

US EPA ARCHIVE DOCUMENT

## RCRA REVISION CHECKLIST 233D2

**2008 DSW exclusions and non-waste determinations, including revisions from 2015 DSW final rule**

**Less stringent for states not operating under 2008 DSW rule**

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		
<b>PART 260 HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL</b>								
<b>SUBPART B DEFINITIONS</b>								
<b>DEFINITIONS</b>								
Remove “hazardous secondary material generated and reclaimed under the control of the generator”	260.10							
1 Revise <i>facility</i> to mean:	260.10 “ <i>facility</i> ”							
1 (1) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).	260.10 “ <i>facility</i> ”							
1 (2) For the purpose of implementing corrective action under 40 CFR 264.101 or 267.101, all contiguous property under the control of the owner or operator seeking a permit under Subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h).	260.10 “ <i>facility</i> ”							

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1 (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101, but is subject to corrective action requirements if the site is located within such a facility.	260.10 <i>"facility"</i>					
1 Add <i>"Hazardous secondary material generator"</i> to mean" any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of §261.2(a)(2)(ii) and §261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.	260.10 <i>"Hazardous secondary material generator"</i>					
1 Add <i>"Intermediate facility"</i> to mean: any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.	260.10 <i>"Intermediate facility"</i>					
1 Add <i>"Land-based unit"</i> to mean: an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.	260.10 <i>"Land-based unit"</i>					
1 Revise <i>"Transfer facility"</i> to mean: any transportation-related facility, including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.	260.10 <i>"Transfer facility"</i>					
SUBPART C RULEMAKING PETITIONS						
STANDARDS AND CRITERIA FOR VARIANCES FROM CLASSIFICATION AS A SOLID WASTE						
1 Revise section Heading: Non-waste determinations and variances from classification as a solid waste.	260.30					

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1 Revise introductory text: In accordance with the standards and criteria in §260.31 and §260.34 and the procedures in §260.33, the Administrator may determine on a case-by-case basis that the following recycled materials are not solid wastes:	260.30					
1 Revise paragraph to read: Materials that are reclaimed and then reused within the original production process in which they were generated;	260.30(b)					
1 Add paragraph: Hazardous secondary materials that are reclaimed in a continuous industrial process; and	260.30(d)					
1 Add paragraph: Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.	260.30(e)					
Add new paragraph (f): Hazardous secondary materials that are transferred for reclamation under § 261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards.	260.30(f)					
Add new paragraph (d): The Administrator may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation under § 261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards. The Administrator's decision will be based on the following criteria:	260.31(d)					
The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to § 260.43;	260.31(d)(1)					

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The reclamation facility or intermediate facility must satisfy the financial assurance condition in § 261.4(a)(24)(vi)(F);	260.31(d)(2)					
The reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;	260.31(d)(3)					
The intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under 40 CFR part 261 subpart M;	260.31(d)(4)					
If residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment, and	260.31(d)(5)					

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The intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment ( i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors.	260.31(d)(6)					
1 Revise section heading to read as follows: Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations.	260.33 heading					
1 Revise introductory text to read as follows: The Administrator will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed controlled flame combustion devices as boilers, or applications for non-waste determinations.	260.33					
1 Revise to read as follows: The applicant must apply to the Administrator for the variance or non-waste determination. The application must address the relevant criteria contained in §260.31, §260.32, or §260.34, as applicable.	260.33(a)					
1 Add new section 260.34	260.34					
1 Add section heading to read as follows: Standards and criteria for non-waste determinations.	260.34					

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1 An applicant may apply to the Administrator for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in paragraphs (b) or (c) of this section, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under §260.31). Determinations may also be granted by the State if the State is either authorized for this provision or if the following conditions are met:	260.34(a)					
1 The State determines the hazardous secondary material meets the criteria in paragraphs (b) or (c) of this section, as applicable;	260.34(a)(1)					
1 The State requests that EPA review its determination; and	260.34(a)(2)					
1 EPA approves the State determination.	260.34(a)(3)					
The Administrator may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in §260.43 and on the following criteria:	260.34(b)					
1 The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;	260.34(b)(1)					
1 Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);	260.34(b)(2)					



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1	Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and	260.34(b)(3)					
	Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under § 261.2 or § 261.4 of this chapter.	260.34(b)(4)					
1	The Administrator may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in §260.43 and on the following criteria:	260.34(c)					
1	Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);	260.34(c)(1)					
1	Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;	260.34(c)(2)					
1	Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);	260.34(c)(3)					



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1 Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and	260.34(c)(4)					
Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under § 261.2 or § 261.4 of this chapter.	260.34(c)(5)					

## PART 261 IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

## SUBPART A GENERAL

Revise paragraph as follows: A material is “reclaimed” if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. In addition, for purposes of § 261.4(a)(23) and (24), smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in § 266.100(d)(1) through (3) of this chapter, and if the residuals meet the requirements specified in § 266.112 of this chapter.	261.1(c)(4)					
Add or revise: <i>Reclaimed</i> . Materials noted with a “-” in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an “*” in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of §§ 261.4(a)(17), or 261.4(a)(23), 261.4(a)(24), or 261.4(a)(27).	261.2(c)(3)					
Revise column 3 to read: Reclamation (§ 261.2(c)(3)), except as provided in §§ 261.4(a)(17), 261.4(a)(23), 261.4(a)(24) or 261.4(a)(27).	261.2(c)(4) table 1					

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Add section 261.4(a)(23) as follows: Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator, provided that the material complies with paragraphs (a)(23)(i) and (ii) of this section:	261.4(a)(23) introductory text					
The hazardous secondary material is generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator); or	261.4(a)(23)(i)(A)					

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The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in § 260.10 of this chapter, and if the generator provides one of the following certifications: “on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material,” or “on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material.” For purposes of this paragraph, “control” means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in § 260.10 shall not be deemed to “control” such facilities. The generating and receiving facilities must both maintain at their facilities for no less than three years records of hazardous secondary materials sent or received under this exclusion. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received under the exclusion. These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations); or	261.4(a)(23)(i)(B)					

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The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: "On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process". The tolling contractor must maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). For purposes of this paragraph, tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.	261.4(a)(23)(i)(C)					

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The hazardous secondary material is contained as defined in § 260.10 of this chapter. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.	261.4(a)(23)(ii)(A)					
The hazardous secondary material is not speculatively accumulated, as defined in § 261.1(c)(8).	261.4(a)(23)(ii)(B)					
Notice is provided as required by § 260.42 of this chapter.	261.4(a)(23)(ii)(C)					
The material is not otherwise subject to material-specific management conditions under paragraph (a) of this section when reclaimed, and it is not a spent lead-acid battery (see § 266.80 and § 273.2 of this chapter).	261.4(a)(23)(ii)(D)					
Persons performing the recycling of hazardous secondary materials under this exclusion must maintain documentation of their legitimacy determination on-site. Documentation must be a written description of how the recycling meets all four factors in § 260.43(a). Documentation must be maintained for three years after the recycling operation has ceased.	261.4(a)(23)(ii)(E)					
The emergency preparedness and response requirements found in subpart M of this part are met.	261.4(a)(23)(ii)(F)					
Add section 261.4(a)(24) as follows: Hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste, provided that:	261.4(a)(24) introductory text					
The material is not speculatively accumulated, as defined in § 261.1(c)(8);	261.4(a)(24)(i)					

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The material is not handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in §260.10 of this chapter, and is packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport;	261.4(a)(24)(ii)					
The material is not otherwise subject to material-specific management conditions under this paragraph (a) when reclaimed, and it is not a spent lead-acid battery (see §§ 266.80 and 273.2 of this chapter);	261.4(a)(24)(iii)					
The reclamation of the material is legitimate, as specified under § 260.43 of this chapter;	261.4(a)(24)(iv)					
The hazardous secondary material generator satisfies all of the following conditions:	261.4(a)(24)(v)					
The material must be contained as defined in § 260.10. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases is discarded and a solid waste.	261.4(a)(24)(v)(A)					

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The hazardous secondary material generator must arrange for transport of hazardous secondary materials to a verified reclamation facility (or facilities) in the United States. A verified reclamation facility is a facility that has been granted a variance under § 260.31(d), or a reclamation facility where the management of the hazardous secondary materials is addressed under a RCRA Part B permit or interim status standards. If the hazardous secondary material will be passing through an intermediate facility, the intermediate facility must have been granted a variance under § 260.31(d) or the management of the hazardous secondary materials at that facility must be addressed under a RCRA Part B permit or interim status standards, and the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator.	261.4(a)(24)(v)(B)					
The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years records of all off-site shipments of hazardous secondary materials. For each shipment, these records must, at a minimum, contain the following information:	261.4(a)(24)(v)(C)					
Name of the transporter and date of the shipment;	261.4(a)(24)(v)(C)(1)					
Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;	261.4(a)(24)(v)(C)(2)					
The type and quantity of hazardous secondary material in the shipment.	261.4(a)(24)(v)(C)(3)					



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The hazardous secondary material generator must maintain at the generating facility for no less than three (3) years confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt);	261.4(a)(24)(v)(D)					
The hazardous secondary material generator must comply with the emergency preparedness and response conditions in subpart M of this part.	261.4(a)(24)(v)(E)					
Reclaimers of hazardous secondary material excluded from regulation under this exclusion and intermediate facilities as defined in §260.10 of this chapter satisfy all of the following conditions:	261.4(a)(24)(vi)					
The reclaimer and intermediate facility must maintain at its facility for no less than three (3) years records of all shipments of hazardous secondary material that were received at the facility and, if applicable, for all shipments of hazardous secondary materials that were received and subsequently sent off-site from the facility for further reclamation. For each shipment, these records must at a minimum contain the following information:	261.4(a)(24)(vi)(A)					
Name of the transporter and date of the shipment;	261.4(a)(24)(vi)(A)(1)					
Name and address of the hazardous secondary material generator and, if applicable, the name and address of the reclaimer or intermediate facility which the hazardous secondary materials were received from;	261.4(a)(24)(vi)(A)(2)					

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The type and quantity of hazardous secondary material in the shipment; and	261.4(a)(24)(vi)(A)(3)					
For hazardous secondary materials that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent.	261.4(a)(24)(vi)(A)(4)					
The intermediate facility must send the hazardous secondary material to the reclaimer(s) designated by the hazardous secondary materials generator.	261.4(a)(24)(vi)(B)					
The reclaimer and intermediate facility must send to the hazardous secondary material generator confirmations of receipt for all off-site shipments of hazardous secondary materials. Confirmations of receipt must include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received. This requirement may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt).	261.4(a)(24)(vi)(C)					
The reclaimer and intermediate facility must manage the hazardous secondary material in a manner that is at least as protective as that employed for analogous raw material and must be contained. An “analogous raw material” is a raw material for which a hazardous secondary material is a substitute and serves the same function and has similar physical and chemical properties as the hazardous secondary material.	261.4(a)(24)(vi)(D)					

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Any residuals that are generated from reclamation processes will be managed in a manner that is protective of human health and the environment. If any residuals exhibit a hazardous characteristic according to subpart C of 40 CFR part 261, or if they themselves are specifically listed in subpart D of 40 CFR part 261, such residuals are hazardous wastes and must be managed in accordance with the applicable requirements of 40 CFR parts 260 through 272.	261.4(a)(24)(vi)(E)					
The reclaimer and intermediate facility have financial assurance as required under subpart H of 40 CFR part 261,	261.4(a)(24)(vi)(F)					
The reclaimer and intermediate facility have been granted a variance under §260.31(d) or have a RCRA Part B permit or interim status standards that address the management of the hazardous secondary materials; and	261.4(a)(24)(vi)(G)					
All persons claiming the exclusion under this paragraph (a)(24) of this section provide notification as required under § 260.42 of this chapter.	261.4(a)(24)(vii)					
Remove and reserve	261.4(a)(25)					

**SUBPART H FINANCIAL REQUIREMENTS FOR MANAGEMENT OF EXCLUDED HAZARDOUS SECONDARY MATERIALS**

2 Add new Subpart H to Part 261 as follows: Financial Requirements for Management of Excluded Hazardous Secondary Materials	261 Subpart H					
Add and Reserve Subparts K-L	261 Subparts K-L					

**SUBPART M EMERGENCY PREPAREDNESS AND RESPONSE FOR MANAGEMENT OF EXCLUDED HAZARDOUS SECONDARY MATERIALS**

Add new Subpart M to Part 261 as follows: Subpart M—Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials	261 Subpart M					
Add Heading: Applicability	261.400					

Add introductory text: The requirements of this subpart apply to those areas of an entity managing hazardous secondary materials excluded under § 261.4(a)(23) and/or (24) where hazardous secondary materials are generated or accumulated on site.	261.400					
A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d), that accumulates 6000 kg or less of hazardous secondary material at any time must comply with §§ 261.410 and 261.411.	261.400(a)					
A generator of hazardous secondary material, or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) that accumulates more than 6000 kg of hazardous secondary material at any time must comply with §§ 261.410 and 261.420.	261.400(b)					
Add Heading: Preparedness and prevention	261.410					
<i>Maintenance and operation of facility.</i> Facilities generating or accumulating hazardous secondary material must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous secondary materials or hazardous secondary material constituents to air, soil, or surface water which could threaten human health or the environment.	261.410(a)					
<i>Required equipment.</i> All facilities generating or accumulating hazardous secondary material must be equipped with the following, <i>unless</i> none of the hazards posed by hazardous secondary material handled at the facility could require a particular kind of equipment specified below:	261.410(b)					
An internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;	261.410(b)(1)					

A device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;	261.410(b)(2)					
Portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment, and decontamination equipment; and	261.410(b)(3)					
Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.	261.410(b)(4)					
<i>Testing and maintenance of equipment.</i> All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.	261.410(c)					
<i>Access to communications or alarm system.</i>	261.410(d)					
Whenever hazardous secondary material is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, <i>unless</i> such a device is not required under paragraph (b) of this section.	261.410(d)(1)					
If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, <i>unless</i> such a device is not required under paragraph (b) of this section.	261.410(d)(2)					

<i>Required aisle space.</i> The hazardous secondary material generator or intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, <i>unless</i> aisle space is not needed for any of these purposes.	261.410(e)					
<i>Arrangements with local authorities.</i>	261.410(f)					
The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must attempt to make the following arrangements, as appropriate for the type of waste handled at his facility and the potential need for the services of these organizations:	261.410(f)(1)					
Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous secondary material handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;	261.410(f)(1)(i)					
Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;	261.410(f)(1)(ii)					
Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and	261.410(f)(1)(iii)					
Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.	261.410(f)(1)(iv)					

Where state or local authorities decline to enter into such arrangements, the hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must document the refusal in the operating record.	261.410(f)(2)					
Add Heading: Emergency procedures for facilities generating or accumulating 6000 kg or less of hazardous secondary material.	261.411					
Add introductory text: A generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) that generates or accumulates 6000 kg or less of hazardous secondary material must comply with the following requirements:	261.411					
At all times there must be at least one employee either on the premises or on call ( <i>i.e.</i> , available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in paragraph (d) of this section. This employee is the emergency coordinator.	261.411(a)					
The generator or intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must post the following information next to the telephone:	261.411(b)					
The name and telephone number of the emergency coordinator;	261.411(b)(1)					
Location of fire extinguishers and spill control material, and, if present, fire alarm; and	261.411(b)(2)					
The telephone number of the fire department, unless the facility has a direct alarm.	261.411(b)(3)					
The generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;	261.411(c)					



The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:	261.411(d)					
In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;	261.411(d)(1)					
In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;	261.411(d)(2)					
In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) has knowledge that a spill has reached surface water, the generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) must immediately notify the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include the following information:	261.411(d)(3)					
The name, address, and U.S. EPA Identification Number of the facility;	261.411(d)(3)(i)					
Date, time, and type of incident (e.g., spill or fire);	261.411(d)(3)(ii)					
Quantity and type of hazardous waste involved in the incident;	261.411(d)(3)(iii)					
Extent of injuries, if any; and	261.411(d)(3)(iv)					
Estimated quantity and disposition of recovered materials, if any.	261.411(d)(3)(v)					
Add Heading: Contingency planning and emergency procedures for facilities generating or accumulating more than 6000 kg of hazardous secondary material.	261.420					
Add introductory text: A generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) that generates or accumulates more than 6000 kg of hazardous secondary material must comply with the following requirements:	261.420					
Purpose and implementation of contingency plan.	261.420(a)					

Each generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) that accumulates more than 6000 kg of hazardous secondary material must have a contingency plan for his facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water.	261.420(a)(1)					
The provisions of the plan must be carried out immediately whenever there is a fire, explosion, or release of hazardous secondary material or hazardous secondary material constituents which could threaten human health or the environment.	261.420(a)(2)					
Content of contingency plan.	261.420(b)					
The contingency plan must describe the actions facility personnel must take to comply with paragraphs (a) and (f) in response to fires, explosions, or any unplanned sudden or non-sudden release of hazardous secondary material or hazardous secondary material constituents to air, soil, or surface water at the facility.	261.420(b)(1)					

<p>If the generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) accumulating more than 6000 kg of hazardous secondary material has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The hazardous secondary material generator or an intermediate or reclamation facility operating under a verified recycler variance under § 260.31(d) may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.</p>	261.420(b)(2)					
<p>The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to § 262.410(f).</p>	261.420(b)(3)					
<p>The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see paragraph (e) of this section), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.</p>	261.420(b)(4)					

The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.	261.420(b)(5)					
The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires).	261.420(b)(6)					
Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:	261.420(c)					
Maintained at the facility; and	261.420(c)(1)					
Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.	261.420(c)(2)					
Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, whenever:	261.420(d)					
Applicable regulations are revised;	261.420(d)(1)					
The plan fails in an emergency;	261.420(d)(2)					
The facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous secondary material or hazardous secondary material constituents, or changes the response necessary in an emergency;	261.420(d)(3)					
The list of emergency coordinators changes; or	261.420(d)(4)					
The list of emergency equipment changes.	261.420(d)(5)					

Emergency coordinator. At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan. The emergency coordinator's responsibilities are more fully spelled out in paragraph (f). Applicable responsibilities for the emergency coordinator vary, depending on factors such as type and variety of hazardous secondary material(s) handled by the facility, and type and complexity of the facility.	261.420(e)					
Emergency procedures.	261.420(f)					
Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:	261.420(f)(1)					
Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and	261.420(f)(1)(i)					
Notify appropriate State or local agencies with designated response roles if their help is needed.	261.420(f)(1)(ii)					
Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records or manifests and, if necessary, by chemical analysis.	261.420(f)(2)					

Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions).	261.420(f)(3)					
If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he must report his findings as follows:	261.420(f)(4)					
If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate officials decide whether local areas should be evacuated; and	261.420(f)(4)(i)					
He must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number 800/424-8802). The report must include:	261.420(f)(4)(ii)					
Name and telephone number of reporter;	261.420(f)(4)(ii)(A)					
Name and address of facility;	261.420(f)(4)(ii)(B)					
Time and type of incident (e.g., release, fire);	261.420(f)(4)(ii)(C)					
Name and quantity of material(s) involved, to the extent known;	261.420(f)(4)(ii)(D)					
The extent of injuries, if any; and	261.420(f)(4)(ii)(E)					
The possible hazards to human health, or the environment, outside the facility.	261.420(f)(4)(ii)(F)					
During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous secondary material at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released material, and removing or isolating containers.	261.420(f)(5)					

If the facility stops operations in response to a fire, explosion or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.	261.420(f)(6)					
Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered secondary material, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility. Unless the hazardous secondary material generator can demonstrate, in accordance with § 261.3(c) or (d) of this chapter, that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of parts 262, 263, and 265 of this chapter.	261.420(f)(7)					
The emergency coordinator must ensure that, in the affected area(s) of the facility:	261.420(f)(8)					
No secondary material that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and	261.420(f)(8)(i)					
All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.	261.420(f)(8)(ii)					
The hazardous secondary material generator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Regional Administrator. The report must include:	261.420(f)(9)					
Name, address, and telephone number of the hazardous secondary material generator;	261.420(f)(9)(i)					
Name, address, and telephone number of the facility;	261.420(f)(9)(ii)					
Date, time, and type of incident (e.g., fire, explosion);	261.420(f)(9)(iii)					
Name and quantity of material(s) involved;	261.420(f)(9)(iv)					
The extent of injuries, if any;	261.420(f)(9)(v)					



An assessment of actual or potential hazards to human health or the environment, where this is applicable; and	261.420(f)(9)(vi)					
Estimated quantity and disposition of recovered material that resulted from the incident.	261.420(f)(9)(vii)					

**PART 270 – EPA Administered Permit Programs: The Hazardous Waste Permit Program**

**Subpart D – Changes to Permits**

**PERMIT MODIFICATION AT THE REQUEST OF THE PERMITTEE**

Add entry 10 in the table under section L as shown below:	270.42, Appendix I					
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Modifications	Class
A. General Permit Provisions.	
9. Changes to remove permit conditions applicable to a unit excluded under the provisions of §261.4.	<sup>1</sup> 1
10. Changes in the expiration date of a permit issued to a facility at which all units are excluded under the provisions of §261.4.	<sup>1</sup> 1

<sup>1</sup>Class 1 modifications requiring prior Agency approval.

<sup>1</sup> These provisions were promulgated under the October 30, 2008 rule and are unaffected by today's rule.

<sup>2</sup> This Subpart was promulgated by the October 30, 2008 rule and is unaffected by today's rule. See pages 23-43 of Checklist 219.