

# **Proposed Amendments to Title 128 – *Nebraska Hazardous Waste Regulations***

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**NDEQ Waste Management Division**

**NDEQ Headquarters, Room 424, 2:00pm**

**August 26, 2015**



# Areas Proposed for Amendment

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1. RCRA(c) Definition of Solid Waste
2. Public Participation in Environmental Decision-Making (40 CFR Part 124)
3. Update to CRT Monitor Rule



# Title 132 Outreach

What?	When?
1 <sup>st</sup> Outreach Meeting to discuss concepts	Aug. 26, 2015, 2:00pm @ NDEQ
Preliminary draft regulations available on NDEQ website	October 2015
2 <sup>nd</sup> Outreach Meeting to discuss draft regulations	November or December 2015
Legal Notice Period	January 2016
EQC Hearing Date	February 2016



# Solid Wastes under RCRA Subtitle(c)

Under RCRA and Title 128, Chapter 2, materials which are **solid wastes** first define the scope of the regulatory program. 2 Steps in analyzing a given waste:

1. Is it a solid waste?
2. Is it a hazardous waste (a subset of solid waste)?



# Solid Wastes under RCRA Subtitle(c)

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- Regulated solid wastes are not based on the physical form (gas, liquid, sludge) but whether the material is ***discarded*** (abandoned, inherently waste-like, or recycled).
- Recycled materials are further defined as solid wastes when used in a manner constituting disposal (applied to the land), burned for energy recovery, accumulated speculatively, or ***reclaimed*** (defined on next slide).
- ***Excluded*** solid wastes, thus, cannot be hazardous wastes, but may need to meet certain conditions or may be subject to other regulatory controls that are less-stringent than for hazardous wastes.



# DSW Rule – General Concept

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- Definition of Solid Waste (DSW) rule excludes hazardous secondary materials (HSMs) from regulation as a solid waste (and, thus, hazardous waste) if the material will be legitimately ***reclaimed***.
- “Hazardous secondary material” is defined as secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste.
- “Reclamation” – physical/chemical/thermal process to recover a usable product (smelting, distilling).



# DSW Rule - Background

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- 2008 DSW rule was criticized by stakeholders and faced legal challenges.
- EPA environmental justice analysis identified mismanagement by third-party hazardous materials recyclers as posing a risk of fires, explosions, accidents and releases of hazardous constituents to the environment.
- 90% of 250 damage cases studied by EPA involved facilities receiving waste for off-site recycling. Only 20% of the facilities were identified as having a RCRA permit.



# DSW Rule - Benefits

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- Hazardous waste recycling decreases pollution and energy consumption that would otherwise be needed to extract raw materials for use in manufacturing.
- Currently, some recycling is discouraged partly because of the high costs associated with meeting the Subtitle C hazardous waste requirements, such as facility permits.
- The DSW rule provides 3 new exclusions + a case-by-case petition process for "non-waste determinations," for recycling operations that closely resemble normal manufacturing processes.
- Cost savings to industry of approximately \$95 million per year. 1.5 million tons subject to reduced regulation.





# DSW Rule – Nebraska Impacts

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- 2015 rule seeks to better regulate the bad actors while still fostering legitimate recycling.
  - Bad actors are thinly-capitalized 3<sup>rd</sup> party HW recyclers which mostly operate on the coasts and upper midwest/great lakes region.
  - Nebraska has one regional hazardous waste disposal facility – Clean Harbors in Kimball, NE.
    - Clean Harbors has a RCRA permit so they will automatically be a “verified recycler” under the rule.
  - Nebraska has facilities doing on-site or intra-company recycling, usually solvent-distillation.
    - This could lower their monthly counting volumes and move them to a lower generator status.



# DSW Rule - Major Regulatory Themes

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1. Exclusions for HSM's that are legitimately recycled:
  - “generator controlled” exclusion
  - “verified recycler” exclusion – outside of the property/company to a 3<sup>rd</sup> party recycler
  - “remanufacturing” exclusion – high value solvents.
2. Case-by-case “non-waste determinations” for partially reclaimed HSMs using variance procedures.
3. Codified definition of legitimacy for HW reclamation/recycling.
  - Applied previously from EPA guidance.



# Generator-Controlled Exclusion

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- “Generator-controlled” recycling exclusion for HSMs is retained from 2008 rule.
- Covers 1) on-site & in-process recycling, 2) w/ in same company, and 3) some tolling agreements.
  - “Tolling agreement” is a written certification that the HSM is used to manufacture a product or intermediate.
    - An “intermediate” needs further processing to be a product.
- Requirements:
  - Revised “contained” standard – good condition & compatible with the material it contains.
  - Must notify using EPA Form 8700-12.
  - Emergency preparedness and response conditions.
  - No speculative accumulation + recordkeeping.
  - **Must document legitimate recycling. . .more later.**



# Verified Recycler Exclusion

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- Hazardous secondary material transferred to a 3<sup>rd</sup> party for recycling must go to a “verified recycler” who:
  - Has a RCRA part B permit; OR
  - Has obtained a state or EPA **variance** from the permit requirement. Variance requires facility to:
    - **Demonstrate the recycling is legitimate**
    - Have financial assurance
    - No formal enforcement actions for 3 years
    - Training and emergency preparedness
    - Must manage residuals from reclamation properly
    - Must follow new “contained” standards.
    - Must notify using EPA Form 8700-12.



# Remanufacturing Exclusion

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- High-value solvents processed for a “similar functional purpose as the original commercial grade material.”
- Rule lists specific eligible solvents
- Must originate from and be further used in:
  - Pharmaceutical manufacturing (NAICS 325412)
  - Organic chemical manufacturing (NAICS 325199)
  - Plastic and resins manufacturing (NAICS 325211)
  - Paints and coatings manufacturing (NAICS 325510)
- Inter- or intra-company transfers ARE allowed
- CANNOT be used for cleaning or degreasing
- NO legitimacy showing required



# Legitimate Recycling of HSMs

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The Legitimacy Standard includes 4 codified factors (must address all):

- 1) Hazardous secondary material must provide a useful contribution to the recycling process or to a product or intermediate (5 factors).
- 2) Recycling must produce a valuable product or intermediate (sold or used as an effective substitute for a product or intermediate).
- 3) Hazardous secondary material must be managed as valuable commodities (contained).
- 4) The product of recycling must be comparable to a legitimate product or intermediate.

More details to follow at 2<sup>nd</sup> meeting.....

A prohibition on sham recycling is also codified.



# Non-Waste Determinations

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- Creates a variance procedure for “partially reclaimed” HSMs that are commodity-like.
  - “Partially reclaimed” means 2 or more steps are involved in the reclamation process.
  - An allowance for an intermediate stage of recycling.
- A “variance” is a case-specific exception to regulation that must be sought through agency procedural rules, proposed for Chapter 5.
- Whether the waste is “commodity-like” requires consideration of 5 criteria such as economic value, known markets, and its viability as a substitute for another product or intermediate.



# Non-Waste Determinations

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## Other requirements:

- Fixed variance term of 10 years or less
- Must provide notice to NDEQ in the event of a change in circumstances affecting how a HSM meets a variance criteria.
- Must re-notify every 2 years.
- Must demonstrate why the existing solid waste exclusions do not apply to their HSM.





# Public Participation in 40 C.F.R. 124

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- Nebraska already has a good program for public participation in RCRA permitting activities in Title 128, ch. 15.
- These proposals clarify existing provisions and are consistent with, but no more stringent than federal requirements.
- Makes Title 128 consistent with federal requirements and is necessary for NDEQ to receive state authorization to administer the RCRA corrective action program.
- 2 new requirements:
  1. Pre-application public meeting & notice
  2. Information repository



# Public Participation in 40 C.F.R. 124

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## 1. Pre-application public meeting & notice

- “to solicit questions from the community and inform the community of proposed hazardous waste management activities.”
- Applies to: new permit applicants AND renewal applicants proposing a class 3 modification under ch. 15, 012.02.
- Does not apply to permits for post-closure activities or corrective action *only*.

## 2. Information repository

- “all documents, reports, data, and information deemed necessary by the Director.”
- Potentially applies to all permit applicants, but is on a discretionary, case-by-case basis.



# CRT Monitor Rule Update

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- Nebraska adopted the 2007 rule which streamlined the management requirements for cathode ray tubes (CRTs) and glass removed from CRTs to encourage recycling.
- Proposed rule updates the notification and recordkeeping requirements for used, intact CRTs exported for reuse.
- These export notifications are made to EPA, not states, but since Nebraska adopted the 2007 rule, we must incorporate the updated provisions.



# Questions for Stakeholders

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1. Do you currently do hazardous waste recycling or reclamation at your facility?
  - What materials?
  - On-site or off-site?
2. Do you plan to seek any of the exclusions in the DSW rule for Hazardous Secondary Materials?
3. Do you have any questions or concerns about the recycling legitimacy standards?



# ???Questions???

My contact information:

Brian McMullen, NDEQ

402-471-0270

[brian.mcmullen@nebraska.gov](mailto:brian.mcmullen@nebraska.gov)