# **Overview of the Definition of Solid Waste Final Rule**



#### NJ DEP Hazardous Waste Handler Seminar

### June 16, 2010





## Agenda

Module 1: Goals & Background for the DSW Rule Module 2: Under the Control of the Generator Exclusion Module 3: Transfer-Based Exclusion

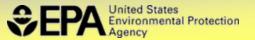
--- Short Break----

Module 4: Notification & Recordkeeping Module 5: Non-waste Determination Procedure Module 6: Legitimate Recycling Provision Module 7: Rule Status and Implementation

**Question & Answer Panel** 

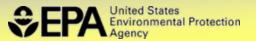


# Module 1: Goals & Background for the DSW rule



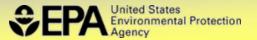
# **Goals of the DSW Rule**

- To better define when hazardous secondary materials being recycled are discarded and regulated by EPA
- To encourage legitimate reclamation of hazardous wastes



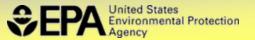
## Facts about the DSW Rule

- Only applies to "hazardous secondary materials," which are secondary materials that, when discarded, would be hazardous wastes
- Does not affect any existing exclusion, exemption, or determination
- DSW is an **optional** rule
  - RCRA authorized states can choose whether to adopt the rule
  - Facilities in states that adopt can choose whether to manage hazardous secondary materials under the rule



## Facts about the DSW Rule (cont.)

- Is limited to reclamation, and does not include burning for energy recovery or "use constituting disposal" (i.e., materials used directly on the land)
- A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. This includes:
  - Regeneration (e.g., distillation) of spent solvents
  - Regeneration of spent acids
  - Recovery of metals from metal-bearing wastes

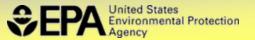


## **Background of the DSW Rule**

 Under the Resource Conservation and Recovery Act (RCRA), EPA has the authority to regulate solid wastes. RCRA defines solid waste as:

"...any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material*... resulting from industrial, commercial, mining, and agricultural operations, and from community activities..." (RCRA Section 1004 (27) (emphasis added)).

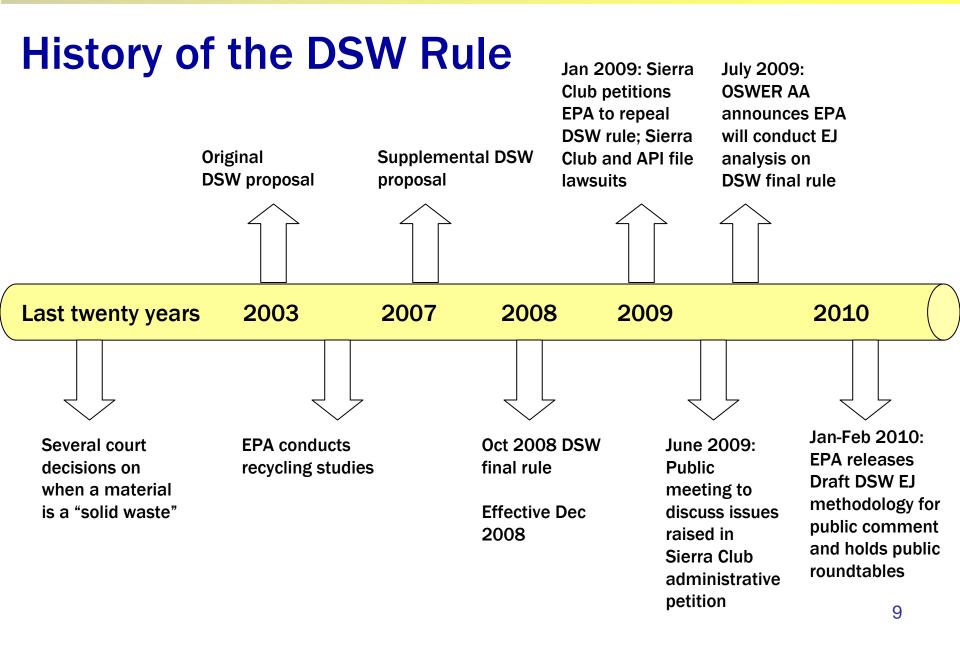
 A key issue since the 1980's is when recycling or reuse constitutes "discard" and therefore is potentially subject to RCRA regulation.

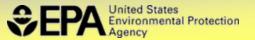


## **Background for the DSW Rule**

- Several court decisions have provided direction about when recycling of hazardous secondary materials resembles manufacturing and when it resembles discard.
- The DSW final rule defines when hazardous secondary materials that are reclaimed have been discarded and are therefore solid and hazardous wastes under RCRA authority.

SEPA United States Environmental Protection

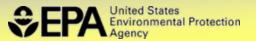




## Status of the DSW Rule

- The DSW final rule was published on October 30, 2008 (73 FR 64668).
- The rule became federally effective on December 29, 2008.
- However, the rule does not go into effect in an authorized state unless and until the state adopts the rule.

What hazardous secondary materials are eligible?	YES	NO
<ul> <li>Spent materials (e.g., spent solvents, spent acids) being reclaimed (e.g., regenerated)</li> <li>Listed sludges (e.g., electric arc furnace dust) being reclaimed (e.g., metals recovery)</li> <li>Listed byproducts being reclaimed</li> <li>Metals recovery in smelting, melting and refining furnaces that meet the BIF exclusion requirements found in 40 CFR 266.100(d) and 266.112</li> </ul>	<ul> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> </ul>	
<ul> <li>Materials burned for energy recovery or "use constituting disposal"</li> <li>Inherently waste-like materials (e.g., dioxins)</li> <li>Materials already excluded under 40 CFR 261.4</li> <li>Spent lead-acid batteries</li> <li>Spent petroleum catalysts (K171, K172)</li> <li>Materials managed in thermal treatment units that involve destruction of hazardous constituents (e.g., carbon regeneration units)</li> </ul>		<ul> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>✓</li> <li>11</li> </ul>



## Four Major Components of the DSW 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 case-by-case petition process

#### 4. "Legitimate" Recycling Provision



# Module 2: Under the Control of the Generator Exclusion



## **Generator-controlled Exclusion**

- Includes hazardous secondary materials that are generated and reclaimed...
  - <u>at the same facility</u> (may be leased), including onsite 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
  - <u>under certain toll manufacturing arrangements</u>



#### **Recycling Must be Legitimate**

Generator Hazardous Waste Regulations DSW Generator-Controlled Exclusion

Must be legitimately recycled (according to EPA guidance)

Must be legitimately recycled according to codified criteria in 40 CFR 260.43



#### Storage

#### Generator Hazardous Waste Regulations

Must not store more than 90/180 days if an LQG/SQG

Must meet specific storage standards in 40 CFR 262

DSW Generator-Controlled Exclusion

Must meet speculative accumulation limits

Materials must be "contained"

Must consider legitimacy factor 3: "materials must be managed as a valuable commodity"



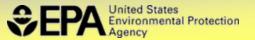
## What is "contained"?

- Generally, material is "contained" if it is placed in a unit that controls the movement of the material out of the unit and into the environment.
- Material that is released from the unit (e.g., through a spill) is considered a solid and hazardous waste unless it is immediately recovered.
- If a release is "significant" the material remaining in the unit may also be considered a solid and hazardous waste, under certain circumstances.



## What is "contained" (cont.)?

- If the materials are not managed as valuable raw materials, the unit could be considered a hazardous waste storage unit.
- "Significant" releases are not necessarily large in volume; small releases over time could also be considered significant under some circumstances.



## What is "contained" (cont.)?

- Materials may be stored in non-land-based units or landbased units.
- A land-based unit is defined as an area where materials are placed in or on the land before recycling (e.g., surface impoundment or waste pile).
- Land-based units do not include land-based production units, which are used in the actual production of a product.



### **Emergency Planning / Training**

Generator Hazardous Waste Regulations

Must have emergency coordinator, test and maintain emergency equipment, and have emergency plan DSW Generator-Controlled Exclusion

#### No specific DSW requirements

- OSHA requirements in 29 CFR 1910.120(q) may apply
- EPCRA requirements in 40 CFR
   355 may apply

Must have personnel training plan

No specific DSW requirements

 OSHA requirements in 29 CFR 1910.1200 may apply



## **Notification / Reporting**

#### Generator Hazardous Waste Regulations

Must submit a Site ID form.

LQGs must submit a Biennial Report every other year DSW Generator-Controlled Exclusion

#### Must submit a Site ID form:

- Prior to managing hazardous secondary materials under the exclusion
- Every other year thereafter
- Within 30 days of stopping management under the exclusion



#### Exports

Generator Hazardous Waste Regulations

Allowed.

DSW Generator-Controlled Exclusion

Not allowed. (However, exports are allowed under the transfer-based exclusion.)



# Module 3: Transfer-Based Exclusion



## **Transfer-based Exclusion**

- Covers hazardous secondary materials that are generated and transferred to another person for reclamation
- Generators and reclaimers must comply with all the conditions and requirements of the generator-controlled exclusion, including:
  - Legitimate recycling
  - Speculative accumulation limits
  - Notifications
  - Materials must be "contained"

# • Plus...



#### Transfer

#### Generator Hazardous Waste Regulations

Must send materials to a facility with a RCRA permit, if the reclamation facility is storing materials prior to recycling.

May send materials to a facility without a RCRA permit, if the reclamation facility is not storing materials prior to recycling. (However, the reclamation facility must meet AA, BB air emission control standards.)

Note: This is because the recycling process is generally exempt under 40 CFR 261.6.

**DSW Transfer-based Exclusion** 

Can send hazardous secondary materials to a RCRA permitted TSDF or to a non-RCRA permitted facility.

If sending to a non-permitted RCRA facility, generator must conduct **reasonable efforts** to ensure reclamation facility intends to safely and legitimately reclaim the materials.

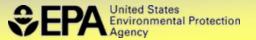
Must make contractual arrangements with any **intermediate facilities** to ensure materials are sent to the reclamation facility.

Must conduct reasonable efforts for any intermediate facility.



#### What are "reasonable efforts"?

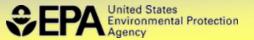
- Reasonable efforts requires generators to evaluate a reclaimer to ensure that they intend to properly manage and legitimately recycle the material prior to shipping it to the facility. Generators must also conduct reasonable efforts on intermediate facilities.
- Generators must make reasonable efforts and document the evaluation every three years at a minimum. Documentation includes a certification statement.
- The minimum standard for reasonable efforts consists of five questions.
- Reasonable efforts is not required if a generator chooses to send materials to a facility that will manage the material under a RCRA Part B permit or interim status standards.



### What are "reasonable efforts" (cont.)?

# Five questions must be affirmatively answered by the generator:

- 1. Is the reclamation process legitimate?
- 2. Has the facility notified authorities and indicated that it has financial assurance?
- 3. Does publicly available information indicate that there are <u>no</u> formal enforcement actions taken against the facility in the previous three years and that the facility is <u>not</u> a "significant non-complier" with RCRA Subtitle C? If "no," does the generator have "credible evidence" the material will be properly managed?
- 4. Does the facility have the equipment and trained personnel to safely recycle the material?
- 5. Does the facility have the required permits to manage residuals and a contract to dispose of them at a permitted facility, or does the generator have "credible evidence" residuals will be safely managed?



## What are "intermediate facilities"?

- Intermediate facilities are facilities that store materials for more than 10 days, but do not generate or reclaim the materials.
- Intermediate facilities do <u>not</u> include transfer facilities, which hold materials during the normal course of transportation for less than 10 days.
- Intermediate facilities must comply with the same conditions as a reclaimer (e.g., notification, financial assurance, recordkeeping).
- Generators must perform reasonable efforts on each intermediate facility and must make contractual arrangements to ensure that the materials are sent to the reclamation facility chosen by the generator.



#### Shipping

#### Generator Hazardous Waste Regulations

Must use a manifest and maintain copies for 3 years.

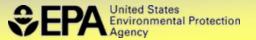
Must comply with DOT regulations.

**DSW Transfer-based Exclusion** 

Must maintain **records of shipments** for three years.

Must maintain **confirmations of receipt** from the reclamation facility and any intermediate facility for three years.

Must comply with DOT regulations.



- Under the transfer-based exclusion, <u>reclaimers</u> and <u>intermediate facilities</u> must:
  - Legitimately recycle materials (reclaimers)
  - Not speculatively accumulate materials
  - Submit notifications (using the Site ID form)
  - Ensure materials are "contained" and managed in a manner at least as protective as analogous raw materials
  - Manage recycling residuals safely (reclaimers)
  - Maintain records of shipments and send confirmations of receipt to generator
  - Have financial assurance



#### **Exports**

#### Generator Hazardous Waste Regulations

Must provide notice and receive consent.

Must file annual reports.

Must file exception reports.

Must use a manifest.

Must provide notice and receive consent.

**DSW Transfer-based Exclusion** 

Must file annual reports.

Must maintain **records of shipments** for three years.

Must maintain **confirmations of receipt** from reclamation facility and any intermediate facility for three years.



# Interstate transfer of excluded hazardous secondary materials

- If originating state has adopted the rule, but receiving (or transfer) state has not adopted:
  - HSM is subject to the hazardous waste requirements of the receiving state that has not adopted the rule upon reaching the border of that state (e.g., manifesting requirements).
  - MUST go to a RCRA permitted facility, and, if stored, materials must be managed in permitted storage units.
  - Excluded materials cannot go to an unpermitted recycling facility in a state that has not adopted the rule because such a facility would not meet the conditions of the exclusion (i.e., financial assurance).



# Interstate transfer of regulated hazardous waste

- If originating state has not adopted the rule, but receiving state has adopted:
  - Hazardous wastes MUST be managed as regulated hazardous waste in the receiving state that has adopted the rule.
  - The hazardous waste would not be eligible for the exclusion because the generator in the originating state that has not adopted would not meet the conditions and requirements of the exclusion (i.e., notification, reasonable efforts).

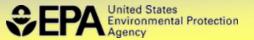
Subtitle C Regulation Requirements for GENERATORS	Transfer-based Exclusion Conditions for GENERATORS
Must be legitimately recycling	Must meet codified legitimacy criteria
Cannot accumulate waste for more than 90 days without a permit	Must meet speculative accumulation limits
Must meet specific storage standards for tanks and containers	Hazardous secondary materials must be contained
Must have emergency coordinator, test and maintain emergency equipment, and have emergency plan	No specific DSW requirements; may have to comply with OSHA requirements in 29 CFR 1910.120(q) and EPCRA requirements in 40 CFR 355
Must have personnel training plan	No specific DSW requirements; may have to comply with OSHA requirements in 29 CFR 1910.1200
Applicable DOT regulations for transport	Applicable DOT regulations for transport
Manifest required Exception Reporting	Records of shipments off-site Confirmations of receipt
One-time notification Biennial Reporting	Notification every two years
Three-year record retention	Three-year record retention
Must ship hazardous waste to a TSDF (if TSD is storing prior to recycling)	Must either ship to a TSDF or conduct reasonable efforts if shipping to a non-TSDF
Exports oNotice & consent oAnnual reports oManifesting oException Reports	Exports <ul> <li>Notice &amp; consent</li> <li>Annual reports</li> <li>Shipping records</li> <li>Confirmations of receipt</li> </ul>

Subtitle C Regulation Requirements for RECLAIMERS AND STORAGE FACILITIES	Transfer-based Exclusion Requirements for RECLAIMERS AND INTERMEDIATE FACILITIES
Must be legitimately recycling	Must meet codified legitimacy criteria
Must obtain Subtitle C permit (if storing prior to recycling)	Permit is not required, but must have financial assurance and must safely manage residuals of recycling process
Waste analysis plan	No specific DSW requirements; MSDS reporting requirements in 40 CFR 370 may apply
Security measures	No specific DSW requirements; DOT transportation security requirements in 49 CFR 172 may apply
Financial assurance	Financial assurance (modified)
Personnel training	No specific DSW requirements; OSHA requirements in 29 CFR 1910.1200 may apply
Must have emergency coordinator, and have emergency and contingency plan	No specific DSW requirements; OSHA requirements in 29 CFR 1910.120(q) and EPCRA requirements in 40 CFR 355 may apply
Manifest requirements	Shipping records and confirmations of receipt required
Operating record Biennial report Three-year record retention	Notification every two years Three-year record retention
Specific design standards for tanks, containers, containment buildings, surface impoundments and inspection requirements.	Hazardous secondary materials must be contained and managed in a manner at least as protective as analogous raw materials.



# Module 4: Notification and Recordkeeping

<b>Recordkeeping for DSW Rule</b>	Generator	Transfer-based		
	-controlled	Generator	Reclamation Facility/ Intermediate Facility	
Notification	✓	$\checkmark$	$\checkmark$	
Certifying statement for "same company"/ tolling arrangement	✓			
Records of shipments		$\checkmark$	$\checkmark$	
Confirmations of Receipt		(receive)	(send)	
Documentation of Reasonable Efforts		$\checkmark$		
Certification of Reasonable Efforts		$\checkmark$		
Contract with intermediate facility to send materials to reclaimer		$\checkmark$		
Notice & Consent to Export		$\checkmark$		
Annual Report for Exports		$\checkmark$		
Financial assurance documentation			✓	



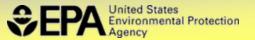
# What is the "notification"?

- Facilities must send a notification prior to operating under the exclusion and by March 1 of each even-numbered year thereafter to the Regional Administrator using the Site ID form (EPA Form 8700-12).
- Information submitted in the notifications enables EPA and states to:
  - (1) monitor compliance of facilities;
  - (2) compile credible information for the public;
  - (3) measure performance and impacts of the rulemaking; and,
  - (4) target future program efforts to achieve further increases in recycling.



# Notifications must include the following information:

- (1) Name, address and EPA ID number (if applicable);
- (2) Name and telephone number of a contact person;
- (3) NAICS code;
- (4) Type of exclusion(s) the facility is claiming;
- (5) Whether the reclaimer/intermediate facility has financial assurance;
- (6) When the facility expects to begin managing materials;
- (7) A list of hazardous secondary materials to be managed;
- (8) Whether the materials will be managed in a land-based unit;
- (9) The quantity of materials to be managed annually; and
- (10) The certification (included in EPA form 8700-12) signed by an authorized representative.



## EPA ID Number OMB#: 2050-0024; Expires 11/30/2011 12. Notification of Hazardous Secondary Material (HSM) Activity Y 🔲 N 🔲 Are you notifying under 40 CFR 260.42 that you will begin managing, are managing, or will stop managing hazardous secondary material under 40 CFR 261.2(a)(2)(ii), 40 CFR 261.4(a)(23), (24), or (25)? If "Yes", you must fill out the Addendum to the Site Identification Form: Notification for Managing Hazardous Secondary Material. Everyone must answer this question. This item serves as a link to the Addendum to the

Site ID form.

#### ADDENDUM TO THE SITE IDENTIFICATION FORM:

#### NOTIFICATION OF HAZARDOUS SECONDARY MATERIAL ACTIVITY



#### Before filling out this section: your hazardous wastes in this section. Only facilities managing HSM must section). Use additional pages if more space is needed. complete the Facility code b. Waste code(s) for hazardous secondary material (HSM) (answer using codes listed in the Addendum, Facilities Code List section of the instructions) must be in a state where the DSW rule is effective.

You must check with your State to determine if you are eligible to manage hazardous secondary material under 40 CFR. 261.2(a)(2)(II), 261.4(a)(23), (24), or (25). (See also http://www.epa.gov/epawaste/hazard/dsw/statespf.htm.) You must be managing hazardous secondary material, which is secondary material (e.g., spent material, by-product, or sludge) that when discarded, would be identified as hazardous waste under 40 CFR Part 261. Do not include any information regarding You must submit a completed Site Identification Form, including this Addendum, prior to operating under the exclusion(s) and by March 1 of each even-numbered year thereafter to your regulatory authority using the Site identification Form as pursuant to 40 CFR 260.42. Persons who must staisfy this notification requirement can submit information at the same time as their Bienniai Report (which is also due by March 1 of each even-numbered year). If you stop managing hazardous secondary material in accordance with the exclusions(s) and do not expect to manage any amount of hazardous secondary material under the exclusions(s) for at least one year, you must also submit a completed Site identification Form, including this Addendum, within thirty (30) days pursuant to 40 CFR 260.42. Indicate reason for notification. Include dates where requested. Notifying that the facility will begin managing hazardous secondary material as of (mm/dd/yvyy). Re-notifying that the facility is still manaping hazardous secondary material. Notifying that the facility has stopped managing hazardous secondary material as of (mm/dd/yyyy). 2. Description of hazardous secondary material (HSM) activity. Please list the appropriate codes and quantities in short tons to describe your hazardous secondary material activity ONLY (do not include any information regarding your hazardous wastes in this c. Estimated short d. Actual short tons e. Land-based unit tons of HSM to be of HSM that was CODE managed during the managed annually (answer using codes most recent oddlisted in the Code numbered year List section of the instructions) 3. Facility has financial assurance pursuant to 40 CFR 261 Subpart H. (Financial assurance is required for reclaimers and Intermediate facilities managing hazardous secondary material under 40 CFR 261.4(a)(24) and (25)) Y 🔲 N 🔲 Does this facility have financial assurance pursuant to 40 CFR 261 Subpart H?

#### HSM FACILITY CODES

Facility codes describe the specific regulation a facility uses to manage its hazardous secondary material (HSM) and the type of activity the facility performs under that regulation (e.g., generator, reclaimer). Review the groups and pick the appropriate code. If more than one facility code applies to you, enter each code on a separate row under Item 2 of the Addendum to the Site ID Form.

Unde	r Control of the Generator Exclusion (40 CFR 261.2(a)(2)(ii) or 261.4(a)(23))
Code	Facility Code Description
01	HSM Generator reclaiming HSM "on-site": This code applies if you generate and reclaim hazardous secondary material at your generating facility. See also paragraph (1) in the Federal definition of "Hazardous secondary material generated and reclaimed under the control of the generator" in 40 CFR Part 260.10
02	HSM Generator transferring HSM to reclaimer within the "same company": This code applies if you generate hazardous secondary material and send the material for reclamation to a different facility that is either controlled by you or controlled by the same person that controls your generating facility. See also paragraph (2) in the Federal definition of "Hazardous secondary material generated and reclaimed under the control of the generator" in 40 CFR Part 260.10.
03	Reclaimer receiving HSM from HSM generator within the "same company": This code applies if you receive and reclaim hazardous secondary material from a different facility that either controls you or is controlled by the same person that controls you. See also paragraph (2) in the Federal definition of "Hazardous secondary material generated and reclaimed under the control of the generator" in 40 CFR Part 260.10.
04	Tolling Contractor reclaiming HSM pursuant to a tolling contract: This code applies if you are a tolling contractor that reclaims hazardous secondary material pursuant to a written contract with a toll manufacturer. See also paragraph (3) in the Federal definition of "Hazardous secondary material generated and reclaimed under the control of the generator" in 40 CFR Part 260.10.
05	Toll Manufacturer managing HSM pursuant to a tolling contract: This code applies if you generate and send hazardous secondary material for reclamation to a tolling contractor pursuant to a written contract. See also paragraph (3) in the Federal definition of "Hazardous secondary material generated and reclaimed under the control of the generator" in 40 CFR Part 260.10.

Transfer-based Exclusion (40 CFR 261.4(a)(24))

Code	Facility Code Description
06	HSM Generator transferring HSM off-site to a domestic reclamation facility: This code applies if you generate and send hazardous secondary material for reclamation to an off-site domestic reclamation facility.
07	Reclaimer receiving HSM from off-site: This code applies if you reclaim hazardous secondary material received from an off-site domestic hazardous secondary material generator or other domestic facility.
08	Intermediate facility: This code applies if you receive hazardous secondary material from an off-site domestic hazardous secondary material generator or another domestic facility and you store it for more than ten days. This code does not apply if you generate or reclaim the hazardous secondary material.

Impo	rts/Exports (40 CFR 261.4(a)(24) or (25))
Code	Facility Code Description
09	HSM Generator exporting HSM off-site to a foreign reclamation facility: This code applies if you
	generate and export hazardous secondary material for reclamation to a foreign reclamation facility.
	HSM Generator importing HSM from a foreign entity to send to another domestic reclamation
10	facility: This code applies if you import hazardous secondary material from a foreign entity and send the
	material for reclamation to a domestic reclamation facility.
11	HSM Generator AND Reclaimer of imported HSM: This code applies if you import hazardous
	secondary material from a foreign entity and reclaim the material at your facility.

List of facility codes for reporting hazardous secondary material activity. Found on p. 42 of Site ID instructions.



#### Examples for Reporting Hazardous Secondary Material Activity:

**EXAMPLE 1:** A pharmaceutical manufacturer generates spent solvents that are characteristic for ignitability (D001). He plans to manage his spent solvents under 40 CFR 261.2(a)(2)(ii) and 261.4(a)(24). He will send some amount to a reclaimer within his own company and the rest off-site to a reclamation facility within the United States. He will not manage any spent solvents in a land-based unit. Following the regulations, he is submitting his initial notification prior to managing his spent solvents under the exclusions. He reports his hazardous secondary material activity as follows:

a. Facility code (answer using codes listed in the Code List section of the instructions)	b. Waste Code(s) for hazardous secondary material (HSM)	c. Estimated short tons of HSM to be managed annually	d. Actual short tons of HSM that was managed during the most recent odd- numbered year	e. Land-based unit code (answer using codes listed in the Code List section of the instructions)
02	D001	15	0	NA
06	D001	40	0	NA

**EXAMPLE 3:** A reclamation facility has been receiving and reclaiming spent solvents under 40 CFR 261.2(a)(2)(ii) and 261.4(a)(24) for a number of years. He receives and reclaims spent solvents from multiple hazardous secondary material generators, some of which are within his same company. He does not manage any spent solvents in a land-based unit. It is now time to re-notify. He would report his hazardous secondary material activity as follows:

a. Facility code (answer using codes listed in the Code List section of the instructions)	b. Waste Code(s) for hazardous secondary material (HSM)	c. Estimated short tons of HSM to be managed annually	d. Actual short tons of HSM that was managed during the most recent odd- numbered year	e. Land-based unit code (answer using codes listed in the Code List section of the instructions)
03	D001;F002;F003;F005	6,000	7,533	NA
03	D001;D038;F002;F003	1,500	918	NA
07	D001;F002;F003;F005	3,000	3,509	NA
07	D001;D038;F002;F003	1,000	523	NA

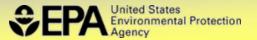


# What are the "certifying statements"?

 If a generator is managing HSM under the "same company" or under a tolling arrangement, he must certify a statement included in 40 CFR 260.10.

## • Example:

"On behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert the name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material."



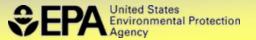
# What are "records of shipments"?

- These records may consist of routine business records but must contain the following information:
  - Name of the transporter and date of the shipment;
  - Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;
  - The type and quantity of hazardous secondary material in the shipment.



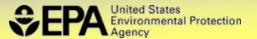
# What are "confirmations of receipt"?

- These records can be fulfilled by routine business records but must contain the following information:
  - the name and address of the reclaimer (or intermediate facility);
  - the type and quantity of the hazardous secondary materials received;
  - the date which the hazardous secondary materials were received.



## What counts as "documentation of reasonable efforts"?

- Generators must maintain documentation showing that they satisfied the reasonable efforts condition. Such records could include:
  - Copies of audit reports;
  - Information from third party organizations;
  - Information from reclamation facility;
  - Information collected by the generator;
  - Public records (e.g., RCRA compliance history).
- Generators must maintain documentation and certification for 3 years and these must be available upon request within 72 hours or as specified by regulatory authority.



# What is the "certification of reasonable efforts"?

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



# Module 5: Non-Waste Determination Procedure



# **Non-waste Determination**

- Includes hazardous secondary materials that are...
  - reclaimed in a continuous industrial process; or
  - indistinguishable in all relevant aspects from a product or intermediate.
- Materials recycled by 'use constituting disposal' and burning for energy recovery are not eligible for a non-waste determination.



# What is the process for obtaining a non-waste determination?

- To obtain a non-waste determination, facilities must:
  - Legitimately recycle materials;
  - Demonstrate that the hazardous secondary material meets eligibility criteria; and
  - Submit application to EPA or authorized state.
- After a public comment period, regulatory authorities can either grant or deny a non-waste determination request.
- Regulatory authorities may also stipulate conditions as part of the non-waste determination.



# Module 6: Legitimate Recycling Provision

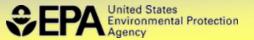


- The legitimate recycling provision is a condition of the new DSW exclusions and non-waste determinations.
- Is equivalent to the long-standing policy for legitimate recycling.



## • Two mandatory 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.
- Two factors must be considered
  - Materials must be managed as valuable commodities.
  - Products of recycling must not contain significantly higher levels of hazardous constituents than are in analogous products.



### What does it mean to meet the mandatory factors?

- Persons <u>must meet</u> the mandatory factors:
  - Material provides a useful contribution to the recycling process or a product or intermediate if it:
    - Contributes valuable ingredients;
    - Replaces a catalyst or carrier in the recycling process;
    - Is a source of a valuable constituent recovered;
    - Is recovered or regenerated; <u>OR</u>
    - Is used as an effective substitute for a commercial product.
  - Recycling produces a valuable product or intermediate if it is:
    - Sold to a third party; OR
    - Used by the recycler or generator as an effective substitute for a commercial product or as an ingredient or intermediate. 55



## What does it mean to meet (or not meet) the nonmandatory factors?

- Persons <u>must consider</u> the non-mandatory factors:
  - Materials must be managed as valuable commodities; and
  - Products of recycling must not contain significantly higher levels of hazardous constituents.
- If the recycling does not meet one of the non-mandatory factors, the recycler should be prepared to explain why the recycling is still legitimate, for example, by considering the protectiveness of the storage methods, exposure from and bioavailability of toxics in the products, and other relevant considerations in evaluating legitimacy.



# Module 7: Status and Implementation of the DSW Rule



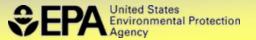
# What has happened since publication of the DSW final rule?

- On January 29, 2009, the Sierra Club submitted an administrative petition to the Agency requesting that EPA repeal the rule and stay its implementation.
- On March 6, 2009, industry associations requested that EPA deny the Sierra Club's petition on the grounds that the DSW final rule is consistent with court decisions regarding EPA's jurisdiction to regulate waste under RCRA.
- In addition, both Sierra Club and the American Petroleum Institute have submitted petitions to the court for judicial review, with fourteen additional industry groups filing to intervene.



# What has happened since publication of the DSW final rule? (cont.)

- On June 30, 2009, EPA held a public meeting to allow all interested stakeholders an opportunity to comment and provide input before the Agency makes a decision on Sierra Club's administrative petition.
- Most speakers at the public meeting raised the issue of potential environmental justice impacts of the DSW rule. In response to these concerns, OSWER announced that we will do an expanded analysis of environmental justice impacts of the rule as part of the petition response.
- During January-February 2010, OSWER released a draft EJ methodology for the DSW rule and held three public roundtables to gather comment on the methodology.



## What is happening with the DSW final rule now?

- We are conducting the EJ analysis on the DSW final rule.
- We are reviewing public comments received last summer.
- Using both the EJ analysis and the public comments, we are considering a broad range of options regarding the DSW final rule and are working towards a proposed response to Sierra Club's petition.

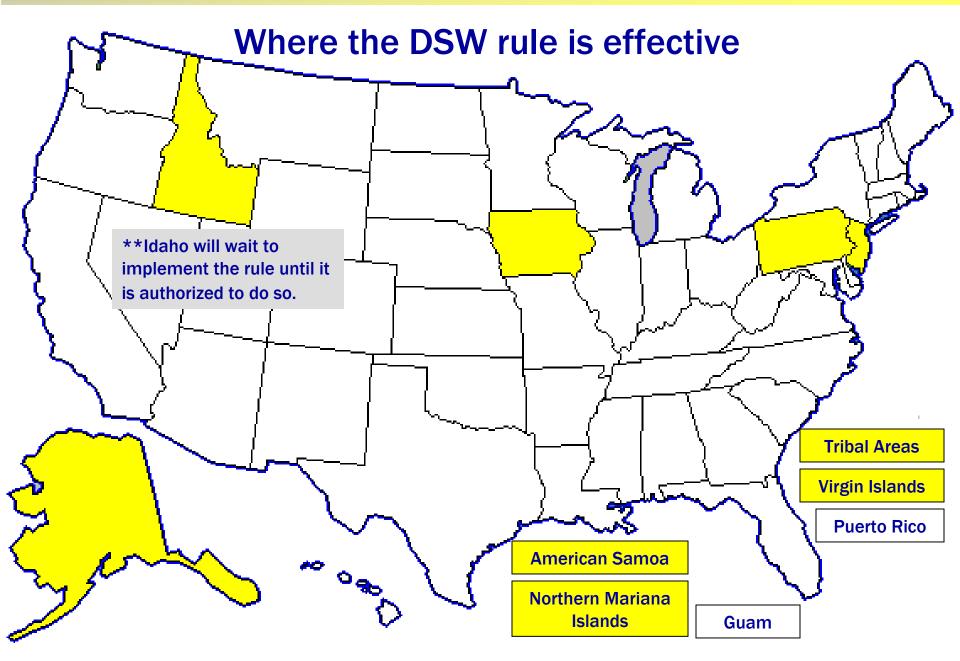


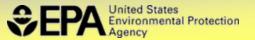
## **Next Steps**

- Tentative decision on response to Sierra Club petition (40 CFR 260.20(c))
  - Federal Register Notice and Request for Comment
  - May be Advanced Notice of Proposed Rulemaking, Proposed Rule, or Tentative Denial
- Optional Informal Public Hearing (40 CFR 260.20(d))
- Final response to petition (40 CFR 260.20(e))
  - Federal Register Notice: Regulatory Amendment or Denial

**Module 7: Status & Implementation** 

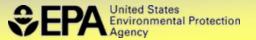






# **DSW Users Group**

- Formed to assist states and EPA regions with implementing the DSW rule.
- Includes those states and regions that have adopted the rule.
- New Jersey representatives Zafar Billah, Mike Hastry, Jennifer Meyer.
- The group has focused on:
  - Notifications;
  - Training/Guidance; and
  - Compliance Monitoring.



# **Notifications**

- As of April 2010, we have received 31 DSW notifications:
  - 15 generating and reclaiming onsite
  - 6 generating and reclaiming within the same company
  - 9 generating and transferring off-site
  - 4 reclaimers receiving from off-site
- Most hazardous secondary materials being reclaimed are spent solvents, electric arc furnace dust, and other metal-bearing wastes.



# Notifications (cont.)

List of Facilities that have Notified U

EPA ID	Name	City
lowa		
IAD005286539	lowa Mold Tooling Company Inc	Garner
IAD043490150	Curries 9th. Street Facility	Mason City
IA0000990762	lowa Contract Fabricators Inc	Riceville
IAR000007377	<u>Siegwerk</u> USA Co	Des Moines
IAD078096732	Siegwerk USA Co	Des Moines
IA0000362905	Curries 1.2th. St.NVV Facility	Mason City
IAD000678094	John Deere Engine Works	Waterloo

#### Summary of Definition of Solid Waste Final Rule Notifications As of April 5, 2010

Under the Revisions to the Definition of Solid Waste (DSW) final rule, published October 30, 2008 (73 FR 64668), facilities are required to notify their regulatory authority prior to managing hazardous secondary materials under the DSW rule and every other year thereafter. EPA is providing this *Summary of Definition of Solid Waste Final Rule Notifications* to enable public access to the information received from these notifications. Note: The information from the notifications is reported as it was submitted by the companies; <u>some</u> information from recent re-notifications have not yet been included.

	<u>Sta</u>		of facilities that have submitted a D 14	SW notification			
Garner	Pei Net	<sup>va</sup> nnsylvania w Jersey <b>TAL</b>	14 12 5 <b>31</b>				
Mason City	Ge Ge Ge	nerator-controlled ex nerator-controlled ex		<mark># of facilities</mark> 15 ny 6 0	<u>5<sup>1</sup></u>		
Riceville	Tra Tra Tra	insfer-based exclusio insfer-based exclusio insfer-based exclusio	n, generator transferring offsite n, reclamation facility <sup>2</sup> n, intermediate facility n, generator exporting HSM n, reclamation facility importing HSM	9 4 0 0 1			
Des Moines	Sol Ele	zardous Secondary Vents (F001-F005, D etric arc furnace dus ent pickle liquor (K06	035, plus D001) t (K061)			a <b>cilities</b> ³ 6 2 5	
Des Moines	lgn Ch	itable and/or corrosiv aracteristically toxic f	plating bath residues from electroplatin e (only) (D001, D002) or metals (D004-D011) <sup>4</sup> toxic (D012-D043, except D035)	g operations (F006;F008	3)	4 8 3 1	
Mason City	<sup>2</sup> Fo have <sup>3</sup> So:	ur reclaimers have notified u e financial assurance.	e operating as multiple facility types and thus are co inder the rule (INMETCO Ellwood City, PA; Safety e managing multiple types of hazardous secondary n ive.	-Kleen Linden, NJ; Veolia Middl	esex, NJ and World F		my Pottsville, PA). All have notified they
Waterloo							1
YYALCHUU		Manufacturing	now Generator reclaiming onsite		33 10115	Aug-05	65

# Facilities currently operating under the DSW rule in New Jersey



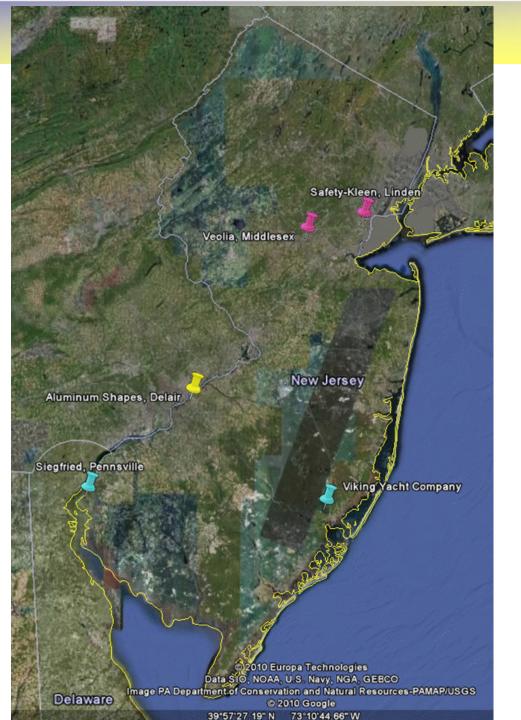
Generator-controlled exclusion; facility is reclaiming materials onsite or within the same company.



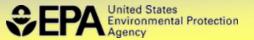
Transfer-based exclusion; facility is transferring materials offsite for reclamation



Transfer-based exclusion; facility is reclaiming materials received from offsite.



66



## **Status of the DSW rule in New Jersey**

- As of April 2010, New Jersey has received 5 notifications:
  - 1 facility generating and reclaiming onsite
  - 2 facility transferring hazardous secondary materials (HSM) offsite
  - 2 facilities receiving HSM from offsite for reclamation
- Most hazardous secondary materials being reclaimed in New Jersey are spent solvents.

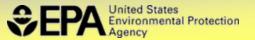


# Guidance

TED STAD	U.S. ENVIRONMENTAL PROTECTION AGENCY
	Wastes - Hazardous Waste - Definition of Solid Waste
PROTECTION AND AND AND AND AND AND AND AND AND AN	Recent Additions   Contact Us Search: O All EPA () This Area Go You are here: EPA Home » Wastes » Hazardous Waste » Definition of Solid Waste » Resources » Implementation Resources
Wastes Home	DSW Final Rule: Resources for Implementation
Hazardous Waste Home	On October 7, 2008, the Environmental Protection Agency issued a final Definition of Solid Waste (DSW) rule that streamlines regulation of hazardous secondary materials to encourage beneficial recycling and help conserve resources. By removing unnecessary regulatory controls, EPA expects to make it easier and more cost- effective to safely recycle hazardous secondary material. This website provides tools and resources for facilities managing hazardous secondary materials under this
Definition of Solid Waste Home	rule.
DSW Tool	<u>Where can I find the regulation citations for the rule?</u> Where is the DSW final rule in effect?
DSW Compendium	What facilities have notified that they will be operating under the DSW rule?
DSW Federal Register Notices	How do I notify under the DSW rule?     What is the history of this rule?     Where can I find answers to Frequent Questions?
Additional Resources	What additional resource materials are available?
Resource Conservation Challenge	Where can I find the regulation citations for the rule? The revisions to the definition of solid waste rule are set forth in various parts of the regulations:
Information Resources	Under Control of the Generator Exclusion
Laws & Regulations	<ul> <li>For non-land based units 40 CFR 261.2(a)(2)(ii)</li> <li>For land-based units 40 CFR 261.4(a)(23)</li> </ul>
Educational Materials	Transfer-based Exclusion 40 CFR 261.4(a)(24)
Partnerships	Hazardous Secondary Materials Being Exported 40 CFR 261.4(a)(25)     Notification 40 CFR 260.42
Planet Protectors FOE KIGS!	<ul> <li>Legitimate Recycling 40 CFR 260.43</li> <li>Financial Assurance 40 CFR part 261 subpart H</li> <li>Non-waste Determinations 40 CFR 260.30, 40 CFR 260.33, and 40 CFR 260.34</li> <li>Definitions 40 CFR 260.10</li> </ul>
	∲Top of Page
	What facilities have notified that they will be operating under the DSW rule?

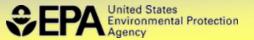
As of March 25, 2010, 30 facilities have notified they are managing hazardous secondary materials under the DSW final rule. See the <u>Summary of Definition of Solid</u> <u>Waste Final Rule Notifications (PDF)</u> (5 PP, 70K, <u>About PDE</u>) for a summary of information collected from these notifications. (*Note: The information from the notifications is reported as it was submitted by the company; some information from recent re-notifications has not yet been included.*)

## Website: http://www.epa.gov/epawaste/hazard/dsw/impresource.htm



# **Training/Guidance**

- Provided training for states and regions, as well as the regulated community.
- We responded to questions from Safety-Kleen and Veolia regarding the DSW rule. These responses are posted in RCRAOnline and on our website.
- We have developed four "DSW compilations" to help facilities and regulatory program staff understand the new requirements in the rule.



# **Review "The Contained Standard"**



# Guidance

• Developed a brochure for generators on how to choose a responsible recycler.

### Choosing a Responsible Recycler

A GUIDE FOR GENERATORS OF HAZARDOUS SECONDARY MATERIALS



#### LEARN the basics.

Can the recycler give you a general description of its business, including a point of contact, number of employees, years in business and ownership history, site information and history, summary of operations, services offered, etc.?

Can the recycler provide the facility's compliance record with federal and state environmental and occupational safety regulations? Does the facility's record indicate a commitment to sound environmental stewardship?

#### UNDERSTAND the recycling process.

Does the recycler normally accept the materials you want recycled?

After receiving your materials, does the recycler track them through its process?

Can the recycler describe its processes and procedures for recycling, reuse, or resale?

Does the recycler have environmental, health, and safety management systems in place to ensure environmentally sound management practices?

### ASK about what happens afterwards.

Is there a reliable market for the saleable products or intermediates that are made from recycling your hazardous secondary material?

Are residuals, if any are generated from the recycling process, managed in a manner that is protective of human health and the environment?

Can the recycler provide names and locations of businesses, landfills, or incinerators to which it sends products and/or residuals?

Can the recycler supply certification of final disposition for your materials, if necessary?

#### CONSIDER a few other things.

Are you interested in verifying information through an onsite evaluation, such as an environmental compliance audit? Do you want to check the facility's record in EPA's public databases (such as http://www.epaecho.gov/echo) or state databases?

Does the recycler maintain appropriate environmental liability insurance, and are mechanisms in place to ensure clean-up costs would be covered if the facility unexpectedly closes or has to perform an environmental clean-up?

#### WANT MORE INFORMATION?

Visit EPA's general hazardous materials recycling Web site at http://www.epa.gov/wastes/hazard/recycling Review a recycler's compliance status with EPA at http://www.epa-echo.gov/echo/





## For additional information or to give feedback...

For information on the DSW rule, contact:

- Mary Beth Sheridan <u>sheridan.marybeth@epa.gov</u> (703) 308-4941
- Amanda Geldard <u>geldard.amanda@epa.gov</u> (703) 347-8975