

CHANGES TO HAZARDOUS WASTE REGULATIONS

On October 30, 2008, the U.S. EPA revised the definition of solid waste to encourage recycling. **This created a category of "hazardous secondary materials" that when sent for legitimate reclamation are eligible to be exempt from regulation as a hazardous waste.**

Previously, recycling may not have been economical because of strict hazardous waste standards. For example, a hazardous waste recycler often was required to obtain a special permit with extensive obligations and liability.

The new recycling program has its own conditions that the generator and recycler must meet, including filing periodic notification to the EPA, maintaining specific records, and make "reasonable efforts" to evaluate the recycler.

The new regulation is complicated and the U.S. EPA will likely issue supporting guidance and explanations for specific situations. **The regulation will not be effective in most states until the state agency adopts it into the state's regulations.** The adoption in Illinois may take as much as two years. Environmental groups may file legal challenges that could further delay implementation.

A few comments:

- We expect recycling companies will develop new options for recycling of wastes that have real value, notably for metals (such as F006 sludge) or for solvent content. However, **the EPA is putting responsibility on the generator to make sure the recycling is legitimate.** In the past there were disposal companies that made claims of recycling but in practice they were a sham. The eventual liability for those wastes reverted back to the industrial generators.
- In a few cases, existing hazardous waste recycling performed by an outside company will be exempted from the hazardous waste program. To maintain compliance, it will be crucial for the waste generator to implement the applicable requirements.

Until your state adopts this regulation, you can not take advantage of the recycling exclusion. We will be sending out a notification when Illinois adopts the rules. In the meantime, please contact us if you would like us to review your compliance situation.

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