

Master

§11-261-35 Deletion of Certain Hazardous Waste Codes
Following Equipment Cleaning and Replacement.

Subchapter E Appendices

§11-261-40 Appendices

SUBCHAPTER A -- GENERAL

§11-261-1 Purpose and scope. (a) This chapter identifies those solid wastes which are subject to regulation as hazardous wastes under chapters 11-262 through 11-280 and which are subject to the notification requirements of HRS section 342J-6.5. The definitions in chapter 11-260 apply to this chapter. In this chapter:

- (1) Subchapter A defines the terms "solid waste" and "hazardous waste", identifies those wastes which are excluded from regulation under chapters 11-262 through 11-280 and establishes special management requirements for hazardous waste produced by conditionally exempt small quantity generators and hazardous waste which is recycled.
- (2) Subchapter B sets forth the criteria used by the department to identify characteristics of hazardous waste and to list particular hazardous wastes.
- (3) Subchapter C identifies characteristics of hazardous waste.
- (4) Subchapter D lists particular hazardous wastes.
- (5) Subchapter E adopts by reference Appendices I, II, III, VII, VIII, and X to 40 CFR Part 261.
- (b) (1) The definition of solid waste contained in this chapter applies only to wastes that also are hazardous for purposes of the rules implementing HRS chapter 342J. For example, it does not apply to materials (such as non-hazardous scrap, paper, textiles, or rubber) that are not otherwise hazardous wastes and that are recycled.
- (2) This chapter identifies only some of the materials which are solid wastes and hazardous wastes under HRS chapter 342J. A material which is not defined as a solid waste in this chapter, or is not a hazardous waste identified or listed in this chapter, is still a solid waste and a hazardous waste for purposes of HRS sections 342J-6, 342J-7, 342J-8, 342J-9(a), 342J-9(b), 342J-10, and 342J-11 if:
 - (i) In the case of HRS sections 342J-6, 342J-7, 342J-9(a), 342J-9(b), 342J-10, and 342J-11, the department has reason to believe that the material may be a solid waste as the term is

- defined in HRS section 342J-2, and a hazardous waste as the term is defined in HRS section 342J-2; or
- (ii) In the case of HRS section 342J-8, the statutory elements are established.
- (c) For the purposes of sections 11-261-2 and 11-261-6:
- (1) A "spent material" is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;
 - (2) "Sludge" has the same meaning used in section 11-260-10;
 - (3) A "by-product" is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process.
 - (4) 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.
 - (5) A material is "used or reused" if it is either:
 - (i) Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or
 - (ii) Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).
 - (6) "Scrap metal" is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.
 - (7) A material is "recycled" if it is used, reused, or reclaimed.
 - (8) A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of

being recycled; and that -- during the calendar year (commencing on January 1) -- the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the seventy-five percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under subsection 11-261-4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

(d) All references in tables and appendices to provisions of the code of federal regulations shall be construed to mean the State rule analog of the referenced federal regulation (for example, 40 CFR 260.1 shall be construed to mean section 11-260-1 of the Hawaii Administrative Rules). [Eff. JUN 18 1994]
 (Auth: HRS §§342J-4, 342J-31, 342J-35)

§11-261-2 Definition of solid waste. (a)(1) A "solid waste" is any discarded material that is not excluded by subsection 11-261-4(a).

- (2) A "discarded material" is any material which is:
- (i) "Abandoned," as explained in subsection (b); or
 - (ii) "Recycled," as explained in subsection (c); or
 - (iii) Considered "inherently waste-like," as explained in subsection (d).

(b) Materials are solid waste if they are "abandoned" by being:

- (1) Disposed of; or
- (2) Burned or incinerated; or
- (3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are "recycled" -- or accumulated, stored, or treated before recycling -- as specified in paragraphs (c)(1) through (c)(4).

- (1) Used in a manner constituting disposal.
- (i) Materials noted with a '*' in Column 1 of Table 1 are solid wastes when they are:
 - (A) Applied to or placed on the land in a manner that constitutes disposal; or
 - (B) Used to produce products that are applied to or placed on the land or are otherwise contained in

- (ii) products that are applied to or placed on the land (in which cases the product itself remains a solid waste).
- (ii) However, commercial chemical products listed in section 11-261-33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.
- (2) Burning for energy recovery.
 - (i) Materials noted with a '*' in column 2 of Table 1 are solid wastes when they are:
 - (A) Burned to recover energy;
 - (B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).
 - (ii) However, commercial chemical products listed in section 11-261-33 are not solid wastes if they are themselves fuels.
- (3) Reclaimed. Materials noted with a '*' in column 3 of Table 1 are solid wastes when reclaimed.
- (4) Accumulated speculatively. Materials noted with a '*' in column 4 of Table 1 are solid wastes when accumulated speculatively.

Table 1

	Use constituting disposal (§11-261-2(c)(1))	Energy recovery/fuel (§11-261-2(c)(2))	Reclamation (§11-261-2(c)(3))	Speculative accumulation (§11-261-2(c)(4))
	(1)	(2)	(3)	(4)
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in section 11-261-31 or 11-261-32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	(*)
By-products (listed in section 11-261-31 or 11-261-32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	(*)
Commercial chemical products listed in section 11-261-33	(*)	(*)
Scrap metal	(*)	(*)	(*)	(*)

Note: The terms "spent materials", "sludges", "by-products," and "scrap metal" are defined in section 11-261-1.

- (d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:
- (1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.
 - (2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in subchapter C or D, except for brominated material that meets the following criteria:
 - (i) The material must contain a bromine concentration of at least forty-five percent; and
 - (ii) The material must contain less than a total of one percent of toxic organic compounds listed in appendix VIII; and
 - (iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).
 - (3) The director will use the following criteria to add wastes to that list:
 - (i) (A) The materials are ordinarily disposed of, burned, or incinerated; or
 - (B) The materials contain toxic constituents listed in Appendix VIII of chapter 11-261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and
 - (ii) The material may pose a substantial hazard to human health and the environment when recycled.
 - (e) Materials that are not solid waste when recycled.
 - (1) Materials are not solid wastes when they can be shown to be recycled by being:
 - (i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or
 - (ii) Used or reused as effective substitutes for commercial products; or
 - (iii) Returned to the original process from which they are generated, without first being reclaimed. The material must be returned as a substitute for raw material feedstock, and the process must use raw materials as principal feedstocks.
 - (2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in subparagraphs (e)(1)(i) through (e)(1)(iii)):
 - (i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

- (ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or
 - (iii) Materials accumulated speculatively; or
 - (iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.
- (f) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing HRS chapter 342J who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so. [Eff. JUN 18 1994] (Auth: HRS §§342J-4, 342J-31, 342J-35)
- §11-261-3 Definition of hazardous waste. (a) A solid waste, as defined in section 11-261-2, is a hazardous waste if:
- (1) It is not excluded from regulation as a hazardous waste under subsection 11-261-4(b); and
 - (2) It meets any of the following criteria:
 - (i) It exhibits any of the characteristics of hazardous waste identified in subchapter C except that any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under subsection 11-261-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under subchapter C only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I to section 11-261-24 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.
 - (ii) It is listed in subchapter D.
 - (iii) It is a mixture of a solid waste and a hazardous waste that is listed in subchapter D solely because it exhibits one or more of the

characteristics of hazardous waste identified in subchapter C, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subchapter C, or unless the solid waste is excluded from regulation under paragraph 11-261-4(b)(7) and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subchapter C for which the hazardous waste listed in subchapter D was listed. (However, nonwastewater mixtures are still subject to the requirements of chapter 11-268, even if they no longer exhibit a characteristic at the point of land disposal).

- (iv) It is a mixture of solid waste and one or more hazardous wastes listed in subchapter D; however, the following mixtures of solid wastes and hazardous wastes listed in subchapter D are not hazardous wastes (except by application of subparagraphs (a)(2)(i) or (ii) of this section) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either section 402 or section 307(b) of the federal Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and:
- (A) One or more of the following spent solvents listed in section 11-261-31 -- carbon tetrachloride, tetrachloroethylene, trichloroethylene -- provided, that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million; or
- (B) One or more of the following spent solvents listed in section 11-261-31 -- methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents -- provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or
- (C) One of the following wastes listed in section 11-261-32 -- heat exchanger bundle cleaning sludge

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from the petroleum refining industry (EPA Hazardous Waste No. K050); or

- (D) A discarded commercial chemical product, or chemical intermediate listed in section 11-261-33, arising from de minimis losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph (a)(2)(iv)(D), "de minimis" losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or
- (E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in subchapter D, provided, that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation.
- (v) Rebuttable presumption for used oil. Used oil containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in subchapter D of chapter 11-261. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in appendix VIII of chapter 11-261). EPA Publication SW-846, Third Edition, is available for the cost of \$110.00 from the Government printing Office, Superintendent of Documents, PO Box 371954,

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Pittsburgh, PA 15250-7954. 202-783-3238
(document number 955-001-00000-1).

- (A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oil/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.
- (B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.
- (b) A solid waste which is not excluded from regulation under paragraph (a)(1) becomes a hazardous waste when any of the following events occur:
 - (1) In the case of a waste listed in subchapter D, when the waste first meets the listing description set forth in subchapter D.
 - (2) In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in subchapter D is first added to the solid waste.
 - (3) In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in subchapter C.
- (c) Unless and until it meets the criteria of subsection (d):
 - (1) A hazardous waste will remain a hazardous waste.
 - (2) (i) Except as otherwise provided in subparagraph (c)(2)(ii), any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation run-off) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)
 - (ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:
 - (A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the

- iron and steel industry (Standard Industrial Codes (SIC) 331 and 332).
- (B) Waste from burning any of the materials exempted from regulation by subparagraphs 11-261-6(a)(3)(v) through (viii).
- (C)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in paragraphs (6), (7), and (13) of the definition for "industrial furnace" in section 11-260-10), that are disposed in solid waste management units under HRS chapter 342H, provided that these residues meet the generic exclusion levels identified in the tables in this paragraph for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	Maximum for any single composite sample-TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15

Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater
HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

- (2) A one-time notification and certification must be placed in the facility's files and sent to the department for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste management units under HRS chapter 342H. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the HRS chapter 342H solid waste management unit receiving the waste changes. However, the generator or treater need only notify the department on an annual basis if such changes occur. Such notification and certification should be sent to the department by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the HRS chapter 342H solid waste management unit receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The

certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

- (d) Any solid waste described in subsection (c) is not a hazardous waste if it meets the following criteria:
- (1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in subchapter C. (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of chapter 11-268, even if they no longer exhibit a characteristic at the point of land disposal.)
- (2) [Reserved]
- (e) [Reserved]
- (f) Notwithstanding subsections (a) through (d) of this section and provided the debris as defined in chapter 11-268 does not exhibit a characteristic identified at subchapter C of this chapter, the following materials are not subject to regulation under chapters 11-260, 11-261 to 11-266, 11-268, or 11-270:
- (1) Hazardous debris as defined in chapter 11-268 that has been treated using one of the required extraction or destruction technologies specified in Table 1 of section 11-266-45; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or
- (2) Debris as defined in chapter 11-268 that the director, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.
- [Eff. JUN 18 1994] (Auth: HRS §§342J-4, 342J-31, 342J-35)

§11-261-4 Exclusions. (a) Materials which are not solid wastes. The following materials are not solid wastes for the purpose of this chapter:

- (1) (i) Domestic sewage; and
(ii) Any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.
- (2) Industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the federal Clean Water Act, as amended. This exclusion applies only to the actual point source

- discharge. It does not exclude industrial wastewaters while they are being collected, stored or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.
- (3) Irrigation return flows.
 - (4) Source, special nuclear or by-product material as defined by the federal Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.
 - (5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.
 - (6) Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in subsection 11-261-1(c).
 - (7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection 11-261-1(c).
 - (8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:
 - (i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;
 - (ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);
 - (iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and
 - (iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.
 - (9) (i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and
 - (ii) Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.
 - (10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in section 11-261-24 when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled

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to coke ovens or tar recovery or refining processes, or mixed with coal tar.

- (11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.
 - (b) Solid wastes which are not hazardous wastes. The following solid wastes are not hazardous wastes:
 - (1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under chapters 11-260 through 11-280, if such facility:
 - (i) Receives and burns only
 - (A) Household waste (from single and multiple dwellings, motels, and other residential sources) and
 - (B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and
 - (ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.
 - (2) Solid wastes generated by any of the following and which are returned to the soils as fertilizers:
 - (i) The growing and harvesting of agricultural crops.
 - (ii) The raising of animals, including animal manures.
 - (3) Mining overburden returned to the mine site.
 - (4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste, generated primarily from the combustion of coal or other fossil fuels, except as provided by section 11-266-112 for facilities that burn or process hazardous waste.
 - (5) [Reserved]
 - (6) (i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in subchapter D due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other

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constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

- (A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and
 - (B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and
 - (C) The waste is typically and frequently managed in non-oxidizing environments.
- (ii) Specific wastes which meet the standard in clauses (b)(6)(i)(A), (B), and (C) (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:
- (A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.
 - (B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.
 - (C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.
 - (D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.
 - (E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.
 - (F) Wastewater treatment sludges generated by the following subcategories of the leather

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tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrometan/retan/wet finish; and through-the-blue.

- (G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.
 - (H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.
- (7) Solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), except as provided by section 11-266-112 for facilities that burn or process hazardous waste. For purposes of paragraph 11-261-4(b)(7), beneficiation of ores and minerals is restricted to the following activities: Crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching. For the purpose of paragraph 11-261-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes:
- (i) Slag from primary copper processing;
 - (ii) Slag from primary lead processing;
 - (iii) Red and brown muds from bauxite refining;
 - (iv) Phosphogypsum from phosphoric acid production;
 - (v) Slag from elemental phosphorus production;
 - (vi) Gasifier ash from coal gasification;
 - (vii) Process wastewater from coal gasification;
 - (viii) Calcium sulfate wastewater treatment plant sludge from primary copper processing;
 - (ix) Slag tailings from primary copper processing;
 - (x) Fluorogypsum from hydrofluoric acid production;
 - (xi) Process wastewater from hydrofluoric acid production;
 - (xii) Air pollution control dust/sludge from iron blast furnaces;
 - (xiii) Iron blast furnace slag;

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- (xiv) Treated residue from roasting/leaching of chrome ore;
- (xv) Process wastewater from primary magnesium processing by the anhydrous process;
- (xvi) Process wastewater from phosphoric acid production;
- (xvii) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
- (xviii) Basic oxygen furnace and open hearth furnace slag from carbon steel production;
- (xix) Chloride process waste solids from titanium tetrachloride production;
- (xx) Slag from primary zinc processing.
- (8) Cement kiln dust waste, except as provided by section 11-266-112 for facilities that burn or process hazardous waste.
- (9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood product for these materials' intended end use.
- (10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic of section 11-261-24 (Hazardous Waste Codes D018 through D043 only) and are subject to the corrective action regulations under 40 CFR Part 280, or the corrective action requirements of HRS chapter 342L, or the corrective action rules adopted under HRS chapter 342L.
- (11) [Reserved]
- (12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.
- (13) Non-terne plated used oil filters that are not mixed with wastes listed in subchapter D of this chapter if these oil filters have been gravity hot-drained using one of the following methods:
 - (i) Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;
 - (ii) Hot-draining and crushing;
 - (iii) Dismantling and hot-draining; or
 - (iv) Any other equivalent hot-draining method that will remove used oil.
- (14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under chapters 11-262 through 11-280 or to the notification requirements of HRS section 342J-6.5 until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than ninety days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

(d) Samples.

- (1) Except as provided in paragraph (d)(2), a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this chapter or chapters 11-262 through 11-280 or to the notification requirements of HRS section 342J-6.5, when:
 - (i) The sample is being transported to a laboratory for the purpose of testing; or
 - (ii) The sample is being transported back to the sample collector after testing; or
 - (iii) The sample is being stored by the sample collector before transport to a laboratory for testing; or
 - (iv) The sample is being stored in a laboratory before testing; or
 - (v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
 - (vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).
- (2) In order to qualify for the exemption in subparagraphs (d)(1)(i) and (ii), a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:
 - (i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or
 - (ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:
 - (A) Assure that the following information accompanies the sample:

- (1) The sample collector's name, mailing address, and telephone number;
 - (2) The laboratory's name, mailing address, and telephone number;
 - (3) The quantity of the sample;
 - (4) The date of shipment; and
 - (5) A description of the sample.
- (B) Package the sample so that it does not leak, spill, or vaporize from its packaging.
- (3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1).
- (e) Treatability Study Samples.
- (1) Except as provided in paragraph (e)(2), persons who generate or collect samples for the purpose of conducting treatability studies as defined in section 11-260-10, are not subject to any requirement of chapters 11-261 through 11-263 or to the notification requirements of HRS section 342J-6.5, nor are such samples included in the quantity determinations of section 11-261-5 and subsection 11-262-34(d) when:
- (i) The sample is being collected and prepared for transportation by the generator or sample collector; or
 - (ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
 - (iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.
- (2) The exemption in paragraph (e)(1) is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:
- (i) The generator or sample collector uses (in "treatability studies") no more than one thousand kg of any non-acute hazardous waste, one kg of acute hazardous waste, or two-hundred and fifty kg of soils, water, or debris contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and
 - (ii) The mass of each sample shipment does not exceed one thousand kg of non-acute hazardous waste, 1 kg of acute hazardous waste, or two hundred and fifty kg of soils, water, or debris contaminated with acute hazardous waste; and
 - (iii) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the

- requirements of clause (e)(2)(iii)(A) or (B) are met.
- (A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or
- (B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:
- (1) The name, mailing address, and telephone number of the originator of the sample;
 - (2) The name, address, and telephone number of the facility that will perform the treatability study;
 - (3) The quantity of the sample;
 - (4) The date of shipment; and
 - (5) A description of the sample, including its EPA Hazardous Waste Number.
- (iv) The sample is shipped to a laboratory or testing facility which is exempt under subsection 11-261-4(f) or 40 CFR 261.4(f) or has an appropriate hazardous waste management permit issued by any state, a RCRA permit or interim status.
- (v) The generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:
- (A) Copies of the shipping documents;
 - (B) A copy of the contract with the facility conducting the treatability study;
- (C) Documentation showing:
- (1) The amount of waste shipped under this exemption;
 - (2) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;
 - (3) The date the shipment was made; and
 - (4) Whether or not unused samples and residues were returned to the generator.
- (vi) The generator reports the information required under clause (e)(2)(v)(C) in its biennial report.
- (3) The director, may grant requests, on a case-by-case basis, for quantity limits in excess of those specified in subparagraph (e)(2)(i), for up to an additional five hundred kg of non-acute hazardous waste, one kg of acute hazardous waste, and two-hundred and fifty kg of soils, water, or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation when: There has been an equipment or mechanical failure during the conduct of a treatability

study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment. The additional quantities allowed are subject to all the provisions in paragraph (e)(1) and subparagraphs (e)(2)(ii) through (vi). The generator or sample collector must apply to the director and provide in writing the following information:

- (i) The reason why the generator or sample collector requires additional quantity of sample for the treatability study evaluation and the additional quantity needed;
- (ii) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;
- (iii) A description of the technical modifications or change in specifications which will be evaluated and the expected results;
- (iv) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and
- (v) Such other information that the director considers necessary.

(f) Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to HRS chapter 342J requirements) are not subject to any requirement of this chapter, or chapters 11-262 through 11-280, or to the notification requirements of HRS section 342J-6.5 provided that the conditions of paragraphs (f)(1) through (11) of this section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in paragraphs (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

- (1) No less than forty-five days before conducting treatability studies, the facility notifies the

director, in writing that it intends to conduct treatability studies under this paragraph.

- (2) The laboratory or testing facility conducting the treatability study has an EPA identification number.
- (3) No more than a total of two-hundred and fifty kg of "as received" hazardous waste is subjected to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.
- (4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed one thousand kg, the total of which can include five hundred kg of soils, water, or debris contaminated with acute hazardous waste or one kg of acute hazardous waste. This quantity limitation does not include:
 - (i) Treatability study residues; and
 - (ii) Treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste.
- (5) No more than ninety days have elapsed since the treatability study for the sample was completed, or no more than one year has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs.
- (6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.
- (7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:
 - (i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;
 - (ii) The date the shipment was received;
 - (iii) The quantity of waste accepted;
 - (iv) The quantity of "as received" waste in storage each day;
 - (v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
 - (vi) The date the treatability study was concluded;
 - (vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.
- (8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with

the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

- (9) The facility prepares and submits a report to the director, by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:
- (i) The name, address, and EPA identification number of the facility conducting the treatability studies;
 - (ii) The types (by process) of treatability studies conducted;
 - (iii) The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);
 - (iv) The total quantity of waste in storage each day;
 - (v) The quantity and types of waste subjected to treatability studies;
 - (vi) When each treatability study was conducted;
 - (vii) The final disposition of residues and unused sample from each treatability study.
- (10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under section 11-261-3 and, if so, are subject to chapters 11-261 through 11-268, and 11-270, unless the residues and unused samples are returned to the sample originator under the subsection 11-261-4(e) exemption.
- (11) The facility notifies the director, by letter when the facility is no longer planning to conduct any treatability studies at the site.
[Eff JUN 18 1994] (Auth: HRS §§342J-4, 342J-31, 342J-35)

§11-261-5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators. (a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than one-hundred kilograms of hazardous waste in that month.

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (j), a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under chapters 11-262 through 11-266, 11-268, and 11-270 and 11-271, and the notification requirements of HRS section 342J-6.5, provided the generator complies with the requirements of paragraphs (f), (g), and (j).

(c) Hazardous waste that is not subject to regulation or that is subject only to sections 11-262-11, 11-262-12, subsection 11-262-40(c), and section 11-262-41 is not included in the quantity determinations of this chapter and chapters 11-262

through 11-266, 11-268, and 11-270 and is not subject to any of the requirements of those chapters. Hazardous waste that is subject to the requirements of subsections 11-261-6(b) and (c) and subchapters C, D, and F of chapter 11-266 is included in the quantity determination of this chapter and is subject to the requirements of chapters 11-262 through 11-266 and 11-270.

(d) In determining the quantity of hazardous waste generated, a generator need not include:

- (1) Hazardous waste when it is removed from on-site storage; or
 - (2) Hazardous waste produced by on-site treatment (including reclamation) of his hazardous waste, so long as the hazardous waste that is treated was counted once; or
 - (3) Spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.
- (e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth below, all quantities of that acute hazardous waste are subject to full regulation under chapters 11-262 through 11-266, 11-268, and 11-270 and 11-271, and the notification requirements of HRS section 342J-6.5:

- (1) A total of one kilogram of acute hazardous wastes listed in sections 11-261-31, 11-261-32, or subsection 11-261-33(e).
- (2) A total of one-hundred kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in sections 11-261-31, 11-261-32, or subsection 11-261-33(e).

[Comment: "Full regulation" means those regulations applicable to generators of greater than one-thousand kilograms of non-acutely hazardous waste in a calendar month.]

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in paragraph (e)(1) or (2) to be excluded from full regulation under this section, the generator must comply with the following requirements:

- (1) Section 11-262-11;
- (2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2), all of those accumulated wastes are subject to regulation under chapters 11-262 through 11-266, 11-268, and 11-270 and 11-271, and the applicable notification requirements of HRS section 342J-6.5. The time period of subsection 11-262-34(a), for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;