

Legal Lookout: Redefining Solid Waste -- Again

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On March 26, 2007, EPA announced the issuance of a sweeping proposal to modify the RCRA definition of solid waste.^[1] The proposal seeks to streamline regulation of hazardous secondary materials, and revise the definition of solid waste to exclude certain secondary materials from RCRA regulation to promote the legitimate recycling of these materials. The proposed rule is available at www.epa.gov/fedrgstr/EPA-WASTE/2007/March/Day-26/f5159.pdf, and comments were due on or before May 25, 2007.

EPA's recent revisions build upon suggested changes to the definition of solid waste proposed in 2003.^[2]

Proposal elements

The proposal would exclude several categories of materials. They are:

- *Exclusion for materials that are legitimately reclaimed under the control of the generator in non-land-based units* – The proposal would exclude certain hazardous secondary materials, i.e., spent materials, listed sludges and listed byproducts, that are generated and legitimately reclaimed within the United States, and are handled only in non-land-based units. The exclusion would apply to hazardous secondary materials that are reclaimed under the control of the generator and are not speculatively accumulated.
- The proposed exclusion would not include recycling practices that involve the discard of materials. These include recycling inherently waste-like materials; recycling materials that are used in a manner constituting disposal or are placed onto the land; or burning of materials for energy recovery, or using them to produce a fuel or materials that are otherwise contained in fuels.^[3]
- *Exclusion for materials that are legitimately reclaimed under the control of the generator in land-based units* – EPA is proposing to exclude certain hazardous secondary materials that are generated and legitimately reclaimed within the U.S. and handled in land-based units, such as waste impoundments or waste piles.
- *Conditional exclusion for materials that are transferred for the purpose of reclamation* – This conditional exclusion would apply to hazardous secondary materials that are generated and subsequently transferred to a different person or company for the purpose of reclamation. This exclusion would not apply to recycled materials that are regulated as hazardous wastes for other reasons, including inherently waste-like materials, materials that are used in a manner constituting disposal or materials burned for energy recovery.

EPA also proposed that generators satisfy recordkeeping requirements and “reasonable effort” conditions that would require the generator to assess the reclaimer. EPA also proposed to implement a petition process for obtaining a case-specific, non-waste determination for certain hazardous secondary materials that are recycled.

Implications

EPA's proposed revisions promise greater opportunities to recycle hazardous secondary materials. By proposing to remove unnecessary restrictions on certain recycling practices, the agency is laying the foundation for changes that, if implemented as proposed, will enable the beneficial recycling of certain hazardous secondary materials.

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References

EPA is considering expanding its regulations for comparable fuels in a separate rulemaking.
68 Fed. Reg. 61558 (Oct. 28, 2003).
72 Fed. Reg. 14172 (Mar. 26, 2007).