

US EPA ARCHIVE DOCUMENT

## RCRA REVISION CHECKLIST 233B

**Legitimacy-related provisions, including prohibition of sham recycling, definition of legitimacy, definition of contained**  
**More stringent for all state programs**

Revisions to the Definition of Solid Waste  
 80 FR 1694-1814  
 January 13, 2015  
 (RCRA Cluster XXIV, Non-HSWA)

Name of State: \_\_\_\_\_

State Statutory Authority: \_\_\_\_\_

Title of Regulations: \_\_\_\_\_ Effective Date: \_\_\_\_\_

Date Checklist Completed: \_\_\_\_\_

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIV- ALENT	LESS STRIN- GENT	MORE STRIN- GENT	BROADER IN SCOPE
PART 260 HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL						
SUBPART B DEFINITIONS						

**DEFINITIONS**

Add <i>Contained</i> to mean” held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:	260.10 “contained”					
(1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;	260.10 “contained”					

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(2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and	260.10 “contained”					
(3) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.	260.10 “contained”					
(4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.	260.10 “contained”					
1 Add “ <i>Hazardous secondary material</i> ” to mean: a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under part 261 of this chapter.	260.10 “ <i>Hazardous secondary material</i> ”					
SUBPART C RULEMAKING PETITIONS						
STANDARDS AND CRITERIA FOR VARIANCES FROM CLASSIFICATION AS A SOLID WASTE						
Add or revise section 260.43; section heading: Legitimate recycling of hazardous secondary materials.	260.43 section heading					
Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph.	260.43(a)					

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Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:	260.43(a)(1)					
Contributes valuable ingredients to a product or intermediate; or	260.43(a)(1)(i)					
Replaces a catalyst or carrier in the recycling process; or	260.43(a)(1)(ii)					
Is the source of a valuable constituent recovered in the recycling process; or	260.43(a)(1)(iii)					
Is recovered or regenerated by the recycling process; or	260.43(a)(1)(iv)					
Is used as an effective substitute for a commercial product.	260.43(a)(1)(v)					
The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:	260.43(a)(2)					
Sold to a third party; or	260.43(a)(2)(i)					
Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.	260.43(a)(2)(ii)					
The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.	260.43(a)(3)					

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The product of the recycling process must be comparable to a legitimate product or intermediate:	260.43(a)(4)					
Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:	260.43(a)(4)(i)					
The product of the recycling process does not exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit, and	260.43(a)(4)(i)(A)					
The concentrations of any hazardous constituents found in appendix VIII of part 261 of this chapter that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.	260.43(a)(4)(i)(B)					
Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:	260.43(a)(4)(ii)					
The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or	260.43(a)(4)(ii)(A)					
The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).	260.43(a)(4)(ii)(B)					

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If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per paragraph (a)(4)(i) or (ii) of this section, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Regional Administrator of this activity using EPA Form 8700-12.	260.43(a)(4)(iii)					
Remove and reserve	260.43(b)					
Remove and reserve	260.43(c)					
PART 261 IDENTIFICATION AND LISTING OF HAZARDOUS WASTE						
SUBPART A GENERAL						
1 Remove and reserve	261.2(a)(2)(ii)					
Revise to read: Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated; or	261.2(b)(3)					
Add: Sham recycled, as explained in paragraph (g) of this section.	261.2(b)(4)					

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Add: <i>Sham recycling</i> . A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in § 260.43.	261.2(g)					

- 1 This provision was promulgated under the October 30, 2008 rule and is unaffected by today's rule.
- 2 The removal of section 261.2(a)(2)(ii) is necessary only in those states which have adopted the 2008 DSW rule (October 30, 2008, 73 FR 64668). In addition to adding 261.2(a)(2)(ii), the 2008 DSW rule also renumbered the previous 261.2(a)(2)(i)-(iv) as 261.2(a)(2)(i)(A)-(D).