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Version 1

Definition of Solid Waste Compendium



Volume D: Use Constituting Disposal

Hazardous Waste Identification Division
Office of Solid Waste
U.S. Environmental Protection Agency



Navigation Tips

To improve document navigation:

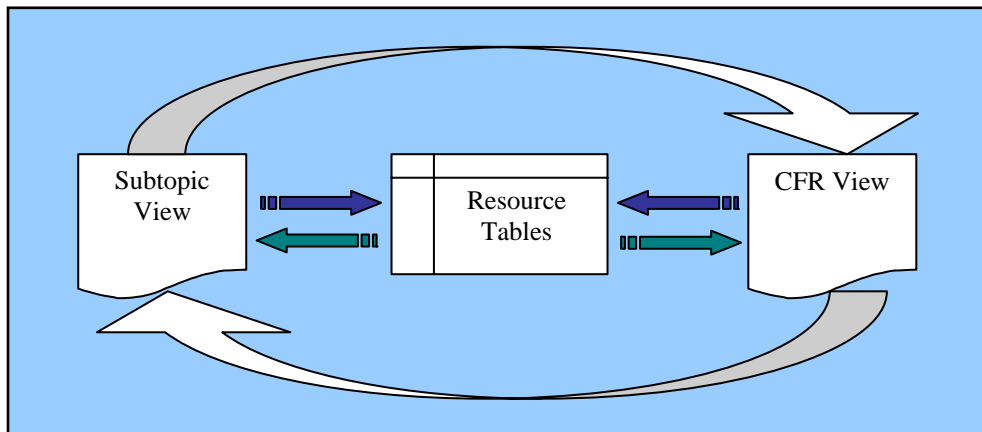
Using Microsoft Word

1. Use the  (back) and  (forward) buttons to navigate between document locations accessed via hyperlinks. These buttons can be accessed from the Navigation toolbar (View > Toolbars > Navigation). Alternatively, use ALT + Left (back) and ALT + Right (forward).
2. Use the Document Map. To show the Document Map, go to View > Document Map.

Using Adobe Reader (PDF)

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2. Use the Bookmarks listed in the Bookmarks tab (located on the left-hand side of the document window).

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Introduction

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About the Compendium

The Definition of Solid Waste Compendium serves as a user-friendly reference to assist Environmental Protection Agency (EPA) and state staff, industrial facilities generating and managing solid and hazardous wastes, as well as the general public, in locating resources addressing specific regulatory issues within the federal Definition of Solid Waste regulations. Please note that this reference is designed to be web-based; therefore, the usefulness of the document is maximized when it is viewed on a computer that is connected to the internet.

A frequently mentioned comment from stakeholders is the need for EPA to improve the user-friendliness of the existing regulations. Commenters note that the applicable Definition of Solid Waste regulations and relevant guidance materials are difficult to locate and use. As a result, stakeholders have difficulty in understanding the regulations and identifying solid waste. The objective of this document is to address some of the commenters' concerns by consolidating and streamlining the Definition of Solid Waste into a helpful reference tool that features a user-friendly format, including references to EPA FAQs (Frequently Asked Questions), letters, memoranda, and guidance documents that EPA has provided to the public through the years to help stakeholders interpret the Definition of Solid Waste. This document does not change any of the existing solid or hazardous waste requirements.

The resources referenced in the Compendium may include Federal Register (FR) notices, documents from [Resource Conservation and Recovery Act \(RCRA\) Online](#) (e.g., RCRA Hotline Q&A's, letters, and memoranda issued by EPA), and other resources, as well as relevant Code of Federal Regulations (CFR) language. We have attempted to identify the relevant resources for each Compendium volume topic. However, please note that EPA could have inadvertently overlooked a relevant document and did not reference it. Certain available resources, such as superseded RCRA Online documents and items that were judged to be not pertinent, have not been referenced. Most of the referenced resources are not included or reproduced in the Compendium; instead, hyperlinks to the resources are provided. As an exception, we have included a version of relevant sections of the most current CFR language (as of the date on the cover of the Compendium) that we have reformatted to make it easier to read and find citations of interest. In addition, we also provide links to the [Government Printing Office's Electronic Code of Federal Regulations Web site](#) (e-CFR), which is updated almost daily.

Please note that this document is also not a rulemaking in any way. As well, the included reformatted CFR language is not a substitute for the CFR itself or the requirements in the CFR. The Government Printing Office frequently updates the e-CFR

Web site; where appropriate, hyperlinks to the respective CFR section at the e-CFR Web site are provided.

This reference document presents only the federal Definition of Solid Waste. Most states are authorized to manage their own solid and hazardous waste generator regulatory program. Therefore, states may have their own set of regulations that apply in lieu of federal regulations, and while most state solid and hazardous waste regulations are based on the federal requirements, some states have developed regulations more stringent than the federal program. We direct you to the following Web site to determine if the state regulatory program is different from the federal program:
<http://www.epa.gov/epawaste/wyl/stateprograms.htm>.

The Definition of Solid Waste includes multiple subtopics, and is codified under 40 CFR. To help users of the Compendium more quickly identify the information they need, and to make the Compendium more user-friendly in an electronic environment, the Compendium has been divided into multiple volumes. These volumes are available through EPA's Definition of Solid Waste Web site at <http://www.epa.gov/epawaste/hazard/dsw/index.htm>. Because regulations are promulgated throughout the year, EPA intends to update the Compendium volumes periodically to remain up-to-date with regulations relating to the Definition of Solid Waste.

About the Use Constituting Disposal Volume

This volume of the Compendium references resources pertaining to the definition of “used in a manner constituting disposal” as it appears in the Definition of Solid Waste regulations at 40 CFR 261.2(c)(1), as well as the hazardous waste recycling regulations for recyclable materials that are used in a manner constituting disposal located at 40 CFR 266.20-266.23.

This document is organized into three main sections:

- *Subtopic View* – lists subtopics for resources
- *Resources* – lists resources for each subtopic
- *CFR View* – CFR language we've reformatted for easy reading

The *Subtopic View* section lists the subtopics among the resources pertaining to the definition of “used in a manner constituting disposal” as it relates to the Definition of Solid Waste and the hazardous waste recycling regulations for recyclable materials that are used in a manner constituting disposal. The *Resources* section is comprised of a table, arranged by subtopic, that provides basic details about and a hyperlink to each resource. The *CFR View* section provides reformatted versions of the relevant CFR language. As noted previously, this reproduced language is not a substitute for the CFR itself or the requirements in the CFR. Additionally, the Government Printing Office frequently updates the e-CFR Web site to which the document is linked; where appropriate, hyperlinks to the respective CFR section at the e-CFR Web site are provided. These three main sections are cross-referenced, where each section includes hyperlinks to

the other sections. Please see the “Navigation Tips” section for document navigation guidance.

This reference document does not provide guidance on solid waste or hazardous waste regulations beyond issues concerning resources pertaining to the definition of “used in a manner constituting disposal” as it relates to the Definition of Solid Waste and the hazardous waste recycling regulations for recyclable materials that are used in a manner constituting disposal. For more information regarding the various regulations applied to facilities generating or managing hazardous waste, see [Hazardous Waste Generators: A User Friendly Reference Document](#).

The Compendium volumes are also available in Microsoft Word format from EPA upon request. For more information on these versions and any other questions or comments concerning this document, please contact EPA’s Office of Solid Waste:

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Subtopic View

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Use Constituting Disposal [§§261.2(c)(1), 266.20-266.23]

Resource Index:

- [Resources applicable to all subtopics](#)
- Resources specific to subtopic:
 - [Anti-skid agent](#)
 - [Chemical reaction](#)
 - [Fertilizers](#)
 - [Wastewater conditioner](#)
 - [Other](#)

Resources by Subtopic

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Subtopic	Resource	Document Date	Type	Topic is Focus?	Link to EPA Summary	Link to Resource
Resources applicable to all subtopics	1. 50 FR 614 - Amendments to Definition of Solid Waste (Final) [pp. 627-628, 646-647]	1/4/1985	Federal Register	Yes	N/A	PDF
	2. 52 FR 21306 - Amendments to Definition of Solid Waste (Technical Corrections) [All pages]	6/5/1987	Federal Register	Yes	N/A	PDF
	3. 53 FR 31138 - Land Disposal Restrictions for First Third Scheduled Wastes (Final) [pp. 31197-31198]	8/17/1988	Federal Register	Yes	N/A	PDF
	4. 54 FR 36967 - Land Disposal Restrictions (Correction) [pp. 36969-36970]	9/6/1989	Federal Register	Yes	N/A	PDF
	5. 59 FR 8583 - Amendment to Subpart C – Recyclable Materials Used in a Manner Constituting Disposal (Proposed) [All pages]	2/23/1994	Federal Register	Yes	N/A	PDF
	6. 59 FR 43496 - Amendment to Subpart C – Recyclable Materials Used in a Manner Constituting Disposal (Final) [All pages]	8/24/1994	Federal Register	Yes	N/A	PDF
	7. 59 FR 67256 - Standards for the Management and Use of Slag Residues Derived from HTMR Treatment of K061, K062, and F006 Wastes (Proposed) [All pages]	12/29/1994	Federal Register	Yes	N/A	PDF
	8. 65 FR 70954 - Requirements for Zinc Fertilizers Made From Recycled Hazardous Secondary Materials (Proposed) [pp. 70954-70974]	11/28/2000	Federal Register	Yes	N/A	PDF
	9. 67 FR 48393 - Zinc Fertilizers Made From Recycled Hazardous Secondary Materials (Final) [All pages]	7/24/2002	Federal Register	Yes	N/A	PDF
	10. §261.2(c)(1) - Definition of solid waste: Materials are solid wastes if they are recycled—or accumulated, stored, or treated before recycling: Used in a manner constituting disposal.	N/A	Code of Federal Regulations	Yes	N/A	e-CFR
	11. §266.20 - Applicability.	N/A	Code of Federal Regulations	Yes	N/A	e-CFR

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Subtopic	Resource	Document Date	Type	Topic is Focus?	Link to EPA Summary	Link to Resource
	12. §266.21 - Standards applicable to generators and transporters of materials used in a manner that constitutes disposal.	N/A	Code of Federal Regulations	Yes	N/A	e-CFR
	13. §266.22 - Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.	N/A	Code of Federal Regulations	Yes	N/A	e-CFR
	14. §266.23 - Standards applicable to users of materials that are used in a manner that constitutes disposal.	N/A	Code of Federal Regulations	Yes	N/A	e-CFR
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Anti-skid agent	1. RESPONSE TO PETITION ON PROHIBITION OF USE OF SLAG FROM HIGH TEMPERATURE METALS RECOVERY AS ANTI-SKID/DEICING AGENT	2/16/1995	Letter	Yes	Summary	PDF
Return to: Subtopic View CFR View (CFR text) Main Index						
Chemical reaction	1. INDUSTRIAL FURNACES BURNING HAZARDOUS WASTES AND THE RESIDUALS GENERATED (LOUISIANA REG)	4/15/1987	Letter	No	Summary	PDF
Return to: Subtopic View CFR View (CFR text) Main Index						
Fertilizers	1. EXEMPTION FOR COMMERCIAL FERTILIZERS ONCE THE FERTILIZER IS PRODUCED	8/21/1986	Letter	Yes	Summary	PDF
	2. COMMERCIAL FERTILIZERS VERSUS SOIL AMENDMENTS	9/3/1987	Memo	Yes	Summary	PDF
	3. MATERIALS USED IN FERTILIZER PRODUCTION MANAGEMENT	10/11/1991	Letter	No	Summary	PDF
	4. REGULATORY STATUS OF THE MANUFACTURE AND USE OF WASTE-DERIVED FERTILIZER	9/23/1993	Letter	Yes	Summary	PDF

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Subtopic	Resource	Document Date	Type	Topic is Focus?	Link to EPA Summary	Link to Resource
	5. INTERPRETATION OF USE CONSTITUTING DISPOSAL PROVISION AS IT APPLIES TO ZINC MICRONUTRIENTS IN FERTILIZER	6/6/1997	Letter	Yes	Summary	PDF
	6. SPENT SULFURIC ACID EXCLUSION AND USE CONSTITUTING DISPOSAL	6/1/1999	Q & A	No	Summary	PDF
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Wastewater conditioner	1. SPENT PICKLE LIQUOR, USE/REUSE EXEMPTION AS APPLIED TO	6/5/1985	Memo	Yes	Summary	PDF
	Return to: Subtopic View CFR View (CFR text) Main Index					
Other	1. USE CONSTITUTING DISPOSAL	11/1/1985	Q & A	Yes	Summary	PDF
	2. LAND DISPOSAL RESTRICTIONS AND USE CONSTITUTING DISPOSAL	8/1/2001	Q & A	Yes	Summary	PDF
	Return to: Subtopic View CFR View (CFR text) Main Index					

CFR View Index

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NOTE: The CFR links in the below index are internal to this document.

CFR Location	Title/Topic
261.2	Definition of solid waste.
261.2(c)	Materials are solid wastes if they are <i>recycled</i> .
266.20	Applicability (of Subpart C—Recyclable Materials Used in a Manner Constituting Disposal).
266.21	Standards applicable to generators and transporters of materials used in a manner that constitutes disposal.
266.22	Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.
266.23	Standards applicable to users of materials that are used in a manner that constitutes disposal.

CFR View

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NOTE: The CFR language outline has been formatted

§261.2: Definition of solid waste.

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[****Preceding section text omitted****]

(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 solid wastes when reclaimed (except as provided under §261.4(a)(17)). Materials noted with a “—” in column 3 of Table 1 are not solid wastes when reclaimed.

§261.2: Definition of solid waste (cont.).

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

	Use constituting disposal (§261.2(c)(1))	Energy recovery/ fuel (§261.2(c)(2))	Reclamation (§261.2(c)(3)) (except as provided in 261.4(a)(17) for mineral processing secondary materials)	Speculative accumulation (§261.2(c)(4))
Spent Materials	(*)	(*)	(*)	(*)
Sludges (listed in 40 CFR Part 261.31 or 261.32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	—	(*)
By-products (listed in 40 CFR 261.31 or 261.32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	—	(*)
Commercial chemical products listed in 40 CFR 261.33	(*)	(*)	—	—
Scrap metal other than excluded scrap metal (see 261.1(c)(9))	(*)	(*)	(*)	(*)

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

[***Remaining section text omitted***]

§266.20: Applicability.

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(a) The regulations of this subpart apply to recyclable materials that are applied to or placed on the land:

(1) Without mixing with any other substance(s); or

(2) After mixing or combination with any other substance(s). These materials will be referred to throughout this subpart as “materials used in a manner that constitutes disposal.”

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in subpart D of part 268 (or applicable prohibition levels in §268.32 or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (*i.e.*, hazardous waste) that they contain.

(c) Anti-skid/deicing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in paragraph (b) of this section and remain subject to regulation.

(d) Fertilizers that contain recyclable materials are not subject to regulation provided that:

(1) They are zinc fertilizers excluded from the definition of solid waste according to §261.4(a)(21) of this chapter; or

(2) They meet the applicable treatment standards in subpart D of Part 268 of this chapter for each hazardous waste that they contain.

[50 FR 666, Jan. 4, 1985, as amended at 52 FR 21307, June 5, 1987; 54 FR 36970, Sept. 6, 1989; 59 FR 43500, Aug. 24, 1994; 67 FR 48414, July 24, 2002]

§266.21: Standards applicable to generators and transporters of materials used in a manner that constitutes disposal.

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Generators and transporters of materials that are used in a manner that constitutes disposal are subject to the applicable requirements of parts 262 and 263 of this chapter, and the notification requirement under section 3010 of RCRA.

§266.22: Standards applicable to storers of materials that are to be used in a manner that constitutes disposal who are not the ultimate users.

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Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of subparts A through L of parts 264 and 265 and parts 270 and 124 of this chapter and the notification requirement under section 3010 of RCRA.

§266.23: Standards applicable to users of materials that are used in a manner that constitutes disposal.

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(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of subparts A through N of parts 124, 264, 265, 268, and 270 of this chapter and the notification requirement under section 3010 of RCRA. (These requirements do not apply to products which contain these recyclable materials under the provisions of §266.20(b) of this chapter.)

(b) The use of waste or used oil or other material, which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

[50 FR 666, Jan. 4, 1985, as amended at 50 FR 28750, July 15, 1985; 59 FR 48042, Sept. 19, 1994]

*****End of Use Constituting Disposal CFR Excerpts *****

Glossary of Acronyms

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Acronym	Meaning
CFR	Code of Federal Regulations
e-CFR	electronic Code of Federal Regulations
EPA	Environmental Protection Agency
FR	Federal Register
HTMR	High Temperature Metal Recovery
RCRA	Resource Conservation and Recovery Act
UCD	Use Constituting Disposal