

MIDWEST ENVIRONMENTAL SERVICES, INC.

USEPA Modifies the Definition of Solid Waste – October 2008

In October 2003, U.S. EPA proposed a regulatory exclusion from the definition of *solid waste* intended to streamline requirements for recycling of hazardous secondary materials. In March 2007, EPA completed its evaluation of public comments and independent assessment, and published a supplemental proposal to address:

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

On October 30, 2008, EPA promulgated the Final Rule that revised the definition of solid waste to exclude certain *hazardous secondary materials* from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The stated purpose of the final rule is to encourage safe, environmentally-sound recycling and resource conservation and to respond to court decisions concerning the definition of solid waste. The final rule became effective December 29, 2008.

The elements of the revised rule, promulgated under 40 CFR Part 261.2 and related paragraphs, include a *non-waste determination* as addressed under revised subparagraphs 260.30 and 260.34. Such a determination is a case-by-case application process involving the generator’s demonstration that a *hazardous secondary material*, defined as a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under part 261, but which is not discarded and is therefore not a solid waste.

The revised rule, under paragraph 260.10, also defines the terms, *hazardous secondary material generated and reclaimed under the control of the generator*, *hazardous secondary material generator*, and *intermediate facility, land-based unit, and transfer facility* as they relate to the management of hazardous secondary materials.

With its revised 122-page final rule, EPA asserts that recycling of certain materials is clarified and further encouraged. Provisions within the rule help determine which recycling activities are legitimate under the new regulations. EPA states that that legitimate recycling of a hazardous secondary material under the new rules should:

1. provide a useful contribution to the recycling process;
2. create a new intermediate or final product;
3. result in the management of the product as a valuable material; and
4. result in a product that contains less toxic constituents than a non-recycled material.

The exclusions under the new rules do not apply to materials that are 1) considered inherently waste-like; 2) used in a manner constituting disposal; and/or 3) burned for energy recovery.

EPA estimates that nearly 5,600 facilities handling approximately 1.5 million tons of hazardous secondary materials annually may be affected by this new rule. The activities most affected are metals and solvent recycling. This action is expected to result in cost savings of approximately \$95 million per year for all affected industry sectors. Contact Midwest Environmental Services if you believe the provisions of the new rule could apply to the benefit of your operations.

Midwest Environmental Services' *Consulting Services Division* is available to assist you and your company with compliance to applicable environmental and safety regulations. If you seek assistance in determining whether your waste management activities are exempt under the modified definition of solid wastes, or if professional assessment of the applicability of any of the myriad environmental or safety regulations affecting your business would benefit you, contact us at **502-491-0991**, or our Corporate Offices at **800-388-5160**.

Midwest Environmental Services continually works to improve our professional services to help ensure that our valuable clients receive prompt, professional attention.

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