

**Inspection Checklist Tool for Facilities Generating and Recycling  
Hazardous Secondary Materials (HSM)**

**Version 1.0  
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**DISCLAIMER:** This checklist is an inspection support tool provided by the U.S. Environmental Protection Agency (EPA), primarily for use by EPA regions and states, but may also be used by the regulated community. This checklist is not a regulation and, therefore, does not add, eliminate or change any existing regulatory requirements. The statements in this document are intended solely as guidance. This document is not intended, nor can it be relied on, to create any rights enforceable by any party in litigation with the United States. EPA and State officials may decide to follow the guidance provided in this document, or to act at variance with the guidance, based on analysis of specific-site circumstances. This guidance may be revised without public notice to reflect changes in EPA's policy.

Should any member of the regulated community have any questions concerning the use of this inspection tool or any questions concerning RCRA, please contact your authorized state office or the appropriate EPA regional office.

## **Introduction**

The United States Environmental Protection Agency (EPA) Office of Resource Conservation and Recovery (ORCR), in conjunction with the Office of Enforcement and Compliance Assurance (OECA), has developed the enclosed pre-inspection and inspection guidance tool to assist EPA and state waste inspectors in evaluating a generator's compliance with RCRA requirements governing the recycling of hazardous secondary materials (HSM), and/or evaluating compliance with applicable RCRA regulations by a facility receiving and recycling this material. ORCR and OECA plan to update and improve this guidance periodically based on feedback and ideas from the user community.

This guidance tool consists mainly of a series of checklists that address the recycling of hazardous secondary materials. Some of these checklists address regulations for hazardous secondary materials such as characteristic sludges and byproducts that were promulgated in the January 1985 Definition of Solid Waste (DSW) rule (hereafter referred to as the "1985 DSW rule.") Other checklists address the regulations for recycling hazardous secondary materials such as listed byproducts and sludges, and spent materials that were promulgated in the October 2008 rule (hereafter referred to as the "2008 DSW rule"). Rarely will all of the enclosed checklists apply to an individual facility. These checklists provide a reference to current federal regulatory requirements governing the recycling of many wastes. These checklists, and associated appendices, are built around the federal regulatory program. Note: state regulations may be more stringent than the federal program.

This guidance tool is designed to help inspectors prepare for a facility inspection involving the recycling of a hazardous secondary material. This guidance provides the inspector with questions for facility officials and areas of inquiry when inspectors are gathering information to assess a facility's compliance status. For example, in the case of a recyclable hazardous secondary material and whether the material is excluded from the RCRA definition of a solid waste under the 2008 rule, the questions in this guidance focus on the regulatory requirements and whether the facility meets all the conditions of the exclusion.

In some instances, other tools may be necessary to complete the inspection preparation process. For example, this tool does not include a compliance checklist for the management of hazardous waste residuals generated from the recycling process that are subject to RCRA regulation or other wastes at the facility which may be subject to RCRA regulation. Many states and EPA regions already have inspection checklists for these other areas. In still other instances, inspectors may require RCRA 3007 information collection requests to gather additional information in order to fully assess a facility's compliance with RCRA.

### RCRA Definition of Solid Waste Regulatory Program

RCRA's DSW program governs the recycling of hazardous secondary materials. In order for a hazardous secondary material to be subject to RCRA as a hazardous waste, the material must first be a solid waste. Whether a material is a solid waste depends on two variables: (1) the type of secondary material generated by a manufacturing or service industry facility (e.g., characteristic byproduct, spent material) and (2) how the material is recycled (e.g., direct use,

reclamation). However, even if the material is determined to be a hazardous secondary material conditionally excluded from the definition of solid waste, both generators and handlers still have certain regulatory responsibilities. See EPA's [Definition of Solid Waste Website](#) for additional information related to the DSW regulatory program.

Complicating this framework is how the recycled product is used or reused and whether the recycling process is legitimate. For example, an otherwise excluded material may be a RCRA solid waste if the recycled product is burned for energy recovery, or used in a manner constituting disposal. Similarly, a generator or a facility recycling an excluded material may find the material to be a solid waste if it is speculatively accumulated.

Equally important is whether the material has been recycled legitimately. Through the years, EPA has issued guidance and regulatory interpretations as to what constitutes legitimate recycling. The final Revisions to the Definition of Solid Waste rule, promulgated on October 30, 2008, goes one step further in codifying the legitimacy factors for the secondary materials in that rule. A discussion of these criteria, as well as the methods for determining legitimacy for materials not covered by that exclusion, is found in Appendix E.

### Organization of the Guidance Tool

There are four major sections to the enclosed tool:

- Section 1 is a cover sheet on which the inspector can describe the demographics of the facility to be visited. It includes such questions as the name and address of the facility and type of RCRA regulated facility, if appropriate (e.g., conditionally exempt small quantity generator, small quantity generator, large quantity generator, or exempt or regulated recycling facility).
- Section 2 includes a series of questions to help the inspector better understand facility operations and determine if the hazardous secondary material (HSM) generated from its operations is a solid waste or not and if it is being recycled. The answers to these questions help establish which regulations apply to the management of the material.
- Section 3 contains two tables to help the inspector identify the type of HSM generated and recycled, the quantity of HSM recycled, and whether that recycling takes place on-site or off-site. The table in Section 3a focuses on generators and the one in Section 3b focuses on the recycling facility.
- Section 4 provides a series of individual checklists for the different types of HSM being recycled.
  - Checklists 1–4 and 8 include the provisions for the regulations in the original 1985 Definition of Solid Waste rule, which excluded from RCRA regulation certain hazardous secondary materials when legitimately recycled (e.g., characteristic sludges and byproducts, and commercial chemical products), while regulating other hazardous secondary materials when legitimately recycled (e.g., listed byproducts and

sludges, and spent materials). For reference, checklists 1–4 and 8 are labeled as the “1985 DSW Rule.”

- Checklists 5–7 include the provisions from the revisions promulgated in 2008, which conditionally excluded hazardous secondary materials (e.g., spent materials and listed byproducts and sludges) when legitimately reclaimed. Checklists 5–7 are labeled as the “2008 DSW Rule.” Note that the 2008 DSW rule is only effective in states without RCRA authorized programs and in states that have chosen to adopt the rule.

For each of the individual checklists, the specific conditions necessary for the HSM to be excluded from the definition of solid waste are identified, along with the specific federal regulatory citation. Regulatory citations can be found in Title 40 of the Code of Federal Regulations (CFR), unless otherwise specified.<sup>1</sup> In several instances, appendices are cited to help describe and support a particular regulatory citation. These are found in the back of the document.

### How to Use This Guidance Tool

This guidance tool is designed for inspectors who inspect facilities that recycle hazardous secondary materials (e.g., generators of HSM and facilities that receive and process/recycle HSM). How you use this tool will most likely vary based on your experience and familiarity with the definition of solid waste regulatory program. Experienced inspectors may use this tool as a simple reference document or a pre-inspection guidance tool to recall particular pieces of information they may need prior to actually inspecting the facility, including specific regulatory components that are necessary for the facility to be in compliance with the definition of solid waste regulations. Other inspectors, particularly new inspectors, may use this guidance tool and associated checklists to collect and record information and observations made during inspections. Information and observations contained in a completed checklist will help the inspector write a comprehensive inspection report and make it easier for compliance determinations to be made.

Notification data from the *Revisions to the Definition of Solid Waste* final rule will also assist with pre-planning efforts. Under the 2008 rule, facilities managing hazardous secondary materials under 40 CFR §§261.2(a)(2)(ii), 261.4(a)(23), (24), and (25) must notify their regulatory authorities prior to managing materials under the rule and every other year thereafter using the RCRA Subtitle C Site Identification form (“Site ID form”). The notification includes information such as facility type (e.g., reclaimer, generator, intermediate facility), type and quantity of hazardous secondary materials managed, and whether the facility is managing the materials in a land-based unit. This information provides basic information about the facility that can be used when assessing compliance with the DSW rule.

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<sup>1</sup> Note: We did not develop checklists for hazardous secondary materials addressed under 40 CFR 261.6, such as lead acid batteries, precious metals, etc.

To find this information:

- Log into [RCRAInfo](#) and click on “Handler” under “National and Implementer Reports”.
- Scroll down the page to see the list of “Hazardous Secondary Material” reports.
- A particularly helpful report is the “List of Facilities that are Managing HSM.” This report will bring up a snapshot of information regarding all facilities that fit your selection criteria.
- Note: The facility code on this report will help you to determine which “tear-out” checklist applies to the facility you will be inspecting. For example, a facility listing a facility code of “01” or “HSM generator reclaiming HSM onsite” means you would need to use the checklist found in Section 8. Facility codes are used by a facility to identify their facility type on the Site ID form; you can find specific facility codes by using the lookup table found on the second page of the report.

Whether a new or experienced inspector, a key inquiry is to determine the type(s) of hazardous secondary materials that are generated and/or recycled. A review of available information gathered during the pre-inspection phase will help answer that question. The inspector will be able to use a particular checklist(s) for that hazardous secondary material. Most of the checklists are one or two pages that can be easily printed out prior to the inspection.

Each checklist has four columns: the specific federal regulatory citation; a description of that citation, a comment field to record thoughts or observations, and a yes/no check box. In designing the yes/no boxes, we have put the answer that would indicate that the facility is in compliance with the specific requirement in bold and shaded, where applicable. This should result the inspector’s ability to review a page of the checklist at a glance to determine if follow-up is needed. We have also included a Bottom Line section at the end of each checklist for inspector notes.

As stated above, we view this document as evolving over time as it is used by more inspectors. After using it, please let us know what worked and what did not, and whether we could make improvements that would make a difference to you and your counterparts in the regions and states. You can send your comments to Jim O’Leary at [oleary.jim@epa.gov](mailto:oleary.jim@epa.gov) and Kathy Lett at [lett.kathy@epa.gov](mailto:lett.kathy@epa.gov).

## Table of Contents

Section 1:	Facility Information
Section 2:	Overview of Manufacturing Process and HSM Characterization
Section 3a:	Identification and Quantification of HSMs being Generated and Recycled (Generators Only)
Section 3b:	Identification and Quantification of HSMs being Consolidated and/or Recycled (Intermediate and Recycling Facilities Only)
Section 4:	Definition of Solid Waste Checklists 1–8
Checklist 1	Characteristic Sludges and/or Byproducts being Recycled (§261.2(c)(3)) (1985 DSW Rule)
Checklist 2	Commercial Chemical Products being Recycled (§261.33) (1985 DSW Rule)
Checklist 3	Recycling of Scrap Metal that is Not Excluded Under §261.4(a)(13) (1985 DSW Rule)
Checklist 4	Materials Recycled through Use or Reuse (§261.2(e)(1)) (1985 DSW Rule)
Checklist 5	Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) Generated and Recycled Under the Control of the Generator (§261.2(a)(2)(ii) and §261.4(a)(23)) (2008 DSW Rule)
Checklist 6	Recycling of Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) Sent Off-site by a Generator Directly or Via an Intermediate or Partial Reclamation Facility (Transfer-based Exclusion— Generator Conditions) (§261.4(a)(24)–(25)) (2008 DSW Rule)
Checklist 7	Recycling of Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) Sent Off-site by a Generator Directly or Via an Intermediate or Partial Reclamation Facility (Transfer-based Exclusion— Reclaimer/Intermediate Conditions) (§261.4(a)(24)) (2008 DSW Rule)
Checklist 8	Facilities Generating and/or Reclaiming Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) under RCRA Subtitle C (1985 DSW Rule)

### References:

Appendix A:	Specific Exclusions from the Definition of Solid Waste at §261.4(a)
Appendix B:	Discussion of Containment From 2008 DSW Rule Preamble (73 <u>FR</u> 64680, October 30, 2008)
Appendix C:	Definitions at §260.10 for Purposes of October 30, 2008, DSW Rule
Appendix D:	Definition of Speculative Accumulation at §261.1(c)(8)
Appendix E:	Legitimate Recycling
Appendix F:	Use/Reuse at §261.2(e)(1)
Appendix G:	Notification Requirements at §260.42
Appendix H:	Reasonable Efforts Condition at §261.4(a)(24)(v)(B)
Appendix I:	Certification Statement at §261.4(a)(24)(v)(C)
Appendix J:	Exports of HSM at §261.4(a)(25)

### Section 1: Facility Information

Company Name: \_\_\_\_\_

USEPA ID Number \_\_\_\_\_

Facility Type:      CESQG \_\_\_\_\_      SQG \_\_\_\_\_      LQG \_\_\_\_\_  
                         Intermediate \_\_\_\_\_      Partial Reclamation \_\_\_\_\_  
                         Commercial Recycling \_\_\_\_\_

NAICS Code(s) \_\_\_\_\_

Company Product and Services \_\_\_\_\_

Dates of Recent Inspections: \_\_\_\_\_

Do any concerns or violations with recent inspections exist? If so, please attach comments.

Location Address:

Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Mailing Address:

Street: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Inspection Date: \_\_\_\_\_ Time: From \_\_\_\_\_ To \_\_\_\_\_

Lead Inspector: \_\_\_\_\_ Telephone No. \_\_\_\_\_

Other People Present (Name, Title, Organization)	Telephone Number

## Section 2: Overview of Manufacturing Process and HSM Characterization

1. Describe the generator's manufacturing/production operations, and identify all of the waste streams (non-product streams) generated from these operations (use extra sheet if needed). If there are multiple production processes or a single complicated production process, process flow diagrams or other diagrams should be obtained to help describe and understand the process to ensure that all production waste streams are identified. (Intermittently generated streams from equipment cleanout will not likely be identified in the diagrams):

Is the information you have and the generator's explanation of its process sufficient for you to clearly understand the facility's operations and identify what hazardous secondary materials are being generated and recycled?  Y  N

**If YES**      ⇒ Go to Question 2  
**If NO**        ⇒ List follow-up questions to ask:

2. Are any of the waste streams listed in Question 1 hazardous secondary materials?  Y  N

**If YES**      ⇒ Go to Question 3  
**If NO**        ⇒ **STOP**. RCRA Subtitle C does not apply

3. Are the hazardous secondary materials being generated and subsequently recycled on site or shipped off site for recycling?  Y  N

**If YES** ⇒ Go to Question 4 and proceed with this checklist.

**If NO** ⇒ **STOP.** This facility is not recycling a hazardous secondary material and this checklist is not needed. RCRA Subtitle C waste(s) are being generated.

4. For each hazardous secondary material being recycled, what analytical process did the generator use to characterize the hazardous secondary material?

Used knowledge of the manufacturing process and secondary material?  Y  N

Made a determination through proper sampling and analysis of the secondary material?  Y  N

Briefly describe the sampling protocol used:

To the best of your knowledge, is the generator's characterization of its hazardous secondary material correct?  Y  N

4a. Is the facility's HSM being recycled specifically excluded from the definition of solid waste under §261.4(a)(1)–(22)? (See Appendix A for a list of exclusions.)  Y  N

**If YES** ⇒ **STOP.** These checklists are not applicable. Review the description of the specific exclusion to determine what conditions must be met in order for the HSM to be excluded under DSW.

**If NO** ⇒ This checklist is applicable for these materials. When you have completed Question 4 for all hazardous secondary materials being recycled, proceed to Section 3a.

**Section 3a. Identification and Quantification of HSMs being Generated and Recycled  
(Generator Facilities Only)**

List HSM that are generated and recycled?

Type of HSMs	RCRA Waste Code(s)	Quantity Generated and Recycled (tons) for Each Waste Code	Is Recycling Occurring On-Site or Off-Site?	If Off-Site, Identify the Type Using Codes Below
Characteristic Byproducts or Sludges	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Commercial Chemical Products	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Scrap metal (other than excluded scrap metal) (See §261.1(c)(9))	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Spent Materials	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____
Listed Byproducts or Sludges	_____ _____ _____	_____ _____ _____	_____ _____ _____	_____ _____ _____

- 1–Off-site facility under the control of the generator
- 2–Off-site recycling occurring under a tolling agreement
- 3–Off-site intermediate/consolidation facility followed by recycling at commercial recycling facility
- 4–Off-site partial reclamation facility<sup>2</sup> followed by recycling at commercial recycling facility
- 5–Commercial recycling facility
- 6–Other (please identify)

Note: Please attach additional sheets if insufficient space exists to complete Table 3a.

<sup>2</sup> A partial reclamation facility accepts hazardous secondary metal-bearing materials containing recoverable amounts of copper, chromium, and nickel that they, in turn, de-water and consolidate to produce commodity-like materials that they sell to primary mineral processing facilities for final reclamation.

**Section 3b. Identification and Quantification of HSMs being Consolidated and/or Recycled**  
 (Intermediate and Recycling Facilities Only)

Type of HSMs	RCRA Waste Code(s)	Quantity Consolidated and/or Recycled (tons) for Each Waste Code
Characteristic Byproducts or Sludges	_____ _____ _____ _____	_____ _____ _____ _____
Commercial Chemical Products	_____ _____ _____ _____	_____ _____ _____ _____
Scrap metal (other than excluded scrap metal) (See §261.1(c)(9))	_____ _____ _____ _____	_____ _____ _____ _____
Spent Materials	_____ _____ _____ _____	_____ _____ _____ _____
Listed Byproducts or Sludges	_____ _____ _____ _____	_____ _____ _____ _____

Note: Please attach additional sheets if insufficient space exists to complete Table 3b.

**Section 4: Definition of Solid Waste Checklists 1–8**

**Checklist 1: Characteristic Sludges and/or Byproducts being Recycled (§261.2(c)(3)) (1985 DSW Rule)**

Note: These materials are not solid wastes provided certain conditions are met

Regulatory Citation	Condition of Exclusion	Comments	
§261.2(c)(1) (i)(A)&(B)	Are these materials <b>used in a manner constituting disposal</b> or, once reclaimed, used in a manner constituting disposal? (A) Applied to or placed on the land in a manner that constitutes disposal or (B) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste)? If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(i) and Part 266, subpart C.		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(c)(2) (i)(A)&(B)	Are these materials (A) <b>burned for energy recovery</b> or (B) <b>used to produce a fuel</b> or otherwise contained in fuels (in which case the fuel itself remains a solid waste), or Once reclaimed, (A) burned for energy recovery; or (B) used to produce a fuel or otherwise contained in fuels (in which case the fuel itself remains a solid waste)? If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(ii) and Part 266, subpart H.		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(a)(2)	Are the HSM being <b>released</b> into the environment?		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.1(c)(8)	Does the generator <b>maintain records</b> on the volume of recyclable materials generated per month and the volume recycled per month? Is the hazardous secondary material <b>speculatively accumulated</b> , as defined in §261.1(c)(8)? See Appendix D.		<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
Legitimate Recycling	Is the recycling/reclamation of the characteristic sludges and byproducts <b>legitimate</b> ? See Appendix E.		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§262.11	Are any <b>residuals</b> generated from the recycling process? Are they characterized correctly? If hazardous wastes, are the materials managed in a manner consistent with all applicable RCRA regulations?		<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N

Comments:

**Bottom Line:** Does the facility meet all of the conditions for characteristic sludges or byproducts being recycled at §261.2(c)(3)?

**Checklist 2: Commercial Chemical Products being Recycled (§261.33) (1985 DSW Rule)**

Note: These materials are not solid wastes provided certain conditions are met

Regulatory Citation	Condition of Exclusion	Comments	
§261.2(c)(1) (i)(A)&(B)	<p>Are these materials <b>used in a manner constituting disposal</b> or, once reclaimed, used in a manner constituting disposal?                      (A) Applied to or placed on the land in a manner that constitutes disposal; or (B) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which case the product itself remains a solid waste)?                      If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(i) and Part 266, subpart C.</p> <p><b>However,</b> commercial chemical products listed in §261.33 are <u>not</u> solid wastes if they are applied to the land and that is their ordinary manner of use</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(c)(2) (i)(A)&(B)	<p>Are these materials (A) <b>burned for energy recovery</b> or (B) <b>used to produce a fuel</b> or otherwise contained in fuels (in which case the fuel itself remains a solid waste), or Once reclaimed, (A) burned for energy recovery; or (B) used to produce a fuel or otherwise contained in fuels (in which case the fuel itself remains a solid waste)?                      If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(ii) and Part 266, subpart H.</p> <p><b>However,</b> commercial chemical products listed in §261.33 are <u>not</u> solid wastes if they are themselves fuels.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(a)(2)	Are the HSM being <b>released</b> into the environment?		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
Legitimate Recycling	Is the recycling/reclamation of the commercial chemical products <b>legitimate</b> ? See Appendix E.		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§262.11	<p>Are any <b>residuals</b> generated from the recycling process?                      Are they characterized correctly?                      If hazardous wastes, are the materials managed in a manner consistent with all applicable RCRA regulations?</p>		<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N

Comments:

**Bottom Line:** Does the facility meet all of the conditions at §261.33 for commercial chemical products being recycled?

**Checklist 3: Recycling of Scrap Metal that is Not Excluded Under §261.4(a)(13) (1985 DSW Rule)**

Regulatory Citation	Condition of Exclusion	Comments	
§261.2(c)(1) (i)(A)&(B)	Are these materials <b>used in a manner constituting disposal</b> or, once reclaimed, used in a manner constituting disposal? (A) Applied to or placed on the land in a manner that constitutes disposal; or (B) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which case the product itself remains a solid waste)? If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(i) and Part 266, subpart C.		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(c)(2) (i)(A)&(B)	Are these materials (A) <b>burned for energy recovery</b> or (B) <b>used to produce a fuel</b> or otherwise contained in fuels (in which case the fuel itself remains a solid waste), or Once reclaimed, (A) burned for energy recovery; or (B) used to produce a fuel or otherwise contained in fuels (in which case the fuel itself remains a solid waste)? If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(ii) and Part 266, subpart H.		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(a)(2)	Are the HSM being <b>released</b> into the environment?		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.1(c)(8)	Does the generator <b>maintain records</b> on the volume of recyclable materials generated per month and the volume recycled per month? Is the hazardous secondary material <b>speculatively accumulated</b> , as defined in §261.1(c)(8)? See Appendix D.		<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
Legitimate Recycling	Is the recycling/reclamation of the scrap metal <b>legitimate</b> ? See Appendix E.		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§262.11	Are any <b>residuals</b> generated from the recycling process? Are they characterized correctly? If hazardous wastes, are the materials managed in a manner consistent with all applicable RCRA regulations?		<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N

Comments:

**Bottom Line:** Does the facility meet the regulatory requirements at §261.4(a)(13) for the recycling of scrap metal that is not excluded?

**Checklist 4: Materials Recycled through Use or Reuse (§261.2(e)(1)) (1985 DSW Rule)**

Note: These materials are not solid waste when recycled.

Regulatory Citation	Condition of Exclusion	Comments	
§261.2(c)(1)(i)(A)&(B)	<p>Are these materials <b>used in a manner constituting disposal</b>?</p> <p>(A) Applied to or placed on the land in a manner that constitutes disposal; or (B) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which case the product itself remains a solid waste)?</p> <p>If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(i) and Part 266, subpart C.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(c)(2)(i)(A)&(B)	<p>Are these materials (A) <b>burned for energy recovery</b> or (B) <b>used to produce a fuel</b> or otherwise contained in fuels (in which case the fuel itself remains a solid waste)?</p> <p>If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(ii) and Part 266, subpart H.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(a)(2)	<p>Are the HSM being <b>released</b> into the environment?</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.1(c)(8)	<p>Does the generator <b>maintain records</b> on the volume of recyclable materials generated per month and the volume recycled per month?</p> <p>Is the hazardous secondary material <b>speculatively accumulated</b>, as defined in §261.1(c)(8)? See Appendix D.</p>		<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
Legitimate Recycling	<p>Is the recycling of the HSM <b>legitimate</b>, as described in §260.43? See Appendix E.</p>		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§262.11	<p>Are any <b>residuals</b> generated from the recycling process?</p> <p>Are they characterized correctly?</p> <p>If hazardous wastes, are the materials managed in a manner consistent with all applicable RCRA regulations?</p>		<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N

Comments:

**Bottom Line:** Does the facility meet the regulatory requirements at §261.2(e) for HSM recycled through use/reuse?

**Checklist 5: Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) Generated and Recycled Under the Control of the Generator (§261.2(a)(2)(ii) and §261.4(a)(23)) (2008 DSW Rule)**

Regulatory Citation	Condition of Exclusion	Comments	
§261.2(c)(1)(i)(A)&(B)	<p>Are these materials <b>used in a manner constituting</b> disposal or once reclaimed, used in a manner constituting disposal?                      (A) Applied to or placed on the land in a manner that constitutes disposal; or (B) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste)?                      If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(i) and Part 266, subpart C.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(c)(2)(i)(A)&(B)	<p>Are these materials (A) <b>burned for energy recovery</b> or (B) <b>used to produce a fuel</b> or otherwise contained in fuels (in which case the fuel itself remains a solid waste), or Once reclaimed, (A) burned for energy recovery; or (B) used to produce a fuel or otherwise contained in fuels (in which case the fuel itself remains a solid waste)?                      If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(ii) and Part 266, subpart H.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(a)(2)(ii)/§261.4(a)(23)(i)	<p>Is the HSM <b>contained</b> in units that control any movement of the hazardous secondary material out of the unit? See Appendix B.</p>		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§261.2(a)(2)(ii)/§261.4(a)(23)(ii)	<p>Is the HSM generated and reclaimed <b>under the control of the generator</b>, as defined in §260.10?                      Does the generator have signed certifications, as applicable? See Appendix C.</p>		<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§261.2(a)(2)(ii)/§261.4(a)(23)(iii)	<p>Does the generator <b>maintain records</b> on the volume of recyclable materials generated per month and the volume recycled per month?                      Is the hazardous secondary material <b>speculatively accumulated</b>, as defined in §261.1(c)(8)? See Appendix D.</p>		<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(a)(2)(ii)/§261.4(a)(23)(iv)	<p>Is the HSM subject to <b>material-specific management conditions</b> under paragraph (a) of this section when reclaimed?                      Is the HSM a spent lead acid battery (see §266.80 and §273.2)?                      Does the HSM meet the listing description of K171 and K172 in §261.32?</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(a)(2)(ii)/§261.4(a)(23)(v)	<p>Is the reclamation of the HSM <b>legitimate</b>, as specified in §260.43? See Appendix E.</p>		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§261.2(a)(2)(ii)/§261.4(a)(23)(vi)	<p>Has the facility <b>notified/re-notified</b> their authorized state or EPA Region that they are taking advantage of this exclusion as required by §260.42? See Appendix G.</p>		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N

**Checklist 5: Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) Generated and Recycled Under the Control of the Generator (§261.2(a)(2)(ii) and §261.4(a)(23)) (2008 DSW Rule)**

§262.11	Are any <b>residuals</b> generated from the recycling process? Are they characterized correctly? If hazardous wastes, are the materials managed in a manner consistent with all applicable RCRA regulations?		<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§260.10	Is the generator using a tolling agreement to recycle his HSM? If so, does a written contract exist between the tolling contractor and tolling manufacturer, including reclamation of HSM by the tolling contractor that was generated by the tolling manufacturer as specified in §260.10?		<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N

Note: When generated and recycled under the control of the generator, hazardous secondary materials managed only in non-land-based units are subject to the exclusion at §261.2(a)(2)(ii), whereas hazardous secondary materials that are managed in land-based units during the recycling process are subject to the exclusion at §261.4(a)(23).

Comments:

**Bottom Line:** Does the facility meet all of the conditions for the exclusion at §261.2(a)(2)(ii) or §261.4(a)(23)?

**Checklist 6: Recycling of Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) Sent Off-site by a Generator Directly or Via an Intermediate or Partial Reclamation Facility (§261.4(a)(24)–(25)) (2008 DSW Rule)**

**(Transfer-based Exclusion—Generator Conditions)**

Regulatory Citation	Condition of Exclusion	Comments	
§261.2(c)(1)(i)(A)&(B)	<p>Are these materials <b>used in a manner constituting disposal</b> or, once reclaimed, used in a manner constituting disposal?</p> <p>(A) Applied to or placed on the land in a manner that constitutes disposal; or (B) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste)?</p> <p>If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(i) and Part 266, subpart C.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(c)(2)(i)(A)&(B)	<p>Are these materials (A) <b>burned for energy recovery</b> or (B) <b>used to produce a fuel</b> or otherwise contained in fuels (in which case the fuel itself remains a solid waste), or</p> <p>Once reclaimed, (A) burned for energy recovery; or (B) used to produce a fuel or otherwise contained in fuels (in which case the fuel itself remains a solid waste)?</p> <p>If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(ii) and Part 266, subpart H.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.4(a)(24)(i)	<p>Does the generator <b>maintain records</b> on the volume of recyclable materials generated per month and the volume recycled per month?</p> <p>Is the hazardous secondary material <b>speculatively accumulated</b>, as defined in §261.1(c)(8)? See Appendix D.</p>		<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.4(a)(24)(ii)	<p>Is the HSM handled by any person or facility other than the hazardous secondary material generator, the transporter, an intermediate facility or a reclaimer?</p> <p>While in transport, is the HSM stored for more than 10 days at a transfer facility, as defined in §260.10?</p> <p>Is the HSM packaged according to applicable Department of Transportation regulations at 49 CFR parts 173, 178, and 179 while in transport?</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§261.4(a)(24)(iii)	<p>Is the HSM subject to material-specific <b>management conditions</b> under paragraph (a) of this section when reclaimed?</p> <p>Is the HSM a spent lead acid battery (see §266.80 and §273.2)?</p> <p>Does the HSM meet the listing description of K171 and K172 in §261.32?</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.4(a)(24)(iv)	<p>Is the reclamation of the HSM <b>legitimate</b>, as specified in §260.43? See Appendix E.</p>		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§261.4(a)(24)(v)(A)	<p>Is the HSM <b>contained</b> in units that control any movement of the hazardous secondary material out of the unit? See Appendix B.</p>		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N

**Checklist 6: Recycling of Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) Sent Off-site by a Generator Directly or Via an Intermediate or Partial Reclamation Facility (§261.4(a)(24)–(25)) (2008 DSW Rule)**

**(Transfer-based Exclusion—Generator Conditions)**

<p>§261.4(a) (24)(v)(B)</p>	<p>Prior to arranging for transport of HSM to a reclamation facility (or facilities) where the management of the HSM is not addressed under a RCRA Part B permit or interim status standards, did the HSM generator make <b>reasonable efforts</b> to ensure that each reclaimer intends to properly and legitimately reclaim the HSM and not discard it, and that each reclaimer will manage the HSM in a manner that is protective of human health and the environment? See Appendix H.</p> <hr/> <p>Does the HSM pass through an <b>intermediate facility</b> where the management of the HSMs is not addressed under a RCRA Part B permit or interim status standards? If so, (a) did the HSM generator make contractual arrangements with the intermediate facility to ensure that the HSM is sent to the reclamation facility identified by the HSM generator? (b) did the HSM generator perform reasonable efforts to ensure that the intermediate facility will manage the HSM in a manner that is protective of human health and the environment?</p> <hr/> <p>Did the HSM generator <b>repeat the reasonable efforts</b> at a minimum of every three years so that the generator can claim the exclusion and continue to send the HSM to each reclaimer and any intermediate facility? Was the evidence used to conduct reasonable efforts credible? List sources, if known. Did the HSM generator affirmatively answer all questions found in Appendix H for each reclamation facility and any intermediate facility?</p>	<p><input checked="" type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input checked="" type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p>
<p>§261.4(a) (24)(v)(C)</p>	<p>Does the HSM generator maintain for a minimum of three (3) years <b>documentation and certification</b> that reasonable efforts were made for each reclamation facility and, if applicable, intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards prior to transferring hazardous secondary material? See Appendix I. Were <b>documentation and certification made available</b> upon request by a regulatory authority within 72 hours after the request, or within a longer period of time as specified by the regulatory authority?</p>	<p><input checked="" type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input checked="" type="checkbox"/> Y <input type="checkbox"/> N</p>

**Checklist 6: Recycling of Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) Sent Off-site by a Generator Directly or Via an Intermediate or Partial Reclamation Facility (§261.4(a)(24)–(25)) (2008 DSW Rule)**

**(Transfer-based Exclusion—Generator Conditions)**

<p>§261.4(a)(24)(v)(D)</p>	<p>Does the HSM generator <b>maintain records</b> of all off-site shipments of hazardous secondary materials at the generating facility for no less than three (3) years?</p> <p>For each shipment, did these records, at a minimum, contain the following information?</p> <p>(1) Name of the transporter and date of the shipment?</p> <p>(2) Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent?</p> <p>(3) The type and quantity of hazardous secondary material in the shipment?</p>		<p><input type="checkbox"/> Y <input type="checkbox"/> N</p>
<p>§261.4(a)(24)(v)(E)</p>	<p>Does the HSM generator maintain at the generating facility for no less than three (3) years <b>confirmations of receipt</b> from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of hazardous secondary materials?</p> <p>Do confirmations of receipt include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received?</p> <p><b>How was this requirement satisfied</b> (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations of receipt)?</p>		<p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p>
<p>§261.4(a)(25)</p>	<p>Does the HSM generator <b>export</b> from the United States and reclaim the HSM at a reclamation facility located in a foreign country?</p> <p>If so, did the HSM generator comply with the applicable requirements of paragraph (a)(24)(i)–(v) of this section (excepting paragraph (a)(v)(B)(2) of this section for foreign reclaimers and foreign intermediate facilities), and did the HSM generator also comply with the notification, recordkeeping, and reporting requirements in §261.4(a)(25)? See Appendix J.</p>		<p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p>

Comments:

**Bottom Line:** Does the facility meet all of the conditions for the exclusion at §261.4(a)(24) and/or §261.4(a)(25)?

**Checklist 7. Recycling of Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) Sent Off-Site by a Generator Directly or Via an Intermediate or Partial Reclamation Facility (§261.4(a)(24)) (2008 DSW Rule)**

**(Transfer-based Exclusion—Reclaimer/Intermediate Conditions)**

Regulatory Citation	Condition of Exclusion	Comments	
§261.2(c)(1)(i)(A)&(B)	<p>Are these materials <b>used in a manner constituting disposal</b> or, once reclaimed, used in a manner constituting disposal?</p> <p>(A) Applied to or placed on the land in a manner that constitutes disposal; or (B) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste)?</p> <p>If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(i) and Part 266, subpart C.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(c)(2)(i)(A)&(B)	<p>Are these materials (A) <b>burned for energy recovery</b> or (B) <b>used to produce a fuel</b> or otherwise contained in fuels (in which case the fuel itself remains a solid waste), or</p> <p>Once reclaimed, (A) burned for energy recovery; or (B) used to produce a fuel or otherwise contained in fuels (in which case the fuel itself remains a solid waste)?</p> <p>If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(ii) and Part 266, subpart H.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.4(a)(24)(i)	<p>Does the reclaimer or intermediate facility <b>maintain records</b> on the volume of recyclable materials generated per month and the volume recycled per month?</p> <p>Is the hazardous secondary material <b>speculatively accumulated</b>, as defined in §261.1(c)(8)? See Appendix D.</p>		<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.4(a)(24)(iii)	<p>Is the HSM subject to <b>material-specific management conditions</b> under paragraph (a) of this section when reclaimed?</p> <p>Is the HSM a spent lead acid battery (see §266.80 and §273.2)?</p> <p>Does the HSM meet the listing description of K171 and K172 in §261.32?</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N <input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.4(a)(24)(iv)	<p>Is the reclamation of the HSM <b>legitimate</b>, as specified in §260.43? See Appendix E.</p>		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N

**Checklist 7. Recycling of Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) Sent Off-Site by a Generator Directly or Via an Intermediate or Partial Reclamation Facility (§261.4(a)(24)) (2008 DSW Rule)**

**(Transfer-based Exclusion—Reclaimer/Intermediate Conditions)**

<p>§261.4(a) (24)(vi)(A)</p>	<p>Does the reclaimer and/or intermediate facility <b>maintain records</b> at its facility of all shipments of HSM that were received at the facility and, if applicable, for all shipments of HSMs that were received and subsequently sent off-site from the facility for further reclamation for no less than three (3) years? For each shipment, do these records, at a minimum, <b>contain the following information</b>? (1) Name of the transporter and date of the shipment? (2) Name and address of the HSM generator and, if applicable, the name and address of the reclaimer or intermediate facility which the HSMs were received from? (3) The type and quantity of HSM in the shipment? and (4) For HSMs that, after being received by the reclaimer or intermediate facility, were subsequently transferred off-site for further reclamation, the name and address of the (subsequent) reclaimer and, if applicable, the name and address of each intermediate facility to which the HSM was sent?</p>	<p><input type="checkbox"/> Y <input type="checkbox"/> N</p>
<p>§261.4(a) (24)(vi)(B)</p>	<p>If appropriate, did the intermediate facility send the HSM to the reclaimer(s) designated by the HSMs generator?</p>	<p><input type="checkbox"/> Y <input type="checkbox"/> N</p>
<p>§261.4(a) (24)(vi)(C)</p>	<p>Did the reclaimer and intermediate facility send <b>confirmations of receipt</b> to the HSM generator for all off-site shipments of HSM? Did confirmations of receipt include the name and address of the reclaimer (or intermediate facility), the type and quantity of the hazardous secondary materials received and the date which the hazardous secondary materials were received?</p>	<p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p>
<p>§261.4(a) (24)(vi)(D)</p>	<p>Did the reclaimer and intermediate facility <b>manage the HSM</b> in a manner that is at least as protective as that employed for analogous raw material and was the HSM contained? See Appendix B.</p>	<p><input type="checkbox"/> Y <input type="checkbox"/> N</p>
<p>§261.4(a) (24)(vi)(E)</p>	<p>Are any <b>residuals</b> generated from reclamation processes? Are they characterized correctly? If hazardous wastes, are the materials managed in a manner consistent with all applicable RCRA regulations?</p>	<p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p>
<p>§261.4(a) (24)(vi)(F)</p>	<p>Does the reclaimer and intermediate facility have <b>financial assurance</b> as required under Part 261, subpart H? Do the financial assurance amounts satisfy Subpart H requirements? Is the process used by the facility to calculate financial assurance adequate?</p>	<p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N</p>

**Checklist 7. Recycling of Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) Sent Off-Site by a Generator Directly or Via an Intermediate or Partial Reclamation Facility (§261.4(a)(24)) (2008 DSW Rule)**

**(Transfer-based Exclusion—Reclaimer/Intermediate Conditions)**

§261.4(a) (24)(vii)	Did the reclaimer and intermediate facility provide <b>notification</b> as required under §260.42? See Appendix G.		<input type="checkbox"/> <b>Y</b> <input type="checkbox"/> N
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Comments:

**Bottom Line:** Does the facility meet all of the conditions for the exclusion at §261.4(a)(24)?

**Checklist 8. Facilities Generating and/or Reclaiming Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) under RCRA Subtitle C (1985 DSW Rule —No Applicable Exclusions)**

Regulatory Citation	Regulatory Requirement	Comments	
§261.2(c)(1)(i)(A)&(B)	<p>Are these materials being <b>used in a manner constituting disposal</b> or, once reclaimed, used in a manner constituting disposal?                      (A) Applied to or placed on the land in a manner that constitutes disposal; or (B) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste)?                      If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(i) and Part 266, subpart C.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.2(c)(2)(i)(A)&(B)	<p>Are these materials (A) <b>burned for energy recovery</b> or (B) <b>used to produce a fuel</b> or otherwise contained in fuels (in which case the fuel itself remains a solid waste), or                      Once reclaimed, (A) burned for energy recovery; or (B) used to produce a fuel or otherwise contained in fuels (in which case the fuel itself remains a solid waste)?                      If yes, then the HSM are solid wastes. Go to §261.6(a)(2)(ii) and Part 266, subpart H.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
§261.6(a)(2)(iii) and (iv)	<p>Are these materials recyclable materials from which <b>precious metals</b> are reclaimed <b>or spent lead-acid batteries</b> being reclaimed?                      If yes, go to §266 subpart F or §266 subpart G for the applicable standards.</p>		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N
Parts 262, 264, 265 and 270	<p>Are the hazardous secondary materials being <b>recycled on-site</b>?                      If so, prior to entering the on-site reclamation unit, are the hazardous secondary materials in compliance with all applicable RCRA hazardous waste generator regulations found at Part 262 and, if the materials are stored in permitted units prior to entering the reclamation unit, Parts 264, 265 (interim status facilities) and 270?                       Note: Some regions and states already have compliance lists available for these parts of the RCRA regulations. (If yours does not, go to the Electronic Code of Federal Regulations (<a href="#">E-CFR</a>) for the applicable regulations.)</p>		<input type="checkbox"/> Y <input type="checkbox"/> N  <input checked="" type="checkbox"/> Y <input type="checkbox"/> N
Legitimate Recycling	<p>Is any reclamation of the listed byproducts, sludges, or spent materials <b>legitimate</b>? See Appendix E.</p>		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N

**Checklist 8. Facilities Generating and/or Reclaiming Hazardous Secondary Materials (e.g., listed byproducts and sludges and spent materials) under RCRA Subtitle C (1985 DSW Rule —No Applicable Exclusions)**

Part 262	Are the hazardous secondary materials being <b>recycled off-site</b> ?		<input type="checkbox"/> Y <input type="checkbox"/> N
Part 263	If so, prior to sending off-site, are the hazardous secondary materials in compliance with all applicable RCRA hazardous waste generator regulations found in Part 262? Are the hazardous secondary materials in compliance with the transportation regulations in Part 263? Note: Some regions and states have compliance lists available for these parts of the RCRA regulations. (If yours does not, go to the Electronic Code of Federal Regulations ( <a href="#">E-CFR</a> ) for the applicable regulations.)		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§261.6(c)(2)  Parts 261.6, 264, 270 and 124  Parts 261.6, 265, 270 and 124	For materials recycled off-site, are the hazardous secondary materials <b>stored prior to entering the reclamation process</b> (See §261.6(c)(2))? If <b>no</b> , a RCRA Part B storage permit is not required. Therefore, is the facility in compliance with: - Notification requirements under section 3010 of RCRA? - Use of the manifest at §265.71? - Manifest discrepancies at §265.72? - The air emission standards at Part 264 subparts AA and BB or Part 265 subparts AA and BB? If <b>yes</b> , a Part B permit is required. Therefore, is the recycling facility in compliance with all applicable regulations under §261.6, Part 264, Part 268, Part 270, and Part 124? If the unit/facility is under <b>interim status</b> , is the recycling facility in compliance with all applicable regulations under §261.6, Part 265, Part 268, Part 270, and Part 124? Note: Some regions and states already have compliance lists available for these parts of the RCRA regulations. (If yours does not, go to the Electronic Code of Federal Regulations ( <a href="#">E-CFR</a> ) for the applicable regulations.)		<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N
§262.11	Are any <b>residuals</b> generated from reclamation processes? Are they characterized correctly? If hazardous wastes, are the materials managed in a manner consistent with all applicable RCRA regulations?		<input type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N <input checked="" type="checkbox"/> Y <input type="checkbox"/> N

Comments:

**Bottom Line:** Does the facility meet all the requirements for generating and/or reclaiming hazardous secondary materials under Subtitle C?

## Appendix A

### Specific Exclusions from the Definition of Solid Waste at §261.4(a)

**(1)(i) Domestic sewage and**

**(ii) any mixture of domestic sewage** and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. —Domestic sewage” means untreated sanitary wastes that pass through a sewer system.

**(2) Industrial wastewater discharges** that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended.

**(3) Irrigation return flows.**

**(4) Source, special nuclear or by-product material** as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*

**(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.**

**(6) Pulping liquors ( i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in §261.1(c) of this chapter.**

**(7) Spent sulfuric acid used to produce virgin sulfuric acid,** unless it is accumulated speculatively as defined in §261.1(c) of this chapter.

**(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:**

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

**(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; (ii) Wastewaters** from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in paragraphs (a)(9)(i) and (a)(9)(ii) of this section, so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in part 265, subpart W of this chapter, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: “I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation.” The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Regional Administrator or state Director for reinstatement. The Regional Administrator or state Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

**(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in section 261.24 of this part when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.**

**(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.**

**(12) (i) Oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911—including, but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal**

cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in paragraph (a)(12)(ii) of this section, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under this paragraph (a)(12)(i), where such materials as generated would have otherwise met a listing under subpart D of this part, are designated as F037 listed wastes when disposed of or intended for disposal.

**(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in paragraph (a)(12)(i) of this section. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172.)** Recovered oil does not include oil-bearing hazardous wastes listed in subpart D of this part; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 40 CFR 279.1.

**(13) Excluded scrap metal** (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

**(14) Shredded circuit boards** being recycled provided that they are:

- (i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and
- (ii) Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

**(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.**

**(16) Comparable fuels or comparable syngas fuels** (i.e., comparable/syngas fuels) that meet the requirements of §261.38.

**(17) Spent materials (as defined in §261.1) (other than hazardous wastes listed in subpart D of this part) generated within the primary mineral processing industry from which minerals, acids, cyanide, water, or other values are recovered by mineral processing or by beneficiation, provided that:**

- (i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;
- (ii) The spent material is not accumulated speculatively;

(iii) Except as provided in paragraph (a)(17)(iv) of this section, the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support (except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion), and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment (as defined in 40 CFR 260.10), and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Regional Administrator or State Director may make a site-specific determination, after public review and comment, that only solid mineral processing spent material may be placed on pads rather than tanks containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The decision-maker must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The decision-maker must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: The volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: Be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls; be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Regional Administrator or State Director must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Regional Administrator or State Director providing the following information: The types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of paragraph (a)(7) of this section, mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

**(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:**

(i) The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in §261.21) and/or toxicity for benzene (§261.24, waste code D018); and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An “associated organic chemical manufacturing facility” is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. “Petrochemical recovered oil” is oil that has been reclaimed from secondary materials (i.e., sludges, byproducts, or spent materials, including wastewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

**(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in §261.1(c).**

**(20) Hazardous secondary materials used to make zinc fertilizers, provided** that the following conditions specified are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in §261.1 (c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Regional Administrator or State Director in whose jurisdiction the exclusion is being claimed, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind

dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(1) Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

(2) Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(3) Prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of this paragraph (a)(20).

(D) Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment, these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(3) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in paragraph (a)(20)(ii)(B) of this section.

(B) Submit a one-time notification to the Regional Administrator or State Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in this paragraph (a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Regional Administrator or State Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc

fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in §262.11 of this chapter, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in paragraph (a)(20)(ii)(A) of this section, and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of 40 CFR Parts 264 and 265.

**(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under paragraph (a)(20) of this section, provided that:**

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

<b>Constituent</b>	<b>Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)</b>
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of paragraph (a)(21)(ii) of this section. Such records must at a minimum include:

- (A) The dates and times product samples were taken, and the dates the samples were analyzed;
- (B) The names and qualifications of the person(s) taking the samples;
- (C) A description of the methods and equipment used to take the samples;
- (D) The name and address of the laboratory facility at which analyses of the samples were performed;
- (E) A description of the analytical methods used, including any cleanup and sample preparation methods; and
- (F) All laboratory analytical results used to determine compliance with the contaminant limits specified in this paragraph (a)(21).

**(22) Used cathode ray tubes (CRTs)**

- (i) Used, intact CRTs as defined in §260.10 of this chapter are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in §261.1(c)(8) by CRT collectors or glass processors.
- (ii) Used, intact CRTs as defined in §260.10 of this chapter are not solid wastes when exported for recycling provided that they meet the requirements of §261.40.
- (iii) Used, broken CRTs as defined in §260.10 of this chapter are not solid wastes provided that they meet the requirements of §261.39.
- (iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of §261.39(c).

## Appendix B

### Discussion of Containment From 2008 DSW Rule Preamble (73 FR 64680, October 30, 2008)

#### *C. Restrictions and Requirements*

##### *Hazardous secondary materials must be contained.*

The regulations at 40 CFR 261.2(a)(2)(ii) and 40 CFR 261.4(a)(23) apply to hazardous secondary materials that are generated and legitimately reclaimed under the control of the generator in the United States or its territories. Under these provisions, the hazardous secondary materials must be contained, whether they are stored in land-based units or non-land-based units. Generally, such material is “contained” if it is placed in a unit that controls the movement of the hazardous secondary material out of the unit and into the environment. These restrictions support EPA’s determination that materials managed in this manner are not discarded.

In the event of a release from a unit to the environment, the hazardous secondary materials that remain in the unit may or may not meet the terms of the exclusion. They would be considered solid wastes if they are not managed as a valuable raw material, intermediate, or product, and as a result, a “significant” release of hazardous secondary materials from the unit to the environment were to take place and the materials were not immediately recovered. If such a significant release were to occur, the hazardous secondary materials remaining in the unit would be considered solid and hazardous wastes and the unit would be subject to the appropriate hazardous waste regulations. For example, an acidic hazardous secondary material undergoing reclamation could be stored in a tank that experienced a failure. A facility might fail to monitor the structural integrity of the tank, as most product tanks are monitored, or the tank might not be constructed to contain acidic hazardous secondary materials, causing a significant release of such materials into the environment that is not immediately recovered. The unit itself would consequently be considered a hazardous waste management unit because the hazardous secondary materials were not being managed as a valuable raw material, intermediate, or product, as evidenced by the failure to monitor it for structural integrity, resulting in the release. Thus, the unit and any remaining waste would be subject to Subtitle C controls because the hazardous secondary materials in the unit have been discarded. In addition, any of the released materials that were not immediately recovered would also be considered discarded and, if hazardous, subject to appropriate federal or state regulations and applicable authorities. Thus, to be excluded from the definition of solid waste, the facility has an obligation to manage the material as it would any raw material, intermediate or product because of its value. This includes, for example, operating and maintaining storage units in the same manner as product units. In the above example, whether by mismanagement of the hazardous secondary materials or by storing acidic materials in a tank not constructed to handle them or because of the failure to monitor the structural integrity of the unit, the result is that the unit would come under Subtitle C regulation.

Conversely, a tank or a surface impoundment in good condition may experience small releases resulting from normal operations of the facility. Sometimes a material may escape from primary containment and may be captured by secondary containment or some other mechanism that would prevent the material from being released to the environment or would allow immediate recovery of

the material. In that case, the unit would retain its exclusion from RCRA hazardous waste regulation and the hazardous secondary materials in the unit would still be excluded from the definition of solid waste, even though any such materials that had been released would be considered discarded if not immediately recovered and would be subject to appropriate regulation. One specific example of “not contained” hazardous secondary materials would be furnace bricks collected from production units and stored on the ground in walled bins before being used as feedstocks in the metals production process. If there were very small releases from the walled bins due to precipitation runoff, such releases would not cause the storage bins to be subject to Subtitle C controls.

It should be noted that a “significant” release is not necessarily large in volume. Such a release could include an unaddressed small release to the environment from a unit that, if allowed to continue over time, could cause significant damage. Any one release may not be significant in terms of volume. However, if the cause of such a release remains unaddressed over time and hazardous secondary materials are managed in such a way that the release is likely to continue, the materials in the unit would not be contained. For example, a rusting tank or containers that are deteriorating may have a slow leak that, if unaddressed, could, over time, cause a significant environmental impact. Similarly, a surface impoundment with a slow, unaddressed leak to groundwater could result, over time, in significant damage. Another example would be a large pile of lead contaminated finely ground dust without any provisions to prevent wind dispersal of the dust. Such releases, if unaddressed over time and likely to continue, would mean that the hazardous secondary materials remaining in the unit were not being managed as a valuable raw material, intermediate, or product and that the materials had been discarded. As a result, the hazardous secondary materials in the unit would be hazardous wastes and these units would be subject to the RCRA hazardous waste regulations.

## Appendix C

### Definitions at §260.10 for Purposes of October 30, 2008, DSW Rule

***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 or 267.101, 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 RCRA Section 3008(h).

(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.

***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 generated and reclaimed under the control of the generator*** means:

(1) That such material is generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator); or

(2) That such material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in §260.10, and if the generator provides one of the following certifications: –on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert the name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material,” or –on behalf of [insert generator facility name] I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material.” For purposes of this paragraph, –control” means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in §260.10 shall not be deemed to –control” such facilities, or

(3) That such material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: —~~On~~ behalf of [insert tolling contractor name], I certify that [insert tolling contractor name], has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name], I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process. For purposes of this paragraph, tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

***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.

***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.

***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.

***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.

## Appendix D

### Definition of Speculative Accumulation at §261.1(c)(8)

#### §261.1(c)(8) reads:

A material is ~~accumulated~~ "speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that—during the calendar year (commencing on January 1)—the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (*i.e.*, from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

## Appendix E

### Legitimate Recycling

In the EPA October 2008, final rule on the Revisions to the Definition of Solid Waste, EPA codified legitimacy factors to be used in determining whether recycling under the provisions of the rule is legitimate. EPA stated in the preamble to the October 2008, final rule that although the Agency was only codifying the legitimacy provision as part of the new hazardous secondary materials recycling exclusions and non-waste determination process, it was stressing that EPA retains its long-standing policy that all recycling of hazardous secondary materials must be legitimate, and that the four legitimacy factors codified at 40 CFR 260.43 are substantively the same as the Agency's long-standing legitimacy policy, as stated in the 1989 Lowrance Memo and in various definitions of solid waste rulemakings.

Previous guidance documents on the EPA legitimacy policy include the 1989 OSWER Directive 9441.1989(19) (the "Lowrance Memo") and discussions in several Federal Register preambles. A full complement of these discussions can be found in EPA's Definition of Solid Waste Compendium Volume N (<http://www.epa.gov/osw/hazard/dsw/compendium/n-legitrecy-v2.pdf>). Further guidance on legitimacy can also be found in the Compilations developed to assist with implementation of the 2008 DSW rule revisions. These can be found at: <http://www.epa.gov/epawaste/hazard/dsw/impresource.htm#materials>.

Early Federal Register notices on the definition of solid waste topics discussed the importance of distinguishing legitimate recycling from sham recycling situations. However, the most thorough and frequently used guidance on this topic has been the "Lowrance Memo" [OSWER Directive 9441.1989(19)]. The memo provides a series of six questions and sub-questions that are meant to be balanced against each other and taken as a whole to determine legitimacy.

#### **The Lowrance Memo Questions**

- (1) Is the secondary material similar to an analogous raw material or product?  
Does it contain Appendix VIII constituents not found in the analogous raw material/product (or at higher levels)?  
Does it exhibit hazardous characteristics that the analogous raw material/product would not?  
Does it contain levels of recoverable material similar to the analogous raw material/product?  
Is much more of the secondary material used as compared with the analogous raw material/product it replaces? Is only a nominal amount of it used?  
Is the secondary material as effective as the raw material or product it replaces?
- (2) What degree of processing is required to produce a finished product?  
Can the secondary material be fed directly into the process (i.e., direct use) or is reclamation (or pretreatment) required?  
How much value does final reclamation add?
- (3) What is the value of the secondary material?  
Is it listed in industry newsletters, trade journals, etc.?  
Does the secondary material have economic value comparable to the raw material that normally enters the process?

(4) Is there a guaranteed market for the end product?

Is there a contract in place to purchase the "product" ostensibly produced from the hazardous secondary materials?

If the type of recycling is reclamation, is the product used by the reclaimer? The generator? Is there a batch tolling agreement? (Note that since reclaimers are normally TSDFs, assuming they store before reclaiming, reclamation facilities present fewer possibilities of systemic abuse).

Is the reclaimed product a recognized commodity?

Are there industry-recognized quality specifications for the product?

(5) Is the secondary material handled in a manner consistent with the raw material/product it replaces?

Is the secondary material stored on the land?

Is the secondary material stored in a similar manner as the analogous raw material (i.e., to prevent loss?)

Are adequate records regarding the recycling transactions kept?

Do the companies involved have a history of mismanagement of hazardous wastes?

(6) Other relevant factors.

What are the economics of the recycling process?

Does most of the revenue come from charging generators for managing their wastes or from the sale of the product?

Are the toxic constituents actually necessary (or of sufficient use) to the product or are they just "along for the ride."

The regulatory language from the 2008 revisions to the definition of solid waste follows. These legitimacy regulations apply to materials regulated under the exclusions at §261.2(a)(2)(ii), and §261.4(a)(23), (24), or (25) as well as the non-waste determinations at §260.34.

**§260.43 Legitimate recycling of hazardous secondary materials regulated under §260.34, §261.2(a)(2)(ii), and §261.4(a)(23), (24), or (25).**

**(a)** Persons regulated under §260.34 or claiming to be excluded from hazardous waste regulation under §261.2(a)(2)(ii), §261.4(a)(23), (24), or (25) because they are engaged in reclamation must be able to demonstrate that the recycling is 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 the requirements of §260.43(b) and must consider the requirements of §260.43(c) below.

**(b) 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, and the recycling process must produce a valuable product or intermediate.**

**(1) 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 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.

**(c) The following factors must be considered in making a determination as to the overall legitimacy of a specific recycling activity.**

(1) The generator and the recycler should manage the hazardous secondary material as a valuable commodity. Where there is an analogous raw material, the hazardous secondary material should be managed, at a minimum, in a manner consistent with the management of the raw material. Where there is no analogous raw material, the hazardous secondary material should be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(2) The product of the recycling process does not

- (i) Contain significant concentrations of any hazardous constituents found in Appendix VIII of part 261 that are not found in analogous products; or
- (ii) Contain concentrations of any hazardous constituents found in Appendix VIII of part 261 at levels that are significantly elevated from those found in analogous products; or
- (iii) Exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit.

**(3) In making a determination that a hazardous secondary material is legitimately recycled, persons must evaluate all factors and consider legitimacy as a whole. If, after careful evaluation of these other considerations, one or both of the factors are not met, then this fact may be an indication that the material is not legitimately recycled.**

However, the factors in this paragraph do not have to be met for the recycling to be considered legitimate. In evaluating the extent to which these factors are met and in determining whether a process that does not meet one or both of these factors is still legitimate, persons can consider the protectiveness of the storage methods, exposure from toxics in the product, the bioavailability of the toxics in the product, and other relevant considerations.

## Appendix F

### Use/Reuse at §261.2(e)(1)

#### **§261.2(e) Materials that are not solid waste when recycled.**

(1) Materials are not solid wastes when they can be shown to be recycled by being:

**(i) Used or reused as ingredients** in an industrial process to make a product, provided the materials are not being reclaimed; or

**(ii) Used or reused as effective substitutes** for commercial products; or

**(iii) Returned to the original process** from which they are generated, without first being reclaimed or land disposed. The material must be returned as a feedstock for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at §261.4 (a)(17) apply rather than this paragraph.

## Appendix G

### Notification Requirements at §260.42

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

**(a) Hazardous secondary material generators, tolling contractors, toll manufacturers, reclaimers, and intermediate facilities managing hazardous secondary materials which are excluded from regulation under §261.2(a)(2)(ii), §261.4(a)(23), (24), or (25) must send a notification prior to operating under the exclusion(s) and by March 1 of each even numbered year thereafter to the Regional Administrator 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 exclusion under which the hazardous secondary materials will be managed (e.g., §261.2(a)(2)(ii), §261.4(a)(23), (24), and/or (25));
- (5) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with §261.4(a)(24) or (25), whether the reclaimer or intermediate facility has financial assurance (not applicable for persons managing hazardous secondary materials generated and reclaimed under the control of the generator);
- (6) When the facility expects to begin managing the hazardous secondary materials in accordance with the exclusion;
- (7) A list of hazardous secondary materials that will be managed according to the exclusion (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);
- (8) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
- (9) The quantity of each hazardous secondary material to be managed annually; and
- (10) The certification (included in EPA Form 8700–12) signed and dated by an authorized representative of the facility.

**(b) If a hazardous secondary material generator, tolling contractor, toll manufacturer, reclaimer or intermediate facility has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the exclusion(s), the facility must notify the Regional Administrator 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 exclusion(s) and does not expect to manage any amount of hazardous secondary materials for at least one year.**

## Appendix H

### Reasonable Efforts Condition at §261.4(a)(24)(v)(B)

(B) Prior to arranging for transport of hazardous secondary materials to a reclamation facility (or facilities) where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards, the hazardous secondary material generator must make reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the hazardous secondary material and not discard it, and that each reclaimer will manage the hazardous secondary material in a manner that is protective of human health and the environment.

If the hazardous secondary material will be passing through an intermediate facility where the management of the hazardous secondary materials is not addressed under a RCRA Part B permit or interim status standards, the hazardous secondary material generator must make contractual arrangements with the intermediate facility to ensure that the hazardous secondary material is sent to the reclamation facility identified by the hazardous secondary material generator, and the hazardous secondary material generator must perform reasonable efforts to ensure that the intermediate facility will manage the hazardous secondary material in a manner that is protective of human health and the environment.

**Reasonable efforts must be repeated at a minimum of every three years** for the hazardous secondary material generator claim the exclusion and to send the hazardous secondary materials to each reclaimer and any intermediate facility.

In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the hazardous secondary material generator, provided by the reclaimer or intermediate facility, and/or provided by a third party.

**The hazardous secondary material generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:**

(1) Does the available information indicate that the reclamation process is legitimate pursuant to §260.43?

In answering this question, the hazardous secondary material generator can rely on their existing knowledge of the physical and chemical properties of the hazardous secondary material, as well as information from other sources (e.g., the reclamation facility, audit reports, etc.) about the reclamation process. (By responding to this question, the hazardous secondary material generator has also satisfied its requirement in §260.43(a) to be able to demonstrate that the recycling is legitimate).

(2) Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator notified the appropriate authorities of hazardous secondary materials reclamation activities pursuant to §260.42 and have they notified the appropriate authorities that the financial assurance condition is satisfied per §261.4(a)(24)(vi)(F)?

In answering these questions, the hazardous secondary material generator can rely on the available information documenting the reclamation facility's and any intermediate facility's compliance with the notification requirements per §260.42, including the requirement in §260.42(a)(5) to notify EPA whether the reclaimer or intermediate facility has financial assurance.

(3) Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has not had any formal enforcement actions taken against the facility in the previous three years for violations of the RCRA hazardous waste regulations and has not been classified as a significant non-complier with RCRA Subtitle C?

In answering this question, the hazardous secondary material generator can rely on the publicly available information from EPA or the state.

If the reclamation facility or any intermediate facility that is used by the hazardous secondary material generator has had a formal enforcement action taken against the facility in the previous three years for violations of the RCRA hazardous waste regulations and has been classified as a significant non-complier with RCRA Subtitle C, does the hazardous secondary material generator have credible evidence that the facilities will manage the hazardous secondary materials properly?

In answering this question, the hazardous secondary material generator can obtain additional information from EPA, the state, or the facility itself that the facility has addressed the violations, 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) Does the available information indicate that the reclamation facility and any intermediate facility that is used by the hazardous secondary material generator have the equipment and trained personnel to safely recycle the hazardous secondary material?

In answering this question, the generator may rely on a description by the reclamation facility or by an independent third party of the equipment and trained personnel to be used to recycle the generator's hazardous secondary material.

(5) If residuals are generated from the reclamation of the excluded hazardous secondary materials, does the reclamation facility have the permits required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately permitted facility to dispose of the residuals? If not, does the hazardous secondary material generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment? In answering these questions, the hazardous secondary material generator can rely on publicly available information from EPA or the state, or information provided by the facility itself.

## Appendix I

### Certification Statement at §261.4(a)(24)(v)(C)

**The certification statement must:**

(1) Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed;

(2) Incorporate the following language: “I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with §261.4(a)(24)(v)(B) to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information.”

## Appendix J

### Exports of HSM at §261.4(a)(25)

**(25) Hazardous secondary material that is exported from the United States and reclaimed at a reclamation facility located in a foreign country is not a solid waste, provided that the hazardous secondary material generator complies with the applicable requirements of paragraph (a)(24)(i)–(v) of this section (excepting paragraph (a)(v)(B)( 2 ) of this section for foreign reclaimers and foreign intermediate facilities), and that the hazardous secondary material generator also complies with the following requirements:**

(i) **Notify EPA of an intended export** before the hazardous secondary material is scheduled to leave the United States. A complete notification must be submitted at least sixty (60) days before the initial shipment is intended to be shipped off-site. This notification may cover export activities extending over a twelve (12) month or lesser period. The notification must be in writing, signed by the hazardous secondary material generator, and include the following information:

(A) Name, mailing address, telephone number and EPA ID number (if applicable) of the hazardous secondary material generator;

(B) A description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste and the U.S. DOT proper shipping name, hazard class and ID number (UN/NA) for each hazardous secondary material as identified in 49 CFR parts 171 through 177;

(C) The estimated frequency or rate at which the hazardous secondary material is to be exported and the period of time over which the hazardous secondary material is to be exported;

(D) The estimated total quantity of hazardous secondary material;

(E) All points of entry to and departure from each foreign country through which the hazardous secondary material will pass;

(F) A description of the means by which each shipment of the hazardous secondary material will be transported (e.g., mode of transportation vehicle (air, highway, rail, water, etc.), type(s) of container (drums, boxes, tanks, etc.));

(G) A description of the manner in which the hazardous secondary material will be reclaimed in the receiving country;

(H) The name and address of the reclaimer, any intermediate facility and any alternate reclaimer and intermediate facilities; and

(I) The name of any transit countries through which the hazardous secondary material will be sent and a description of the approximate length of time it will remain in such countries and the nature of its handling while there (for purposes of this section, the terms ~~“Acknowledgement of Consent”~~,

–receiving country” and ~~–transit country”~~ are used as defined in 40 CFR 262.51 with the exception that the terms in this section refer to hazardous secondary materials, rather than hazardous waste):

**(ii) Notifications submitted by mail should be sent to the following mailing address:** Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered notifications should be delivered to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. In both cases, the following shall be prominently displayed on the front of the envelope: ~~–Attention: Notification of Intent to Export.”~~

**(iii) Except for changes to the telephone number in paragraph (a)(25)(i)(A) of this section and decreases in the quantity of hazardous secondary material indicated pursuant to paragraph (a)(25)(i)(D) of this section, when the conditions specified on the original notification change (including any exceedance of the estimate of the quantity of hazardous secondary material specified in the original notification), the hazardous secondary material generator must provide EPA with a written renotification of the change.** The shipment cannot take place until consent of the receiving country to the changes (except for changes to paragraph (a)(25)(i)(I) of this section and in the ports of entry to and departure from transit countries pursuant to paragraphs (a)(25)(i)(E) of this section) has been obtained and the hazardous secondary material generator receives from EPA an Acknowledgment of Consent reflecting the receiving country's consent to the changes.

**(iv) Upon request by EPA, the hazardous secondary material generator shall furnish to EPA any additional information which a receiving country requests in order to respond to a notification.**

**(v) EPA will provide a complete notification to the receiving country and any transit countries.** A notification is complete when EPA receives a notification which EPA determines satisfies the requirements of paragraph (a)(25)(i) of this section. Where a claim of confidentiality is asserted with respect to any notification information required by paragraph (a)(25)(i) of this section, EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

**(vi) The export of hazardous secondary material under this paragraph (a)(25) is prohibited unless the receiving country consents to the intended export.** When the receiving country consents in writing to the receipt of the hazardous secondary material, EPA will send an Acknowledgment of Consent to the hazardous secondary material generator. Where the receiving country objects to receipt of the hazardous secondary material or withdraws a prior consent, EPA will notify the hazardous secondary material generator in writing. EPA will also notify the hazardous secondary material generator of any responses from transit countries.

**(vii) For exports to OECD Member countries, the receiving country may respond to the notification using tacit consent.** If no objection has been lodged by any receiving country or transit countries to a notification provided pursuant to paragraph (a)(25)(i) of this section within thirty (30) days after the date of issuance of the acknowledgement of receipt of notification by the competent

authority of the receiving country, the transboundary movement may commence. In such cases, EPA will send an Acknowledgment of Consent to inform the hazardous secondary material generator that the receiving country and any relevant transit countries have not objected to the shipment, and are thus presumed to have consented tacitly. Tacit consent expires one (1) calendar year after the close of the thirty (30) day period; renotification and renewal of all consents is required for exports after that date.

**(viii) A copy of the Acknowledgment of Consent must accompany the shipment.** The shipment must conform to the terms of the Acknowledgment of Consent.

**(ix) If a shipment cannot be delivered for any reason to the reclaimer, intermediate facility or the alternate reclaimer or alternate intermediate facility, the hazardous secondary material generator must re-notify EPA of a change in the conditions of the original notification to allow shipment to a new reclaimer in accordance with paragraph (iii) of this section and obtain another Acknowledgment of Consent.**

**(x) Hazardous secondary material generators must keep a copy of each notification of intent to export and each Acknowledgment of Consent for a period of three years following receipt of the Acknowledgment of Consent.**

**(xi) Hazardous secondary material generators must file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency and ultimate destination of all hazardous secondary materials exported during the previous calendar year.** Annual reports submitted by mail should be sent to the following address: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (Mail Code 2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Hand-delivered reports should be delivered to: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division, Environmental Protection Agency, Ariel Rios Bldg., Room 6144, 12th St. and Pennsylvania Ave., NW., Washington, DC 20004. Such reports must include the following information:

(A) Name, mailing and site address, and EPA ID number (if applicable) of the hazardous secondary material generator;

(B) The calendar year covered by the report;

(C) The name and site address of each reclaimer and intermediate facility;

(D) By reclaimer and intermediate facility, for each hazardous secondary material exported, a description of the hazardous secondary material and the EPA hazardous waste number that would apply if the hazardous secondary material was managed as hazardous waste, DOT hazard class, the name and U.S. EPA ID number (where applicable) for each transporter used, the total amount of hazardous secondary material shipped and the number of shipments pursuant to each notification;

(E) A certification signed by the hazardous secondary material generator which states: ~~I~~certify under penalty of law that I have personally examined and am familiar with the information

submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.”

**(xii) All persons claiming an exclusion under this paragraph (a)(25) must provide notification as required by §260.42 of this chapter.**