



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 23 2014

**MEMORANDUM**

**SUBJECT:** Determining Whether State Hazardous Waste Requirements are More Stringent or Broader in Scope than the Federal RCRA Program

**FROM:** Barnes Johnson, Director *Barnes Johnson*  
Office of Resource Conservation and Recovery

Susan Shinkman, Director *Susan Shinkman*  
Office of Civil Enforcement

**TO:** RCRA Directors, Regions I-X  
Regional Enforcement Division Directors, Regions I-X  
Regional Counsels, Regions I-X

The purpose of this memorandum is to update EPA's guidance to the regional offices on determining whether state hazardous waste requirements are more stringent or broader in scope than the federal Resource Conservation and Recovery Act (RCRA) Subtitle C hazardous waste regulations. This question arises when EPA is in the process of authorizing state programs.<sup>1</sup> This question is important because state provisions that EPA determines are more stringent are part of the federally authorized program and are federally enforceable while state provisions that EPA determines are broader in scope are not part of the federally authorized program and thus, are not federally enforceable.

EPA last addressed the issue of how to classify state provisions as either more stringent or broader in scope in a comprehensive manner in memoranda released in 1982 and 1984.<sup>2</sup> This memorandum supersedes the entire 1984 guidance document and Part 2.A. of the 1982 document which is the part that addresses the "more stringent versus broader in scope" issue. This memorandum also supersedes portions of pages 1-9 and 1-10 of the Introduction to State Authorization Training Manual, which addresses how to handle more stringent and broader in scope issues under the prior guidance.<sup>3</sup>

EPA regions determine whether particular state regulations are more stringent or broader in scope when authorizing state programs and state program revisions. These regional authorization rulemakings

---

<sup>1</sup> State regulations also may become more stringent or broader in scope when a state simply does not adopt new EPA exclusions or other optional EPA regulatory changes, thus leaving its previously authorized regulations unchanged.

<sup>2</sup> "EPA Enforcement of RCRA-Authorized State Hazardous Waste Laws and Regulations," March 15, 1982. See [http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/E9360D6BCE9AD528852567BA00708B78/\\$file/12046.pdf](http://yosemite.epa.gov/osw/rcra.nsf/0c994248c239947e85256d090071175f/E9360D6BCE9AD528852567BA00708B78/$file/12046.pdf). "Determining Whether State Hazardous Waste Management Requirements are Broader In Scope or More Stringent than the Federal RCRA Program," May 21, 1984.

<sup>3</sup> See [http://www.epa.gov/osw/laws-regs/state/revision/training/final\\_manual.pdf](http://www.epa.gov/osw/laws-regs/state/revision/training/final_manual.pdf).



constitute EPA's legally-binding decisions rather than this or any other guidance.<sup>4</sup> However, EPA is updating this guidance in order to assist the regions in implementing a nationally consistent approach.

## Background

The RCRA statute, in section 3006, grants EPA the authority to authorize state hazardous waste programs and then to enforce the authorized State requirements. See, e.g., section 3008(a). Once authorized, the state hazardous waste requirements are requirements of RCRA subtitle C, which operate "in lieu of the Federal program." See RCRA section 3006(b).

The RCRA statute further specifies that state programs may contain requirements that are more stringent than the federal regulations. See RCRA section 3009. Although the statute does not address state requirements that are considered broader in scope, states are not precluded from having such requirements. However, for purposes of federal authorization and enforcement, the EPA RCRA hazardous waste regulations distinguish between these two kinds of allowable state requirements. State requirements that are "more stringent," including those that are "more extensive" than the federal requirements, are among the requirements that may be federally authorized and enforced. 40 C.F.R. § 271.1(i)(1). On the other hand, state requirements that provide a "greater scope of coverage" than the federal requirements (commonly referred to as "broader in scope") are "not part of the federally approved program." 40 C.F.R. § 271.1(i)(2). Thus, while RCRA does not preclude states from including requirements that are "broader in scope" in their programs, EPA cannot authorize that part of the program and therefore cannot enforce it.<sup>5</sup>

The 1984 memorandum outlined the following two-part test that Regions generally used as guidance in determining whether state provisions are more stringent or broader in scope:

1. Does imposition of the State requirement increase the size of the regulated community beyond that of the Federal program?
2. Does the requirement in question have a direct counterpart in the Federal regulatory program?

If the answer to Part 1 was "yes," then the state requirement generally was considered broader in scope and the analysis was complete. If the answer was "no," then the region addressed Part 2. If the region found that the additional state regulation had a direct counterpart in the federal regulations, then the state generally was considered more stringent. If the region determined that the state requirement lacked a direct federal counterpart, then the requirement generally was considered broader in scope. In response to developments since 1984, the EPA has decided to retain a two-part test, but is modifying both parts of the test.

EPA is modifying part 1 to clarify that state regulations that cover entities subject to some federal conditional exemptions<sup>6</sup> may be determined to be "more stringent" where the entity is still managing a federally regulated hazardous waste. This modification builds on the approach EPA has taken in various authorization decisions since 1999, authorizing additional state requirements regarding Conditionally

---

<sup>4</sup> United States v. Southern Union, 630 F.3d 17, 28-29 (1<sup>st</sup> Cir. 2010).

<sup>5</sup> States can enforce these requirements under state law.

<sup>6</sup> For the purposes of this memorandum only, the terms "exclusions" and "exemptions" are used interchangeably and are not meant to indicate any particular distinction between the provisions that are described as one or the other.



Exempt Small Quantity Generators (CESQGs),<sup>7</sup> and is consistent with the recent court decision upholding EPA's approach in authorizing the Rhode Island CESQG regulations. United States v. Southern Union, 630 F.3d 17 (1<sup>st</sup> Cir. 2010). As determined by the court, 40 C.F.R. § 261.5 "clearly regulates CESQGs, governing how they categorize their waste, where they may store it, and how they may dispose of it." *Id.* at 30. The court rejected Southern Union's argument that the state's regulation of CESQGs is "additional coverage" as that term is used in 40 C.F.R. § 271.1(i). *Id.*

EPA also is modifying part 2 of the test to clarify that state regulations may have federal counterparts that are not necessarily "direct." This modification reflects that EPA's approach to state authorization has evolved over the past two decades. EPA has moved away from suggesting a line-by-line match of state requirements to federal requirements when authorizing state program provisions under RCRA section 3006. Line-by-line matching of requirements is not required by either the RCRA statute or the regulations when making more stringent versus broader in scope determinations. Since 2005, EPA has instead taken a more flexible approach in determining whether state regulations are "equivalent to the federal program." See "Determining Equivalency of State RCRA Hazardous Waste Program," September 7, 2005 ("Equivalency Policy").<sup>8</sup>

### Revised Two-Part Test

In determining whether a particular state provision is more stringent or broader in scope, the questions below should be answered sequentially:

- (I.) Does imposition of the particular state requirement increase the size of the regulated community or universe of wastes beyond what is covered by the federal program through either directly enforceable (i.e., independent) requirements or certain conditions for exclusion?
- (II.) Does the particular state requirement under review have a counterpart in the federal regulatory program?

Each part of the test is described more fully below. Examples of requirements are listed within this memorandum as either broader in scope with the designation of "BIS" or more stringent with a designation of "MS."

### **I. Does imposition of the particular state requirement increase the size of the regulated community or universe of wastes beyond what is covered by the federal program through either directly enforceable (i.e., independent) requirements or certain conditions for exclusion?**

If the answer is yes, then the state requirement is generally considered broader in scope. If the answer is no, then the state requirement satisfies the first part of the test for being classified as more stringent, but should be further assessed to see if it satisfies the second part of the test. The first part of the test focuses

---

<sup>7</sup> See state authorizations regarding Louisiana, 64 Fed. Reg. 48099 (Sept. 2, 1999); West Virginia, 65 Fed. Reg. 29973 (May 10, 2000); Rhode Island, 67 Fed. Reg. 51765 (August 8, 2002); Florida, 67 Fed. Reg. 53889 (Aug. 20, 2002); Massachusetts, 69 Fed. Reg. 57842, 57856 (March 12, 2004); Connecticut, 69 Fed. Reg. 57842, 57856 (Sept. 28, 2004); New Hampshire, 71 Fed. Reg. 9727, 9732-33 (Feb. 27, 2006); Missouri, 71 Fed. Reg. 25079, 25082 (Apr. 28, 2006); Vermont, 72 Fed. Reg. 12568 (Mar. 16, 2007); and California, 76 Fed. Reg. 62303, 62305 (Oct. 7, 2011).

<sup>8</sup> <http://www.epa.gov/osw/laws-regs/state/policy/fe-9-7-05.pdf>



on the scope of regulation over entities and wastes and asks whether the particular state requirement increases either the universe of covered entities or the universe of wastes.

If a state requirement regulates wastes or entities that are exempted unconditionally or omitted from hazardous waste regulation at the federal level, then it increases the size of the state's regulatory program beyond that of the federal program and thus is broader in scope than the federal program. Examples of requirements that are broader in scope because they regulate wastes exempted unconditionally by the hazardous waste program at the federal level include:

Example I.1. - BIS. State listing of wastes that are not in the universe of federal hazardous wastes (e.g., PCB wastes exempted from the federal RCRA regulations by 40 C.F.R. § 261.8).

Example I.2. - BIS. A state has a lower concentration level for classifying a waste as a characteristic hazardous waste (e.g., for lead) resulting in greater quantities of wastes being classified as exhibiting the characteristic of toxicity. However, in such circumstances, the state regulation still should be authorized as applied to any wastes that meet or exceed the federal characteristic level, but a note should be added to the Federal Register at the time of authorization, and to any listing of codified provisions, explaining that the provision is not federally authorized as applied to wastes below the federal characteristic level.

An example of a requirement that is broader in scope because it regulates entities not regulated at the federal level is:

Example I.3. - BIS. A state regulates household hazardous waste or collection centers or events handling household hazardous wastes.

In addition, even when the federal regulations cover a waste and an entity overall, if they unconditionally exempt a particular kind of unit or process from regulation, state regulation of that unit or process generally will be considered broader in scope because the state will be providing a greater scope of regulatory coverage. An example of a requirement that is broader in scope because it regulates units or processes not regulated at the federal level is:

Example I.4. - BIS. A state regulates the recycling process itself (other than when the state is tracking the federal requirements specified in 40 C.F.R. § 261.6(d)).

### Conditional Exemptions and Exclusions

In contrast, since 1984, EPA has promulgated a large number of conditional exclusions from the definition of solid waste, the definition of hazardous waste, permitting, or other requirements. Questions have arisen regarding situations where states have chosen to not adopt these exclusions and have sought authorization for their resulting state requirements.<sup>9</sup>

EPA is clarifying that additional state regulations covering entities subject to some of the federal conditional exemptions may be considered more stringent (if they also meet the second part of the test) as these state regulations generally are within the scope of the federal program. Entities may be

---

<sup>9</sup> Other times, states have simply not adopted new EPA exclusions, without submitting a program revision, thus leaving their previously authorized regulations in place. How to address this situation is discussed below – see Example I.5. - BIS regarding CRTs.



regulated through either the imposition of requirements that are directly enforceable or through the imposition of conditions for an exemption from more extensive requirements.<sup>10</sup> Thus, when a state more strictly regulates an entity subject to either type of provision, it generally does not expand the size of the regulated community.

For example, a state that does not recognize the CESQG or small quantity generators (SQG) categories, or that imposes additional requirements on CESQGs or SQGs, is not increasing the size of the regulated community, since these generators are managing wastes that are regulated as hazardous at the federal level.<sup>11</sup> CESQGs and SQGs are subject to regulation under the federal program in 40 CFR § 261.5 and 40 CFR Part 262, respectively. While the requirements imposed on these entities are not as extensive as those for large quantity generators (LQGs), CESQGs and SQGs are regulated entities under the federal program.

The following types of requirements satisfy the first part of the test for considered more stringent:

Example I.1. - MS. Where a state adopts additional requirements regarding SQGs and CESQGs.

Example I.2. - MS. Similarly, where a state adopts additional requirements regarding LQGs.

In contrast, if a state regulates material that is not considered to be solid or hazardous waste under the federal regulations when certain conditions are met, such as many of the materials that have been conditionally excluded from regulation under 40 C.F.R. § 261.4(a) (materials which are not solid wastes) or (b) (solid wastes which are not hazardous wastes), then the state regulation is broader in scope whenever all federal conditions have been met.

However, in the case of such solid and hazardous waste exclusions, this broader in scope determination should only apply to the state regulation of wastes or entities that would meet all the conditions of the federal regulatory exclusion. Entities or wastes that would not meet all the conditions of a federal regulatory exclusion remain fully regulated under the federal hazardous waste program and state regulation of these entities/wastes are within the scope of the federal program.

Example I.5. - BIS. State regulation of used, broken cathode ray tubes (CRTs) that meet the conditions in the federal exclusion in 40 C.F.R. § 261.4(a)(22). Under the federal exclusion, used, broken CRTs are not a solid waste as long as the CRTs are stored, labeled, transported, and processed as set forth in the regulations cited within the exclusion and not speculatively accumulated. States that do not adopt this exclusion would continue to regulate these materials as a solid and hazardous waste. Therefore, such state regulations would generally be broader in scope with respect to their regulation of CRTs that meet all the federal exclusion conditions. In contrast, when the handling of used, broken CRTs does not meet all the conditions for exclusion under the federal regulations, the CRTs would also be federally regulated hazardous waste and state regulation of such CRTs would be considered within the scope of the federal

---

<sup>10</sup> Some regulations are independent requirements that are imposed, applicable and enforceable apart from an exemption while other provisions operate as conditions of an exemption and are prerequisites to obtaining that exemption.

<sup>11</sup> EPA is clarifying in this memorandum that the 1984 memorandum is incorrect in citing as an example of a requirement that increases the size of the regulated community: "a lesser amount of waste exempted from regulation under the small quantity generation exemption." Note that the CESQG provisions were promulgated after the memo was written (56 FR 10146, March 24, 1986) but are similar to the small quantity generator provisions to which the memo referred.



program. EPA would be able to enforce the authorized state regulations where at least one of the conditions for the federal exclusion for used, broken CRTs is not met.

Further, if a state adopts a federal solid or hazardous waste exclusion, but adds additional conditions that must be met for the state exclusion to apply, those additional conditions would be considered outside the scope of the federal program and would not be part of the federally authorized program, although the entity would still be subject to federal enforcement regarding the part of the state regulations which track the federal conditions. For example, if a state adopts the CRT exclusion, but adds additional management standards as conditions for the exclusion, those additional management standards would be considered outside the scope of the federal program. However, as discussed above, if not all of the federal exclusion conditions are met, used, broken CRTs would be federally regulated as a hazardous waste and would be within the scope of the federal program.

When a state chooses not to adopt a federal exclusion, it is not required to submit a program revision application to EPA – since it is not revising its program. However, the regions should consider working with such a state, when otherwise reviewing applications for authorized program revisions, to include determinations in the Federal Register notice regarding the effect of the state not adopting particular federal exclusions. This would provide the clearest possible notice regarding which state regulations remain in the authorized program and, thus are subject to federal enforcement – in other words, those that are more stringent.

To summarize, the general principle with regard to exclusions under Part I of the test is that when the federal regulations contain an unconditional exclusion for a particular material or entity, state regulation of the excluded material or entity should be considered broader in scope. However, when there is a conditional federal exclusion, state regulation of the material or entity may still be considered within the scope of the federal program, depending on the application of the second part of the two-part test.

To assist in making the exclusion-specific determinations, Appendix A (attached) is a table that lists current federal exclusions together with a classification of whether a material or entity subject to a particular exclusion generally remains within the federal universe or is outside the scope of the federal program when the terms or conditions of the exclusion are met.

## **II. Does the particular state requirement under review have a counterpart in the federal regulatory program?**

Assuming that a state requirement has satisfied the first part of the test, the region should then look to the second part of the test to determine whether the state requirement has a counterpart in the federal program.

If the additional state requirement does not have a counterpart, the requirement should be classified as broader in scope. EPA is continuing to make the policy decision that the regions should not authorize these state hazardous waste requirements. Even though state requirements lacking federal counterparts may apply to entities that also are subject to federal RCRA regulation, these additional requirements generally involve matters that EPA believes should be left to state-only administration and enforcement.

If an additional state requirement has a counterpart in the federal regulatory program, it should be classified as more stringent. For a state regulation to have a counterpart in the federal regulations, it is



sufficient if the state and federal provisions relate to the same general subject matter. It is not necessary that the state requirement have a “direct” counterpart in the federal program in order for the state requirement to be classified as more stringent. In addition, the requirements need not be identical and need not achieve identical results. Factors that Regions should consider in determining whether a state regulation has a counterpart include whether the state and federal requirements are designed for the same purpose and to achieve similar results, whether the state requirements support or enhance the implementation of a federal requirement, and whether the state requirements supplement federal regulations. A region need not determine that all factors are present when determining there is an adequate counterpart between the state and federal provisions.

Note that if a state adopts provisions designed to provide different but equivalent environmental protection, then the Region should review the provisions in accordance with the EPA’s 2005 Equivalency Policy to determine if they are equivalent to federal requirements. The Equivalency Policy discusses how state provisions might differ from their federal counterparts while maintaining equivalency, which is a requirement for authorization. It also acknowledges that there could be some variation between state and federal provisions that does not compromise equivalency.<sup>12</sup> However, if the state adopts provisions that are different from the federal requirements and does not assert that they are equivalent, then the Region should review those provisions in accordance with this memorandum to determine if they are more stringent or broader in scope.

Examples of additional state requirements that have counterparts in the federal regulations and should generally be classified as more stringent include the following:

Example II.1. - MS. In addition to the federal requirement in 40 C.F.R. § 265.174 that facilities conduct weekly inspections of container storage areas, some states also require that the facility record the results in an inspection log. EPA believes that this additional requirement is related to the federal inspection requirement in that both are related to gathering information to be used to ensure the inspected materials are handled properly, and thus the state requirement has a counterpart in the federal regulations. Additional state reporting and recordkeeping requirements that support the implementation of underlying federal requirements should also be classified as more stringent.

Example II.2. - MS. Additional state permit application information requirements that supplement similar federal application requirements should be classified as more stringent.

Example II.3. - MS. Some states add to the federal 40 C.F.R. part 265, subpart I requirements applicable to generators the requirement to have secondary containment in container management areas. The federal regulations require measures to prevent releases from containers such as storage in non-leaking containers, using containers compatible with the wastes and keeping the containers closed. A requirement of secondary containment is designed to further carry out the purpose of these federal regulations in preventing releases of hazardous waste to the environment. Such state requirements relate to the specific subject matter in the federal regulatory program’s containment requirements and should be classified as a more stringent requirement.

Example II.4. - MS. Additional hazardous waste management conditions for CESQGs. Some states require CESQGs to meet additional conditions such as storage in containers, time limits on storage, and

---

<sup>12</sup> Equivalency Policy at 3.



manifesting that are not imposed on CESQGs as exemption conditions by the federal regulations. CESQGs are federally regulated through provisions that ensure their hazardous wastes are properly recycled, treated and disposed (e.g., the 40 C.F.R. § 261.5 requirements to conduct waste determinations and to send hazardous wastes only to particular kinds of facilities). Additional state conditions are designed to achieve this same purpose: ensuring that the hazardous wastes generated from these facilities are properly recycled, treated, and disposed. The additional state regulations also generally match federal requirements for large or small quantity generators – with the states applying similar requirements to waste accumulation that involves a lesser quantity threshold. Such state regulations have counterparts in the federal regulatory program and should generally be classified as more stringent requirements.<sup>13</sup>

Example II.5. - MS. Requirements to monitor for additional constituents beyond those specified in the groundwater monitoring provisions found in 40 C.F.R. § 264.98. Monitoring for various constituents is required by the federal regulation, and when a state requires monitoring for additional constituents this is designed to achieve the same purpose of assessing the extent of releases. Such state regulations have a counterpart in the federal regulations (except when the state monitoring requirements apply only to wastes regulated by the state but not the federal program).

Additional state requirements that have more direct (e.g., line-by-line) counterparts in the federal regulations also should continue to be classified as more stringent. Examples of such state requirements are:

Example II.6. - MS. Fewer financial assurance options for facility closure.

Example II.7. - MS. Requirement for submittal of an annual rather than a biennial report for generators.

Example II.8. - MS. Expiration of permits after five years instead of ten years.

On the other hand, there are state requirements that have no counterpart in the federal program. Examples of such state requirements are:

Example II.1. - BIS. State registration and permitting fee requirements for generators or treatment, storage, and disposal facilities.

Example II.2. - BIS. Controls on traffic outside a hazardous waste facility or specification of transport routes to the facility.

Example II.3. - BIS. A requirement for the preparation of an environmental impact statement or the approval of a siting board as part of the RCRA permit issuance process.

Example II.4. - BIS. Licensing of hazardous waste transporters.

---

<sup>13</sup> As discussed in this memorandum, CESQGs are never fully exempt from RCRA regulation and therefore, additional state conditions operate as additional requirements on these entities. In contrast, additional state conditions on solid and hazardous waste exclusions, where the material is not part of the regulated program if the federal conditions are met, would be outside the authorized program, as discussed above on page 6 immediately following Example I.5.



## Conclusion

This guidance document is intended to assist the regions in carrying out important authorization and enforcement work. As the regions implement this guidance, they should continue to consult with ORCR and OECA when nationally significant issues arise, or when it is unclear to a region whether a particular provision should be classified as more stringent or broader in scope.

cc: John Michaud, OGC  
Dania Rodriguez, ASTSWMO



## **Appendix A**

### **RCRA Exclusions and Exemptions – Federal Regulatory Universe**

The following table sets out the Agency's position on whether the specified materials that are the subject of either an exclusion or an exemption are within the universe of federally-regulated materials under RCRA Subtitle C. This determination is germane for the first part of the more stringent/broader in scope analysis described in the memorandum to which this table is appended.

Where the table indicates a "No", this means the material or entity is not within the federal regulatory universe and state provisions that regulate the material or entity are broader in scope; on the other hand, "Yes" indicates that the material remains within that regulatory universe and further analysis under the second part of the guidance (the federal counterpart question) is required. Where an exclusion or exemption provision includes a temporal component (such as the exemption for persons engaged in an immediate response to a hazardous waste discharge), the analysis relates to the time period covered by the provision (in this example, the inquiry into whether the entity is within the regulatory universe would relate to the time during the immediate response).

For those exclusions and exemptions that are set forth with conditions, specific terms or other types of limitations, where specified with "No", the determination is that the material is outside the regulatory universe when the applicable conditions or terms of the federal regulations are met. Therefore, where a state does not have a matching exclusion or exemption and regulates the material, the state provision would be considered broader in scope. On the other hand, where particular conditions or terms of the federal regulations are not met so that the exclusion or exemption would not be applicable, the material remains within the federal regulated universe. Regional authorization reviewers must still analyze state provisions using the second part of the more stringent/broader in scope test to inform those circumstances when the terms of conditional exclusions or exemptions are not met.

While every effort has been made to make this list of exclusions and exemptions as complete as possible, there may be additional exclusions or exemptions that appear in the regulations or that are promulgated in the future that are not included in this table and there should be nothing inferred from the lack of such inclusion. The descriptions of the exclusions and exemptions provided here as summaries and excerpts are not intended to be relied upon in lieu of the actual regulatory language. The conditions and terms that are set forth are those that are found in the regulations. This Appendix does not set out conditions or terms that may be part of regulatory interpretations or case law relating to any particular exemption or exclusion.



## RCRA Exclusions and Exemptions – Federal Regulatory Universe Table

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.2(e)	Use/Reuse	Must be (a) used or reused as ingredients to make product, (b) used or reused as an effective substitute for a product, (c) returned to the original process to be used as feedstock. (Does not apply to use constituting disposal, burning for energy or inherently waste-like material). Must meet speculative accumulation limits	No
261.2 Table 1	Characteristic sludges being reclaimed	Must meet speculative accumulation limits	No
261.2 Table 1	Characteristic by-products being reclaimed	Must meet speculative accumulation limits	No
261.2 Table 1	Commercial chemical products being reclaimed	None	No
40 CFR 261.3 (a)(2)(iv)(A-G))	Headworks Exemption from Mixture Rule for specified wastes at specified concentrations	None	Not within the federal universe if specified wastes are present at or below the specified concentration; if the material is not a specified waste or is present above the specified concentration, it is within the federal universe.
261.4(a)(1),(3), (4),(5),(13)	Unconditional exclusions from regulatory solid waste universe	None	No
261.4(a)(2)	Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act	None	No  This exclusion only applies to the actual point source discharge and does not exclude industrial wastewaters while they are being collected, stored or treated prior to discharge nor does it exclude industrial wastewater treatment.



Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(a)(6)	Pulping Liquors	Must be reclaimed in a pulping liquor recovery furnace, reused in the pulping process and meet speculative accumulation limits	No
261.4(a)(7)	Spent Sulfuric Acid	Must be used to produce virgin sulfuric acid and meet speculative accumulation limits	No
261.4(a)(8)	Secondary Materials Processed in Closed-Loop Recycling	Only tank storage; closed process connected by pipes or similar equipment; no controlled flame combustion; must meet speculative accumulation limits; no burning for energy recovery, no land placement	No
261.4(a)(9)	Spent Wood Preservatives	Reused on-site for intended purpose; managed to prevent releases; meets drip pad standards and one-time notification requirement	No
261.4(a)(10)	Coke By-Product Wastes that exhibit only the toxicity characteristic	Recycled only to coke ovens or tar recovery process as a feedstock to produce coal tar or mixed with coal tar prior to the tar's sale or refining; no land disposal prior to recycling	No
261.4(a)(11)	Splash Condenser Dross Residue	Must be shipped in drums and not land disposed	No
261.4(a)(12)	Hazardous Oil-Bearing Secondary Materials and Recovered Oil from Petroleum Refining Operations	No land placement nor speculative accumulation prior to recycling; coke product does not exhibit characteristic	No
261.4(a)(14)	Shredded Circuit Boards that are free of mercury switches, batteries	Stored in containers sufficient to prevent release	No

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(a)(15)	Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR § 63.446(e)	None	No  This exclusion applies only to combustion at the mill generating the condensates.
261.4(a)(16) <sup>1</sup> 261.38	Comparable Fuels that meet requirements of 40 CFR Section 261.38. Includes minimum heating value, viscosity specifications and constituent concentrations.	Limits on blending. No impermissible dilution. Excluded fuel can only be burned in certain units. Generator must keep records necessary to document compliance with those conditions, must submit a one-time notice, must publish a notice in the local newspaper, must develop and follow a written fuel analysis plan and must conduct sampling and analysis according to the plan. Excluded fuel must be re-tested at least annually. Generator must maintain an operating record and a record of all shipments off-site and must obtain a certification from the burner.	No
261.4(a)(17)	Mineral Processing Spent Materials	Must be legitimately recycled; must meet speculative accumulation limits, storage standards, and notification requirement	No
261.4(a)(18)	Petrochemical Recovered Oil from organic chemical manufacturing facility that is only characteristically hazardous	No placement on the land; must meet speculative accumulation limits	No

<sup>1</sup> On June 27, 2014, the Court of Appeals for the D.C. Circuit vacated the Comparable Fuels Exclusion. As of the date of the memorandum to which this chart is appended, that vacatur had not yet become effective. If necessary, a revised chart may be distributed in the future to address the vacatur.



Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(a)(19)	Spent Caustic Solutions from Petroleum Refining	No land placement; must meet speculative accumulation limits	No
261.4(a)(20)	Hazardous Secondary Materials Used to Make Zinc Fertilizers	Must meet speculative accumulation limits, a one-time notice requirement, storage standards, shipment records requirement and annual reports requirements	No
261.4(a)(21)	Zinc Fertilizers Made from Recycled Hazardous Secondary Materials that meet specified contaminant limits	The fertilizer is made from materials that meet 40 CFR § 261.4(a)(20) and the manufacturer must meet sampling, analysis and record requirements	No
261.4(a)(22) and 261.39	Used Cathode Ray Tubes (CRTs)	<p>Must meet speculative accumulation limits</p> <p>For used, intact CRTs: No disposal; must meet speculative accumulation limits; meet export requirements</p> <p>For used, broken CRTs: Specific storage and container standards, labeling, export requirements, processing requirements. (40 CFR §§ 261.39(a) and (b)).</p> <p>For CRT glass: Must go to a CRT glass maker or lead smelter. (40 CFR § 261.39(c)).</p>	No
261.4(a)(23)	Generator-controlled reclamation exclusion	<p>Reclamation occurs onsite or within the same company or under a tolling agreement; must meet containment requirement and not be speculatively accumulate; no exports</p> <p>Note: notification is a requirement but not a condition</p>	No

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(a)(24) and (25)	Transfer-based reclamation exclusion	Must send to RCRA-permitted recycler or perform audit, must maintain shipping records including confirmations of receipt, recycler must have financial assurance, containment requirement must be met, no speculative accumulation, export requirements  Note: notification is a requirement but not a condition	No
261.4(a)(26)	Solvent contaminated wipes (reusable)	Stored in labeled non-leaking containers, accumulated no longer than 180 days, generators must maintain documentation, and wipes are sent to a laundry or dry cleaner whose discharge, if any is regulated under sections 301 and 402 or section 307 of the Clean Water Act.	No
261.4(b)(1)	Household hazardous waste	Exemption extends to resource recovery facilities handling municipal solid waste provided such facilities only receive and burn household waste and solid waste from commercial and industrial sources that does not contain hazardous waste; facilities cannot accept hazardous wastes and must establish contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at nor burned in such facility.	No
261.4(b)(2)	Solid waste generated from the growing and harvesting of agricultural crops or the raising of animals, including animal manure.	Must be returned to the soil as fertilizer	No
261.4(b)(3)	Mining overburden	Must be returned to the mining site	No



Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(b)(4)	Fossil fuel combustion waste	Not otherwise regulated by 40 CFR § 266.112 for facilities that burn or process hazardous waste	No
261.4(b)(5)	Drilling fluids, produced waters, and other wastes associated with the exploration of crude oil, natural gas or geothermal energy	None	No
261.4(b)(6)	Trivalent Chromium Waste	Normally managed in non-oxidizing environment	No
261.4(b)(7)	Solid waste from the extraction, beneficiation and processing of ores and minerals	If the material is a residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials, the residue is exempt provided the owner or operator processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials and legitimately reclaims the secondary mineral processing materials; not otherwise regulated by 40 CFR § 266.112 for facilities that burn or process hazardous waste	No
261.4(b)(8)	Cement kiln dust waste	Not otherwise regulated by 40 CFR § 266.112 for facilities that burn or process hazardous waste	No

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(b)(9)	Solid waste consisting of discarded arsenical-treated wood or wood products which only exhibit hazard characteristics corresponding to waste codes D004 through D017	None	No
261.4(b)(10)	Petroleum Contaminated Media that have the Toxic characteristic Waste Codes D018 to D043 and are subject to corrective action requirements under 40 CFR Part 280	None	No This material is subject to 40 CFR Part 280, part of the RCRA Subtitle I program.
261.4(b)(11)	Injected Groundwater that is hazardous only because it exhibits the toxic characteristic under 40 CFR § 261.24	Reinjection must occur only pursuant to specific petroleum operations and in accordance with specified timeframes; operations must be performed pursuant to a written state agreement that is submitted to EPA and includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed	No
261.4(b)(12)	Used Chlorofluorocarbon refrigerants	Refrigerant is reclaimed for further use	No



Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.4(b)(13)	Non-terne plated used oil filters	No mixture with listed wastes, gravity hot-drained pursuant to specified method	No
261.4(b)(14)	Used Oil Distillation Bottoms	Must be used to manufacture asphalt products	No
261.4(b)(15)	Leachate and gas condensate collected from landfills where specified waste types have been disposed	The disposed solid waste meets specified listing descriptions and was disposed prior to specified dates; the gas or leachate condensate meets specific characteristic limitations, is discharged subject to regulation under sections 307(b) and 402 of the Clean Water Act and management of the condensate is subject to specified surface impoundment storage limitations.	No
261.4(b)(18)	Solvent contaminated wipes (disposable)	Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, are stored in labeled non-leaking containers, accumulated no longer than 180 days, contain no free liquids, generators must maintain documentation, and wipes are sent to specified disposal or combustion facilities.	No
261.5	Conditional exemption for small quantity generators	Must generate no more than 100 kg of waste per month, conduct hazardous waste determination and ensure waste goes to appropriate facility	Yes; while the generators are exempt from most generator regulatory requirements found in 40 CFR Part 262; these entities are subject to some regulatory requirements (e.g., requirement to make a hazardous waste determination) <sup>2</sup>

<sup>2</sup> See U.S. v. South Union Company, 630 F.3d 17 (1<sup>st</sup> Cir. 2010).

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.6(a)(3)(i)	Industrial ethyl alcohol being reclaimed	If material is to be exported, specified requirements must be met	No, where the material is not exported  Yes, where the material is to be exported
261.6(a)(3)(ii)	Scrap metal being recycled	None	No
261.6(a)(3)(iii)	Recycled fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at petroleum refining facility where such wastes are from normal petroleum refining, production, and transportation practices	None	No If not part of the normal process streams, the fuel needs to be analyzed to determine if it is a hazardous waste and if so, it is within the federal regulatory universe.



261.6(a)(3)(iv) (A) and (B)	<p>Hazardous Waste Fuel produced from oil-bearing hazardous waste from petroleum refining, production, and transportation practices;</p> <ul style="list-style-type: none"> <li>• fuel production process does not use distillation</li> <li>• fuel production process does not produce products from crude oil</li> <li>• fuel must meet used oil specifications under 40 CFR 279.11</li> <li>• no other hazardous wastes are used to produce hazardous waste fuel</li> <li>• hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed</li> </ul>	None	No
261.6(a)(3)(iv) (C)	Reclaimed Oil Fuel that meets used oil specifications under 40 CFR 279.11	Oil is burned as fuel without reintroduction of reclaimed oil into refining process	No

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
261.6(a)(4)	Used oil that is hazardous only due to a hazard characteristic	Oil must be recycled	Yes  The material is regulated under part 279
261.6(c)(2)	Reclaimers that do not store	No storage of recyclable materials prior to recycling; these entities are subject to Section 3010 notification, Parts 264 and 265 Subparts AA and BB, and manifest requirements	Yes <sup>3</sup>  These entities are subject to Section 3010 notification, Parts 264 and 265 Subparts AA and BB, and manifest requirements
261.7	Residues of hazardous waste in containers or inner liners removed from containers that meet the specified criteria for empty containers or empty inner liners	None	No <sup>4</sup>
261.8	PCB-containing dielectric fluid and equipment containing such PCB fluid that is hazardous only because it exhibits the toxic characteristic and is authorized for use and regulated under TSCA	None	No
261.9/273	Batteries, pesticides, mercury-containing equipment, lamps	Materials described in 40 CFR Part 273 are subject to regulation under 40 CFR Part 273 rather than full regulation	Yes

<sup>3</sup> Note that the recycling process itself is exempt from regulation and state regulation of the recycling process is broader in scope.

<sup>4</sup> Similar to conditional exclusions or exemptions, if the container or inner liner does not meet the criteria defining "empty," the material is regulated and within the federal universe.



Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
262.10(f), 262.70, 264.1(g)(4)/ 265.1(c)(8)	Farmer generating waste pesticides	Must be from own use; container must be triple-rinsed; residue must be disposed of in accordance with label instructions	Yes. While a farmer to which these provisions are applicable is exempt from most generator and disposal requirements, the farmer must still manage the waste in accordance with regulatory requirements (the containers must be triple-rinsed) and the material is RCRA hazardous waste.
262 Subpart K	Academic lab waste	Multiple specified Conditions	Yes
262.10(i), 264.1(g)(8), 265.1(c)(11), 270.1(c)(3)	Persons responding to explosives or munitions emergency	Response must be in accordance with 40 CFR Sections 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv) and 270.1(c)(3)(i)(D) or (iii); activities must not continue after immediate response is over	No, during the time of immediate response if responder is non-military and not the owner/operator of the facility;  Yes, if responder is owner/operator of facility and is otherwise regulated under part 265 as subparts C and D must be followed  Yes, for response involving military munitions and responder is military emergency response unit as 3-year record-keeping requirements must be met
264.1(c), 265.1(c)(1), 270.60(a)	Persons disposing of hazardous waste by mean of ocean disposal subject to permit issued under Marine Protection, Research and Sanctuaries Act	To be exempt from full permitting requirements, entities must meet specified requirements as part of a permit by rule granted under 40 CFR Part 270	Yes; covered by a permit by rule granted under 40 CFR Part 270

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
264.1(g)(1), 265.1(c)(5)	State-permitted municipal or industrial solid waste facility	Facility only handles hazardous waste regulated under 40 CFR Section 261.5	No
264.1(g)(2), 265.1(c)(6)	Owner/operator of facility managing recyclable materials	Entity is exempt except to the extent it is referred to in 40 CFR Part 279 or subparts C, F, G, or H of 40 CFR Part 266	No if the entity is not covered by 40 CFR Part 279 or subparts C, F, G, or H of 40 CFR Part 266  Yes if the entity is covered by 40 CFR Part 279 or subparts C, F, G, or H of 40 CFR Part 266
264.1(g)(3), 265.1(c)(7)	Generators accumulating on-site	Must meet conditions set out in 40 CFR Section 262.34	Yes; exemption is only from storage permit requirements; waste and entity remains regulated under 40 CFR Part 262
264.1(g)(5), 265.1(c)(9)	Owner/operator of totally enclosed treatment unit that is directly connected to an industrial facility	Must be constructed and operated in a manner which prevents releases	No  The treatment activity is not subject to regulation and the material is only regulated as it exits the treatment unit.
264.1(g)(6), 265.1(c)(10)	Owner/operator of elementary neutralization unit or wastewater treatment unit	Units must meet the definitions in 40 CFR Section 260.10 and the owner/operator must comply with 40 CFR Section 264.17(b) if diluting D001 or D003 wastes to remove characteristic	Yes
264.1(g)(9), 265.1(c)(12)	Transporter storing manifested HW	HW is in containers that comply with 40 CFR Section 262.30; storage is at transfer facility; storage lasts no longer than 10 days	Yes, as the transporter is regulated under 40 CFR Part 263.
264.1(g)(10), 265.1(c)(13)	Owner/Operator of Facility that mixes absorbent material and waste	Must be in container; mixture occurs at the time waste is first placed in container; container must meet substantive requirements of 40 CFR Sections 264.17(b), 264.171, and 264.172 are complied with.	Yes, as owner/operator must meet substantive requirements of reaction prevention provisions and container management provisions
264.1(g)(11), 265.1(c)(14)	Universal waste handlers and transporters handling specified wastes	None	Yes, as entities are subject to 40 CFR Part 273



Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
265.1(c)(3), 270.60(c)	Owner/operator of POTW	To be exempt from full permitting requirements, entities must meet specified requirements as part of a permit by rule granted under 40 CFR Part 270	Yes; covered by a permit by rule granted under 40 CFR Part 270
266 Subpart C	Recyclable Materials Used in a Manner Constituting Disposal	Must meet treatment standards	Yes Part 266 regulates this material
266 Subpart F	Materials Utilized for Precious Metal Recovery	Must meet notification, export and records requirements; must also meet speculative accumulation limits	Yes Part 266 regulates this material
266 Subpart G	Spent Lead-Acid Batteries Being Reclaimed	Multiple specified conditions	Yes Part 266 regulates this material
266 Subpart H	Hazardous Waste Burned in Boilers and Industrial Furnaces	Multiple specified conditions	Yes Part 266 regulates this material
266 Subpart M	Military Munitions	Multiple specified conditions	No for the material that do not meet the definition of solid waste in 40 CFR Section 266.202  The regulation explicitly sets out the conditions and circumstances under which military munitions are and are not solid waste
266 Subpart N	Storage and Treatment Exemption for Low-Level Mixed Waste (low-level radioactive waste mixed with RCRA hazardous waste)	Multiple specified conditions	Yes as exemption is only for storage and treatment activities

Citation	Description	Conditions or Terms of the Provision	While the conditions are met, is the material or entity within the federal regulatory universe?
270.60	Permits by Rule <ul style="list-style-type: none"> <li>• Ocean Disposal</li> <li>• Injection Wells</li> <li>• POTWs</li> </ul>	Multiple specified Conditions	Yes; covered by a permit by rule granted under 40 CFR Part 270
273	Universal Waste	Multiple specified conditions	Yes
279	Used Oil	Multiple specified conditions.	Yes