

# WEBINAR AT 10:00 MST

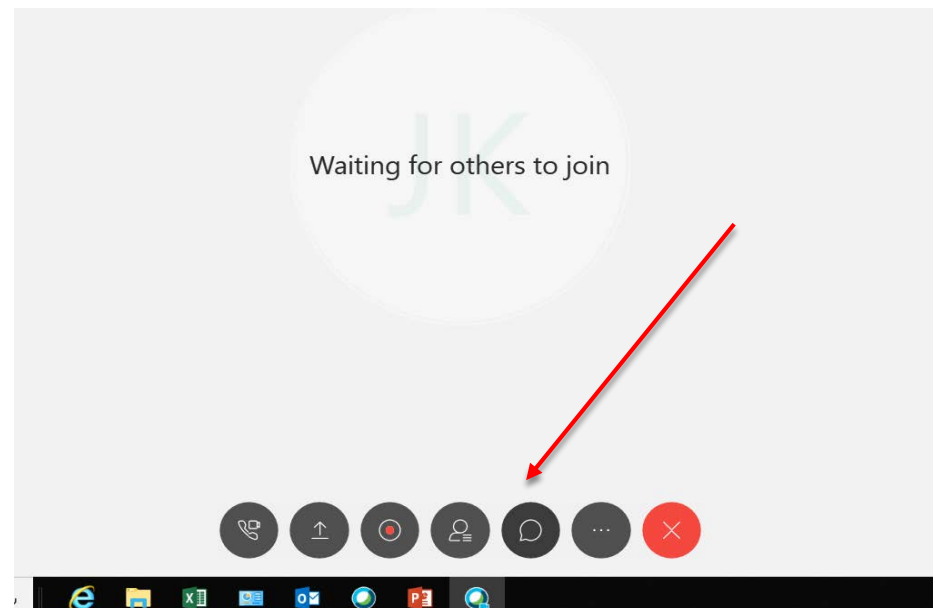
## GENERATOR IMPROVEMENT RULE

### Housekeeping Issues:

Please be sure your phone is on “mute” to keep background noise to a minimum.

**PLEASE DO NOT** put your phone on “hold” during the webinar, as much as we all love music, it is a bit distracting while conducting a webinar.

Please save all your questions until the end and use the chat bubble on the bottom of the screen to ask questions.



# NMED

New  
Mexico  
Environment  
Department



## DEFINITION OF SOLID WASTE

March 23, 2019

Don Meyer  
Environmental Specialist  
New Mexico Environment Department

# Introduction

- From 2008 to 2018 the EPA added 4 rules for exclusions to the Definition of Solid Waste (DSW).
- The 4 exclusions are for Secondary Hazardous Materials (HSM).
- The scope of this presentation is to discuss the definitions, requirements and examples of the exclusions.



# Definitions

Definitions are listed in 40 CFR 260.10.

- Hazardous Secondary Material (HSM)— is a spent material, by-product or sludge that, when discarded, would be a hazardous waste.
- Intermediate Facility — means any facility that stores HSM for more than 10 days, other than a generator or a reclaimer.
- Remanufacturing — processing a higher value HSM in order to manufacture a product that serves a similar functional purpose as the original commercial grade material.
- Sludge — solid, semi-solid or liquid waste generated from a municipal, commercial, industrial waste-water treatment plant or air pollution control facility exclusive of the treated effluent.



# Overview

- The purpose of the DSW rule is to reduce compliance costs while encouraging legitimate recycling of materials.
- EPA identified mismanagement by third-party hazardous materials recyclers as posing a risk of fires, explosions, accidents and releases of hazardous constituents to the environment. This is because the economics of commercial recycling contain market disincentives that encourage over-accumulation and mismanagement of hazardous secondary material.



# Overview (continued)

- The 2015 DSW rule addresses these market disincentives in a way that helps encourage safe and legitimate recycling while addressing the need to protect communities.
- The DSW revisions provides communities a strong protection against the potential for mismanagement of hazardous materials intended for recycling and opportunities for public participation in environmental decision-making at DSW recycling facilities, while allowing legitimate recycling activities to continue.



# Solid Waste Exclusions

- 40 CFR 261.4(a)(23) – Generator Controlled Exclusion
- 40 CFR 261.4(a)(24) – Transfer Based Exclusion for Domestic Reclamation
- 40 CFR 261.4(a)(25) – Transfer Based Exclusion for Foreign Reclamation
- 40 CFR 261.4(a)(27) – Transfer for Remanufacturing Exclusion



# Generator Controlled Exclusion

- 40 CFR 261.4(a)(23) – Generator Controlled Exclusion
  - Revisions combine and modify EPA's 2008 changes for non land based [former 40 CFR 261.2(a)(ii)] and land based recycling processes
  - Hazardous secondary material generated and legitimately reclaimed within the U.S. or its territories and under the control of the generator
  - Material complies with paragraphs (a)(23)(i) and (ii)





# Generator Controlled Exclusion (continued)

- **261.4(a)(23)(i)(A)** – The hazardous secondary material (HSM) is generated and reclaimed at the generating facility.
- **261.4(a)(23)(i)(B)** – The HSM is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator.
- **261.4(a)(23)(i)(C)** – The HSM is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor



# Generator Controlled Exclusion (continued)

- **261.4(a)(23)(ii)(A)** – The HSM is contained
- **261.4(a)(23)(ii)(B)** – The HSM is not speculatively accumulated
- **261.4(a)(23)(ii)(C)** – Notice (notification) is provided
- **261.4(a)(23)(ii)(D)** – The HSM is not otherwise subject to material specific management conditions under 40 CFR 261.4(a)
- **261.4(a)(23)(ii)(E)** – The HSM recycling is legitimate
- **261.4(a)(23)(ii)(F)** – Emergency Preparedness and response requirements are met



# Generator Controlled Exclusion (continued)

## Under the Control of the Generator means:

- **261.4(a)(23)(i)(A)** – The HSM is generated & reclaimed at generating facility
  - ▣ **Generating Facility** means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator.



# Generator Controlled Exclusion (continued)

## Under the Control of the Generator means:

- **261.4(a)(23)(i)(B)** – The HSM is generated & reclaimed at different facilities controlled by the generator, or both generator and recycler are controlled by the same person.
  - “Person” means an individual, trust, firm, joint stock company, Federal Agency, corporation ...
  - “Control” means power to direct policies of facility
  - Requires generator certification statement
  - Generator and receiving facility must maintain 3 years of records documenting HSM shipments



# Generator Controlled Exclusion (continued)

## Under the Control of the Generator means:

- **261.4(a)(23)(i)(C)** – The HSM is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the toll contractor.
  - “Toll Manufacturer” means a person who produces a product or intermediate made from specified **unused** materials pursuant to a written contract with a tolling contractor
  - Tolling contractor certification required
  - Tolling contractor and toll manufacturer must both maintain 3 years of records of HSM shipped / received pursuant to the written contract



# Generator Controlled Exclusion (continued)

- **261.4(a)(23)(ii)(A)** – The HSM is “contained” meaning it is held in a unit (including a land-based unit) that:
  - The unit is in good condition with no leaks or other continuing or intermittent unpermitted releases of HSM to environment.
  - The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the HSM in the unit.
  - The unit holds HSM compatible with other HSM placed in the unit and is compatible with materials used to construct the unit and addresses potential risk of fire or explosion.
  
- A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation. Hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases is discarded and a solid waste.



# Generator Controlled Exclusion (continued)

- **261.4(a)(23)(ii)(B)** – The HSM is not speculatively accumulated. Must show:
  - Material is potentially recyclable and has a feasible means of being recycled.
  - During calendar year amount recycled, or transferred for recycling is at least 75%
  - Material placed in storage unit with label indicating accumulation start date (or use log)



# Generator Controlled Exclusion (continued)

- **261.4(a)(23)(ii)(C)** – Notice is provided...
- Prior to operating under the exclusion, and by March 1 of each even numbered year submit 8700-12 Form with:
  - Name, Address, EPA ID Number of the facility
  - Name and Telephone Number of Contact
  - NAICS Code
  - Regulation under which the HSM will be managed
  - When facility began, or will begin, managing HSM
  - List of HSM that will be managed (Waste Codes)
  - Whether any HSM will be managed in land-based unit
  - Quantity of HSM to be managed annually
  - Signed certification contained in the 8700-12 Form





# Generator Controlled Exclusion (continued)

- **261.4(a)(23)(ii)(C)** – Notice is provided...
- If the facility that has notified as managing HSM and subsequently stops managing the material in accordance with the regulation an updated Notification must be provided within 30 days



# Generator Controlled Exclusion (continued)

- **261.4(a)(23)(ii)(D)** – The material is not otherwise subject to material-specific management conditions under 40 CFR 261.4(a) [exclusions] when reclaimed
- Material is not a spent lead-acid battery



# Generator Controlled Exclusion (continued)

- **261.4(a)(23)(ii)(E)** – Persons performing recycling must maintain documentation of legitimate recycling determination on-site
  - Documentation is written description of how the recycling meets the following 4 factors
    - HSM provides a useful contribution to recycling process
    - Recycling process must produce a valuable product or intermediate
    - The HSM must be managed as a valuable commodity
    - The product of the recycling process must be comparable to a legitimate product or intermediate.
  - Documentation must be maintained for 3 years after recycling operation has ceased



# Generator Controlled Exclusion (continued)

- **261.4(a)(23)(ii)(F)** – Must meet Preparedness and Response requirements of 261 Subpart M
  - ▣ Applies to those areas of the entity managing the excluded HSM where HSMs are generated or accumulated on-site
  - ▣ Generator of HSM accumulating 6,000 kilograms or less of HSM at any time must comply with 261.410 and 261.411
  - ▣ Generator of HSM accumulating more than 6,000 kilograms of HSM at any time must comply with 261.410 and 261.420



# Preparedness and Response

- **40 CFR 261.410 – Preparedness & Prevention**
  - Maintenance & Operation of Facility to minimize...
  - Required Equipment
    - Internal communications or alarm system
    - Telephone immediately available at scene of operations
    - Portable fire extinguishers, fire control, spill control, and decontamination equipment
    - Water of adequate volume and pressure
  - Testing & Maintenance of Equipment
  - Access to Communications or Alarm System
    - Whenever HSM is being actively managed
    - If ever just 1 employee on premises while facility operating



# Preparedness and Response (continued)

- **40 CFR 261.410 – Preparedness & Prevention (Continued)**
  - Required Aisle Space
  - Arrangements with Local Authorities
    - Generator must attempt to make following arrangements
      - Familiarize police, fire departments, and emergency response teams... **properties of HSM handled at the facility and associated hazards...**
      - Where more than 1 police department...
      - Agreements with state emergency response teams...
      - Arrangements to familiarize local hospitals with the properties of **hazardous waste** handled at the facility...

(The words “hazardous waste” above are not a typo)
  - Documentation of refusals for arrangements



# Preparedness and Response (continued)

## Requirement for 6,000 kg or less of HSM

- **40 CFR 261.411** – Emergency Procedures
  - ▣ Emergency Coordinator (EC)
  - ▣ Must post the following next to telephone
    - Name and Telephone Number of EC
    - Location of fire extinguishers, spill control material, fire alarm
    - Telephone number of fire department
  - ▣ Training of employees
  - ▣ EC must respond to any emergencies that arise



# Preparedness and Response (continued)

## Requirement for more than 6,000 kg of HSM

- **40 CFR 261.420** – Contingency Planning
  - ▣ Purpose & Implementation of Contingency Plan
  - ▣ Content of Contingency Plan
  - ▣ Copies of Contingency Plan
  - ▣ Amendment of Contingency Plan
  - ▣ Emergency Coordinator
  - ▣ Emergency Procedures





# Transfer Based Exclusion - Domestic

- **40 CFR 261.4(a)(24)** – HSM is generated and transferred to an offsite third party reclamation facility for the purpose of reclamation...provided that:
  - The material is not speculatively accumulated
  - The material is not handled by any person or facility other than the HSM generator, transporter, an intermediate facility or the reclaimer
    - While in transport it cannot be stored for greater than 10 days at a transfer facility
    - Packaged in accordance with DOT requirements



# Transfer Based Exclusion – Domestic (continued)

- **40 CFR 261.4(a)(24) – Continued**
  - The material is not otherwise subject to material-specific management conditions under 40 CFR 261.4(a) [exclusions] when reclaimed
  - Material is not a spent lead-acid battery
  - Document legitimate recycling
    - Maintain documentation for 3 years after operations cease
  - The HSM Generator must meet the following:
    - The material must be “Contained”
    - HSM generator must arrange for transport to a HW TSD or a facility that has received a variance for facilities in the U.S.



# Transfer Based Exclusion – Domestic (continued)

- **40 CFR 261.4(a)(24) – Continued**
  - ▣ The HSM Generator must maintain at the generating facility 3 years of records for all off-site shipments
  - ▣ The HSM Generator must maintain at the generating facility 3 years of records for confirmation of receipt from each reclaimer and intermediate facility
  - ▣ The HSM Generator must comply with Part 261 Subpart M preparedness and response



# Transfer Based Exclusion – Domestic (continued)

- **40 CFR 261.4(a)(24) – Continued**
  - Reclaimers of HSM, and intermediate facilities, must comply with:
    - 3 years of records for all HSM received and/or shipped off-site for further reclamation
    - Intermediate facility must send the HSM to the reclaimer designated by the HSM generator
    - Confirmation of receipt of HSM must be provided to generator
    - HSM must be managed in a manner that is at least as protective as for raw materials and it must be contained.
    - Reclaimer and Intermediate facilities must have financial assurance as required under 40 CFR Part 261 Subpart H
    - Must have RCRA Permit or be granted variance
    - Must provide notification required by 40 CFR 260.42



# Transfer Based Exclusion - Foreign

- **40 CFR 261.4(a)(25)** – For HSM exported to foreign countries.
  - ▣ Reclaimers of HSM, and intermediate facilities, must comply with:
    - Most of the provisions in 40 CFR 261.4(a)(24).
    - Follow the requirements for 40 CFR 262 Subpart H for hazardous waste exports.



# Transfer to Remanufacturer Exclusion

- **40 CFR 261.4(a)(27)** – HSM is transferred to another person for purpose of remanufacturing
- The HSM must consist of one or more of 18 specific spent solvents



# Transfer to Remanufacturer Exclusion (continued)

- **40 CFR 261.4(a)(27)** – Continued
- The HSM originated from using 1 or more of the solvents in a commercial grade for reacting, extracting, purifying, or blending chemicals, or rinsing process lines in one of the following industries
  - Pharmaceutical Manufacturing – NAICS 325412
  - Basic Organic Chemical Mfg.. – NAICS 325199
  - Plastics and Resins Mfg. – NAICS 325211
  - Paints & Coatings Mfg. – NAICS 325510



# Transfer to Remanufacturer Exclusion (continued)

- **40 CFR 261.4(a)(27)** – Continued
- The HSM generator sends the HSM solvent to a remanufacturer in one of the following industries
  - Pharmaceutical Manufacturing – NAICS 325412
  - Basic Organic Chemical Mfg. – NAICS 325199
  - Plastics and Resins Mfg. – NAICS 325211
  - Paints & Coatings Mfg. – NAICS 325510





# Transfer to Remanufacturer Exclusion (continued)

- **40 CFR 261.4(a)(27)** – Continued
- After remanufacturing, the use of the remanufactured solvent is limited to reacting, extracting, purifying, or blending chemicals, or for rinsing out process lines associated with those functions in one of the following industries
  - Pharmaceutical Manufacturing – NAICS 325412
  - Basic Organic Chemical Mfg. – NAICS 325199
  - Plastics and Resins Mfg. – NAICS 325211
  - Paints & Coatings Mfg. – NAICS 325510



# Transfer to Remanufacturer Exclusion (continued)

- **40 CFR 261.4(a)(27)** – Continued
- After remanufacturing, the use of the remanufactured solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles.



# Transfer to Remanufacturer Exclusion (continued)

- **40 CFR 261.4(a)(27) – Continued**
- Both the HSM Generator and Remanufacturer must:
  - ▣ Notify as required by 40 CFR 260.42
  - ▣ Develop and maintain an up-to-date remanufacturing plan that identifies
    - Name, address, EPA ID of generator(s) and remanufacturer(s)
    - Type and annual volume of solvent to be remanufactured
    - Processes and industrial sectors generating the HSM
    - Specific uses and industry sectors for remanufactured solvent
    - Certification from remanufacturer stating compliance with Part 261 Subparts AA, BB, CC or Clean Air Act permit



# Transfer to Remanufacturer Exclusion (continued)

- **40 CFR 261.4(a)(27)** – Continued
- Maintain records of shipments and confirmations of receipts for 3 years from date of shipment
- Prior to remanufacturing store the hazardous spent solvents in tanks or containers meeting the requirements of 40 CFR 261 Subparts I & J
- Certify remanufacturing equipment is in compliance with 261 Subparts AA, BB, CC or Clean Air Act
- Meet requirements prohibiting speculative accumulation



Requirements	Generator Controlled Exclusion § 261.4(a)(23)	Transfer Based Exclusion § 261.4(a)(24 - 25)	Remanufacturing Exclusion § 261.4(a)(27)
<b>Description</b>	<p>1) Materials generated and reclaimed on site.</p> <p>2) Materials reclaimed offsite but controlled by same “person.”</p> <p>3) Materials generated and reclaimed under a tolling agreement.</p>	<p>Materials transferred from generator to offsite 3rd party reclaimer – both domestic.</p> <p>261.4(a)(25) covers foreign reclamation.</p>	Lists spent solvents that can be transferred from generator to specific industries for remanufacture.
<b>Materials must be “contained” in units at the generator or reclaimer</b>	See definition of “contained” in 260.10.	See definition of “contained” in 260.10.	Units storing HSM must follow 261 Subparts J or I.
<b>Emergency Preparedness and Response</b>	Must follow Part 261, Subpart M.	Must follow Part 261, Subpart M.	No additional requirements.
<b>Legitimate Recycling</b>	Must meet the first three legitimacy factors and consider the fourth and keep documentation.	Must meet the first three legitimacy factors and consider the fourth. No specific documentation required.	Must meet the first three legitimacy factors and consider the fourth. No specific documentation required.
<b>Reclaimer must have financial assurance</b>	Not required.	Must follow Part 261, Subpart H.	Not required.
<b>Recordkeeping</b>	Manufacturer and reclaimer must keep records of each material shipment for 3 years.	Generator must document reasonable effort was made every 3 years. Generator and reclaimer must keep records of each material shipment for 3 years.	Generator and reclaimer must keep records of each material shipment for 3 years. Generators must receive confirmation of receipt from remanufacturer for 3 years.
<b>Remanufacturing Plan</b>	Not required.	Not required.	Generator and remanufacturer jointly develop.
<b>Notification</b>	Must notify prior to operating under the exclusion by March 1st of each even numbered year and report types and quantities being reclaimed.	Each party must notify prior to operating under the exclusion by March 1st of each even numbered year and report types and quantities being reclaimed.	Each party must notify prior to operating under the exclusion by March 1st of each even numbered year and report types and quantities being reclaimed.

# Examples

Q: If a ten-day transfer facility is used as an intermediate facility, can excluded HSM be bulked into stationary tanks?

A: No. HSM may not be managed in stationary tanks at a transfer facility. 40 CFR 261.4(a)(24)(ii), HSM may not be stored for greater than 10 days; and must be packaged according to DOT standards in 49 CFR Parts 173, 178 and 179 while in transport. Stationary tanks are not regulated under DOT, if the facility had a RCRA permit or met the conditions for an intermediate facility under 261.4(a)(24)(vi) they could store the HSM.



# Examples (continued)

Q: A RCRA permit for the reclamation facility and any intermediate facility satisfies the “reasonable efforts” requirements. However, recycling units located at the permitted facilities are often not part of the facility’s RCRA permit because of the permitting exemption found in 261.6(c)(1). As long as the storage and associated handling equipment for the HSM is RCRA –permitted and the reclamation equipment is used as intended for the HSM, will this meet the reasonable efforts requirement for the generator?

A: Yes. Reasonable efforts are not required if the intermediate facility or the reclaimer’s permit extends to the management of HSM due to the permitting exemption in 261.6(c)(1). See RCRA Online (RO)14812.



# Examples (continued)

Q: Can a HSM be comingled with a similar hazardous waste and still maintain the exclusion?

A: No. Excluded HSM cannot be comingled with regulated hazardous waste. The mixture would most likely become a hazardous waste. See RO's 14812 and 14813.





# Examples (continued)

Q: If hazardous waste is reclaimed in a distillation column (still) and then that same still is used to reclaim a HSM does the still have to be cleaned out first?

A: In order to keep the exclusion, any hazardous wastes and associated residues must be removed prior to processing the HSM. EPA recommends facilities check with their state to see what procedures to follow to ensure no commingling has occurred. See RO 14813.



# Examples (continued)

Q: Can an excluded HSM be transported through a state that has not adopted the DSW rule without a hazardous waste manifest?

A: States are allowed to be more stringent than the federal regulations, the EPA recommends checking with any state the HSM will pass through to see what their policies on HSM transport are.



# Questions?

**Don Meyer**  
**Environmental Specialist**  
**Hazardous Waste Bureau**  
**Compliance and Technical Assistance Program**  
[Don.Meyer@state.nm.us](mailto:Don.Meyer@state.nm.us)  
**505-476-6021**



# Future Webinars

## Definition of Solid Waste:

March 26, 2019 at 10:00 am

## Generator Improvement Rule:

April 9, 2019 at 10:00 am

April 18, 2019 at 1:30 pm

## RCRA 101:

May 10, 2019 at 10:00 am

PowerPoint slides will be located on website at:

<https://www.env.nm.gov/hazardous-waste/>

