

Resource Conservation and Recovery Act, 42 USC 6901, et seq.

Environmental Law Institute
Summer School
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Resources

- ▶ 42 U.S.C. § 6901, et seq.
- ▶ 40 C.F.R. Part 239-258 - solid waste
- ▶ 40 C.F.R. Part 260-272 - hazardous waste
- ▶ 40 C.F.R. Part 273 - universal waste
- ▶ 40 C.F.R. Part 279 - used oil
- ▶ 40 C.F.R. Part 280 - underground storage tanks
- ▶ EPA RCRA Orientation Manual, at <https://www.epa.gov/sites/production/files/2015-07/documents/rom.pdf>
- ▶ EPA RCRA Hazardous Waste Pages, at:
 - ▶ <https://www.epa.gov/hw>
 - ▶ <https://www.epa.gov/enforcement/waste-chemical-and-cleanup-enforcement#cleanup>
 - ▶ <https://www.epa.gov/compliance/resource-conservation-and-recovery-act-rcra-compliance-monitoring>
- ▶ EPA's "List of Lists" with CERCLA and RCRA lists: https://www.epa.gov/sites/production/files/2015-03/documents/list_of_lists.pdf
- ▶ EPA Enforcement Database (choose "hazardous waste"), see: <https://echo.epa.gov/>
- ▶ EPA "RCRA Online" database (older guidance repository, updated Oct. 2017, watch broken links), see: <https://yosemite.epa.gov/osw/rcra.nsf/how+to+use?OpenForm=>

On October 21, 1976, Congress enacted amendments to the 1965 Solid Waste Disposal Act bringing the generation, management and disposal of solid and hazardous waste under federal regulation.



What is RCRA?

The Resource Conservation and Recovery Statute: Waste Management Statute that regulates from “Cradle to Grave”

(as amended, Hazardous and Solid Waste Amendments, 1984)

Regulates:

- Hazardous Waste Management from generation to disposal or reuse (RCRA Subtitle C)
- Solid Waste Management (RCRA Subtitle D)
- Underground Storage Tanks (RCRA Subtitle I)

Requires

- Solid Waste disposal requirements
- RCRA hazardous waste definition, classification
- Hazardous Waste determination by generator
- Recordkeeping requirements to ensure tracking hazardous from generation through to disposal or reuse
- Performance standards for management upon generation through to disposal
- Treatment standards for treatment of hazardous waste
- Disposal requirements for disposal of hazardous waste
- Waste minimization

Provides:

- Civil and criminal penalties and citizen suits
- Delegated to States for implementation upon approval of state program no less stringent than federal, while EPA retains authority to enforce through “overfilling”

RCRA “Cradle to Grave” covers “Generation” to “Disposal”

Figure III-1: RCRA’s Cradle-to-Grave Hazardous Waste Management System



Hazardous Waste
Generation



Hazardous Waste
Transportation



Hazardous Waste
Disposal

Material Covered

Solid waste

- Any **discarded** material that is not excluded where discarded is **abandoned, recycled, or considered inherently waste-like**, where abandoned is **disposed of, burned or incinerated, accumulated, stored or treated before being disposed of, burned or incinerated, sham recycled**

Hazardous Waste

- Any **Solid Waste** that falls within a **Listed Category**, or exhibits a **Hazardous Characteristic** that is **not Exempt**

Exemptions

- Solid waste
- Hazardous waste

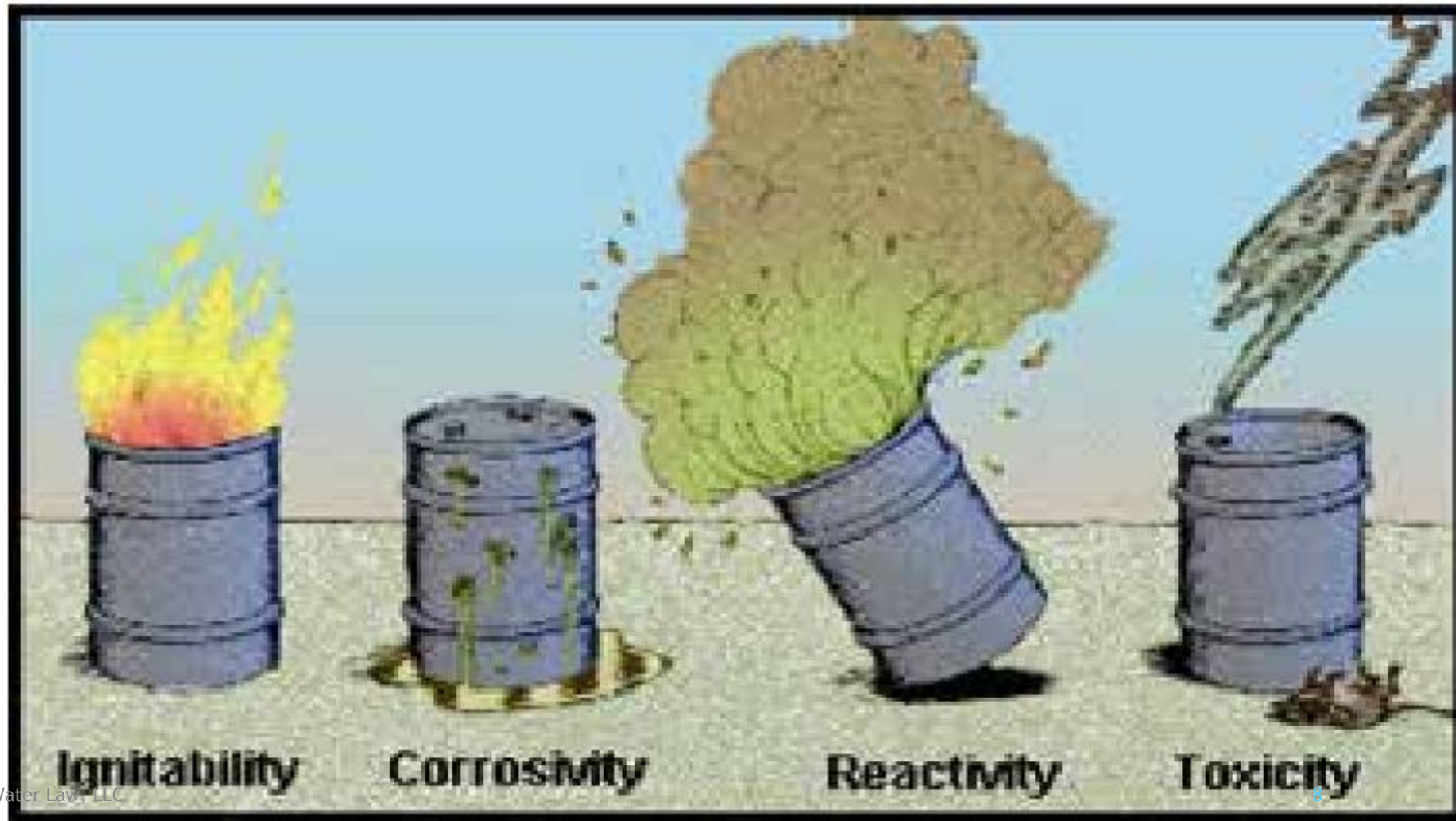
Hazardous Waste

CERCLA Hazardous Substance	RCRA Characteristic "D Codes"	RCRA Listed	Exemptions
<p>300 plus substances</p> <ul style="list-style-type: none"> - metals - chemicals - RCRA Characteristic Hazardous Wastes and Some Listed <p>-Excluding exempted substances such as "petroleum or fractions thereof"</p>	<p><u>D001</u> - Ignitable (flash point, for liquids)</p> <ul style="list-style-type: none"> - alcohols or solvents, compressed gases or solid oxidizers <p><u>D002</u> - Corrosive (pH)</p> <ul style="list-style-type: none"> - lemon juice, bleach, <p><u>D003</u> - Reactive</p> <ul style="list-style-type: none"> - readily explodes or undergoes violent reactions such as phosphorus <p><u>D004 - D043</u> - Toxic</p> <ul style="list-style-type: none"> - TCLP for a RCRA metal, chlorinated solvent, etc. 	<p><u>F List</u> - Non-specific sources</p> <p><u>K List</u> - Specific Sources - Discarded</p> <p><u>P List</u> - Acutely Hazardous</p> <p><u>U List</u> - Toxic</p> <p>Mixture Rule - characteristic and listed</p> <p>Derived-From Rule</p>	<p>It's NOT Solid Waste</p> <p>It's NOT Hazardous Waste</p>

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RCRA Characteristic Wastes



Hazardous Waste

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Making Sense of RCRA Listings

Inherently Waste-like

- ▶ **F Codes** - Waste derived from **7 groups of NonSpecific Sources** - including spent solvents, metal finishing such as electroplating, dioxins, chlorinated aliphatic hydrocarbons, wood preservation, petroleum refinery wastewater treatment sludge, multisource leachate
- ▶ **K Codes** - Waste derived from **13 groups of Specific Sources** - including wood preservation, inorganic pigment, organic chemicals, inorganic chemicals, pesticides, explosives, petroleum, iron and steel, primary aluminum secondary lead processing, veterinary pharmaceuticals, ink, coking

Discarded Commercial Chemical Products

- ▶ **P Codes** - ACUTELY HAZARDOUS
- ▶ **U Codes** - TOXIC

Hazardous Waste

CERCLA Hazardous Substance	RCRA Characteristic "D Codes"	RCRA Listed	Exemptions
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Exemptions, 40 CFR 261.4

▶ Solid Waste, 40 CFR 261.4(a)

Domestic Sewage, clean water act regulated point source discharges, irrigation return flow, radioactive waste, in-situ mining, pulping liquors, spent sulfuric acid, reclamation in enclosed tanks, spent wood preservatives, coke by-product wastes, splash condenser dross residue, hazardous secondary materials from petroleum refining, **excluded scrap metal, shredded circuit boards, pulping condensates from kraft mill steam strippers, spent materials from primary mineral processing where recovered, petroleum recovered oil from organic chemical manufacturing, spent caustic solutions from petroleum refining liquids used for cresylic or naphthenic acid production, **zinc fertilizers from hazardous wastes**, used cathode ray tubes, solvent contaminated wipes when sent for cleaning and reuse, **hazardous secondary material when reclaimed or remanufactured.****

▶ Hazardous Waste, 40 CFR 261.4(b)

Household hazardous waste, agricultural waste, mining overburden, fossil fuel combustion waste (Bevill), oil, gas and geothermal wastes (Bentsen Amendment), trivalent chromium wastes, mining and mineral processing wastes (Bevill), cement kiln dust (Bevill), arsenical-treated wood, petroleum contaminated media & debris from underground storage tanks, injected groundwater, spent chlorofluorocarbon refrigerants, used oil filters, used oil distillation bottoms, landfill leachate or gas condensate derived from certain listed wastes, project XL pilot project exclusions.



Continued Use, Recycling and Reuse

Figure III-3: Is It a Solid Waste?

Is material discarded by being either:
1. Abandoned,
2. Inherently waste-like,
3. A discarded military munition, or
4. Recycled?

YES

NO

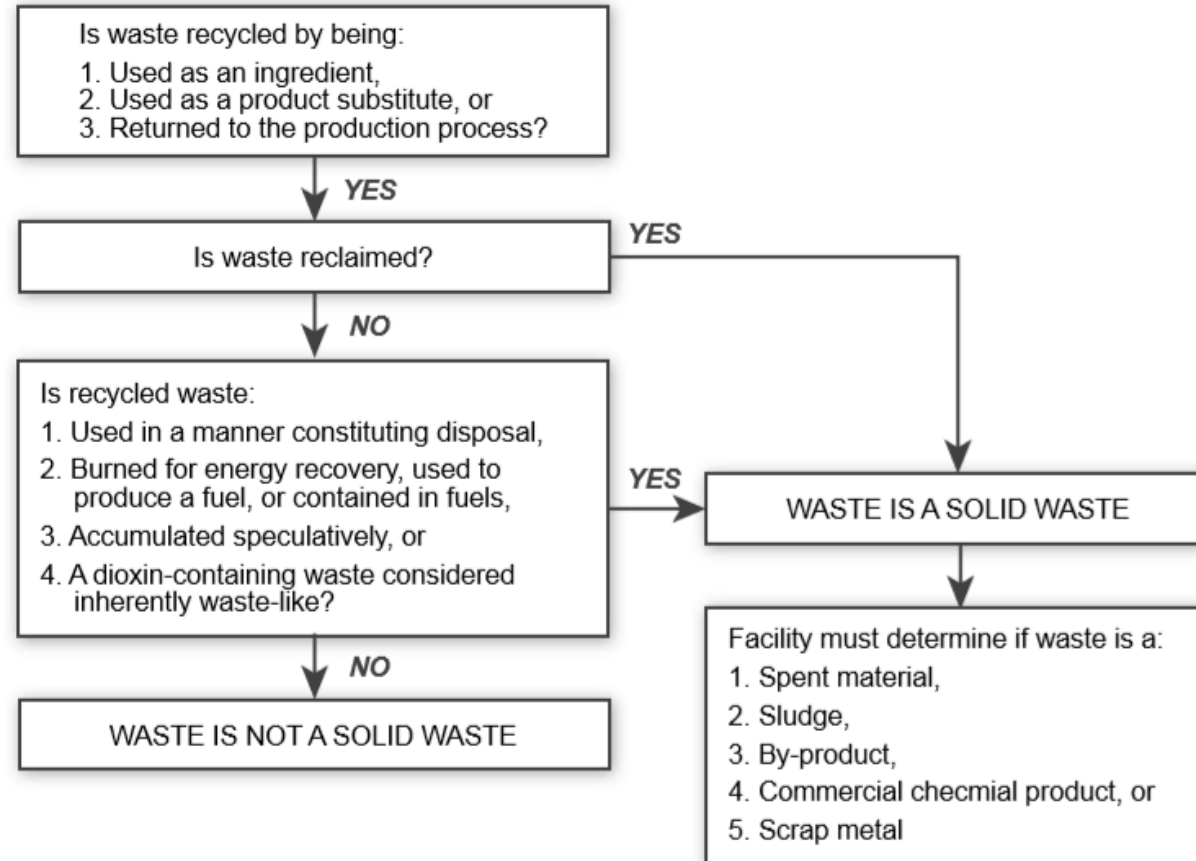
Material is a solid waste
and may be a hazardous
waste subject to RCRA
Subtitle C regulation

Material is not a solid waste
and is not subject to RCRA
Subtitle C regulation.



























Continued Use, Recycling and Reuse

Figure III-2: Are All Recycled Wastes Hazardous Wastes?



If it is a solid waste,
it may also then be a hazardous waste when...

Figure III-6: Regulatory Status of Secondary Materials

	Reclaimed	Used in a Manner Constituting Disposal	Burned for Energy Recovery, Used to Produce a Fuel, or Contained in Fuels	Accumulated Speculatively
Spent Materials				
Listed Sludges				
Characteristic Sludges				
Listed By-Products				
Characteristic By-Products				
Commercial Chemical Products		 *	 *	
Scrap-Metal				

Activities and Persons Covered: Owners and Operators of RCRA “Facilities”

Generation

Identify - Complete HW “Determination” upon “Generation” using generator knowledge or chemical analysis using EPA methods, e.g., TCLP

Count -LQG (>1000 kg/m, 90 days), SQG (>100 kg/m, 180/270 days), V/CESQG (<100 kg/m)

Notify - EPA ID Number

Manage - accumulation time limits and technical standards for containers (good condition, closed, centralized location), tanks (secondary containment), drip pads and containment buildings

Air Emissions

Waste Minimization

Personnel Training

Preparedness and Prevention

Contingency Plan and Emergency Procedures

Recordkeeping and Reporting

Manifests and Labelling for shipping HW waste offsite for proper treatment and disposal

Storage

TSD Permitting - imposing **general facility standards** where storage is not permit exempt, as well as **Waste Analysis Plan** and **specific standards** including:

Manage -accumulation time limits and technical standards for **containers, tanks, surface impoundments, waste piles**

Air Emissions and waste minimization

Personnel Training

Preparedness and Prevention

Contingency Plan and Emergency Procedures

Recordkeeping and Reporting

Financial Assurance

Corrective Action - releases, GW monitoring, closure and post-closure

Treatment and Disposal

TSD Permitting - imposing general and applicable specific standards previously listed, as well as:

Operate - technical standards for treatment and disposal facilities:

Treatment - Land treatment, Thermal, physical, chemical, biochemical and other treatment processes,

Disposal - Landfills, Incinerators, Underground injection, Drip pads, etc.

Disposal includes:

- Use Constituting Disposal

- Burning for Energy Recovery, Used to Produce a Fuel, Contained in Fuels

-Speculative accumulation

-Dioxin=-Containing Wastes are inherently waste-like regardless of treatment method

Land Disposal Restrictions

Reuse and Recycling

No permitting required for Continued Use or Legitimate Recycling process **unless**, when recycled, materials are solid and hazardous wastes when recycled.

No “Sham Recycling”**:

- Ineffective or only marginally effective for claimed use

- Used in excess of the amount necessary

- Handled in a manner inconsistent with use as a raw material or commercial product substitute

- Recycled product is not comparable to a product made from analogous raw material*

See *API v. EPA*, (D.C. Cir.) (2017) and (2018), discussed below

What does Hazardous Waste Look Like?

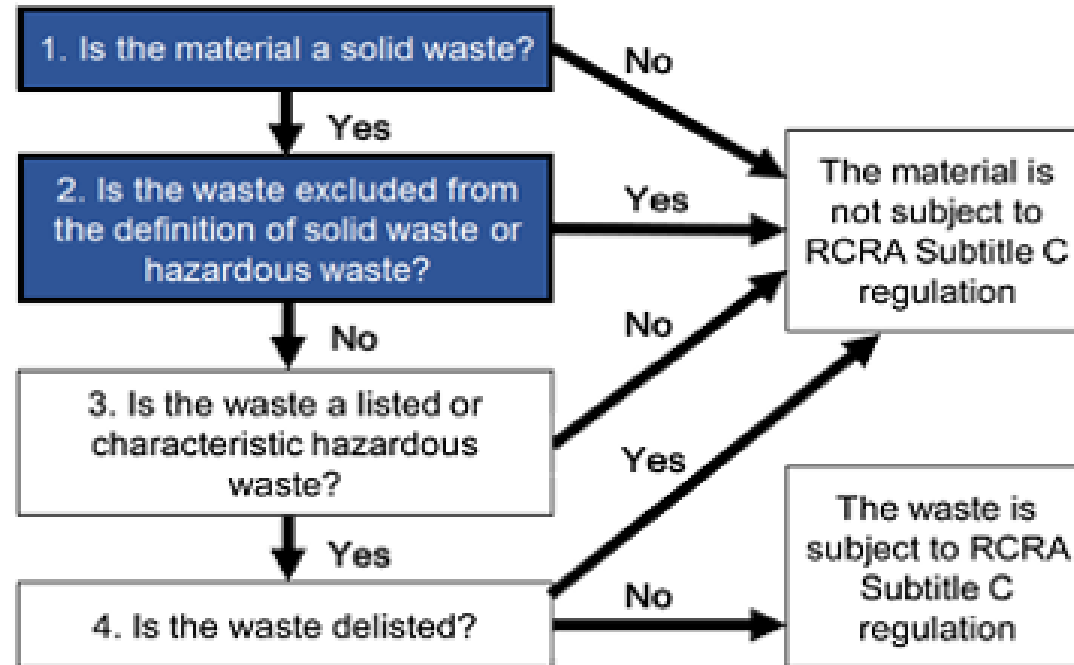


- ▶ But it can look like household waste too, including any waste like:
 - ▶ Half empty bleach bottle (corrosive)
 - ▶ Half empty isopropyl alcohol bottle (ignitable)
 - ▶ Any kind of battery (toxic)
 - ▶ Mercury thermometers (toxic)



You open the process to clean it out and begin a new batch, placing unreacted chemicals, byproducts and other residue (sludge) in a drum thereby generating waste, then...

The Hazardous Waste Identification Process



Click on a step in the hazardous waste identification process for more information.

Labeling Manifesting

**HAZARDOUS
WASTE**

**FEDERAL LAW PROHIBITS IMPROPER DISPOSAL.
IF FOUND, CONTACT THE NEAREST POLICE OR PUBLIC SAFETY
AUTHORITY OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY.**

GENERATOR INFORMATION:
 NAME _____
 ADDRESS _____ PHONE _____
 CITY _____ STATE _____ ZIP _____
 EPA ID NO. / MANIFEST DOCUMENT NO. _____ / _____
 ACCUMULATION START DATE _____ EPA WASTE NO. _____

D.O.T. PROPER SHIPPING NAME AND UN OR NA NO. WITH PREFIX

HANDLE WITH CARE!

Earth & Water Law, LLC

Form Approved, OMB No. 2050-0038

Please print or type.

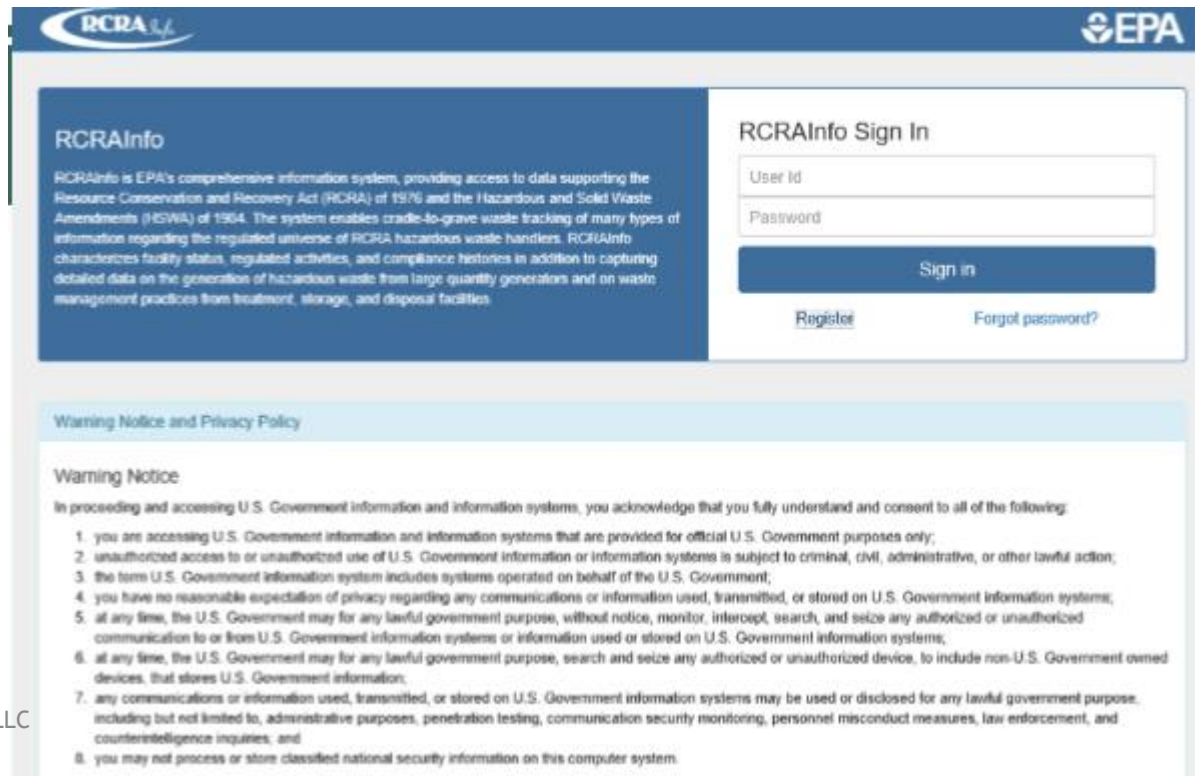
UNIFORM HAZARDOUS WASTE MANIFEST		1. Generator ID Number	2. Page 1 of	3. Emergency Response Phase	4. Manifest Tracking Number
5. Generator's Name and Mailing Address		Generator's Site Address (if different than mailing address)			
Generator's Phone:					
6. Transporter 1 Company Name		U.S. EPA ID Number			
7. Transporter 2 Company Name		U.S. EPA ID Number			
8. Designated Facility Name and Site Address		U.S. EPA ID Number			
Facility's Phone:					
9. HM	10. Containers No. Type	11. Total Quantity	12. Unit Wt./Vol.	13. Waste Codes	
1.					
2.					
3.					
4.					
14. Special Handling Instructions and Additional Information					
15. GENERATOR'S/OFFEROR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by the proper shipping name, and are classified, packaged, marked and labeled/placarded, and are in all respects in proper condition for transport according to applicable international and national governmental regulations. If export shipment and I am the Primary Exporter, I certify that the contents of this consignment conform to the terms of the attached EPA Acknowledgment of Consent. I certify that the waste minimization statement identified in 40 CFR 263.27(a) (if I am a large quantity generator) or (b) (if I am a small quantity generator) is true.					
Generator's/Offsor's Printed/Typed Name		Signature		Month	Day Year
16. International Shipments <input type="checkbox"/> Import to U.S. <input type="checkbox"/> Export from U.S. Port of entry/exit: _____ Date leaving U.S.: _____					
17. Transporter Acknowledgment of Receipt of Materials					
Transporter 1 Printed/Typed Name		Signature		Month	Day Year
Transporter 2 Printed/Typed Name		Signature		Month	Day Year
18. Discrepancy					
18a. Discrepancy Indication Space <input type="checkbox"/> Quantity <input type="checkbox"/> Type <input type="checkbox"/> Residue <input type="checkbox"/> Partial Rejection <input type="checkbox"/> Full Rejection					
18b. Alternate Facility (or Generator) Manifest Reference Number: _____ U.S. EPA ID Number _____					
Facility's Phone: _____					
18c. Signature of Alternate Facility (or Generator) _____ Month Day Year					
19. Hazardous Waste Report Management Method Codes (i.e., codes for hazardous waste treatment, disposal, and recycling systems)					
1.	2.	3.	4.		
20. Designated Facility Owner or Operator. Certification of receipt of hazardous materials covered by the manifest, except as noted in item 18a					
Printed/Typed Name		Signature		Month	Day Year

EPA Form 8700-22 (Rev. 12-17) Previous editions are obsolete.

DESIGNATED FACILITY TO EPA's e-MANIFEST SYSTEM

June 30, 2018 - e-Manifesting

- ▶ Paper, Electronic and Hybrid
- ▶ User fees - Paper (\$20 - \$7); e-Manifest (\$4)
- ▶ To use e-Manifest, need EPA ID Number to register and create account at www.epa.gov/e-Manifest (see <https://www.epa.gov/e-manifest/monthly-webinars-about-hazardous-waste-electronic-manifest-e-manifest#materials>)



RCRAInfo

RCRAInfo is EPA's comprehensive information system, providing access to data supporting the Resource Conservation and Recovery Act (RCRA) of 1976 and the Hazardous and Solid Waste Amendments (HSWA) of 1994. The system enables cradle-to-grave waste tracking of many types of information regarding the regulated universe of RCRA hazardous waste handlers. RCRAInfo characterizes facility status, regulated activities, and compliance histories in addition to capturing detailed data on the generation of hazardous waste from large quantity generators and on waste management practices from treatment, storage, and disposal facilities.

RCRAInfo Sign In

User Id

Password

Sign in

Register

Forgot password?

Warning Notice and Privacy Policy

Warning Notice

In proceeding and accessing U.S. Government information and information systems, you acknowledge that you fully understand and consent to all of the following:

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2. unauthorized access to or unauthorized use of U.S. Government information or information systems is subject to criminal, civil, administrative, or other lawful action;
3. the term U.S. Government information system includes systems operated on behalf of the U.S. Government;
4. you have no reasonable expectation of privacy regarding any communications or information used, transmitted, or stored on U.S. Government information systems;
5. at any time, the U.S. Government may for any lawful government purpose, without notice, monitor, intercept, search, and seize any authorized or unauthorized communication to or from U.S. Government information systems or information used or stored on U.S. Government information systems;
6. at any time, the U.S. Government may for any lawful government purpose, search and seize any authorized or unauthorized device, to include non-U.S. Government owned devices, that stores U.S. Government information;
7. any communications or information used, transmitted, or stored on U.S. Government information systems may be used or disclosed for any lawful government purpose, including but not limited to, administrative purposes, penetration testing, communication security monitoring, personnel misconduct measures, law enforcement, and counterintelligence inquiries; and
8. you may not process or store classified national security information on this computer system.

Hazardous Waste in Context

CERCLA Hazardous Substance	RCRA Characteristic "D Codes"	RCRA Listed	Except... Examples
<p>About 800 substances</p> <ul style="list-style-type: none"> - metals - chemicals - includes pollutants regulated by other statutes, such as RCRA with Characteristic Hazardous Wastes and Some Listed <p>-Excluding exempted substances such as "petroleum or fractions thereof"</p> <p><small>Earth & Water Law, LLC</small></p>	<p><u>D001</u> - Ignitable (flash point, for liquids)</p> <ul style="list-style-type: none"> - alcohols or solvents, compressed gases or solid oxidizers <p><u>D002</u> - Corrosive (pH)</p> <ul style="list-style-type: none"> - lemon juice, bleach, <p><u>D003</u> - Reactive</p> <ul style="list-style-type: none"> - readily explodes or undergoes violent reactions such as phosphorus <p><u>D004 - D043</u> - Toxic</p> <ul style="list-style-type: none"> - TCLP for a RCRA metal, chlorinated solvent, etc. 	<p><u>F List</u> -Non-specific sources</p> <p><u>K List</u> -Specific Sources - Discarded</p> <p><u>P List</u> - Acutely Hazardous</p> <p><u>U List</u> -Toxic</p> <p>Mixture and Derived-From Rules</p> <p><small>21</small></p>	<p>Benzene - HS, D001, D018, F003, U018</p> <p>Versus</p> <p>HS exemption - Petroleum fraction</p> <p>HW exemption - UST remediation</p>

Additional RCRA Requirements

- ▶ **Universal Wastes** - ubiquitous categories of hazardous wastes classified for conditional exemption when properly managed per 40 C.F.R. Part 273:
 - ▶ Batteries, pesticides, mercury-containing equipment, bulbs
 - ▶ Less stringent management requirements
- ▶ **Used Oil** - ubiquitous solid waste, managed separately in containers in good condition, not leaking, marked as “Used Oil,” per 40 C.F.R. Part 279
 - ▶ Managed as hazardous wastes if mixed with listed hazardous wastes
- ▶ **Underground storage tanks** - ubiquitous activity - gas stations, regulated per 40 C.F.R. Part 280:
 - ▶ Strict requirements for design and operation including corrosion prevention, spill and overflow prevention, leak detection and groundwater monitoring
 - ▶ Broad exemptions for farms, septic, heating oil, hazardous waste, wastewater

RCRA Hot Topics

Hazardous Waste Generator Improvements Rule

- ▶ Effective May 30, 2017, 81 Fed. Reg. 85,808 (Nov. 28, 2016), <https://www.epa.gov/hwgenerators/final-rule-hazardous-waste-generator-improvements>
- ▶ Provides for episodic generation to allow avoidance of LQG status
- ▶ Renames CESQG as VSQG and allows VSQG to send HW to LQG controlled by same entity

RCRA Hot Topics - Definition of Solid Waste

Legitimate Recycling

- ▶ *American Petroleum Institute v. EPA*, 862 F.3d 50 (D.C. Cir., July 7, 2017) - Four Factors, codified from 1989 Lowrance Memo, at 40 CFR 260.43(a)(1)-(4), per Definition of Solid Waste, 80 Fed. Reg. 1694 (Jan. 13, 2015) (final rule):
 - ▶ 1. Hazardous Secondary Material must provide a useful contribution to the recycling process;
 - ▶ 2. The recycling process must produce a valuable product or intermediate;
 - ▶ 3. Persons controlling the secondary material must manage the hazardous secondary material as a valuable commodity - UPHELD;
 - ▶ 4. The product of the recycling process must be comparable to the legitimate product or intermediates (expanded scope of 2008 “no toxics along for the ride” requirement)- VACATED.

Definition of Solid Waste, 80 Fed. Reg. at 1773 (Jan 13, 2015)

(4) The product of the recycling process must be comparable to a legitimate product or intermediate:

(i) Where there **IS an analogous product or intermediate**, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process does not exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit, and

(B) The concentrations of any hazardous constituents found in appendix VIII of part 261 of this chapter that are in the product or intermediate are at levels that are comparable to or lower than those found in analogous products or at levels that meet widely recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

(ii) Where there **IS NO analogous product**, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or

(B) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).

(iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per paragraph (a)(4)(i) or (ii) of this section, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bio availability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Regional Administrator of this activity using EPA Form 8700-12.

RCRA Hot Topics - Redefinition of Solid Waste

Legitimate Recycling

- ▶ *American Petroleum Institute v. EPA*, No. 09-1038 (D.C. Cir., Mar. 6, 2018) - clarifies 2017 decision
 - ▶ 2015 Factor 4 VACATED regarding all RCRA exclusions including Generator-Controlled and Transfer-Based Exclusions
 - ▶ Reinstated 2008 Factor 4 requires consideration of “toxics along for the ride” in determining whether recyclable material is a solid waste when recycled

Definition of Solid Waste, 73 Fed. Reg. at 64,759 (Oct. 30, 2008)

(2) The product of the recycling process does not:

- (i) Contain significant concentrations of any hazardous constituents found in Appendix VIII of part 261 that are not found in analogous products; or
- (ii) Contain concentrations of any hazardous constituents found in Appendix VIII of part 261 at levels that are significantly elevated from those found in analogous products; or
- (iii) Exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit.

Questions?

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