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Resource Conservation and Recovery Act

Recycling, Reuse and Reclamation

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Presented by: Laura Kerr

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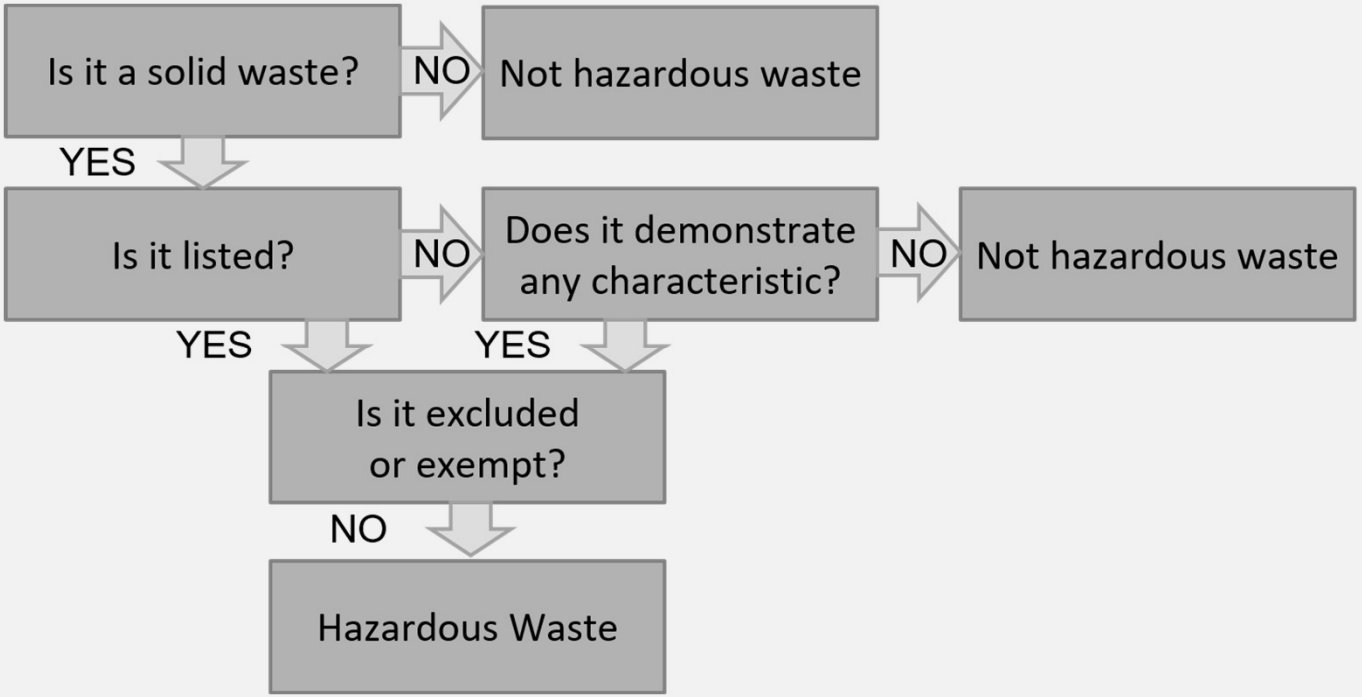
Hazardous Waste Determination



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What does it regulate?

Solid Waste (40 CFR 261.2)	Hazardous Waste (40 CFR 261.3)
• Discarded material (abandoned, recycled, or inherently waste-like)	• Solid waste that is ***listed*** or exhibits a ***characteristic*** of hazardous waste

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Is it a solid waste?

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Is it a solid waste?

- Any garbage or refuse, sludge from a wastewater treatment plant, supply treatment plant, or air pollution control facility and other discarded material (unless excluded from regulation). RCRA 1004(27); 40 CFR 261.2.
- Solid Wastes are discarded when they are:
  - **Abandoned**
  - **Recycled in certain manner**
  - Inherently Waste-Like
  - A Discarded Military Munition

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Abandoned Materials

- Materials are solid waste if they are ***abandoned*** by being:
  - (1) Disposed of; or
  - (2) Burned or incinerated; or
  - (3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated; or
  - (4) Sham recycled

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Background on Recycled Materials

- Certain materials are solid wastes if they are ***recycled*** (or accumulated, stored, or treated before recycling)
  - Some context and history

    -RCRA regulations aim to close the recycling loophole by distinguishing between legitimate and "sham" recycling
  - Tricky because some materials are solid waste when recycled, and some are not (and the regulations don't make it easy to navigate)
  - Applicable regulations

    -40 CFR 261.2(c-e), 40 CFR 261.4(a)(8), 40 CFR 261.4(a)(23-25), (27)

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Framework for determining if recycled material is solid waste

- **<u>Question 1</u>: What is the material (and how is it best characterized under regulations)**
  -The same material might be a solid waste in some cases, and not others.

- **<u>Question 2</u>: How will it be recycled?**
  -The same management practice might be solid waste management in some cases, and not others.

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A Brief Detour: An Introduction to Hazardous Secondary Materials

- "A secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste…." 40 CFR 260.10.
- A hazardous secondary material (HSM) may or may not be a hazardous waste depending on whether it is discarded.

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Question 1: What is the material?

- EPA operates on the premise that all recycled hazardous secondary materials fit into one of the following categories
  - Spent material (40 CFR 261.1(c)(1))
  - Sludge (40 CFR 261.1(c)(2), same as 40 CFR 260.10)
  - By-product (40 CFR 261.1(c)(3))
  - Commercial chemical product
  - Scrap metal (40 CFR 261.1(c)(6))

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Question 2: How will it be recycled?

- Use constituting disposal (use in or on the land) (40 CFR 261.2(c)(1); see also 40 CFR part 266 Subpart C)
- Burning for energy recovery (40 CFR 261.2(c)(2))
- Reclamation (40 CFR 261.2(c)(3))
- Speculative Accumulation (40 CFR 261.1(c)(8))

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Table 1

	Use constituting disposal (§ 261.2(c)(1))	Energy recovery/ fuel (§ 261.2(c)(2))	Reclamation (§ 261.2(c)(3)), except as provided in §§ 261.4(a)(17), 261.4(a)(23), 261.4(a)(24) or 261.4(a)(27)	Speculative accumulation (§ 261.2(c)(4))
	1	2	3	4
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 40 CFR Part 261.31 or 261.32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	–	(*)
By-products (listed in 40 CFR 261.31 or 261.32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	–	(*)
Commercial chemical products listed in 40 CFR 261.33	(*)	(*)	–	–
Scrap metal that is not excluded under 40 CFR 261.4(a)(13)	(*)	(*)	(*)	(*)

NOTE: The terms "spent materials," "sludges," "by-products," and "scrap metal" and "processed scrap metal" are defined in § 261.1.

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Legitimate Recycling

- Factor 1: Materials must provide a useful contribution to the recycling process or to a product or intermediate. (40 CFR 260.43(a)(1))
- Factor 2: Recycling must produce a valuable product or intermediate. (40 CFR 260.43(a)(2))
- Factor 3: Materials must be managed as valuable commodities. (40 CFR 260.43(a)(3))
- Factor 4: Products of recycling don't contain significant concentrations of hazardous constituents. (40 CFR 260.43(b))
  - *Note: Must meet Factors 1-3 and must consider Factor 4 to be legitimate recycling.*

Exclusions from the Definition of Solid Waste

- 40 CFR 261.4(a) contains several exclusions from the definition of solid waste. Most are specific to certain materials and/or industries.
- Some common ones:
  - Domestic sewage and mixtures of domestic sewage (261.4(a)(1))
  - Secondary materials reclaimed in a closed-loop process in tanks (261.4(a)(8))
  - Excluded scrap metal (261.4(a)(13))
  - Solvent-contaminated wipes that are sent for cleaning and reuse. (261.4(a)(26))

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Exclusions from the Definition of Solid Waste (cont.)

- Most recently promulgated exclusions
  - Hazardous secondary materials generated and reclaimed under the control of the generator (261.4(a)(23))
  - Hazardous secondary materials transferred for the purpose of reclamation (261.4(a)(24) and (25))
  - Higher-value solvents transferred for the purpose of remanufacturing (261.4(a)(27)
- Least likely to be adopted by states

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Is it a hazardous waste?

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Is it a hazardous waste?

Waste Determination Requirement

A generator of solid waste "*must make an accurate determination as to whether that waste is a hazardous waste….*"

40 CFR 262.11.

Is it a hazardous waste? (cont.)

- Characteristic Hazardous Waste
  - Ignitability (D001) (40 CFR 261.21)
  - Corrosivity (D002) (40 CFR 261.22)
  - Reactivity (D003) (40 CFR 261.23)
  - Toxicity (D004-D043) (40 CFR 261.24)
- Listed Hazardous Waste
  - F-listed wastes: Hazardous wastes from non-specific sources
  - K-listed wastes: Hazardous wastes from specific industries
  - P-listed and U-listed wastes: Unused commercial chemical products
- State-only Hazardous Wastes

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Exclusions from the Definition of Hazardous Waste

- 40 CFR 261.4(b) contains several exclusions from the definition of hazardous waste. Most are specific to certain materials and/or industries.
  - These exclusions are narrow and limited

    -Ex: Petroleum-contaminated media and debris from cleanup of USTs (40 CFR 261.4(b)(10)

Exemptions from Subtitle C Regulation

- 40 CFR 261.3 and 261.4 also exempt certain hazardous wastes from regulation under RCRA subtitle C
  - Examples

    -Wastes in active manufacturing process units (40 CR 261.4(c))

    -Used oil that is recycled (40 CFR 261.6(a)(4))

    -Residues in RCRA-empty containers (40 CFR 261.7)