

Recent Changes to Title 128 – *Nebraska Hazardous Waste Regulations*

NDEQ Land Management Division

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Environmental Update – Omaha/Lincoln

May 19th/20th



Areas Proposed for Amendment

- 1. RCRA Subtitle (C) Definition of Solid Waste (DSW rule)**
- 2. Public Participation in Environmental Decision-Making (40 CFR Part 124)**
- 3. Update to Cathode Ray Tube (CRT) Monitor Rule**
- 4. Typographical Corrections**



Facilities & Groups Impacted

1. DSW rule:

- Small- and Large-Quantity Generators of Hazardous Waste that reclaim hazardous waste
- Receiving facilities that reclaim these wastes

2. 40 CFR Part 124:

- Applicants seeking initial permits for hazardous waste management units (treatment, storage, or disposal) or seeking renewal permits proposing a significant modification
- The public

3. CRT rule update

- CRT exporters and intermediaries who ship used CRTs out of the U.S. for recycling



Regulation Development Process

What?	When?
Initial Discussions of Proposal with NDEQ Administration	Summer 2015
1 st Outreach Meeting	August 26, 2015
Draft Development and Internal Review	September & October 2015
Review of Draft Regulations by Governor's Policy Research Office	November 2015
Preliminary draft regulations available on NDEQ website	December 8, 2015
Present amendments to the Nebraska Industrial Council on the Environment	January 21, 2016
2 nd Outreach Meeting	January 27, 2016
EQC Hearing Date	March 22, 2016



Solid Wastes under RCRA Subtitle (C)

Under RCRA (C) and Title 128, materials that are ***solid wastes*** define the scope of the hazardous waste regulatory program.

3 steps in analyzing a given waste.

1. Is it a solid waste?

- Has the material been *discarded*?

2. Is it a hazardous waste (a subset of solid waste)?

- Is it listed or does it exhibit a hazardous characteristic?

3. Is it excluded (from either #1 or #2)?



DSW Rule – General Concepts (1 of 2)

DSW rule excludes hazardous secondary materials (HSMs) from regulation as a solid waste (and, thus, hazardous waste) when legitimately *reclaimed* (subset of recycling).

- “Hazardous secondary material” is defined as secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste.
- “Reclamation” – physical/chemical/thermal process to recover a usable product (smelting, distilling, other processing).



DSW Rule – General Concepts (2 of 2)

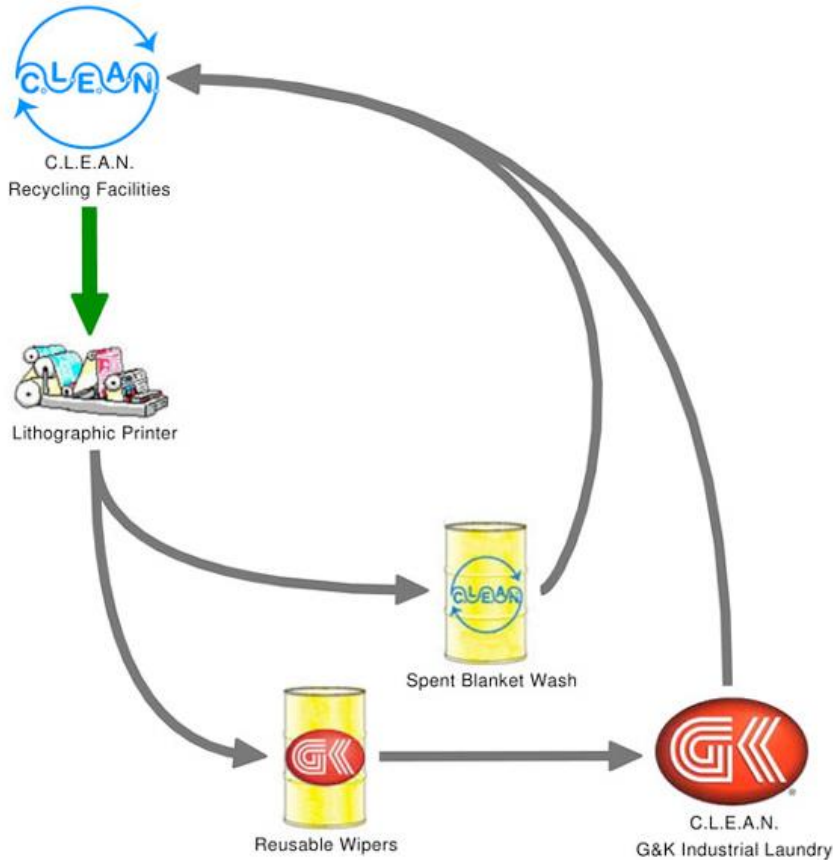
DSW rule *incentivizes* reclamation of HSMs by:

- Creating an alternate set of management standards that is still protective, yet contains fewer requirements than the larger hazardous waste management program. Examples:
 - manifesting & HW determinations are not needed, if managing HSMs under the DSW rule
- **THE BIG ONE**: properly managed HSMs are not counted toward monthly generator status
 - **a reduction in generator status** decreases associated requirements in areas such as biennial reporting, contingency planning, and staff training.

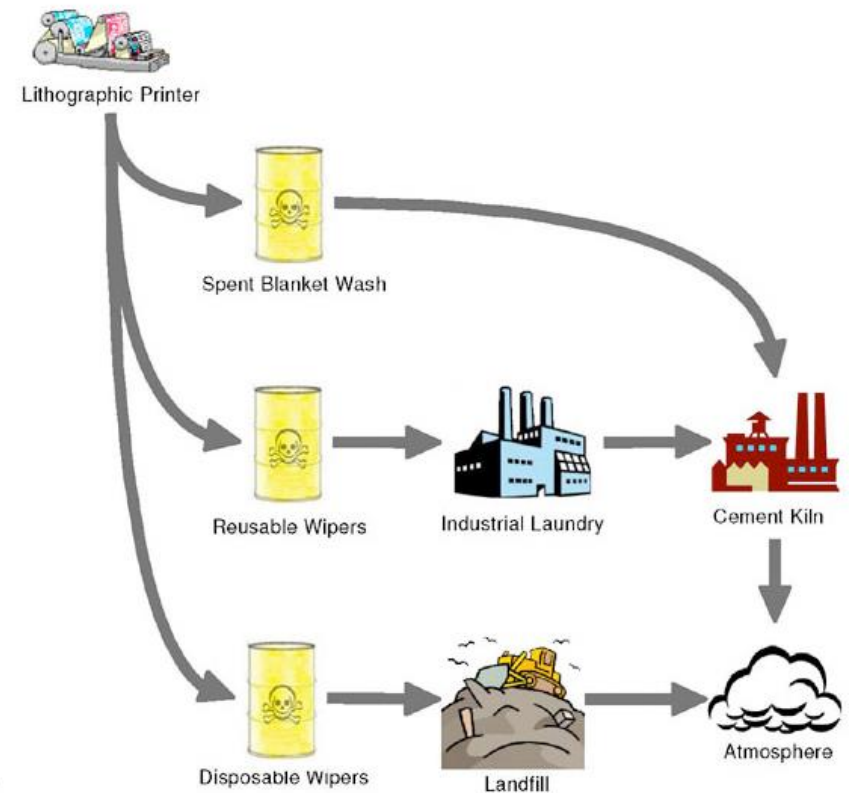


Closed Loop Solvent Recycling

Award Winning Closed Loop Solvent Recycling System
(Figure 1)



Traditional Methods
(Figure 2)





DSW Rule – 3 Exclusions in Ch. 2, 008

3 Exclusions for hazardous secondary materials that are legitimately recycled:

- **“generator controlled”** exclusion – **Ch. 2, 008.25**.
- **“verified recycler”** exclusion – outside of the property/company to a permitted or verified recycler – **Chapter 2, 008.26**.
- **“remanufacturing”** exclusion – high value solvents – **Chapter 2, 008.27**.



Generator-Controlled Exclusion (1 of 2)

- “Generator-controlled” exclusion for HSMs generated:
 - At the generating facility
 - At different facilities by the same “person” (definition in Ch 1. 097), i.e. company
 - Under a “tolling agreement”
 - A tolling agreement is a written agreement between two companies in which one agrees to supply a certain amount of material to the other at periodic intervals.
- Many facilities reclaim **spent solvents** on-site or within the same company.



Generator-Controlled Exclusion (2 of 2)

- Generator requirements (from 40 CFR 261.4(a)(23)(ii)(A-F)):
 - A. Material is “contained” under **Ch. 1, 023**.
 - B. Not speculatively accumulated under Ch. 2, 002.07 (75% material turnover per year).
 - C. Notice given under **Ch. 5, 008** (using EPA Form 8700-12).
 - D. Not otherwise subject to material-specific management conditions (applying to excluded wastes).
 - E. On-site documentation of **legitimate recycling** under **Ch. 5, 009**.
 - F. Emergency preparedness and response conditions under **Ch. 3, 025** (40 CFR Part 261, Subpart M).



Verified Recycler Exclusion (1 of 2)

- Hazardous secondary material transferred to another party for recycling/reclamation.
- A verified recycler must have either:
 - a RCRA part B permit; OR
 - obtained a state or EPA **variance** from the permit requirement under Ch. 5.
- For generators, the requirements are in **Chapter 2, 008.26**.



Verified Recycler Exclusion (2 of 2)

- For verified recyclers, the requirements are in **Ch. 5, 001.05A-F** and require an approved variance.
- Agency decision criteria for variance:
 - A. Demonstrate the recycling is legitimate.....next slide**
 - B. Have financial assurance under **Ch. 3, 022** (incorporates by reference 40 CFR Part 261, Subpart H)
 - C. No formal enforcement actions in past 3 years
 - D. Emergency preparedness and response conditions
 - E. Must manage hazardous residuals as hazardous waste
 - F. Facility must address the risk of release to proximate populations. ← EPA will be looking at this issue.



Legitimate Recycling of HSMs

The Legitimacy Standard includes 4 factors (must address all) proposed for **Ch. 5, 009.01A-D**:

- A. Hazardous secondary material must provide a useful contribution to the recycling process or to a product or intermediate (5 scenarios).
- B. Recycling must produce a valuable product or intermediate (sold to 3rd party or used as an effective substitute for a product or intermediate).
- C. Hazardous secondary material must be managed as valuable commodities (equally protective).
- D. The product of recycling must be comparable to a legitimate product or intermediate.

A prohibition on sham recycling is also codified.



Remanufacturing Exclusion (1 of 2)

- High-value solvents processed for a “similar functional purpose as the original commercial grade material.”
- Must originate from 1 of 4 industrial sectors:
 - Pharmaceutical manufacturing (NAICS 325412)
 - Organic chemical manufacturing (NAICS 325199)
 - Plastic and resins manufacturing (NAICS 325211)
 - Paints and coatings manufacturing (NAICS 325510)
- After remanufacture, must be further used in the 4 industrial sectors listed above.
- use “shall be limited to reacting, extracting, purifying, or blending chemicals.....or to using them as ingredients in a product.”



Remanufacturing Exclusion (2 of 2)

- Solvent CANNOT be used for cleaning or degreasing
- Intercompany transfers allowed
- Requirements:
 - Notify NDEQ every 2 years using EPA Form 8700-12
 - Have a remanufacturing plan on file
 - Keep records on file for 3 years
 - No speculative accumulation allowed
 - Comply with tank, container, process vent, and leak requirements including air emissions standards under 40 CFR Part 261
- NO recycling legitimacy showing required



Variations / Non-Waste Determinations

- A “variance” is a case-specific exception to regulation that must be sought through agency procedural rules in Chapter 5.
- 3 new variance procedures (termed “non-waste determinations”):
 - Partially-reclaimed HSMs – **Ch. 5, 001.04**
 - HSMs reclaimed in a continuous industrial process – **Ch. 5, 004.02**.
 - HSMs which are indistinguishable from a product or intermediate – **Ch. 5, 004.03**.



Variations / Non-Waste Determinations

Decision criteria for “partially-reclaimed” HSMs – **Ch. 5, 001.04A-E:**

- A. Whether the degree of partial reclamation the material has undergone is substantial.
- B. Whether the material has sufficient economic value for further reclamation.
- C. Whether the partially-reclaimed material is a viable substitute for virgin or raw materials.
- D. Whether a market and known customers exist for the partially-reclaimed material.
- E. Whether the partially-reclaimed material is handled to minimize loss.



Variations / Non-Waste Determinations

Decision criteria for HSMs reclaimed in a **continuous industrial process – Ch. 5, 004.02:**

- A. Whether use of the material is a part of the production **process** and not waste treatment.
- B. Whether the **process** uses the material in a reasonable time frame.
- C. Whether hazardous constituents are reclaimed rather than released to the environment (using a statistical or health risk-based analysis).
- D. Other relevant factors.



Variations / Non-Waste Determinations

Decision criteria for HSMs which are indistinguishable from a **product or intermediate** – **Ch. 5, 004.03**:

- A. Whether **market** participants treat the waste as a product or intermediate rather than a waste.
- B. Whether the material is chemically and physically comparable to **commercial** products or intermediates.
- C. Whether **markets** would use the HSMs in a reasonable time frame and not abandon them.
- D. Whether hazardous constituents are reclaimed rather than released to the environment (using a statistical or health risk-based analysis).
- E. Other relevant factors.



4 Steps in Seeking the DSW exclusion

1. Is my facility recycling/reclaiming a hazardous waste stream?
2. Is a DSW exclusion or DSW variance procedure applicable to my material or process?
 - a) If seeking a DSW exclusion, can I meet the **conditions** for the exclusions?
 - b) If seeking a DSW variance, can I meet the **decision criteria** required for the variance?
3. Does the exclusion or variance sought require a **recycling legitimacy determination**?
4. Have I **documented** #2 and #3 so that I am ready to notify DEQ (for exclusions) or apply for the variance?



Variations / Non-Waste Determinations

General requirements:

- Fixed variance term of 10 years or less
- Must provide notice to NDEQ in the event of a change in circumstances affecting how a HSM meets a variance criteria.
- Must re-notify every 2 years using the EPA Site ID form (8700-12).



Public Participation in 40 CFR Part 124

- Existing program for public participation in RCRA permitting is in Title 128, Chs. 13-15.
- These proposals clarify existing provisions and are consistent with, but no more stringent than federal requirements.
- 2 new requirements
 1. Pre-application public meeting & notice – **Ch. 13, 016** (generally applies only to a single facility in NE or **new** TSDs)
 2. Information repository (discretionary) – **Ch. 13, 018** (more broadly applicable, e.g. remediation)



CRT Monitor Rule Update

- This proposal updates the notification and recordkeeping requirements for used, intact CRTs exported for reuse.
- These export notifications are made to EPA, not states, but since Nebraska adopted the 2007 rule, we must incorporate the updated provisions.
- Definition for CRT exporter – **Ch. 1, 031.**
- Requirements – **Ch. 3, 019.01E** and **021.**



Questions / Contact information

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