

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

**Brian McMullen, Program Specialist
NDEQ Waste Management Section**

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Areas Proposed for Amendment

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



Title 128 Outreach Process

What?	When?
1 st Outreach Meeting	Aug. 26, 2015
Drafting of regulations and internal review of drafts	September & October 2015
Review of draft regulations by Governor's Policy Office	November 2015
Preliminary draft regulations available on NDEQ website	December 8, 2015
Present amendments to NICE	January 21, 2016
2 nd Outreach Meeting	January 27, 2016
EQC Hearing Date	March 22, 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. 3 Steps in analyzing a given waste:

1. Is it a solid waste?
 - Has the material been *discarded*?
 - More complex when recycling is involved
2. Is it a hazardous waste (a subset of solid waste)?
 - Is it listed or does it exhibit a hazardous characteristic?
3. Is it excluded?



DSW Rule – General Concept

- 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 means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste.” **Ch. 1, Section 063**.
- “Reclamation” – physical/chemical/thermal process to recover a usable product (smelting, distilling). Examples are in Ch. 2, Table 1.



DSW Rule - Major Regulatory Themes

1. Exclusions for HSM's that are legitimately recycled:
 - **“generator controlled”** exclusion
 - **“verified recycler”** exclusion – outside of the property/company to a 3rd party recycler
 - **“remanufacturing”** exclusion – high value solvents.
2. New variance procedures (termed “non-waste determinations” under the rule) for:
 - HSMs reclaimed in a continuous industrial **process**
 - HSMs **indistinguishable from a product** or intermediate
 - **Partially-reclaimed** HSMs



DSW Rule - Major Regulatory Themes

3. Codified definition of legitimacy for HW reclamation/recycling.
 - Applied previously from EPA guidance. See RCRA Online #11426.
 - For generators managing their HSMs under the **generator-controlled exclusion**, you must document compliance with the recycling legitimacy requirement **on-site**.
 - For generators managing their HSMs under the **verified recycler exclusion**, the recycling facility must have an **approved variance** to recycle excluded HSMs.



4 Steps in Seeking the DSW exclusion

1. Is my facility recycling/reclaiming a hazardous waste stream?
2. Is a DSW exclusion or DSW variance procedure applicable to my material or process?
 - a) If seeking a DSW exclusion, can I meet the **conditions** for the exclusions?
 - b) If seeking a DSW variance, can I meet the agency **decision criteria** required for the variance?
3. Does the exclusion or variance sought require a **recycling legitimacy determination**?
4. Have I **documented** #2 and #3 so that I am ready to notify DEQ (for exclusions) or apply for the variance?



Generator-Controlled Exclusion (1 of 2)

- “Generator-controlled” exclusion for HSMs
 - **Ch. 2, 008.25** which incorporates by reference **40 CFR 261.4(a)(23)**. Covers:
 - At the generating facility - **261.4(a)(23)(i)(A)**
 - At different facilities by the same “person” (definition in Ch 1. 097) - **261.4(a)(23)(i)(B)**
 - Under a “tolling agreement” - **261.4(a)(23)(i)(C)**
 - A tolling agreement is a written certification that the HSM is used to manufacture a product or intermediate.



Generator-Controlled Exclusion (2 of 2)

- Generator requirements – **Ch. 2, 008.25** and **40 CFR 261.4(a)(23)(ii)(A-F)**.
 - A. Material is “contained” under **Ch. 1, 023**.
 - B. Not speculatively accumulated under Ch. 2, 002.07 (75% material turnover per year).
 - C. Notice given under **Ch. 5, 008** (using EPA Form 8700-12).
 - D. Not otherwise subject to material-specific management conditions (applying to excluded wastes).
 - E. On-site documentation of **legitimate recycling** under **Ch. 5, 009**.
 - F. Emergency preparedness and response conditions under **Ch. 3, 025** (IBR of 40 CFR Part 261, Subpart M).



Verified Recycler Exclusion (1 of 3)

- Hazardous secondary material transferred to a 3rd party for recycling.
- A verified recycler must have either:
 - a RCRA part B permit; OR
 - obtained a state or EPA **variance** from the permit requirement under Ch. 5.
- For generators, the requirements are in **Chapter 2, 008.26** which incorporates by reference **40 CFR 261.4(a)(24)**.



Verified Recycler Exclusion (2 of 3)

- Generator requirements – **Chapter 2, 008.26 / 40 CFR 261.4(a)(24)(i-vii)**.
- All of the generator-controlled requirements apply **plus:**
 - HSM is not handled by anyone other than the generator, transporter, or reclaimer and not stored > 10 days. **261.4(a)(24)(ii)**.
 - 3 years of records for all off-site shipments. **261.4(a)(24)(v)(C & D)**.
 - Manage the HSM in a manner at least as protective of the environment as analogous raw material. **261.4(a)(24)(v)(E)**.



Verified Recycler Exclusion (3 of 3)

- For verified recyclers, the requirements are in **Ch. 5, 001.05A-F** and require an approved variance.
- Agency decision criteria for variance:
 - A. Demonstrate the recycling is legitimate.....more later**
 - B. Have financial assurance under Ch. 3, 022 (IBR of 40 CFR Part 261, Subpart H)
 - C. No formal enforcement actions in past 3 years
 - D. Emergency preparedness and response conditions
 - E. Must manage hazardous residuals as hazardous waste
 - F. Facility must address the risk of release to proximate populations.



Remanufacturing Exclusion (1 of 3)

- High-value solvents processed for a “similar functional purpose as the original commercial grade material.”
- The exclusion is proposed for **Chapter 2, 008.27** which incorporates by reference **40 CFR 261.4(a)(27)(i-vi)**.
- Requirements of **40 CFR 261.4(a)(27)(i-vi)**:
 - i. HSM must be in the list of specific eligible solvents
 - ii. Must originate from:
 - Pharmaceutical manufacturing (NAICS 325412)
 - Organic chemical manufacturing (NAICS 325199)
 - Plastic and resins manufacturing (NAICS 325211)
 - Paints and coatings manufacturing (NAICS 325510)
 - iii. After remanufacture, must be further used in the 4 industrial sectors listed above.



Remanufacturing Exclusion (2 of 3)

- iv. The use “shall be limited to reacting, extracting, purifying, or blending chemicals.....or to using them as ingredients in a product.”
- v. CANNOT be used for cleaning or degreasing
- vi. Must notify NDEQ every 2 years, have a remanufacturing plan, keep records for 3 years, and not accumulate speculatively.



Remanufacturing Exclusion (3 of 3)

- vi. (continued) Store in tanks and containers that meet the requirements of 40 CFR §261, Subparts I and J and comply with applicable Clean Air Act regulations.

Other items of note:

- NO legitimacy showing required
- Inter- or intra-company transfers allowed



“Contained” Standard

A requirement of **generator controlled and verified recycler exclusions** (remanufacturing exclusion has slightly higher standards under §261, Subparts I and J) proposed for **Ch. 1, 023**:

1. No leaks or releases to the environment and designed to prevent releases.
2. Adequately labeled to identify HSM contents.
3. The unit is compatible with its HSM contents and addresses release risks.
4. Units meeting standards for TSDs are presumptively contained. (Part 264 & 265)



“Land-Based Units”

- “Contained” standard includes “land-based units” which is a new definition proposed for **Ch. 1, 081**:
- “means an area where hazardous secondary materials are placed in or on the land before recycling.”
- Must notify using the EPA Site ID form (8700-12) and enter unit code from instructions.
- Expect a compliance assistance discussion or inspection by NDEQ if using these units.



Variations / Non-Waste Determinations

- A “variance” is a case-specific exception to regulation that must be sought through agency procedural rules in Chapter 5.
- 3 new variance procedures (termed “non-waste determinations”):
 - Partially-reclaimed HSMs – **Ch. 5, 001.04**
 - HSMs reclaimed in a continuous industrial process – **Ch. 5, 004.02**.
 - HSMs which are indistinguishable from a product or intermediate – **Ch. 5, 004.03**.



Variations / Non-Waste Determinations

Decision criteria for “partially-reclaimed” HSMs – **Ch. 5, 001.04A-E:**

- A. Whether the degree of partial reclamation the material has undergone is substantial.
- B. Whether the material has sufficient economic value for further reclamation.
- C. Whether the partially-reclaimed material is a viable substitute for virgin or raw materials.
- D. Whether a market and known customers exist for the partially-reclaimed material.
- E. Whether the partially-reclaimed material is handled to minimize loss.



Variations / Non-Waste Determinations

Decision criteria for HSMs reclaimed in a **continuous industrial process – Ch. 5, 004.02:**

- A. Whether use of the material is a part of the production **process** and not waste treatment.
- B. Whether the **process** uses the material in a reasonable time frame.
- C. Whether hazardous constituents are reclaimed rather than released to the environment (using a statistical or health risk-based analysis).
- D. Other relevant factors.



Variations / Non-Waste Determinations

Decision criteria for HSMs which are indistinguishable from a **product or intermediate** – **Ch. 5, 004.03**:

- A. Whether market participants treat the waste as a product or intermediate rather than a waste.
- B. Whether the material is chemically and physically comparable to commercial products or intermediates.
- C. Whether markets would use the HSMs in a reasonable time frame and not abandon them.
- D. Whether hazardous constituents are reclaimed rather than released to the environment (using a statistical or health risk-based analysis).
- E. Other relevant factors.



Variations / Non-Waste Determinations

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 using the EPA Site ID form (8700-12).



Legitimate Recycling of HSMs

The Legitimacy Standard includes 4 factors (must address all) proposed for **Ch. 5, 009.01A-D**:

- A. Hazardous secondary material must provide a useful contribution to the recycling process or to a product or intermediate (5 scenarios).
- B. Recycling must produce a valuable product or intermediate (sold to 3rd party or used as an effective substitute for a product or intermediate).
- C. Hazardous secondary material must be managed as valuable commodities (equally protective).
- D. The product of recycling must be comparable to a legitimate product or intermediate.

A prohibition on sham recycling is also codified.



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 - b) If seeking a DSW variance, can I meet the **factor tests** required for the variance?
3. Does the exclusion or variance sought require a **recycling legitimacy determination**?
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Public Participation in 40 C.F.R. 124

- 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 – **Ch. 13, 016**
 2. Information repository – **Ch. 13, 018**



Public Participation in 40 C.F.R. 124

1. **Pre-application public meeting & notice – Ch. 13, 016**
 - “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 – Ch. 13, 018**
 - “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

- 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.
- Definition for CRT exporter - **Chapter 1, 031**.
- Requirements - **Chapter 3, 019.01E** and **021**.



Typographical Corrections

Most of the corrections fall into one of the following areas:

- Treatment Concentrations for wastes subject to Land Disposal Restrictions in Ch. 20, Table 9.
- Clarify that "Equivalent Technology" approval for hazardous waste treatment is under the requirements of 40 CFR 268.42(b) and non-delegable to states.
- Correct/clarify citations and references to federal regulations.



???Questions???

My contact information:

Brian McMullen, NDEQ

402-471-0270

brian.mcmullen@nebraska.gov