



Definition of Solid Waste (DSW) Update

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Background

- Under the Resource Conservation and Recovery Act (RCRA), EPA has the authority to regulate solid wastes. The definitive term in the definition of solid waste is “discard”.
- A key issue since the 1980’s is when recycling or reuse constitutes “discard” and therefore is potentially subject to RCRA regulation.
- Several major court decisions have provided direction about when recycling of hazardous secondary materials resembles manufacturing and when it resembles discard.



History of the DSW Rule

2003: Original
DSW proposal

Jan 2009: Sierra
Club sues

Oct 2011:
Comments due
on proposed
revisions

Oct 2008:
DSW
final rule.

June 2011:
EPA proposes
rule to revise
2008 DSW

Dec 2012:
Final rule to be
published

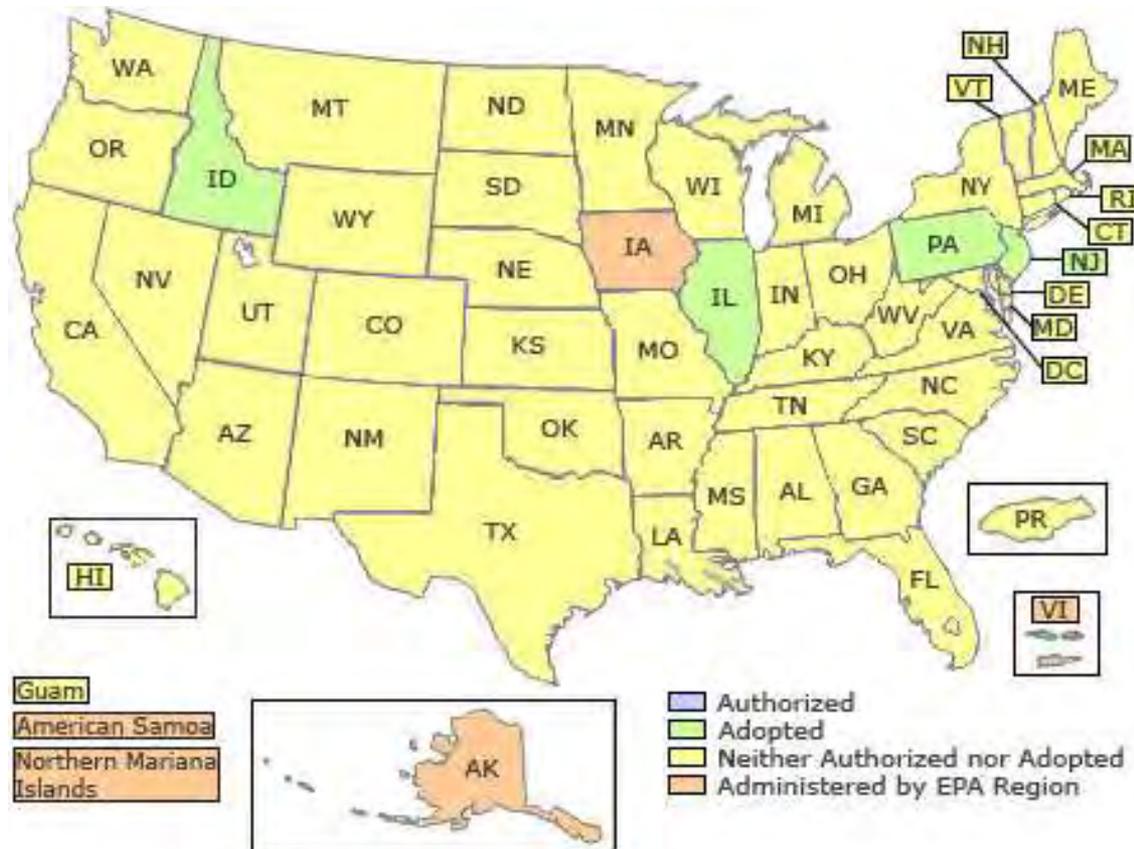


Current Status

- The federal rule was effective on December 29th, 2008. The 2008 DSW final rule went into effect immediately in states and territories that are not RCRA-authorized, including Iowa and Alaska.
- However, State adoption of the 2008 DSW final rule is optional because the rule is less stringent than the previous requirements under RCRA.
- States can create different standards but they have to be equivalent to the federal regulations (i.e., they must provide equivalent protection, cannot regulate fewer handlers, etc.) States may adopt the entire rule or certain provisions.



Where is the DSW Final Rule in Effect?





Major components of 2008 final rule:

1. **Under the Control of the Generator Exclusion**

Self-implementing exclusion for materials generated and reclaimed under the control of the generator.

2. **Transfer-based Exclusion**

Self-implementing exclusion for materials generated and transferred to another company for reclamation.

3. **Non-waste Determination Procedure**

Materials that are non-wastes (determined through a petition process)

4. **“Legitimate” Recycling Provision**



What is the generator-controlled exclusion?

- **Includes hazardous secondary materials that are generated and reclaimed...**
 - at the same facility, which includes facilities leased by the generator and on-site contractors.
 - by the same company (even at different facilities) if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are under common control.
 - under certain toll manufacturing arrangements.



What is the generator-controlled exclusion (cont.)?

- **Under this exclusion, generators must:**
 - Legitimately recycle materials
 - Not speculatively accumulate materials
 - Submit notifications (using the Site ID form)
 - Ensure materials are “contained”
 - Reclaim materials within the United States



Major Concern: Transfer Based Exclusion





What is “legitimate” recycling?

- **The definition of legitimate recycling consists of four legitimacy factors:**
 - Materials must provide a useful contribution to the recycling process or to a product or intermediate.
 - Recycling must produce a valuable product or intermediate.
 - Materials must be managed as valuable commodities.
 - Products of recycling must contain levels of hazardous constituents comparable to those in analogous products.

How does the DSW rule compare to the existing Subtitle C regulations for Generators?

Subtitle C Regulation Requirements	DSW Exclusion Requirements
- Cannot accumulate waste for more than 90 days without a permit	- Must meet speculative accumulation limits
- Must meet specific storage standards for tanks and containers.	- Hazardous secondary materials must be contained.
- Must have emergency coordinator, test and maintain emergency equipment, and have emergency plan.	-----
- Must have personnel training plan.	-----
- Waste must be packaged according to DOT regulations prior to transport.	- Hazardous secondary materials must be packaged according to DOT regulations prior to transport.
- Manifest required	-----
- Recordkeeping <ul style="list-style-type: none"> ○ Biennial Reporting ○ Exception Reporting ○ Three-year record retention 	- Recordkeeping: <ul style="list-style-type: none"> ○ Notifications ○ Records of off-site shipments & confirmations of receipt ○ Three-year record retention
-----	- Reasonable Efforts
- Exports <ul style="list-style-type: none"> ○ Notice & consent ○ Annual reports ○ Manifesting ○ Exception Reports 	- Exports <ul style="list-style-type: none"> ○ Notice & consent ○ Annual reports



Major 2011 Proposed Revisions

- Replacing the transfer-based exclusion with alternate hazardous recyclable materials standard.
- Adding a regulatory definition of “contained” and additional recordkeeping requirements for generator-controlled exclusion.
- Making all four legitimacy factors mandatory and requiring documentation.
- Applying the regulatory definition of legitimate recycling to all hazardous waste and hazardous secondary material recycling.



Major Proposed Revisions (cont.)

- Requested comment on applying the contained standard, notification, and recordkeeping for speculative accumulation to existing recycling exclusions. Alternative standard allows generators longer accumulation time (one year) if there is a reclamation plan in place.
- Retaining the generator-controlled exclusion for recycling performed on-site, at the same company, or under certain tolling agreements.
- Providing a petition process for instances where legitimacy factors are not met, but recycling is still legitimate.
- Requested comment on a targeted exclusion for higher-value hazardous solvents which are re-manufactured into commercial-grade products.



Status in Indiana

- IDEM did not comment on 2011 revisions.
- Neither the 2008 final rule or 2011 proposed revisions are in effect in Indiana.
- All current rules remain in effect. Waste that is excluded in DSW states must be managed as fully regulated in Indiana (e.g. material must be manifested to and from IN facilities, container management requirements apply, etc).



Future Actions

- IDEM will review final revised rule to be promulgated in 2012.
- If IDEM adopts final rule *verbatim*, anticipated authorization and effective date in 2013-14.



Questions?

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