

61-79.260

Hazardous Waste Management System; General

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SUBPART A
General

260.1. Purpose, scope, and applicability.

(a) This part provides definitions of terms, general standards, and overview information applicable to R.61-79.260 through R.61-79.266 and R.61-79.268 of this chapter.

(b) In this part:

(1) Section 260.2 sets forth the rules that the Department will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to the Department under R.61-79.260 through R.61-79.266 and R.61-79.268 of this chapter.

(2) Section 260.3 establishes rules of grammatical construction for R.61-79.260 through R.61-79.266 under these regulations and R.61-79.268 of this chapter.

(3) Section 260.10 defines terms which are used in R.61-79.260 through R.61-79.266 and R.61-79.268 of this chapter.

(4) Section 260.20 establishes procedures for petitioning the Department to amend, modify, or revoke any provision of R.61-79.260 through R.61-79.266 and R.61-79.268 of this chapter, and establishes procedures governing the Department's action on such petitions.

(5) Section 260.21 establishes procedures for petitioning the Department to approve testing methods as equivalent to those prescribed in R.61-79.261, R.61-79.264 or R.61-79.265 of this chapter.

(6) Section 260.22 establishes procedures for petitioning the Department to amend Subpart D of R.61-79.261 to exclude a waste from a particular facility.

260.2. Availability of information; confidentiality of information.

(a) Any information provided to the Department under R.61-79.260 through R.61-79.266 and R.61-79.268 of this chapter will be made available to the public to the extent and in the manner authorized by the Freedom of Information Act, Section 30-4-10 et seq. of the S.C. Code of Law of 1976 as amended, or 5 U.S.C. section 552, section 3007(b) of RCRA or EPA regulations implementing the Freedom of Information Act, or section 3007(b), 40 CFR part 2 of RCRA as applicable. (revised 12/92).

(b) Except as provided under paragraphs (c) and (d) of this section, any person who submits information to the Department in accordance with R.61-79.260 through R.61-79.266 and R.61-79.268 may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in S.C. Code Ann Sections 30-4-10 et seq. and 40 CFR 2.203(b). Information covered by such a claim will be disclosed by the Department only to the extent, and by means of the provisions contained in S.C. Code Ann Sections 30-4-10 et seq., and by means of the procedures, set forth in 40 CFR part 2, subpart B of this chapter.

(c)(1) After August 6, 2014, no claim of business confidentiality may be asserted by any person with respect to information entered on a Hazardous Waste Manifest (EPA Form 8700-22), a Hazardous Waste Manifest Continuation Sheet (EPA Form 8700-22A), or an electronic manifest format that may be

prepared and used in accordance with section 262.20(a)(3).

(2) EPA will make any electronic manifest that is prepared and used in accordance with section 262.20(a)(3), or any paper manifest that is submitted to the system under sections 264.71(a)(6) or 265.71(a)(6) available to the public under this section when the electronic or paper manifest is a complete and final document. Electronic manifests and paper manifests submitted to the system are considered by EPA to be complete and final documents and publicly available information after ninety (90) days have passed since the delivery to the designated facility of the hazardous waste shipment identified in the manifest.

(d) After June 26, 2018, no claim of business confidentiality may be asserted by any person with respect to information contained in cathode ray tube export documents prepared, used and submitted under sections 261.39(a)(5) and 261.41(a), and with respect to information contained in hazardous waste export, import, and transit documents prepared, used and submitted under sections 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, and 265.71, whether submitted electronically into EPA's Waste Import Export Tracking System or in paper format.

(2) EPA will make any cathode ray tube export documents prepared, used and submitted under sections 261.39(a)(5) and 261.41(a), and any hazardous waste export, import, and transit documents prepared, used and submitted under sections 262.82, 262.83, 262.84, 263.20, 264.12, 264.71, 265.12, and 265.71, available to the public under this section when these electronic or paper documents are considered by EPA to be final documents. These submitted electronic and paper documents related to hazardous waste exports, imports and transits and cathode ray tube exports are considered by EPA to be final documents on March 1 of the calendar year after the related cathode ray tube exports or hazardous waste exports, imports, or transits occur.

260.3. Use of number and gender.

As used in R.61-79.260 through R.61-79.273:

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

260.4. Manifest copy submission requirements for certain interstate waste shipments.

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

- (1) Complete the facility portion of the applicable manifest;
- (2) Sign and date the facility certification;
- (3) Submit to the e-Manifest system a final copy of the manifest for data processing purposes; and

(4) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in R.61-79.264 subpart FF.

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

(a) For purposes of this section, “state-only regulated waste” means:

(1) A non-RCRA waste that a state regulates more broadly under its state regulatory program, or

(2) A RCRA hazardous waste that is federally exempt from manifest requirements, but not exempt from manifest requirements under state law.

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

(1) Comply with the provisions of sections 264.71 (use of the manifest) and 264.72 (manifest discrepancies); and

(2) Pay the appropriate per manifest fee to EPA for each manifest submitted to the e-Manifest system, subject to the fee determination methodology, payment methods, dispute procedures, sanctions, and other fee requirements specified in R.61-79.264 subpart FF.

SUBPART B
Definitions

260.10. Definitions.

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

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

“Act” means the S.C. Hazardous Waste Management Act, Section 44-56-10 et seq. of the Code of Laws of 1976 as amended or the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

“Active life” of a facility means the period from the initial receipt of hazardous waste at the facility until the Department receives certification of final closure. “Active portion” means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after the effective date of part 261 of this chapter and which is not a closed portion (see also “closed portion” and “inactive portion”).

“Acute hazardous waste” means hazardous wastes that meet the listing criteria in section R.61-79.261.11(a)(2) and therefore are either listed in R.61-79.261.31 with the assigned hazard code of (H) or are listed in R.61-79.261.33(e).

“Administrator” means the Administrator of the Environmental Protection Agency, or his designee.

“AES filing compliance date” means December 31, 2017, which is the date that EPA announced in the Federal Register, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System (ITDS) platform.

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

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

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

“Batch tolling” [Removed]

“Battery” means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed. (added 5/96)

“Board” means the South Carolina Board of Health and Environmental Control.

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

(1)(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit’s combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(2) The unit is one which the Department has determined, on case-by-case basis, to be a boiler, after considering the standards in Section 260.32.

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

“Cathode Ray Tube” or “CRT” means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

“Central accumulation area” means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either R.61-79.262.16 (for small quantity generators) or R.61-79.262.17 (for large quantity generators). A central accumulation area at an eligible academic entity that chooses to operate under R.61-79.262 subpart K is also subject to R.61-79.262.211 when accumulating unwanted material and/or hazardous waste.

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

“Certified Laboratory” means a laboratory that has been approved by the Department to perform specific analyses referenced in R.61-79.260 through R.61-79.270. Laboratory certification is necessary for parameters of interest under SW-846 and other methods approved by EPA.

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

“Commissioner” means the commissioner of the Department or his authorized agent.

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

“Conditionally exempt small quantity generators” generate less than 100 kg hazardous waste in a month.

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

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

(1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

(3) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

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

“Containment building” means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subpart DD of R.61-79.264 or R.61-79.265.

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

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

“CRT collector” means a person who receives used, intact CRTs for recycling, repair, resale, or donation.

“CRT exporter” means any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

“CRT glass manufacturer” means an operation or part of an operation that uses a furnace to manufacture CRT glass.

“CRT processing” means conducting all of the following activities:

- (1) Receiving broken or intact CRTs; and
- (2) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and
- (3) Sorting or otherwise managing glass removed from CRT monitors

“Department” means the Department of Health and Environmental Control, including personnel thereof authorized by the Board to act on behalf of the Department or Board.

“Designated facility” means:

- (1) A hazardous waste treatment, storage, or disposal facility which:
 - (i) has received a permit (or interim status) in accordance with the requirements of parts 270 and 124 of these regulations, or

(ii) has received a permit (or interim status) from a state authorized in accordance with part 271 of this chapter; or

(iii) is regulated under 261.6(c)(2) or subpart F of part 266 and

(iv) that has been designated on the manifest by the generator pursuant to 262.20.

(2) Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with 264.72(f) or 265.72(f) of this chapter.

(3) If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. (12/92; 12/93; 12/94; 6/95).

“Destination facility” means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in paragraphs (a) and (c) of 273.13 and 273.33 of this chapter. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste. (added 5/96)

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

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

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

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

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

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

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

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

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

“Elementary neutralization unit” means a device which:

(1) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in R.61-79.261.22 of this chapter, or they are listed in subpart D of R.61-79.261 of the chapter only for this reason; and

(2) Meets the definition of tank, tank system, container, transport vehicle, or vessel in R.61-79.260.10. (amended 11/90)

“EPA” means the U. S. Environmental Protection Agency.

“EPA hazardous waste number” means the number assigned by EPA to each hazardous waste listed in 40 CFR Part 261, Subpart D, and to each characteristic identified in R.61-79.261 Subpart C.

“EPA Identification Number” means the number assigned by the Department to each generator, transporter, and treatment, storage, or disposal facility.

“Equivalent method” means any testing or analytical method approved by the Department under 260.20 and 260.21.

“Existing hazardous waste management (HWM) facility” or “Existing facility” means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

(1) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction (revised 12/92); and either

(2)(i) A continuous onsite, physical construction program has begun; or

(ii) The owner or operator has entered into contractual obligations — which cannot be canceled or modified without substantial loss — for physical construction of the facility to be completed within a reasonable time.

“Existing portion” means that land surface area of an existing waste management unit, included in the original part A permit application, on which wastes have been placed prior to the issuance of a permit (revised 12/92).

“Existing tank system” or “existing component” means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either (1) a continuous on-site physical construction or installation program has begun, or (2) the owner or operator has entered into contractual obligations-which cannot be canceled or modified without substantial loss-for physical construction of the site or installation of the tank system to be completed within a reasonable time.

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

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

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

“Facility” means: (1) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them). (2) For the purpose of implementing corrective action under sections 264.101, all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h). (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to section 264.101, but is subject to corrective action requirements if the site is located within such a facility.

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

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

“Final closure” means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Parts 264 and 265 of this Chapter are no longer conducted at the facility unless subject to the provisions in R.61-79.262 Section 262.34.

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

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

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

“Generator” means any person, by site, whose act or process produces hazardous waste identified or listed in R.61-79.261, or whose act first causes a hazardous waste to become subject to regulation.

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

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

“Hazardous secondary material generator” means any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, “generating facility” means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of sections 261.2(a)(2)(ii) and 261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

“Hazardous Waste” means a hazardous waste as defined in R.61-79.261.3.

“Hazardous Waste constituent” means a constituent that caused the Department to list the hazardous waste in R.61-79.261 Subpart D, or a constituent listed in Table I of R.61-79.261.24.

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

“Inactive portion” means that portion of a facility which is not operated after November 19, 1980 (revised 12/93). (See also “active portion” and “closed portion”.)

“Incinerator” means any enclosed device that:

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

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

“Incompatible waste” means hazardous waste which is unsuitable for:

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

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

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

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

(1) Cement kilns

(2) Lime kilns

(3) Aggregate kilns

(4) Phosphate kilns

(5) Coke ovens

(6) Blast furnaces

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

(8) Titanium dioxide chloride process oxidation reactors

(9) Methane reforming furnaces

(10) Pulping liquor recovery furnaces

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

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

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

(i) The design and use of the device primarily to accomplish recovery of material products;

(ii) The use of the device to burn or reduce raw materials to make a material product;

(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(v) The use of the device in common industrial practice to produce a material product; and

(vi) Other factors, as appropriate.

“Infrared incinerator” means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace (revised 12/92).

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

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

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

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

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

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

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

“Laboratory” means any facility, including its agents or employees, that performs analyses related to environmental quality evaluations required by the Department or which will be officially submitted to the Department. The laboratory shall have equipment and instrumentation to enable the laboratory to conduct analyses for the tests for which application is made and for which the laboratory has been certified or approved by the Department to perform.

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

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

“Landfill” means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit (amended 11/90; 12/92).

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

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

“Large quantity generator” means a generator who generates any of the following amounts in a calendar month:

(1) Greater than or equal to one thousand (1,000) kilograms (2,200 pounds) of non-acute hazardous waste; or

(2) Greater than one (1) kilogram (2.2 pounds) of acute hazardous waste listed in R.61-79.261.31 or 261.33(e); or

(3) Greater than one hundred (100) kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in R.61-79.261.31 or 261.33(e).

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

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

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

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

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

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

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

“Military munitions” means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents,

smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

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

“Miscellaneous unit” means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR part 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under 270.65 or staging pile. (11/90; 12/92; 12/93).

“Monitoring well” means a well used to obtain water samples for water quality analysis or to measure groundwater levels.

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

“New hazardous waste management facility” or “new facility” means a facility which began operation, or for which construction commenced after November 19, 1980. (See Also “Existing hazardous waste management facility”.)

“New tank system” or “new tank component” means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of R.61-79.264.193(g)(2) and R.61-79.265.193(g)(2), a new tank system is one for which construction commences after July 14, 1986. (See also “existing tank system.”)

“No free liquids” as used in 261.4(a)(26) and 261.4(b)(18), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (EPA Publication SW-846), which is incorporated by reference, and that there is no free liquid in the container holding the wipes. No free liquids may also be determined using another standard or test method as defined by an authorized state.

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

“NPDES” means National Pollutant Discharge Elimination System.

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

“Onsite” means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along, the right-of-way. Noncontiguous properties owned by

the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered onsite property.

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

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

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

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

“Partial closure” means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of R.61-79.264 and R.61-79.265 at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate. (amended 11/90)

“Person” means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body (revised 12/92).

“Personnel” or “facility personnel” means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in non-compliance with the requirements of R.61-79.264 or R.61-79.265.

“Pesticide” means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that: (added 5/96)

- (1) Is a new animal drug under FFDCFA section 201(w), or
- (2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
- (3) Is an animal feed under FFDCFA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this definition.

“Pile” means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

“Plasma arc incinerator” means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace (revised 12/92).

“Point source” means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal

feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

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

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

“Quarter” means a three (3) month period ending on the last day of March, June, September, and December.

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

“Regional Administrator” means the Regional Administrator for the EPA Region in which the facility is located, or his designee.

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

“Remediation waste” means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments), and debris that are managed for implementing cleanup. (12/93, 8/00)

“Remediation waste management site” means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under 40 CFR 264.101, but is subject to corrective action requirements if the site is located in such a facility.

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

“Reporting Year” means the twelve month time period starting on January 1 of each year and ending on the last day of December.

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

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

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

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

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

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

“Small quantity generator” means a generator who generates the following amounts in a calendar month:

(1) Greater than one hundred (100) kilograms (220 pounds) but less than one thousand (1,000) kilograms (2,200 pounds) of non-acute hazardous waste; and

(2) Less than or equal to one (1) kilogram (2.2 pounds) of acute hazardous waste listed in R.61-79.261.31 or 261.33(e); and

(3) Less than or equal to one hundred (100) kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in R.61-79.261.31 or 261.33(e).

“Solid Waste” means a solid waste as defined in R.60-79.261 Subpart A Section 261.2.

“Solvent-contaminated wipe” means,

(1) a wipe that, after use or after cleaning up a spill, either:

(i) Contains one or more of the F001 through F005 solvents listed in 261.31 or the corresponding P- or U-listed solvents found in 261.33;

(ii) Exhibits a hazardous characteristic found in part 261 subpart C when that characteristic results from a solvent listed in part 261; and/or

(iii) Exhibits only the hazardous waste characteristic of ignitability found in 261.21 due to the presence of one or more solvents that are not listed in part 261.

(2) Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at 261.4(a)(26) and 261.4(b)(18).

“Sorbent” means a material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

“South Carolina Underground Injection Control R.61-87”

“South Carolina Water Classification and Standards R.61-68”

“South Carolina Water Pollution Control Act 48-1-10 et seq.”

“South Carolina Water Pollution Control Permits R.61-9”

“Spill” [Deleted November 23, 1990]

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

“State” means the State of South Carolina.

“State Primary Drinking Water R.61-58”

“State Safe Drinking Water Act 44-55-10 et seq.”

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

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

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

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

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

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

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

“Thermostat” means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these

temperature control devices in compliance with the requirements of R.61-79. 273.13(c)(2) or R.61-79.273.33(c)(2). (added 5/96)

“These Regulations” refers to all regulations contained under R.61-79 of the State Regulations which have been promulgated by the Board as authorized under Section 44-56-30 of the 1976 Code of Laws, as amended.

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

“Transfer facility” means any transportation-related facility, including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste or hazardous secondary materials are held during the normal course of transportation.

“Transportation” means the movement of hazardous wastes by air to the rail, highway or water.

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

“Transport vehicle” means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad, freight car, etc.) is a separate transport vehicle. “Vessel” includes every description of water craft.

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

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

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

“Underground injection” means the subsurface emplacement of fluids as defined in R.61-87.

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

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

“Universal Waste” means any of the following hazardous wastes that are managed under the universal waste requirements of 273: (5/96)

- (1) Batteries as described in 273.2;
- (2) Pesticides as described in 273.3;
- (3) Mercury-containing equipment as described in 273.4; and
- (4) Lamps as described in 273.5 of this chapter.

“Universal Waste Handler”: (added 5/96)

(1) Means:

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

(2) Does not mean:

- (i) A person who treats (except under the provisions of R.61-79.273.13 (a) or (c), or 273.33 (a) or (c)), disposes of, or recycles universal waste; or
- (ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

“Universal Waste Transporter” means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water. (added 5/96)

“Unsaturated Zone (Zone of Aeration)” means the zone between the land surface and the water table.

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

“Used oil” means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use, is contaminated by physical or chemical impurities. (amended 6/89)

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

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

- (i) Any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(ii) Any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

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

(3) Elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with Section 264.71(a)(2)(v) or Section 265.71(a)(2)(v) of this chapter. These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

“Very small quantity generator” means a generator who generates less than or equal to the following amounts in a calendar month:

(1) One hundred (100) kilograms (220 pounds) of non-acute hazardous waste; and

(2) One (1) kilogram (2.2 pounds) of acute hazardous waste listed in R.61-79.261.31 or 261.33(e); and

(3) One hundred (100) kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in R.61-79.261.31 or 261.33(e).

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

“Waste oil” [Deleted 11/90]

“Wastewater treatment unit” means a device which:

(1) is part of a wastewater treatment facility which is subject to regulation under The Pollution Control Act Sections 48-1-10 et seq. of the Code of Laws of 1976 as amended, and either Section 402 or 307(b) of the Clean Water Act; and

(2) Receives and treats or stores an influent wastewater which is a hazardous waste as defined in R.61-79.261.3 or generates and accumulates a wastewater treatment sludge which is a hazardous waste as defined by Section 261.3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 261.3 of these Regulations; and

(3) Meets the definition of tank or tank system in Section 260.10. (amended 11/90)

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

“Well” means any excavation which is cored, bored, drilled, jetted, dug or otherwise constructed the depth of which is greater than its largest surface dimension.

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

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

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

“Zone of incorporation” [Removed]

260.11. Incorporation by reference.

(a) When used in R.61-79.260 through R.61-270, the following publications are incorporated by reference. These references will be applied to necessary testing to be performed by a certified laboratory.

(1) “ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester,” ASTM Standard D-3278-78, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(2) “ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester,” ASTM Standard D-93-79 or D-93-80. D-93-80 is available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(3) “ASTM Standard Method for Analysis of Reformed Gas by Gas Chromatography,” ASTM Standard D 1946-82, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(4) “ASTM Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter(High Precision Method),” ASTM Standard D 2382-83, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(5) “ASTM Standard Practices for General Techniques of Ultraviolet Visible Quantitative Analysis,” ASTM Standard E 169-87, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(6) “ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis,” ASTM Standard E 168-88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(7) “ASTM Standard Practice for Packed Column Gas Chromatography,” ASTM Standard E 260-85, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(8) “ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography,” ASTM Standard D 2267-88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(9) “APTI Course 415: Control of Gaseous Emissions,” EPA Publication EPA450/281005, December 1981, available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(10) "Flammable and Combustible Liquids Code" (NFPA 30), 1977 or 1981, IBR approved for sections 262.16(b), 264.198(b), and 265.198(b).

(11) “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846 [Third Edition (November 1986), as amended by Updates I, (dated July 1992), II (dated September 1994), IIA (dated August 1993), IIB (dated January 1995) and III] (dated December 1996) and IIIA (dated April 1998)]. The Third Edition of SW-846 and Updates I, II, IIA, IIB, and III (document number 955-001-0000-1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800. Update IIIA is available through EPA’s Methods Information Communication Exchange (MICE) Service. MICE can be contacted by phone at (703) 821-4690. Update IIIA can also be obtained by contacting the U.S. Environmental Protection Agency, Office of Solid Waste (5307W), OSW Methods Team, 1200 Pennsylvania Ave. NW, Washington, DC, 20460. Copies of the Third Edition and all of its updates are also available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. (11/99; 8/00)

(12) “Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised,” October 1992, EPA Publication No. EPA-450/R-92-019, Environmental Protection Agency, Research Triangle Park, NC. (revised 12/94)

(13) “ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analysis of Metals,” ASTM Standard E926-88, Test Method C—Bomb, Acid Digestion Method, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(14) “API Publication 2517, Third Edition,” February 1989, “Evaporative Loss from External Floating-Roof Tanks,” available from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.

(15) “ASTM Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope,” ASTM Standard D 2879-92, available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(16) Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry. Available at NTIS, PB99-121949, U.S. Department of Commerce, 5285 Port Royal. Springfield, Virginia 22161.

(b) The references listed in paragraph (a) of this section are also available for inspection at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington DC. These incorporations by reference were approved by the Director of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register (revised 12/93).

SUBPART C ***Rulemaking Petitions***

260.20. General.

(a) Any person may petition the Department to modify or revoke any provision in parts 260 through 266, 268 and 273. This section sets forth general requirements which apply to all such petitions. Section 260.21 sets forth additional requirements for petitions to add a testing or analytical method to part 261, 264 or 265.

Section 260.22 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from 261.3 or the lists of hazardous wastes in subpart D of part 261. Section 260.23 sets forth additional requirements for petitions to amend 40 CFR 273 to include additional hazardous wastes or categories of hazardous waste as universal waste. (revised 11/90; 12/92; 5/96).

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

- (1) The petitioner's name and address;
- (2) A statement of the petitioner's interest in the proposed action;
- (3) A description of the proposed action, including (where appropriate) suggested regulatory language;
and
- (4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(c) The Department will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision, either in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, in the State Register for written public comment.

(d) Upon the written request of any interested person, the Department may, at its discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the persons views. The Department may in any case decide on its own motion to hold an informal public hearing.

(e) After evaluating all public comments the Department will make a final decision by publishing in the State Register a regulatory amendment or a denial of the petition.

260.21. Petitions for equivalent testing or analytical methods.

(a) Any person seeking to add a testing or analytical method to part 261, 264, 265 or 266 may petition for a regulatory amendment under this section and 260.20. To be successful, the person must demonstrate to the satisfaction of the Department and the Regional Administrator of EPA that the proposed method is equal to or superior to the corresponding method prescribed in 261, 264 and 265, in terms of its sensitivity, accuracy, and precision (i.e., reproducibility) (12/92).

(b) Each petition must include, in addition to the information required by section 260.20(b):

- (1) A full description of the proposed method, including all procedural steps and equipment used in the method;
- (2) A description of the types of wastes or waste matrices for which the proposed method may be used;
- (3) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in R.61-79.261, R.61-79.264, or R.61-79.265 of this chapter;
- (4) An assessment of any factors which may interfere with, or limit the use of, the proposed method;
and

(5) A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Department and the Regional Administrator may request any additional information on the proposed method which he may reasonably require to evaluate the method.

(d) If the USEPA amend the regulations to permit use of a new testing method, the method will be incorporated in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington, DC 20460. As the Federal Regulations incorporate new testing methods, these will be incorporated by reference.

260.22. Petitions to amend part 261 to exclude a waste produced at a particular facility.

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in 261 subpart D may petition for a regulatory amendment under this section and section 260.20 to be successful:

(1) The petitioner must demonstrate to the satisfaction of the Department and to the Regional Administrator of EPA that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and

(2) Based on a complete application, the Department and the Regional Administrator must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of subpart C of 261.

(b) The procedures in this Section and 260.20 may also be used to petition the Department and the Regional Administrator for a regulatory amendment to exclude from 261.3(a)(2)(ii) or (c), a waste which is described in these Sections and is either a waste listed in subpart D, or is derived from a waste listed in subpart D. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by paragraph (a) of this section. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of subpart C of part 261. (11/90; 12/92)

(c) If the waste is listed with codes "I," "C," "R," or "E" in 261 subpart D (moved 11/90),

(1) the petitioner must show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in 261.21, 261.22, 261.23, or 261.24 using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in 261.21, 261.22, 261.23, or 261.24 using any applicable methods prescribed therein;

(2) Based on a complete application, the Department and the Regional Administrator must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of subpart C of 261.

(d) If the waste is listed with code “T” in 261 subpart D, (11/90)

(1) The petitioner must demonstrate that the waste:

(i) Does not contain the constituent or constituents (as defined in appendix VII of 261) that caused the Department to list the waste, using the appropriate test methods prescribed in “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, as incorporated by reference in 261.11; or

(ii) Although containing one or more of the hazardous constituents (as defined in appendix VII of 261) that caused the Department and the EPA to list the waste, does not meet the criterion of 261.11 (a)(3) when considering the factors used by the Department and the EPA in 261.11(a)(3)(i) through (xi) under which the waste was listed as hazardous; and

(2) Based on a complete application, the Department and the Regional Administrator must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and, (11/90; 12/92)

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in Sections 261.21, 261.22, 261.23, and 261.24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be hazardous waste by operation of Subpart C of R.61-79.261.

(e) If the waste is listed with the code “H” in subpart D (12/92; 12/93):

(1) Does not meet the criterion of R.61-79.261.11 (a)(2);

(2) Based on a complete application, the Department and the Regional Administrator must determine, where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in R.61-79.261.21, 261.22, 261.23, and 261.24 using any applicable methods prescribed therein; and

(4) A waste which is so excluded, however, still may be hazardous waste by operation of Subpart C of R.61-79.261.

(f) A waste which is excluded under paragraphs (a), (c), (d), and (e) still may be a hazardous waste by operation of R.61-79.261 Subpart C.

(g) [Reserved]

(h) Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(i) Each petition must include, in addition to the information required by Section 260.20(b):

- (1) The name and address of the laboratory facility performing the sampling or tests of the waste;
- (2) The names and qualifications of the persons sampling and testing the waste;
- (3) The dates of sampling and testing;
- (4) The location of the generating facility;
- (5) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration.
- (6) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;
- (7) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on factors in R.61-79.261.11(a)(3);
- (8) A description of the methodologies and equipment used to obtain the representative samples;
- (9) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;
- (10) A description of the tests performed (including results);
- (11) The names and model numbers of the instruments used in performing the tests; and
- (12) The following statement signed by the generator of the waste or his authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration 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.

(j) After receiving a petition for an exclusion, the Department and the Regional Administrator may request any additional information which it may reasonably require to evaluate the petition.

(k) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.

(l) The Department and the Regional Administrator may exclude only part of the waste for which the demonstration is submitted where he has reason to believe that variability of the waste justifies a partial exclusion.

(m) [Removed 12/92]

Editorial Note: For information on the availability of a guidance manual for petitions to delist hazardous wastes, see 50 FR 21607, May 28, 1985.

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

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of 40 CFR 273 may petition for a regulatory amendment under this section, 40 CFR 260.20, and subpart G of 40 CFR part 273.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Administrator that regulation under the universal waste regulations of 40 CFR part 273: Is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by 40 CFR 260.20(b). The petition should also address as many of the factors listed in 40 CFR 273.81 as are appropriate for the waste or category of waste addressed in the petition.

(c) The Administrator will grant or deny a petition using the factors listed in 40 CFR 273.81. The decision will be based on the weight of evidence showing that regulation under 40 CFR part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(d) The Administrator may request additional information needed to evaluate the merits of the petition.

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

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

(a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in section 261.1(c)(8));

(b) Materials that are reclaimed and then reused within the original production process in which they were generated;

(c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

(d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and

(e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

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

(a) The Department may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Department's decision will be based on the following criteria: (revised 5/96)

(1) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

(3) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) The extent to which the material is handled to minimize loss; and

(5) Other relevant factors.

(b) The Department may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria: (revised 5/96)

(1) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) The extent to which the material is handled before reclamation to minimize loss;

(3) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(4) The location of the reclamation operation in relation to the production process;

(5) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) Whether the person who generates the material also reclaims it; and

(7) Other relevant factors.

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

(1) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

(2) Whether the partially-reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(3) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) Whether there is a market for partially-reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading); and

(5) Whether the partially-reclaimed material is handled to minimize loss.

260.32. Variance to be classified as a boiler.

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

(a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(b) The extent to which the combustion chamber and energy recovery equipment are of integral design; and

(c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(d) The extent to which exported energy is utilized; and

(e) The extent to which the device is in common and customary use as a “boiler” functioning primarily to produce steam, heated fluids, or heated gases; and

(f) Other factors, as appropriate.

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

The Department will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed controlled flame combustion devices as boilers, or applications for non-waste determinations.

(a) The applicant must apply to the Department for the variance or non-waste determination. The application must address the relevant criteria contained in sections 260.31, 260.32, or 260.34, as applicable.

(b) The Department will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the recycler is located. The Department will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at its discretion. The Department will issue a final decision after receipt of comments and after the hearing (if any). (revised 5/96)

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

secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination.

(d) Variances and non-waste determinations shall be effective for a fixed term not to exceed ten (10) years. No later than six (6) months prior to the end of this term, facilities must re-apply for a variance or non-waste determination. If a facility re-applies for a variance or non-waste determination within six (6) months, the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the Administrator.

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

260.34. Standards and criteria for non-waste determinations.

(a) An applicant may apply to the Department for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in paragraphs (b) or (c) of this section, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under section 260.31).

(b) The Department may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in section 260.43 and on the following criteria:

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

(2) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

(3) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(4) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under sections 261.2 or 261.4.

(c) The Department may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in section 260.43 and on the following criteria:

(1) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);

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

(3) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);

(4) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water, or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

(5) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under sections 261.2 or 261.4.

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

(a) The Department may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in R.61-79.261.6(a)(2)(iii) should be regulated under R.61-79.261.6 (b) and (c) of this chapter. The basis for this decision is that if the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Department will consider the following factors:

(1) The types of materials accumulated or stored and the amounts accumulated or stored;

(2) The method of accumulation or storage;

(3) The length of time the materials have been accumulated or stored before being reclaimed;

(4) Whether any contaminants are being released into the environment, or are likely to be so released; and

(5) Other relevant factors.

The procedures for this decision are set forth in Section 260.41 below of these Regulations.

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

The Department will use the following procedures when determining whether to regulate hazardous waste recycling activities described in R.61-79.261.6(a)(2)(iii) under the provisions of R.61-79.261.6 (b) and (c), rather than under the provisions of subpart F of R.61-79.266.

(a) If a generator is accumulating the waste, the Department will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of subparts A, C, D, and E of R.61-79.262. The notice will become final within thirty (30) days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Department will hold a public hearing. The Department will provide notice of the hearing to the public and allow public participation at the hearing. The Department will issue a final order after the hearing stating whether or not

compliance with part 262 is required. The order becomes effective 30 days after service of the decision unless the Department specifies a later date or unless review by the Department is requested. The order may be appealed to the Department by any person who participated in the public hearing. The Department may choose to grant or to deny the appeal. Final Department action occurs when a final order is issued and Department review procedures are exhausted.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of R.61-79.270 and R.61-79.124. The owner or operator of the facility must apply for a permit under these regulations within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Department's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Department's determination. The question of whether the Department's decision was proper will remain open for consideration during the public comment period discussed under 124.11 of this chapter and in any subsequent hearing.

260.42. Notification requirement for hazardous secondary materials.

(a) Facilities managing hazardous secondary materials under sections 260.30, 261.4(a)(23), 261.4(a)(24), 261.4(a)(25), or 261.4(a)(27) must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Department using EPA Form 8700-12 that includes the following information:

- (1) The name, address, and EPA ID number (if applicable) of the facility;
- (2) The name and telephone number of a contact person;
- (3) The NAICS code of the facility;
- (4) The regulation under which the hazardous secondary materials will be managed;
- (5) For reclaimers and intermediate facilities managing hazardous secondary materials in accordance with section 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 began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
- (7) A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);
- (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 facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the 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 regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

260.43. Legitimate recycling of hazardous secondary materials.

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

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

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

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

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

(3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

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

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

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

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

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

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

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

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

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

(1) The product of the recycling process does not:

(i) contain significant concentrations of any hazardous constituents found in R.61-79.261 appendix VIII that are not found in analogous products; or

(ii) contain concentrations of hazardous constituents found in R.61-79.264 appendix VIII at levels that are significantly elevated from those found in analogous products, or

(iii) exhibit a hazardous characteristic (as defined in R.61-79.261 subpart C) that analogous products do not exhibit.

(2) 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 considerations, the factor in this paragraph is not met, then this fact may be an indication that the material is not legitimately recycled. However, the factor in this paragraph does not have to be met for the recycling to be considered legitimate. In evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.

(c) [Reserved]