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§ 261.2

(a)(1) A solid waste is any discarded material that is not excluded under §261.4(a) or that is not excluded by a variance granted under §§260.30 and 260.31 or that is not excluded by a non-waste determination under §§260.30 and 260.34.

(2)(i) A discarded material is any material which is:

(A) Abandoned, as explained in paragraph (b) of this section; or

(B) Recycled, as explained in paragraph (c) of this section; or

(C) Considered inherently waste-like, as explained in paragraph (d) of this section; or

(D) A military munition identified as a solid waste in §266.202.

(ii) [Reserved]
(b) Materials are solid waste if they are abandoned by being:
(1) Disposed of; or
(2) Burned or incinerated; or
(3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned or incinerated; or
(4) Sham recycled, as explained in paragraph (g) of this section.

(c) Materials are solid wastes if they are recycled—or accumulated, stored, or treated before recycling—as specified in paragraphs (c)(1) through (4) of this section.

(1) *Used in a manner constituting disposal.* (i) Materials noted with a "*" in Column 1 of Table 1 are solid wastes when they are:
(A) Applied to or placed on the land in a manner that constitutes disposal; or
(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) *Burning for energy recovery.* (i) Materials noted with a "*" in column 2 of Table 1 are solid wastes when they are:
(A) Burned to recover energy;
(B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

(ii) However, commercial chemical products listed in §261.33 are not solid wastes if they are themselves fuels.

(3) *Reclaimed.* Materials noted with a "—" in column 3 of Table 1 are not solid wastes when reclaimed. Materials noted with an "*" in column 3 of Table 1 are solid wastes when reclaimed unless they meet the requirements of §§261.4(a)(17), 261.4(a)(23), 261.4(a)(24), or 261.4(a)(27).

(4) *Accumulated speculatively.* Materials noted with a "*" in column 4 of Table 1 are solid wastes when accumulated speculatively.

### Table 1

<table>
<thead>
<tr>
<th>Use constituting disposal (§261.2(c)(1))</th>
<th>Energy recovery/fuel (§261.2(c)(2))</th>
<th>Reclamation (§261.2(c)(3), except as provided in §§261.4(a)(17), 261.4(a)(23), 261.4(a)(24) or 261.4(a)(27))</th>
<th>Speculative accumulation (§261.2(c)(4))</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>Spent Materials</td>
<td>(*)</td>
<td>(*)</td>
<td>(*)</td>
</tr>
<tr>
<td>Sludges (listed in 40 CFR Part 261.31 or 261.32)</td>
<td>(*)</td>
<td>(*)</td>
<td>(*)</td>
</tr>
<tr>
<td>Sludges exhibiting a characteristic of hazardous waste</td>
<td>(*)</td>
<td>(*)</td>
<td>(*)</td>
</tr>
<tr>
<td>By-products (listed in 40 CFR 261.31 or 261.32)</td>
<td>(*)</td>
<td>(*)</td>
<td>(*)</td>
</tr>
<tr>
<td>By-products exhibiting a characteristic of hazardous waste</td>
<td>(*)</td>
<td>(*)</td>
<td>(*)</td>
</tr>
<tr>
<td>Commercial chemical products listed in 40 CFR 261.33</td>
<td>(*)</td>
<td>(*)</td>
<td>(*)</td>
</tr>
<tr>
<td>Scrap metal that is not excluded under 40 CFR 261.4(a)(13)</td>
<td>(*)</td>
<td>(*)</td>
<td>(*)</td>
</tr>
</tbody>
</table>

**Note:** The terms “spent materials,” “sludges,” “by-products,” and “scrap metal” and “processed scrap metal” are defined in §261.1.

(d) *Inherently waste-like materials.* The following materials are solid wastes when they are recycled in any manner:
(1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.
(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in subparts C or D of this part, except for brominated material that meets the following criteria:
(i) The material must contain a bromine concentration of at least 45%; and
(ii) The material must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and
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§ 261.3 Definition of hazardous waste.

(a) A solid waste, as defined in §261.2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under §261.4(b); and

(2) It meets any of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in subpart C of this part. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under §261.4(b)(7) and any other solid waste...