

**GUIDEBOOK TO HAWAII ADMINISTRATIVE RULES**  
**CHAPTER 11-260.1**  
**HAZARDOUS WASTE MANAGEMENT:**  
**GENERAL PROVISIONS**

**IMPORTANT**

This guidebook is provided to assist regulated businesses and the public in understanding Hawaii Administrative Rules (HAR) chapters 11-260.1 to 11-279.1, which now incorporate by reference portions of the Code of Federal Regulations (CFR). *This guidebook is not the regulations.*

Please go to <http://health.hawaii.gov/shwb/hazwaste/> or call the Department of Health Solid and Hazardous Waste Branch at (808) 586-4226 to obtain a copy of the Hawaii Administrative Rules regulating hazardous waste and used oil within the state of Hawaii.

- The table of contents for 40 CFR part 260 is provided below for convenience.
- 40 CFR part 260 (July 1, 2017) is incorporated by reference in §11-260.1-1, HAR with substitutions made in §11-260.1-2 and amendments made in §§11-260.1-3 to 11-260.1-5.
- The text of 40 CFR part 260 (July 1, 2017) is copied below and changes made to the incorporated text in §§11-260.1-2 to 11-260.1-5, HAR have been made. Exceptions in §11-260.1-2(b) and (d), HAR have been noted in blue.
- All references to provisions of 40 C.F.R. parts 124, 260 to 268, 270, 273, and 279 in the text pasted below mean the Hawaii Administrative Rules analog, as incorporated and amended in chapters 11-260.1 to 11-279.1, except as noted in §11-260.1-2(d) and in blue here.
- The proper citation for the Hawaii Administrative Rules analog of a CFR section is constructed like this: “40 CFR section 262.16, as incorporated and amended in section 11-262.1-1, Hawaii Administrative Rules”, “40 CFR §260.43, as incorporated and amended in §11-260.1-1, HAR”, or “40 CFR §273.13, as incorporated and amended in chapter 11-273.1, HAR”.
- Changes to federal provisions regarding manifests and the national e-manifest system apply to hazardous waste handlers in Hawaii who use the Uniform Hazardous Waste Manifest. See [83 FR 420](#). Changes to the federal regulations are noted in blue.
- Changes to federal provisions regarding confidentiality apply to hazardous waste handlers in Hawaii who submit hazardous waste export, import, and transit documents to EPA. See [82 FR 60894](#). Changes to the federal regulations are noted in blue.

**PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL**

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## **Subpart A—General**

### **§ 260.1 Purpose, scope, and applicability.**

(a) This part provides definitions of terms, general standards, and overview information applicable to parts 260 through 265 and 268 of this chapter.

(b) In this part:

(1) Section 260.2 sets forth the rules that [the] state department of health will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to [the] state department of health under parts 260 through 265 and 268 of this chapter.

(2) Section 260.3 establishes rules of grammatical construction for parts 260 through 265 and 268 of this chapter.

(3) Section 260.10 defines terms which are used in parts 260 through 265 and 268 of this chapter.

(4) Section 260.20 establishes procedures for petitioning [the] state department of health to amend, modify, or revoke any provision of parts 260 through 265 and 268 of this chapter and establishes procedures governing [the] state department of health's action on such petitions.

### **§ 260.2 Availability of information; confidentiality of information.**

(a) Any information provided to [the] state department of health under parts 260 through 266 and 268 of this chapter will be made available to the public to the extent and in the manner authorized by sections 342J-14 and 342J-14.5, HRS, and any applicable provisions of chapter 92F, HRS, and of chapter 2-71.

(b) Except as provided under paragraph (c) of this section, any person who submits information to [the] state department of health in accordance with parts 260 through 266 and 268 of this chapter may assert a claim of business confidentiality covering part or all of that information. Information covered by such a claim will be disclosed by [the] state department of health only to the extent, and by means of the procedures, set forth in sections 342J-14 and 342J-14.5, HRS, and any applicable provisions of chapter 92F, HRS, and of chapter 2-71 except that information required by § 262.53(a) and § 262.83 that is submitted in a notification of intent to export a hazardous waste will be provided to the U.S. Department of State and the appropriate authorities in the transit and receiving or importing countries regardless of any claims of confidentiality. However, if no such claim accompanies the information when it is received by [the] state department of health, it may be made available to the public without further notice to the person submitting it.

(c) (1) After the effective date of this chapter, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be prepared and used in accordance with § 262.20(a)(3) of this chapter.

(2) EPA will make any electronic manifest that is prepared and used in accordance with § 262.20(a)(3), or any paper manifest that is submitted to the system under §§ 264.71(a)(6) or 265.71(a)(6) of this chapter available to the

public under this section when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after 90 days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

[\*\*Changes to federal provisions regarding confidentiality apply to hazardous waste handlers in Hawaii who submit hazardous waste export, import, and transit documents to EPA. After June 26, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in hazardous waste export, import, and transit documents, whether submitted electronically into EPA's Waste Import Export Tracking System or in paper format. See [82 FR 60894](#).\*\*]

### **§ 260.3 Use of number and gender.**

As used in parts 260 through 273 of this chapter:

- (a) Words in the masculine gender also include the feminine and neuter genders; and
- (b) Words in the singular include the plural; and
- (c) Words in the plural include the singular.

### **§ 260.4 Manifest copy submission requirements for certain interstate waste shipments.**

(a) In any case in which the state in which waste is generated, or the state in which waste will be transported to a designated facility, requires that the waste be regulated as a hazardous waste or otherwise be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the state in which the facility is located:

- (1) Complete the facility portion of the applicable manifest;
- (2) Sign and date the facility certification;
- (3) Submit to the e-Manifest system a final copy of the manifest for data processing purposes; and
- (4) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of part 264 of this chapter.

[\*\*Changes to federal provisions regarding manifests and the national e-manifest system apply to hazardous waste handlers in Hawaii who use the Uniform Hazardous Waste Manifest. See [83 FR 420](#).\*\*]

### **§ 260.5 Applicability of electronic manifest system and user fee requirements to facilities receiving state-only regulated waste shipments.**

- (a) For purposes of this section, "state-only regulated waste" means:
  - (1) A non-RCRA waste that a state regulates more broadly under its state regulatory program, or
  - (2) A RCRA hazardous waste that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.

(b) In any case in which a state requires a RCRA manifest to be used under state law to track the shipment and transportation of a state-only regulated waste to a receiving facility, the facility receiving such a waste shipment for management shall:

(1) Comply with the provisions of §§ 264.71 (use of the manifest) and 264.72 (manifest discrepancies) of this chapter; and

(2) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in subpart FF of part 264 of this chapter.

[\*\*Changes to federal provisions regarding manifests and the national e-manifest system apply to hazardous waste handlers in Hawaii who use the Uniform Hazardous Waste Manifest. See [83 FR 420](#).\*\*]

## Subpart B—Definitions

### § 260.10 Definitions.

When used in parts 260 through 273 of this chapter, the following terms have the meanings given below:

*Above ground tank* means a device meeting the definition of “tank” in § 260.10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

*Act* or *RCRA* means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

*Active life of a facility* means the period from the initial receipt of hazardous waste at the facility until the director receives certification of final closure.

*Active portion* means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. (See also “closed portion” and “inactive portion”.)

*Acute hazardous waste* means hazardous wastes that meet the listing criteria in §261.11(a)(2) and therefore are either listed in §261.31 of this chapter with the assigned hazard code of (H) or are listed in §261.33(e) of this chapter.

*Administrator* means the [Administrator](#) of the [Environmental Protection Agency](#), or his designee.

*AES filing compliance date* means the date that [EPA](#) announces in the Federal Register, on or after which exporters of hazardous waste are required to file [EPA](#) information in the Automated Export System or its successor system, under the International Trade Data System (ITDS) platform. [[\\*\\*The AES filing compliance date is December 31, 2017. See 82 FR 41015.\\*\\*](#)]

*Ancillary equipment* means any device including, but not limited to, such -devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

*Any state* means any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other U.S. territory.

*Aquifer* means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs.

*Authorized representative* means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

*Battery* means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

*Boiler* means an enclosed device using controlled flame combustion and having the following characteristics:

- (1)
  - (i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and
  - (ii) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and
  - (iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
  - (iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or
- (2) The unit is one which the director has determined, on a case-by-case basis, to be a boiler, after considering the standards in § 260.32.

*Carbon regeneration unit* means any enclosed thermal treatment device used to regenerate spent activated carbon.

*Central accumulation area* means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either §262.16 (for small quantity generators) or §262.17 of this chapter (for large quantity generators).

*Certification* means a statement of professional opinion based upon knowledge and belief.

*Closed portion* means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also “active portion” and “inactive portion”.)

*Component* means either the tank or ancillary equipment of a tank system.

*Confined aquifer* means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined ground water.

*Contained* means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

- (1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;
- (2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and
- (3) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.
- (4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

*Container* means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

*Containment building* means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subpart DD of parts 264 or 265 of this chapter.

*Contingency plan* means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

*Corrosion expert* means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

CWA means the federal Clean Water Act, 33 U.S.C. section 1251 et seq.

*Designated facility* means:

- (1) A hazardous waste treatment, storage, or disposal facility which:

- (i) Has received a permit (or interim status) in accordance with the requirements of [parts 270 and 124 of this chapter \[federal 40 CFR part 270 and 124\]](#);
- (ii) Has received a permit (or interim status) from a State authorized in accordance with part 271 of this chapter [federal 40 CFR part 271]; or
- (iii) Is regulated under [§ 261.6\(c\)\(2\) or subpart F of part 266 of this chapter \[federal 40 CFR §261.6\(c\)\(2\) or 40 CFR part 266 subpart F\]](#) or corresponding regulations of any authorized state; and
- (iv) That has been designated on the manifest by the generator pursuant to [§ 262.20 \[federal 40 CFR §262.20\]](#) or corresponding regulations of any authorized state.

(2) Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with [§ 264.72\(f\) or § 265.72\(f\) of this chapter \[federal 40 CFR §264.72\(f\) or 265.72\(f\)\]](#) or corresponding regulations of any authorized state.

(3) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

*Destination facility* means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in §§ 273.13 and 273.33 of this chapter. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

*Dike* means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

*Dioxins and furans (D/F)* means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

*Director, or director of health*, means the director of the State of Hawaii department of health or the director's authorized agent.

*Discharge or hazardous waste discharge* means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

*Disposal* means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

*Disposal facility* means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

*Drip pad* is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

*Electronic import-export reporting compliance date* means the date that EPA announces in the Federal Register, on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's Waste Import Export Tracking System, or its successor system.

*Electronic item*, also referred to as *universal waste electronic item*, means a device containing a circuit board, or other complex circuitry, or a video display. Indicators that a device likely contains a circuit board include the presence of a keypad, touch screen, any type of video or digital display, or common electronic ports or connectors, such as serial, parallel, RJ45 ("network"), or USB. Examples of common universal waste electronic items include, but are not limited to: computer central processing unit; computer monitor; portable computer (including notebook, laptop, and tablet computer); devices designed for use with computers (also known as computer peripherals) such as keyboard, mouse, desktop printer, scanner, and external storage drive; server; television; digital video disc (DVD) recorder or player; videocassette recorder or player (VCR); eBook reader; digital picture frame; fax machine; video game equipment; cellular telephone; answering machine; digital camera; portable music or video player; wireless paging device; remote control; and smoke detector. Electronic item does not include a device that is physically a part of, connected to, or integrated within a large piece of equipment that is not meant to be hand-carried by one person (for example, an automobile, large medical equipment, or white goods as defined in chapter 11-58.1). A device is considered physically a part of, connected to, or integrated within a large piece of equipment if the device cannot be easily disconnected from the large equipment by a layperson without specialized training. When a device containing a circuit board or a video display is removed, separated, or separate from the large piece of equipment that it is meant to be a part of, it is a universal waste electronic item.

*Electronic manifest (or e-Manifest)* means the electronic format of the hazardous waste manifest that is obtained from EPA's national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

*Electronic Manifest System (or e-Manifest System)* means EPA's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

*Elementary neutralization unit* means a device which:

- (1) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in § 261.22 of this chapter, or they are listed in subpart D of part 261 of the chapter only for this reason; and
- (2) Meets the definition of tank, tank system, container, transport vehicle, or vessel in § 260.10 of this chapter.

*EPA hazardous waste number* means the number assigned by EPA or the State to each hazardous waste listed in part 261, subpart D, of this chapter and to each characteristic identified in part 261, subpart C, of this chapter.

*EPA identification number* means the number assigned by EPA or the state to each generator, transporter, and treatment, storage, or disposal facility.

*EPA region* means the states and territories found in any one of the following ten regions:

Region I—Maine, Vermont, New Hampshire, Massachusetts, Connecticut, and Rhode Island.

Region II—New York, New Jersey, Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

Region III—Pennsylvania, Delaware, Maryland, West Virginia, Virginia, and the District of Columbia.

Region IV—Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, South Carolina, and Florida.

Region V—Minnesota, Wisconsin, Illinois, Michigan, Indiana and Ohio.

Region VI—New Mexico, Oklahoma, Arkansas, Louisiana, and Texas.

Region VII—Nebraska, Kansas, Missouri, and Iowa.

Region VIII—Montana, Wyoming, North Dakota, South Dakota, Utah, and Colorado.

Region IX—California, Nevada, Arizona, Hawaii, Guam, American Samoa, Commonwealth of the Northern Mariana Islands.

Region X—Washington, Oregon, Idaho, and Alaska.

*Equivalent method* means any testing or analytical method approved by the Administrator under §§ 260.20 and 260.21 [federal] and approved by the director.

*Existing hazardous waste management (HWM) facility or existing facility* means a facility which was in operation or for which construction commenced on or before:

- (1) November 19, 1980;
- (2) The effective date of statutory or regulatory changes made under RCRA prior to June 18, 1994 that made the facility subject to the requirement to have an RCRA permit; or
- (3) The effective date of statutory or regulatory changes made under chapter 342J, HRS, after June 18, 1994 that made the facility subject to the requirement to have a permit under section 342J-30(a), HRS.

A facility has commenced construction if:

- (1) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either
- (2) (i) A continuous on-site, physical construction program has begun; or  
(ii) The owner or operator has entered into contractual obligations—which cannot be cancelled or modified without substantial loss—for physical construction of the facility to be completed within a reasonable time.

*Existing portion* means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

*Existing tank system or existing component* means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986 for HSWA tanks and June 18, 1994 for non-HSWA tanks. Installation will be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations—which

cannot be canceled or modified without substantial loss—for physical construction of the site or installation of the tank system to be completed within a reasonable time.

*Explosives or munitions emergency* means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

*Explosives or munitions emergency response* means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities.

*Explosives or munitions emergency response specialist* means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

*Facility* means:

(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).

(2) For the purpose of implementing corrective action under 40 CFR 264.101, 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 42 U.S.C. section 6928(h) or section 342J-36, HRS.

(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.

Federal agency means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

*Federal, State and local approvals or permits necessary to begin physical construction* means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

*Final closure* means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under parts 264 and 265 of this chapter are no longer conducted at the facility unless subject to the provisions in § 262.34.

*Food-chain crops* means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

*Free liquids* means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

*Freeboard* means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

*Generator* means any person, by site, whose act or process produces hazardous waste identified or listed in part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

*Ground water* means water below the land surface in a zone of saturation.

*Hazardous secondary material* means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under part 261 of this chapter.

*Hazardous secondary material generator* means 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.

*Hazardous waste* means a hazardous waste as defined in § 261.3 of this chapter.

*Hazardous waste constituent* means a constituent that caused the [Administrator](#) to list the hazardous waste in part 261, subpart D, of this chapter, or a constituent listed in table 1 of § 261.24 of this chapter.

*Hazardous waste management unit* is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

*HRS* means the Hawaii Revised Statutes.

*HSWA* means Hazardous and Solid Waste Amendments.

*HSWA Drip Pad* means a drip pad handling F032 waste, as defined in 40 C.F.R. section 261.31, as incorporated and amended in section 11-261.1-1.

*HSWA Tank* means a tank owned or operated by a generator of less than one thousand kilograms of hazardous waste in any single calendar month; or, a new underground tank; or, an existing underground tank that cannot be entered for inspection.

*In operation* refers to a facility which is treating, storing, or disposing of hazardous waste.

*Inactive portion* means that portion of a facility which is not operated after November 19, 1980. (See also “active portion” and “closed portion”.)

*Incinerator* means any enclosed device that:

(1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(2) Meets the definition of infrared incinerator or plasma arc incinerator.

*Incompatible waste* means a hazardous waste which is unsuitable for:

(1) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(2) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases. (See appendix V of parts 264 and 265 of this chapter for examples.)

*Individual generation site* means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

*Industrial furnace* means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(1) Cement kilns

(2) Lime kilns

(3) Aggregate kilns

(4) Phosphate kilns

(5) Coke ovens

(6) Blast furnaces

(7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces)

(8) Titanium dioxide chloride process oxidation reactors

(9) Methane reforming furnaces

(10) Pulping liquor recovery furnaces

(11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid

(12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.

(13) Such other devices as the director may, after notice and comment, add to this list on the basis of one or more of the following factors:

- (i) The design and use of the device primarily to accomplish recovery of material products;
- (ii) The use of the device to burn or reduce raw materials to make a material product;
- (iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
- (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
- (v) The use of the device in common industrial practice to produce a material product; and
- (vi) Other factors, as appropriate.

Infrared incinerator means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

*Inground tank* means a device meeting the definition of “tank” in § 260.10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

*Injection well* means a well into which fluids are injected. (See also “underground injection”.)

*Inner liner* means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

*Installation inspector* means a person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

*Intermediate facility* means any facility that stores hazardous secondary materials for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material.

*International shipment* means the transportation of hazardous waste into or out of the jurisdiction of the United States.

*Lamp*, also referred to as “*universal waste lamp*”, is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

*Land disposal* means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

*Land treatment facility* means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

*Land-based unit* means an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

*Landfill* means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

*Landfill cell* means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

*Large quantity generator* is a generator who generates any of the following amounts in a calendar month:

- (1) Greater than or equal to 1,000 kilograms (2200 lbs) of non-acute hazardous waste; or
- (2) Greater than 1 kilogram (2.2 lbs) of acute hazardous waste listed in §261.31 or §261.33(e) of this chapter; or
- (3) Greater than 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of this chapter.

*Leachate* means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

*Leak-detection system* means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

*Liner* means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

*Management or hazardous waste management* means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

*Manifest* means the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed in accordance with the applicable requirements of parts 262 through 265 of this chapter.

*Manifest tracking number* means: The alphanumeric identification number (i.e., a unique three letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the Manifest by a registered source.

*Mercury-containing equipment* means a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function.

*Military munitions* means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

*Mining overburden returned to the mine site* means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

*Miscellaneous unit* means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under part 146 of this chapter, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under 40 CFR 270.65, or staging pile.

*Movement* means that hazardous waste transported to a facility in an individual vehicle.

*New hazardous waste management facility or new facility* means a hazardous waste management facility which is not included in the definition of an existing hazardous waste management facility.

*New tank system or new tank component* means a tank system or component that will be used for the storage or treatment of hazardous waste --and for which installation has commenced after July 14, 1986 for HSWA tanks and June 18, 1994 for non-HSWA tanks; except, however, for purposes of § 264.193(g)(2) and § 265.193(g)(2), a new tank system is one for which construction commences after July 14, 1986 for HSWA tanks and June 18, 1994 for non-HSWA tanks. (See also "existing tank system.")

*No free liquids*, as used in 40 CFR 261.4(a)(26) and 40 CFR 261.4(b)(18), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference, and that there is no free liquid in the container holding the wipes. No free

liquids may also be determined using another standard or test method as defined by an authorized state.

*Non-acute hazardous waste* means all hazardous wastes that are not acute hazardous waste, as defined in this section.

*Non-HSWA Drip Pad* means a drip pad handling F034 and F035 wastes, as defined in 40 C.F.R. section 261.31, as incorporated and amended in section 11-261.1-1.

*Non-HSWA Tank* means all tanks except HSWA tanks as defined in this section.

*On ground tank* means a device meeting the definition of “tank” in § 260.10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

*On-site* means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

*Open burning* means the combustion of any material without the following characteristics:

- (1) Control of combustion air to maintain adequate temperature for efficient combustion,
- (2) Containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
- (3) Control of emission of the gaseous combustion products. (See also “incineration” and “thermal treatment”.)

*Operator* means the person responsible for the overall operation of a facility.

*Owner* means the person who owns a facility or part of a facility.

*Partial closure* means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of parts 264 and 265 of this chapter at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

*Person* means any individual, partnership, firm, joint stock company, association, public or private corporation, federal agency, the State or any of its political subdivisions, any state and any of its political subdivisions, trust, estate, interstate body, or any other legal entity.

*Personnel or facility personnel* means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of part 264 or 265 of this chapter.

*Pesticide* means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

- (1) Is a new animal drug under FFDC section 201(w), or

(2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or

(3) Is an animal feed under FFDCFA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this definition.

*Pile* means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

*Plasma arc incinerator* means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

*Point source* means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

*Publicly owned treatment works* or *POTW* means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality" (as defined by section 502(4) of the CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

*Qualified Ground-Water Scientist* means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-water monitoring and contaminant fate and transport.

*Recognized trader* means a person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

*Regional Administrator* means the [Regional Administrator](#) for the [EPA Region](#) in which the facility is located, or his designee.

*Remanufacturing* means processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

*Remediation waste* means all solid and hazardous wastes, and all media (including ground water, surface water, soils, and sediments) and debris, that are managed for implementing cleanup.

*Remediation waste management site* means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action

under 40 CFR 264.101 or section 342J-36, HRS, but is subject to corrective action requirements if the site is located in such a facility.

*Replacement unit* means a landfill, surface impoundment, or waste pile unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

*Representative sample* means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

*Run-off* means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

*Run-on* means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

*Saturated zone* or *zone of saturation* means that part of the earth's crust in which all voids are filled with water.

*Sludge* means any solid, semi-solid, --or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

*Sludge dryer* means any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

*Small quantity generator* is a generator who generates the following amounts in a calendar month:

- (1) Greater than 100 kilograms (220 lbs) but less than 1,000 kilograms (2200 lbs) of non-acute hazardous waste; and
- (2) Less than or equal to 1 kilogram (2.2 lbs) of acute hazardous waste listed in §261.31 or §261.33(e) of this chapter; and
- (3) Less than or equal to 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in §261.31 or §261.33(e) of this chapter.

*Solid waste* means a solid waste as defined in § 261.2 of this chapter.

*Solvent-contaminated wipe* means—

- (1) A wipe that, after use or after cleaning up a spill, either:
  - (i) Contains one or more of the F001 through F005 solvents listed in 40 CFR 261.31 or the corresponding P- or U- listed solvents found in 40 CFR 261.33;
  - (ii) Exhibits a hazardous characteristic found in 40 CFR part 261 subpart C when that characteristic results from a solvent listed in 40 CFR part 261; and/or
  - (iii) Exhibits only the hazardous waste characteristic of ignitability found in 40 CFR 261.21 due to the presence of one or more solvents that are not listed in 40 CFR part 261.
- (2) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other

than solvents, are not eligible for the exclusions at 40 CFR 261.4(a)(26) and 40 CFR 261.4(b)(18).

*Sorbent* means a material that is used to soak up free liquids by either adsorption or absorption, or both.

*Sorb* means to either adsorb or absorb, or both.

*Staging pile* means an accumulation of solid, non-flowing remediation waste (as defined in this section) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Director according to the requirements of 40 CFR 264.554.

*Storage* means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

*Sump* means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, “sump” means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

*Surface impoundment* or *impoundment* means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

*Tank* means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

*Tank system* means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

*TEQ* means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

*Thermal treatment* means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also “incinerator” and “open burning”.)

*Thermostat* means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR 273.13(c)(2) or 273.33(c)(2).

*Totally enclosed treatment facility* means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

*Transfer facility* means 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.

*Transport vehicle* means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

*Transportation* means the movement of hazardous waste by air, rail, highway, or water.

*Transporter* means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

*Treatability study* means a study in which a hazardous waste is subjected to a treatment process to determine: (1) Whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the § 261.4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A “treatability study” is not a means to commercially treat or dispose of hazardous waste.

*Treatment* means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

*Treatment zone* means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

*Underground injection* means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also “injection well”.)

*Underground tank* means a device meeting the definition of “tank” in § 260.10 whose entire surface area is totally below the surface of and covered by the ground.

*Unfit-for use tank system* means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

*United States* means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Universal waste* means any of the following hazardous wastes that are managed under the universal waste requirements of part 273 of this chapter:

- (1) Batteries as described in § 273.2 of this chapter;
- (2) Pesticides as described in § 273.3 of this chapter;
- (3) Mercury-containing equipment as described in 40 C.F.R. section 273.4, as incorporated and amended in section 11-273.1-1;
- (4) Lamps as described in 40 C.F.R. section 273.5, as incorporated and amended in section 11-273.1-1; and

(5) Electronic items as described in 40 C.F.R. section 273.6, as incorporated and amended in section 11-273.1-1.

*Universal waste handler:*

(1) Means:

- (i) A generator (as defined in this section) of universal waste; or
- (ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.

(2) Does not mean:

- (i) A person who treats (except under the provisions of 40 CFR 273.13, or 273.33), disposes of, or recycles universal waste; or
- (ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

*Universal waste transporter* means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

*Unsaturated zone or zone of aeration* means the zone between the land surface and the water table.

*Uppermost aquifer* means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

*Used oil* means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

*User of the electronic manifest system* means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(1) Is required to use a manifest to comply with:

- (i) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or
- (ii) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(2) Elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the [EPA](#) electronic manifest system, or

(3) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with § 264.71(a)(2)(v) or § 265.71(a)(2)(v) of this chapter.

These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

*Very small quantity generator* is a generator who generates less than or equal to the following amounts in a calendar month:

- (1) 100 kilograms (220 lbs) of nonacute hazardous waste; and
- (2) 1 kilogram (2.2 lbs) of acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter; and
- (3) 100 kilograms (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in § 261.31 or § 261.33(e) of this chapter.

*Vessel* includes every description of watercraft, used or capable of being used as a means of transportation on the water.

*Wastewater treatment unit* means a device which:

- (1) Is part of a wastewater treatment facility that is subject to regulation under either section 402 or 307(b) of the Clean Water Act; and
- (2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in § 261.3 of this chapter, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in § 261.3 of this chapter, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in § 261.3 of this Chapter; and
- (3) Meets the definition of tank or tank system in § 260.10 of this chapter.

*Water (bulk shipment)* means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

*Well* means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

*Well injection:* (See “underground injection”.)

*Wipe* means a woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

*Zone of engineering control* means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

### **§ 260.11 Incorporation by reference.**

(a) When used in parts 260 through 268 of this chapter, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, [U.S. Environmental Protection Agency](http://www.epa.gov), 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, [libraryhq@epa.gov](mailto:libraryhq@epa.gov); or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html)

(b) The following materials are available for purchase from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.

- (1) ASTM D-93-79 or D-93-80, “Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester,” IBR approved for § 261.21.

- (2) ASTM D-1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography," IBR approved for §§ 264.1033, 265.1033.
- (3) ASTM D 2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," IBR approved for § 264.1063.
- (4) ASTM D 2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)," IBR approved for §§ 264.1033, 265.1033.
- (5) ASTM D 2879-92, "Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope," IBR approved for § 265.1084.
- (6) ASTM D-3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester," IBR approved for § 261.21(a).
- (7) ASTM E 168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis," IBR approved for § 264.1063.
- (8) ASTM E 169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," IBR approved for § 264.1063.
- (9) ASTM E 260-85, "Standard Practice for Packed Column Gas Chromatography," IBR approved for § 264.1063.
- (10) ASTM E 926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," Test Method C—Bomb, Acid Digestion Method.

(c) The following materials are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

- (1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 264.1035 and 265.1035.
- (2) Method 1664, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material SGT-HEM; Non-polar Material) by Extraction and Gravimetry:
  - (i) Revision A, EPA-821-R-98-002, February 1999, IBR approved for Part 261, Appendix IX.
  - (ii) Revision B, EPA-821-R-10-001, February 2010, IBR approved for Part 261, Appendix IX.
- (3) The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times). A suffix of "D" in the method number indicates revision four (the method has been revised four times).
  - (i) Method 0010, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
  - (ii) Method 0020, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.

- (iii) Method 0030, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
- (iv) Method 1320, dated September 1986 and in the Basic Manual, IBR approved for part 261, appendix IX.
- (v) Method 1311, dated September 1992 and in Update I, IBR approved for part 261, appendix IX, and §§ 261.24, 268.7, 268.40.
- (vi) Method 1330A, dated September 1992 and in Update I, IBR approved for part 261, appendix IX.
- (vii) Method 1312 dated September 1994 and in Update III, IBR approved for part 261, appendix IX and § 278.3(b)(1).
- (viii) Method 0011, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, and part 266, appendix IX.
- (ix) Method 0023A, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.104.
- (x) Method 0031, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.
- (xi) Method 0040, dated December 1996 and in Update III, IBR approved for part 261, appendix IX.
- (xii) Method 0050, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.107.
- (xiii) Method 0051, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, part 266, appendix IX, and § 266.107.
- (xiv) Method 0060, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, § 266.106, and part 266, appendix IX.
- (xv) Method 0061, dated December 1996 and in Update III, IBR approved for part 261, appendix IX, § 266.106, and part 266, appendix IX.
- (xvi) Method 9071B, dated April 1998 and in Update IIIA, IBR approved for part 261, appendix IX.
- (xvii) Method 1010A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xviii) Method 1020B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xix) Method 1110A, dated November 2004 and in Update IIIB, IBR approved for § 261.22 and part 261, appendix IX.
- (xx) Method 1310B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.
- (xxi) Method 9010C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§ 268.40, 268.44, 268.48.
- (xxii) Method 9012B, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and §§ 268.40, 268.44, 268.48.
- (xxiii) Method 9040C, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX and § 261.22.
- (xxiv) Method 9045D, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xxv) Method 9060A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX, and §§ 264.1034, 264.1063, 265.1034, 265.1063.

(xxvi) Method 9070A, dated November 2004 and in Update IIIB, IBR approved for part 261, appendix IX.

(xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, part 261, appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 268.32.

(d) The following materials are available for purchase from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

(1) “Flammable and Combustible Liquids Code” (NFPA 30), 1977 or 1981, IBR approved for 262.16(b), 264.198(b), 265.198(b).

(2) [Reserved]

(e) The following materials are available for purchase from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.

(1) API Publication 2517, Third Edition, February 1989, “Evaporative Loss from External Floating-Roof Tanks,” IBR approved for § 265.1084.

(2) [Reserved]

(f) The following materials are available for purchase from the [Environmental Protection Agency](#), Research Triangle Park, NC.

(1) “Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised”, October 1992, EPA Publication No. EPA-450/R-92-019, IBR approved for part 266, appendix IX.

(2) [Reserved]

(g) The following materials are available for purchase from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France.

(1) Guidance Manual for the Control of Transboundary Movements of Recoverable Wastes, copyright 2009, Annex B: OECD Consolidated List of Wastes Subject to the Green Control Procedure and Annex C: OECD Consolidated List of Wastes Subject to the Amber Control Procedure, IBR approved for §§ 262.82(a), 262.83(b),(d), and (g), and 262.84(b) and (d) of this chapter.

(2) [Reserved]

## **Subpart C—Rulemaking Petitions**

### **§ 260.20 General.**

(a) Any person may petition the director to modify or revoke any provision in parts 260 through 266, 268 and 273 of this chapter. This section sets forth general requirements which apply to all such petitions. Section 260.23 sets forth additional requirements for petitions to amend part 273 of this chapter to include additional hazardous wastes or categories of hazardous waste as universal waste.

(b) Each petition must be submitted to the director by certified mail and must include:

(1) The petitioner's name and address;

(2) A statement of the petitioner's interest in the proposed action;

- (3) A description of the proposed action, including (where appropriate) suggested regulatory language; and
  - (4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.
- (c) The director will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision, either in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, for written public comment.
- (d) Upon the written request of any interested person, the director may, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The director may in any case decide on his own motion to hold an informal public hearing.
- (e) After evaluating all public comments the director will make a final decision by publishing a regulatory amendment or a denial of the petition.

#### **§ 260.23 Petitions to amend 40 CFR part 273 to include additional hazardous wastes.**

- (a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of part 273 of this chapter may petition for a regulatory amendment under this section, 40 CFR 260.20, and subpart G of 40 CFR part 273.
- (b) To be successful, the petitioner must demonstrate to the satisfaction of the director that regulation under the universal waste regulations of 40 CFR part 273: Is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by 40 CFR 260.20(b). The petition should also address as many of the factors listed in 40 CFR 273.81 as are appropriate for the waste or category of waste addressed in the petition.
- (c) The director will grant or deny a petition using the factors listed in 40 CFR 273.81. The decision will be based on the weight of evidence showing that regulation under 40 CFR part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.
- (d) The director may request additional information needed to evaluate the merits of the petition.

#### **§ 260.30 Non-waste determinations and variances from classification as a solid waste.**

In accordance with the standards and criteria in § 260.31 and § 260.34 and the procedures in § 260.33, the director may determine on a case-by-case basis that the following recycled materials are not solid wastes:

- (a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in § 261.1(c)(8) of this chapter);
- (b) Materials that are reclaimed and then reused within the original production process in which they were generated;

- (c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.
- (d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and
- (e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.
- (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.

**§ 260.31 Standards and criteria for variances from classification as a solid waste.**

(a) The director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The director's decision will be based on the following criteria:

- (1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);
- (2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;
- (3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;
- (4) The extent to which the material is handled to minimize loss;
- (5) Other relevant factors.

(b) The director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

- (1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;
- (2) The extent to which the material is handled before reclamation to minimize loss;
- (3) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;
- (4) The location of the reclamation operation in relation to the production process;
- (5) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
- (6) Whether the person who generates the material also reclaims it;

(7) Other relevant factors.

(c) The director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 of this part and on whether all of the following decision criteria are satisfied:

- (1) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;
- (2) Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;
- (3) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;
- (4) Whether there is a market for the partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading);
- (5) Whether the partially-reclaimed material is handled to minimize loss.

(d) The director 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 director's decision will be based on the following criteria:

- (1) The reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to § 260.43;
- (2) The reclamation facility or intermediate facility must satisfy the financial assurance condition in § 261.4(a)(24)(vi)(F);
- (3) 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;
- (4) 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;
- (5) 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

(6) 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.

### **§ 260.32 Variances to be classified as a boiler.**

In accordance with the standards and criteria in § 260.10 (definition of “boiler”), and the procedures in § 260.33, the director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in § 260.10, after considering the following criteria:

- (a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and
- (b) The extent to which the combustion chamber and energy recovery equipment are of integral design; and
- (c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and
- (d) The extent to which exported energy is utilized; and
- (e) The extent to which the device is in common and customary use as a “boiler” functioning primarily to produce steam, heated fluids, or heated gases; and
- (f) Other factors, as appropriate.

### **§ 260.33 Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations.**

The director 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.

- (a) The applicant must apply to the director 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.
- (b) The director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The director will issue a final decision after receipt of comments and after the hearing (if any).

(c) In the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in § 260.31, § 260.32, or § 260.34 upon which a variance or non-waste determination has been based, the applicant must send a description of the change in circumstances to the director. The director may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination.

(d) Variances and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities must re-apply for a variance or non-waste determination. If a facility re-applies for a variance or non-waste determination within six months, the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the director.

(e) Facilities receiving a variance or non-waste determination must provide notification as required by § 260.42 of this chapter.

### **§ 260.34 Standards and criteria for non-waste determinations.**

(a) An applicant may apply to the director 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 only be granted by the State if the State is either authorized for this provision or if the following conditions are met:

- (1) The State determines the hazardous secondary material meets the criteria in paragraphs (b) or (c) of this section, as applicable;
- (2) The State requests that [EPA](#) review its determination; and
- (3) [EPA](#) approves the State determination.

(b) The director 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:

- (1) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;
- (2) 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);
- (3) 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
- (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.

(c) The director 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:

- (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);
- (2) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;
- (3) 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);
- (4) 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
- (5) 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.

#### **§ 260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.**

[The procedures for this decision are set forth in § 260.41 of this chapter.]

(a) The director may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in § 261.6(a)(2)(iii) of this chapter should be regulated under § 261.6 (b) and (c) of this chapter. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the director will consider the following factors:

- (1) The types of materials accumulated or stored and the amounts accumulated or stored;
- (2) The method of accumulation or storage;
- (3) The length of time the materials have been accumulated or stored before being reclaimed;
- (4) Whether any contaminants are being released into the environment, or are likely to be so released; and

- (5) Other relevant factors.
- (b) [Reserved]

**§ 260.41 Procedures for case-by-case regulation of hazardous waste recycling activities.**

The director will use the following procedures when determining whether to regulate hazardous waste recycling activities described in § 261.6(a)(2)(iii) under the provisions of § 261.6 (b) and (c), rather than under the provisions of subpart F of part 266 of this chapter.

(a) If a generator is accumulating the waste, the director will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of subparts A, C, D, and E of part 262 of this chapter. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the director will hold a public hearing. The director will provide notice of the hearing to the public and allow public participation at the hearing. The director will issue a final order after the hearing stating whether or not compliance with part 262 is required. The order becomes effective 30 days after service of the decision unless the director specifies a later date or unless review by the director is requested. The order may be appealed to the director by any person who participated in the public hearing. The director may choose to grant or to deny the appeal. Final state department of health action occurs when a final order is issued and state department of health review procedures are exhausted.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of parts 270 and 124 of this chapter. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the director's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the state department of health's determination. The question of whether the director's decision was proper will remain open for consideration during the public comment period discussed under § 124.11 of this chapter and in any subsequent hearing.

**§ 260.42 Notification requirement for hazardous secondary materials.**

(a) Facilities managing hazardous secondary materials under §§ 260.30, 261.4(a)(23), 261.4(a)(24), or 261.4(a)(27) must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the director using EPA Form 8700-12 that includes the following information:

- (1) The name, address, and EPA ID number (if applicable) of the facility;
- (2) The name and telephone number of a contact person;
- (3) The NAICS code of the facility;
- (4) The regulation under which the hazardous secondary materials will be managed;

- (5) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
- (6) A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);
- (7) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
- (8) The quantity of each hazardous secondary material to be managed annually; and
- (9) The certification (included in EPA Form 8700-12) signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the director within thirty (30) days using EPA Form 8700-12. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

**§ 260.43 Legitimate recycling of hazardous secondary materials.**

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph.

(1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

- (i) Contributes valuable ingredients to a product or intermediate; or
- (ii) Replaces a catalyst or carrier in the recycling process; or
- (iii) Is the source of a valuable constituent recovered in the recycling process; or
- (iv) Is recovered or regenerated by the recycling process; or
- (v) Is used as an effective substitute for a commercial product.

(2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

- (i) Sold to a third party; or
- (ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material,

the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(4) The product of the recycling process must be comparable to a legitimate product or intermediate:

(i) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process does not exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit, and

(B) The concentrations of any hazardous constituents found in appendix VIII of part 261 of this chapter that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

(ii) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or

(B) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).

(iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per paragraph (a)(4)(i) or (ii) of this section, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the director of this activity using EPA Form 8700-12.

(b)-(c) [Reserved]