connected to an industrial facility	Must be constructed and operated in a manner which prevents releases	The treatment activity is not subject to regulation and the material is only regulated as it exits the treatment unit.
264.1(g)(6), 265.1(c)(10)	Owner/operator of elementary neutralization unit or wastewater treatment unit	Units must meet the definitions in 40 CFR Section 260.10 and the owner/operator must comply with 40 CFR Section 264.17(b) if diluting D001 or D003 wastes to remove characteristic	Yes
264.1(g)(9), 265.1(c)(12)	Transporter storing manifested HW	HW is in containers that comply with 40 CFR Section 262.30; storage is at transfer facility; storage lasts no longer than 10 days	Yes, as the transporter is regulated under 40 CFR Part 263.
264.1(g)(10), 265.1(c)(13)	Owner/Operator of Facility that mixes absorbent material and waste	Must be in container; mixture occurs at the time waste is first placed in container; container must meet substantive requirements of 40 CFR Sections 264.17(b), 264.171, and 264.172 are complied with.	Yes, as owner/operator must meet substantive requirements of reaction prevention provisions and container management provisions
264.1(g)(11), 265.1(c)(14)	Universal waste handlers and transporters handling specified wastes	None	Yes, as entities are subject to 40 CFR Part 273

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
265.1(c)(3), 270.60(c)	Owner/operator of POTW	To be exempt from full permitting requirements, entities must meet specified requirements as part of a permit by rule granted under 40 CFR Part 270	Yes; covered by a permit by rule granted under 40 CFR Part 270
266 Subpart C	Recyclable Materials Used in a Manner Constituting Disposal	Must meet treatment standards	Yes Part 266 regulates this material
266 Subpart F	Materials Utilized for Precious Metal Recovery	Must meet notification, export and records requirements; must also meet speculative accumulation limits	Yes Part 266 regulates this material
266 Subpart G	Spent Lead-Acid Batteries Being Reclaimed	Multiple specified conditions	Yes Part 266 regulates this material
266 Subpart H	Hazardous Waste Burned in Boilers and Industrial Furnaces	Multiple specified conditions	Yes Part 266 regulates this material
266 Subpart M	Military Munitions	Multiple specified conditions	No for the material that do not meet the definition of solid waste in 40 CFR Section 266.202 The regulation explicitly sets out the conditions and circumstances under which military munitions are and are not solid waste Yes as exemption is only for storage and treatment activities
266 Subpart N	Storage and Treatment Exemption for Low-Level Mixed Waste (low-level radioactive waste mixed with RCRA hazardous waste)	Multiple specified conditions	

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
270.60	Permits by Rule • Ocean Disposal • Injection Wells • POTWs	Multiple specified Conditions	Yes, covered by a permit by rule granted under 40 CFR Part 270
273	Universal Waste	Multiple specified conditions	Yes
279	Used Oil	Multiple specified conditions.	Yes