

9441.1995(29)

Hotline Questions and Answers

August 1995

1. Purpose and Applicability of Speculative Accumulation Provision

RCRA regulates secondary materials that are defined as solid wastes when recycled. Whether or not a given material meets the definition of solid waste when recycled depends primarily on how the material is categorized (e.g., spent material, sludge, commercial chemical product) and the means of recycling (e.g., burning for energy recovery, reclamation, use or reuse). The RCRA Subtitle C regulations also indicate that materials which are "accumulated speculatively" prior to recycling are solid wastes (261.2(c)(4)). What is the purpose of this speculative accumulation provision? To which materials does the provision apply?

EPA created the speculative accumulation provision to mitigate the risk posed by facilities that overaccumulate hazardous secondary materials prior to recycling. The provision serves as a safety net, preventing recyclable materials that are not otherwise regulated under RCRA from being stored indefinitely and potentially causing environmental damage. EPA subjects persons who "accumulate speculatively" (i.e., persons who fail to recycle a sufficient percentage of a recyclable material during the calendar year or fail to demonstrate that a feasible means of recycling exists) to immediate regulation as hazardous waste generators or storage facilities. (50 FR 614, 650; January 4, 1985).

The speculative accumulation provision generally applies to secondary materials that are not solid wastes when recycled (261.1(c)(8), 261.2(c)(4), and 261.2(e)(2)(iii)). In other words, certain secondary materials that are otherwise excluded from the definition of solid waste become regulated as solid and hazardous waste if accumulated speculatively. Among materials subject to this provision are:

Materials that are not solid wastes when recycled according to 261.2(e), including materials used or reused in an industrial process to make a product; used or reused as effective substitutes for commercial products; or returned to the original process from which they are generated, without first being reclaimed

Materials that are not solid wastes when reclaimed according

to 261.2, Table 1, such as by-products and sludges which exhibit a characteristic of hazardous waste

Materials identified under 261.4(a) as exempt from the definition of solid waste when reclaimed, including pulping liquors that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process (261.4(a)(6)) and spent sulfuric acid used to produce virgin sulfuric acid (261.4(a)(7)).

The speculative accumulation provision generally does not apply to materials that are defined as solid waste when recycled. Speculative accumulation is thus not a factor in determining the regulatory status of spent materials that are being reclaimed, secondary materials burned for energy recovery, materials used in a manner constituting disposal, or scrap metal (50 FR 614, 635). Since EPA already exerts the appropriate level of regulatory control over these solid wastes, as provided under 261.6 and Part 266, the safety net provided by the speculative accumulation provision is not needed.

There are two exceptions to the rule that speculative accumulation applies to all materials that are not solid wastes when recycled and does not apply to materials that are solid wastes when recycled. Commercial chemical products are not solid wastes when reclaimed (261.2, Table 1), or when they are burned for energy recovery or used in a manner constituting disposal if that is their normal manner of use (261.2(c)(1)(ii) and 261.2(c)(2)(ii)). Commercial chemical products are not, however, subject to the speculative accumulation provision. EPA has not placed any time constraint on the accumulation of commercial chemical products prior to reclamation (50 FR 614, 636). In addition, precious metal-containing materials are defined as solid wastes when recycled but are also subject to accumulation restrictions. If accumulated speculatively prior to reclamation, precious metals become subject to full RCRA regulation, rather than the reduced standards of Part 266, Subpart F (266.70(d)).