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BIENNIAL REPORT: REPORTABLE AND NON- REPORTABLE WASTES



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IMPORTANT DEFINITION CHANGES

EPA has revised the instructions for these forms to clarify and require respondents to use only the Federal regulatory definition of hazardous waste and the Federal hazardous waste generator categories when reporting hazardous waste activity. Our analysis of large quantity generators (LQGs) revealed respondents were using State regulatory definitions to answer the RCRA Subtitle C Site Identification form sections 10 and 11, because the previous instructions had appeared to allow it. EPA is revising these instructions to make clear that these forms are intended to only collect data using the Federal regulatory definitions. These forms can collect data using an Authorized State's regulatory definition only if they include a specific statement regarding the State's regulatory definition, which the current forms do not include. Therefore, when entering hazardous waste activity information on these current forms, **ONLY** use the Federal regulatory definitions.

We acknowledge that Authorized States with different State regulatory definitions of hazardous waste or different definitions for hazardous waste generator categories have a need to collect State hazardous waste activity using these forms. Therefore, these forms will be revised in the future to include additional questions to track state definitions for hazardous waste activities in addition to the Federal definitions. This change cannot be made without the Office of Management and Budget (OMB) approval. When the forms come up for renewal on April 30, 2024, we will be submitting the new set of forms to include spaces to collect hazardous waste activity using both the Federal regulatory definition and the State regulatory definition.

EXECUTIVE SUMMARY

The U.S. Environmental Protection Agency's (EPA's) and its State Partners' mission to protect human health and the environment includes the responsibility to effectively manage the nation's hazardous waste. As part of this task, EPA and the States collect and maintain information about the generation, management, and final disposition of the nation's hazardous waste regulated by the Resource Conservation and Recovery Act (RCRA), as amended. This information is collected in the Hazardous Waste Report, which is also known as the Biennial Report.

EPA's Office of Resource Conservation and Recovery (ORCR; formerly Office of Solid Waste or OSW) and the Waste Activity Group (composed of representatives from States, one EPA Region, and EPA Headquarters) prepared "Biennial Report: Reportable and Non-Reportable Wastes" as a reference for hazardous waste handlers and the RCRAInfo Community in:

1. [Determining whether a waste should be part of the Biennial Report](#); and
2. [Determining whether a hazardous wastewater should be part of the Biennial Report](#).

During its development, this Biennial Report Guide went through a thorough review process as it was reviewed by experts at EPA Headquarters, EPA Regions, and States. EPA updates this guide, as necessary, to reflect any changes to the RCRA Hazardous Waste Program (e.g., changes in policy, newly promulgated rules).

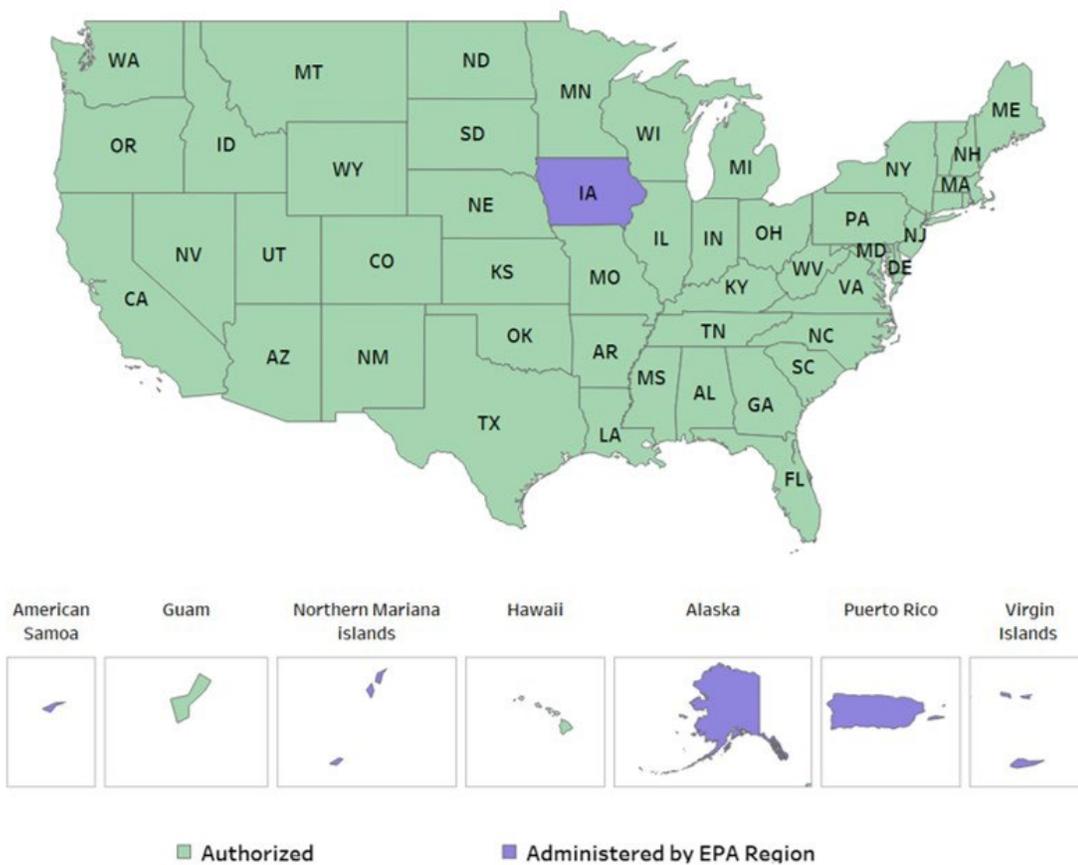
The purpose of this Biennial Report Guide is to clarify and provide further details on the current Biennial Report Instructions, not to change the Biennial Report Instructions. Thus, this guide does not replace Federal laws or regulations. It simply compiles and summarizes information on the regulations and the associated regulatory citations in the Code of Federal Regulations (CFR) pertaining to the completion of the Biennial Report. This guide also identifies additional information resources (e.g., documents, web sites) that may be used as reference in determining whether a waste should be part of the Biennial Report. **Please note that some States have regulations that may be more stringent and/or broader in scope than the counterpart Federal hazardous waste regulations (e.g., a State may require annual submission of the Hazardous Waste Report rather than biennial submission). Therefore, you should consult the corresponding regulatory agency (i.e., Authorized State agency or EPA Region) in your State to clarify the applicable hazardous waste requirements.**

Follow any of the **links (hyperlinks)** in the document to obtain additional information on the corresponding topic. Links are in [underlined blue text](#). To follow a link, move the cursor to the desired topic and left click on the computer mouse.

Implementation of the Biennial Report Program

State authorization is a rulemaking process under which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual States in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to States in implementing rules.

To achieve authorization, a State's program must be fully equivalent to, no less stringent than, and consistent with the Federal program. However, the State programs can be more stringent or broader in scope than the Federal regulations. The map below shows the implementing status of the Biennial Report program.



Source: U.S. Environmental Protection Agency, "[State Authorization Tracking System \(StATS\)](#)" Web page, "Authorization Status of All RCRA/HSWA Rules." Data current as of September 30, 2022.

PART 1 EXECUTIVE SUMMARY: DETERMINING WHETHER A WASTE SHOULD BE PART OF THE BIENNIAL REPORT

EPA uses the information collected in the Biennial Report to, among other things:

- Provide the EPA and the States with an understanding of hazardous waste generation and management in the U.S.
- Help EPA measure the quality of the environment, such as monitoring industry compliance with the regulations, evaluating waste minimization efforts taken by industry, supporting other regulatory activities (e.g., rulemaking, regulation assessment, implementation activities).
- Communicate the findings of EPA's hazardous waste reporting data collection efforts to the public, government agencies, and the regulated community. Data are summarized and communicated via [RCRAInfo Web](#).¹

Therefore, determining whether a waste should be part of the Biennial Report is a process that might have a significant impact on the accuracy of national waste generation and management estimates, and eventually affect decision-making for regulatory or program purposes.

GENERAL PRINCIPLES

Exhibit ES-1 presents the general principles or analytical framework for determining whether a waste should be part of the Biennial Report, as it pertains to generators. The exhibit indicates whether the material should be counted toward generator status determination and whether the material should be part of the Biennial Report.

¹ The data presented on RCRAInfo Web may change as regulators are allowed to make additions, corrections, and/or deletions to their data based on updated data received from facilities. Therefore, the data should be referenced as of the date of the data extraction.

If a material . . .	Should it count toward generator status determination?	Should it be part of the Biennial Report?
Is not a solid waste	No	No
Is a solid waste, but not a hazardous waste	No	No
Is a hazardous waste, but exempt from counting and reporting requirements	No	No
Is a hazardous waste, and is not exempt from counting or reporting requirements	Yes	Yes, unless the site does not meet the Federal regulatory definition of large quantity generator (LQG) (i.e., the site meets the Federal regulatory definition of small quantity generator (SQG) or very small quantity generator (VSQG))

Exhibit ES-1. Analytical Framework for Determining Whether a Generator’s Waste Should Be Part of the Biennial Report

In general terms, a material should be reported in the Biennial Report if that material is a hazardous waste that: (1) counts towards a generator’s regulatory status; (2) the hazardous waste is not exempt from reporting; and (3) the Federal regulatory status of the generator is a large quantity generator (e.g., 1,000 kilograms or greater of hazardous waste, or greater than 1 kilogram of acute hazardous waste listed in 40 CFR 261.31 (i.e., F-code dioxin-containing wastes) or 40 CFR 261.33(e) (i.e., P-code wastes)) in **at least one calendar month**. For Superfund sites, please see Part 5: RCRA Biennial Report Requirements for Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Response Actions.

- **Large quantity generators (LQGs)**, as defined at [40 CFR 260.10](#), are subject to the Biennial Report under [40 CFR 262.41](#).^{2, 3}
- **Treatment, Storage, and Disposal Facilities (TSDFs)** are subject to the Biennial Report under [40 CFR 264.75](#) or [40 CFR 265.75](#).^{4, 5} Hazardous wastes should be part of the Biennial Report if they are:
 - Generated and accumulated onsite at the TSDF.
 - Treated, stored, disposed of, or recycled onsite at the TSDF. This includes all hazardous wastes received from offsite.

² 40 CFR Part 262 – Standards Applicable to Generators of Hazardous Waste.

³ Authorized States may have regulations that are more stringent and/or broader in scope than the Federal regulations. It is the site’s responsibility to make sure that it complies with all applicable requirements under the Federal and the respective State hazardous waste program.

⁴ 40 CFR Part 264 – Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

⁵ 40 CFR Part 265 – Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

IDENTIFYING HAZARDOUS WASTES THAT SHOULD BE PART OF THE BIENNIAL REPORT

To determine whether a waste should be part of the Biennial Report, it is best to ask a series of questions in a step-wise manner. These steps are summarized in [Exhibit ES-2](#) for generators and in [Exhibit ES-3](#) for TSDFs.

Follow any of the **exhibits' links** to obtain additional information on the corresponding topic. To follow a link, move the cursor to the desired topic and left click on the computer mouse.

[Large quantity generators \(LQGs\)](#), as defined at [40 CFR 260.10](#), are required to complete and file the Biennial Report or the State’s equivalent hazardous waste report, which must contain all the Federally-required data contained on the Biennial Report with the same instructions for completion. In determining whether a site qualifies as an LQG, a site must first identify all hazardous wastes generated at the site that count toward generator status determination. The flowchart below is designed as a tool for identifying hazardous wastes generated at the site that should be part of the Biennial Report. Click on any of the flowchart’s links to obtain additional information on the corresponding topic.

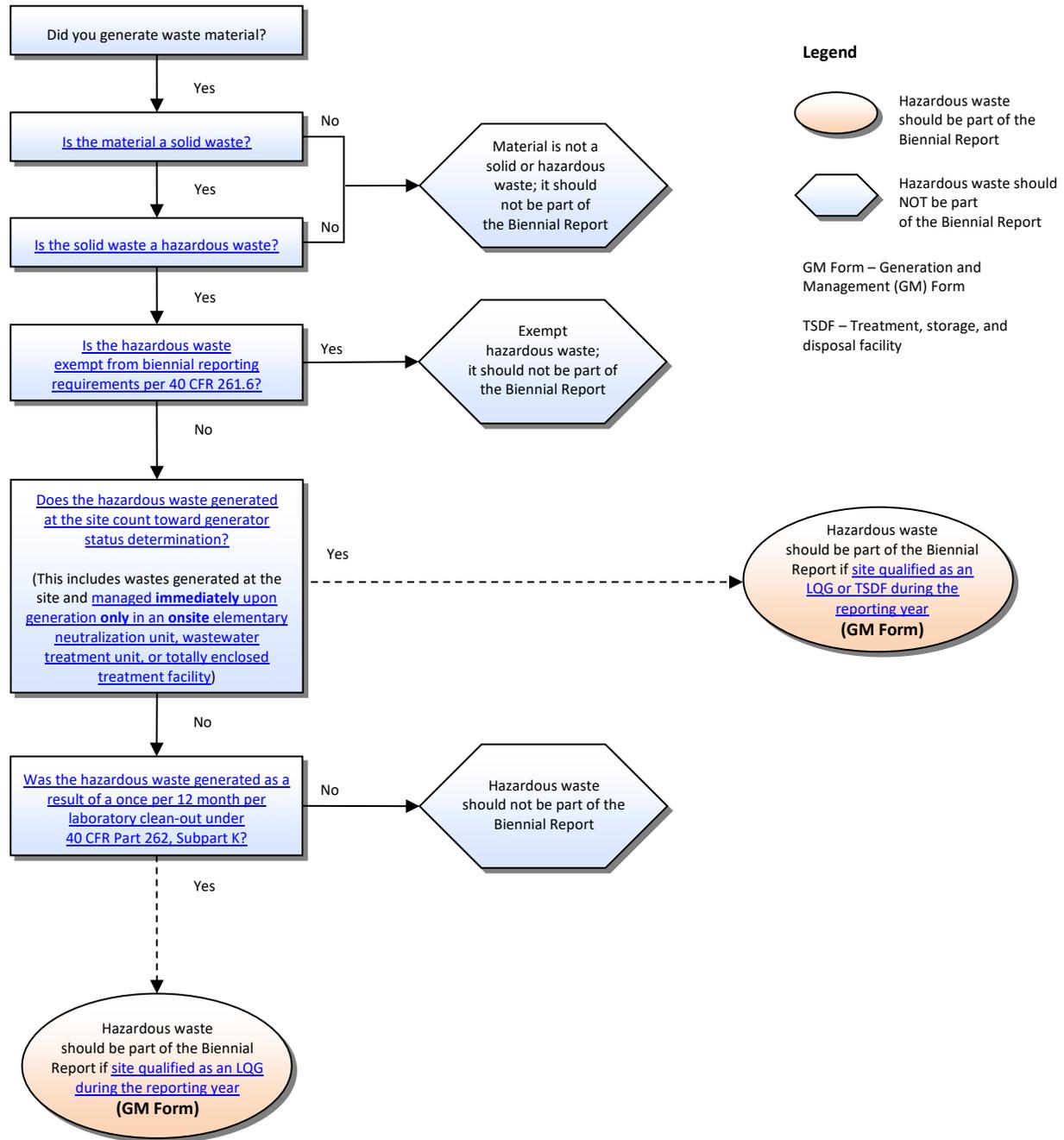
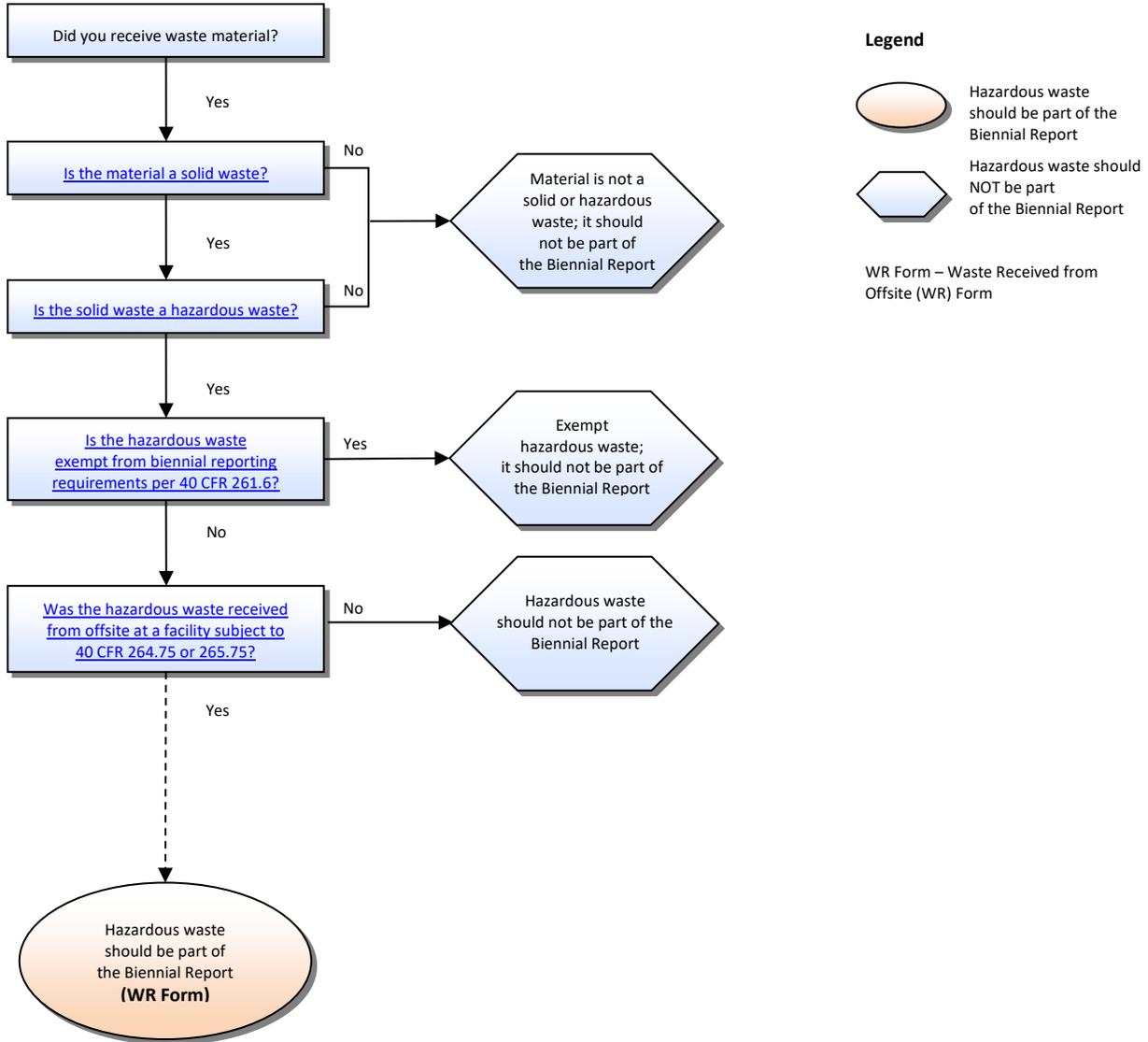


Exhibit ES-2. Determination Flowchart for Generators “Should the Waste Be Part of the Biennial Report?”

[Treatment, storage, and disposal facilities \(TSDFs\)](#) are required to complete and file the Biennial Report or the State’s equivalent hazardous waste report, which must contain all the Federally-required data contained on the Biennial Report with the same instructions for completion. In completing the Biennial Report, TSDFs must report all hazardous wastes received from offsite for management. The flowchart below is designed as a tool for identifying hazardous wastes that should be part of the Biennial Report. Follow any of the exhibit’s links to obtain additional information on the corresponding topic. To follow a link, move the cursor to the desired topic and left click on the computer mouse.



^a All hazardous wastes received from offsite at a facility subject to 40 CFR 264.75 or 265.75 must be part of the Biennial Report.

Exhibit ES-3. Determination Flowchart for Treatment, Storage, and Disposal Facilities “Should the Waste be Part of the Biennial Report?”

PART 2 EXECUTIVE SUMMARY:

DETERMINING WHETHER A HAZARDOUS WASTEWATER SHOULD BE PART OF THE BIENNIAL REPORT

Most hazardous wastes generated take the form of wastewaters (approximately 85-90%). In addition, volumes of wastewaters generated by some facilities can be in the tens of millions of tons. Therefore, counting or not counting correctly wastewaters can significantly impact the accuracy of national waste generation estimates, and eventually affect decision-making for regulatory or program purposes.

GENERAL PRINCIPLES

Applying the following general principles can help simplify the process of determining which hazardous wastewaters should be part of the Biennial Report:

- Find out how the waste is being managed:
 - Was it a hazardous waste that was shipped offsite? If yes, it is reportable no matter what the form code⁶ is.
 - If the hazardous waste was managed onsite, was the management method code⁷ one that might indicate wastewater treatment or neutralization? If yes, find out more about how the waste was managed so you can determine if it should be part of the Biennial Report.
- Not counted toward generator status determination = not to be reported.
- **Do not count** hazardous wastewaters managed **immediately** upon generation **only** in **onsite elementary neutralization units**, **wastewater treatment units (WWTUs)**, or **totally enclosed treatment facilities**.
- **Do not count and report** the hazardous waste, if managed in an onsite WWTU as follows:
 - If the device managing the waste meets the [definition of a WWTU](#). A tank or tank system used to store or treat the waste as part of a wastewater treatment facility that is subject to regulation under the Clean Water Act (CWA) is covered by the [WWTU exemption](#).
 - The WWTU does not have to be physically connected to the tank; the waste can be hauled onsite by truck.
 - Waste sent offsite in pipes for treatment in a WWTU is not reportable, if it is traveling through the pipe immediately after generation.

⁶ Form codes describe the general physical or chemical characteristics of a hazardous waste. Form codes are provided in the Hazardous Waste Report instructions, and must be used in completing the Biennial Report.

⁷ Management method codes describe the type of hazardous waste management system used to treat or dispose of a hazardous waste. Management method codes are provided in the Hazardous Waste Report instructions, and must be used in completing the Biennial Report.

- **Count and report** a hazardous wastewater:
 - If it was managed either onsite or offsite in a permitted underground injection control well for hazardous waste.
 - If it was transported **offsite** to a publicly owned treatment works (POTW) via truck.
 - If it is not managed immediately upon generation in an exempt unit, the site must report the generation and management of the waste, e.g., for a Federally-defined LQG with greater than 90-day storage with subsequent wastewater treatment, its waste is reportable.
 - If it is stored onsite in a surface impoundment prior to discharge, it is reportable.
 - If it was accumulated in drums prior to being placed in the WWTU, it is reportable because it counts toward generator status determination.

RECOMMENDATIONS FOR IDENTIFYING HAZARDOUS WASTEWATERS MANAGED ONSITE

The following steps may be taken to identify hazardous wastewaters:

- Based on data reported in Generation and Management (GM) Forms of the Biennial Report, develop a list of waste streams managed onsite that are represented by management method codes:
 - H070 (chemical treatment - reduction/destruction/oxidation/precipitation);
 - H081 (biological treatment);
 - H100 (physical treatment only (adsorption/absorption/separation/stripping/dewatering));
 - H121 (neutralization only (no other treatment));
 - H136 (discharge to sewer/POTW (with prior storage – with or without treatment)); and
 - H137 (discharge with NPDES permit (with prior storage – with or without treatment)).
- Conduct research on these waste streams, if relevant, by:
 - Obtaining and reviewing process information; and
 - Finding how the waste is managed after generation.
- Compare information compiled through research to the relevant regulations.

- Find out if the waste is managed in such a way that exempts it from reporting – whether the hazardous waste is managed immediately upon generation in an onsite elementary neutralization unit, WWTU, or totally enclosed treatment facility.

PART 1:

DETERMINING WHETHER A WASTE SHOULD BE PART OF THE BIENNIAL REPORT

The U.S. Environmental Protection Agency (EPA) uses the information collected in the Biennial Report to, among other things:

- Provide the EPA and the States with an understanding of hazardous waste generation and management in the U.S.
- Help EPA measure the quality of the environment, such as monitoring industry compliance with the regulations and evaluating waste minimization efforts taken by industry.
- Communicate the findings of EPA's hazardous waste reporting data collection efforts to the public, government agencies, and the regulated community. Data are summarized and communicated via [RCRAInfo Web](#).⁸

Therefore, determining whether a waste should be part of the Biennial Report is a process that might have a significant impact on the accuracy of national waste generation and management estimates, and eventually affect decision-making for regulatory or program purposes.

This section of the document provides information to help determine whether a waste should be part of the Biennial Report. In doing so, this section provides answers to the following questions:

- [Is the material a solid waste?](#)
- [Is the solid waste a hazardous waste?](#)
- [Is the hazardous waste exempt from biennial reporting requirements per 40 CFR 261.6?](#)
- [Does the hazardous waste generated at the site count toward generator status determination?](#)
- [Was the Hazardous Waste Generated as a Result of a Once per 12 Month per Laboratory Clean-Out under 40 CFR Part 262, Subpart K?](#)
- [Did the site qualify as a large quantity generator \(LQG\) or treatment, storage, and disposal facility \(TSDF\) during the reporting year \(GM Form\)?](#)
- [Was the hazardous waste received from offsite at a facility subject to 40 CFR 264.75 or 265.75 \(WR Form\)?](#)

⁸ The data presented on RCRAInfo Web may change as regulators are allowed to make additions, corrections, and/or deletions to their data based on updated data received from facilities. Therefore, the data should be referenced as of the date of the data extraction.

- [Was the site the receiving facility or importer for hazardous waste import shipments approved to enter the U.S. during the reporting year?](#)

IS THE MATERIAL A SOLID WASTE?

The statutory definition of a solid waste is not based on the physical form of the material, but rather that the material is a waste. 40 CFR 261.2 identifies solid wastes as any [discarded material](#) that is not excluded from the definition of solid waste.

To determine whether a material is a solid waste, it is best to ask a series of questions in a step-wise manner. These steps are summarized in [Exhibit 1-1](#), and discussed in the remainder of this section.

WHAT IS A DISCARDED MATERIAL?

A “discarded material” is any of the following:

- **Abandoned Material.** A material is abandoned if it is: (1) disposed of; (2) burned or incinerated; (3) accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; and (4) sham recycled, as explained in 40 CFR 261.2(g). (40 CFR 261.2(b))
- **Inherently Waste-Like Material.** Some materials are considered inherently waste-like because they pose significant threats to human health and the environment if released or mismanaged. As a result, the Resource Conservation and Recovery Act (RCRA), as amended, does not exempt such wastes from the definition of solid waste even if they are recycled through direct use or reuse without prior reclamation. (40 CFR 261.2(d))
- **Military Munition.** Military munitions are all ammunition products and components produced for or used by the U.S. Department of Defense (DOD) or U.S. Armed Services for national defense and security. Pursuant to 40 CFR 266.202, unused military munitions are solid wastes when abandoned or removed from storage in a military magazine or other storage area for the purpose of being disposed of, burned, incinerated, or treated prior to disposal; rendered non-recyclable or non-useable through deterioration; or declared a waste by an authorized military official. Used (i.e., fired or detonated) munitions may also be solid wastes if collected for storage, reclamation, treatment, or disposal.
- **Recycled Material.** A material is recycled if it is used or reused (e.g., as an ingredient in a process), reclaimed, or used in certain ways (e.g., burned for energy recovery). Note, however, that whether a particular recycled material is a solid waste depends on the manner in which it is recycled. The regulations at 40 CFR 261.2 include provisions for determining whether a recycled material is a solid waste and, therefore, potentially regulated as a hazardous waste.

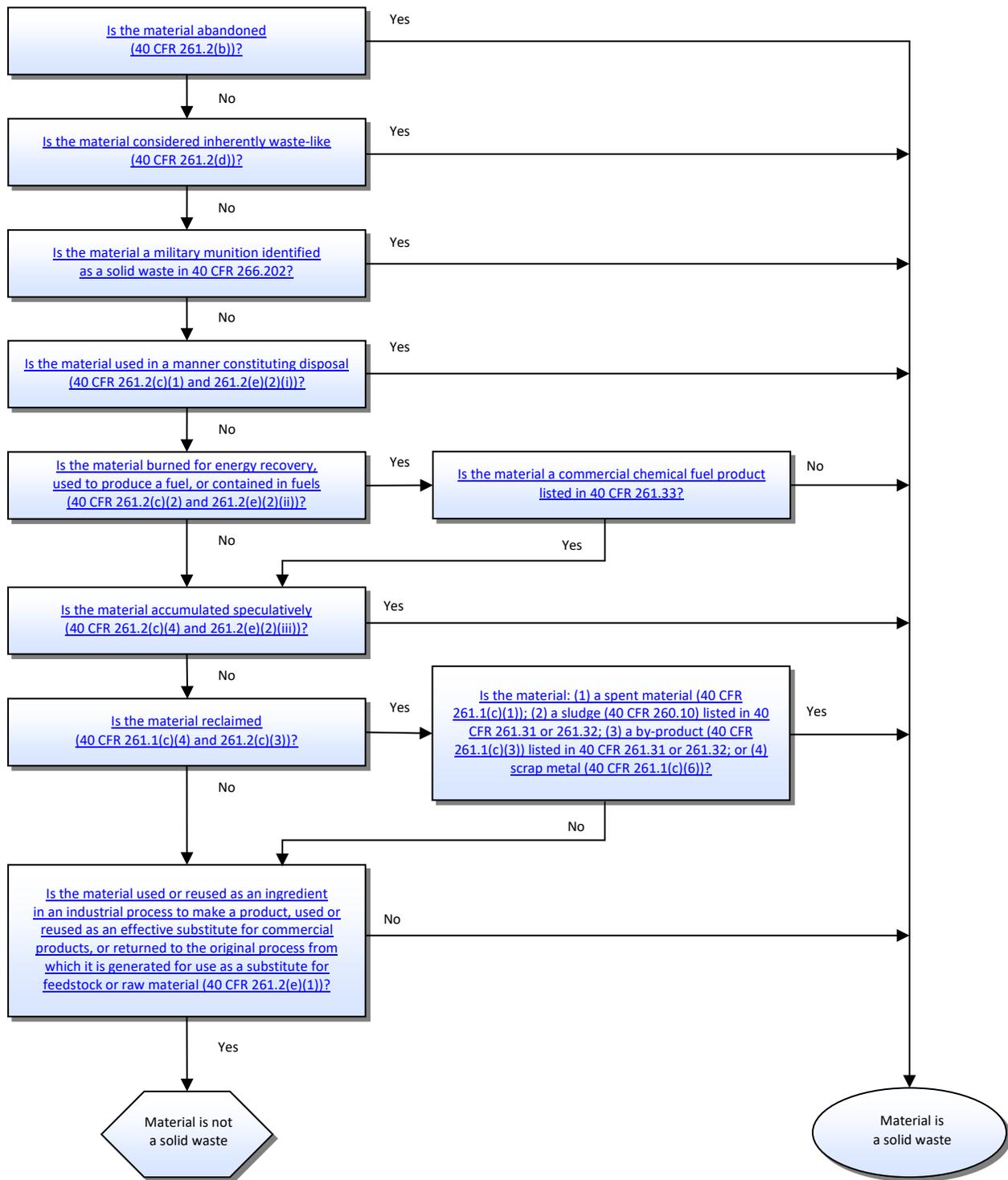


Exhibit 1-1. Determination Flowchart “Is the Material a Solid Waste?”

WHICH RECYCLED MATERIALS ARE SOLID WASTES?

Materials are solid wastes if they are recycled as specified below:

- **Used in a Manner Constituting Disposal.** A material is applied to or placed on the land, or 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. (40 CFR 261.2(c)(1) and 261.2(e)(2)(i))
- **Burned for Energy Recovery, Used to Produce a Fuel, or Contained in Fuels.** Burning a material as a fuel (e.g., burning to recover energy) or using a material to produce a fuel. Note, however, that commercial chemical products listed in 40 CFR 261.33 are not solid wastes if they are themselves fuels. (40 CFR 261.2(c)(2) and 261.2(e)(2)(ii))
- **Accumulated Speculatively.** Materials accumulated speculatively or stored for extended periods of time in anticipation of recycling in the future. (40 CFR 261.2(c)(4) and 261.2(e)(2)(iii))
- **Reclaimed.** Materials processed to recover a usable product, or regenerated. (40 CFR 261.1(c)(4) and 261.2(c)(3))

Exhibit 1-2 indicates which types of secondary materials are solid wastes when recycled in each of the ways previously discussed (e.g., used in a manner constituting disposal, reclaimed). Types of secondary materials include:

- **Spent Material.** A “spent material” is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing. (40 CFR 261.1(c)(1))
- **Sludge.** “Sludge” means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant. (40 CFR 261.1(c)(2) and 40 CFR 260.10)
- **By-Product.** A “by-product” is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form it is produced by the process. (40 CFR 261.1(c)(3))
- **Scrap Metal.** “Scrap metal” is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wire) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled. (40 CFR 261.1(c)(6))

Secondary Material	Used in a Manner Constituting Disposal	Energy Recovery/ Fuel	Reclaimed	Accumulated Speculatively
Spent Materials	Solid Waste	Solid Waste	Solid Waste	Solid Waste
Sludges listed in 40 CFR Part 261.31 or 261.32	Solid Waste	Solid Waste	Solid Waste	Solid Waste
Sludges exhibiting a characteristic of hazardous waste	Solid Waste	Solid Waste	Not a Solid Waste	Solid Waste
By-products listed in 40 CFR 261.31 or 261.32	Solid Waste	Solid Waste	Solid Waste	Solid Waste
By-products exhibiting a characteristic of hazardous waste	Solid Waste	Solid Waste	Not a Solid Waste	Solid Waste
Commercial chemical products listed in 40 CFR 261.33	Solid Waste	Solid Waste	Not a Solid Waste	Not a Solid Waste
Scrap metal other than excluded scrap metal (see 40 CFR 261.1(c)(9) for definition of “excluded scrap metal”)	Solid Waste	Solid Waste	Solid Waste	Solid Waste

Source: 40 CFR 261.2.

Exhibit 1-2. Regulatory Status of Secondary Materials

WHICH RECYCLED MATERIALS ARE NOT SOLID WASTES?

Materials are **NOT solid wastes** if they recycled as specified below:

- **Used or Reused as Ingredients.** Materials used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed. (40 CFR 261.2(e)(1)(i))
- **Used or Reused as Effective Substitutes.** Materials used or reused as effective substitutes for commercial products. (40 CFR 261.2(e)(1)(ii))
- **Returned Directly to the Original Process.** Materials returned to the original process from which they are generated (without first being reclaimed or land disposed) for use as a substitute for feedstock or raw material. (40 CFR 261.2(e)(1)(iii))

WHICH MATERIALS ARE EXCLUDED FROM THE DEFINITION OF SOLID WASTE?

Congress and EPA have excluded certain specific materials from the definition of solid waste, thereby excluding them from hazardous waste regulations.

There are several exclusions from the definition of solid waste, provided certain conditions are met. These exclusions are listed at 40 CFR 261.4(a)(1)-(15) and 261.4(a)(17)-(27).⁹ Examples of exclusions from the definition of solid waste include:

- Domestic sewage;
- Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended;
- Pulping liquors;
- Spent wood preserving solutions;
- Coke by-product wastes;
- Excluded scrap metal being recycled;
- Comparable fuels;
- Mineral processing spent materials;
- Spent caustic solutions from petroleum refining liquid treating processes;
- Used cathode ray tubes (CRTs);
- Hazardous secondary material generated and legitimately reclaimed within the U.S. or its territories and under the control of the generator;
- Hazardous secondary material that is generated and then transferred to another person for the purpose of reclamation; and
- Hazardous secondary material that is exported from the U.S. and reclaimed at a reclamation facility located in a foreign country.

IS THE SOLID WASTE A HAZARDOUS WASTE?

In determining whether a solid waste is a hazardous waste, it is best to ask a series of questions in a step-wise manner. These steps are summarized in [Exhibit 1-3](#), and discussed in the remainder of this section.

⁹ 40 CFR 261.4(a)(16) is “reserved.” Thus, there is no exclusion at this regulatory citation.

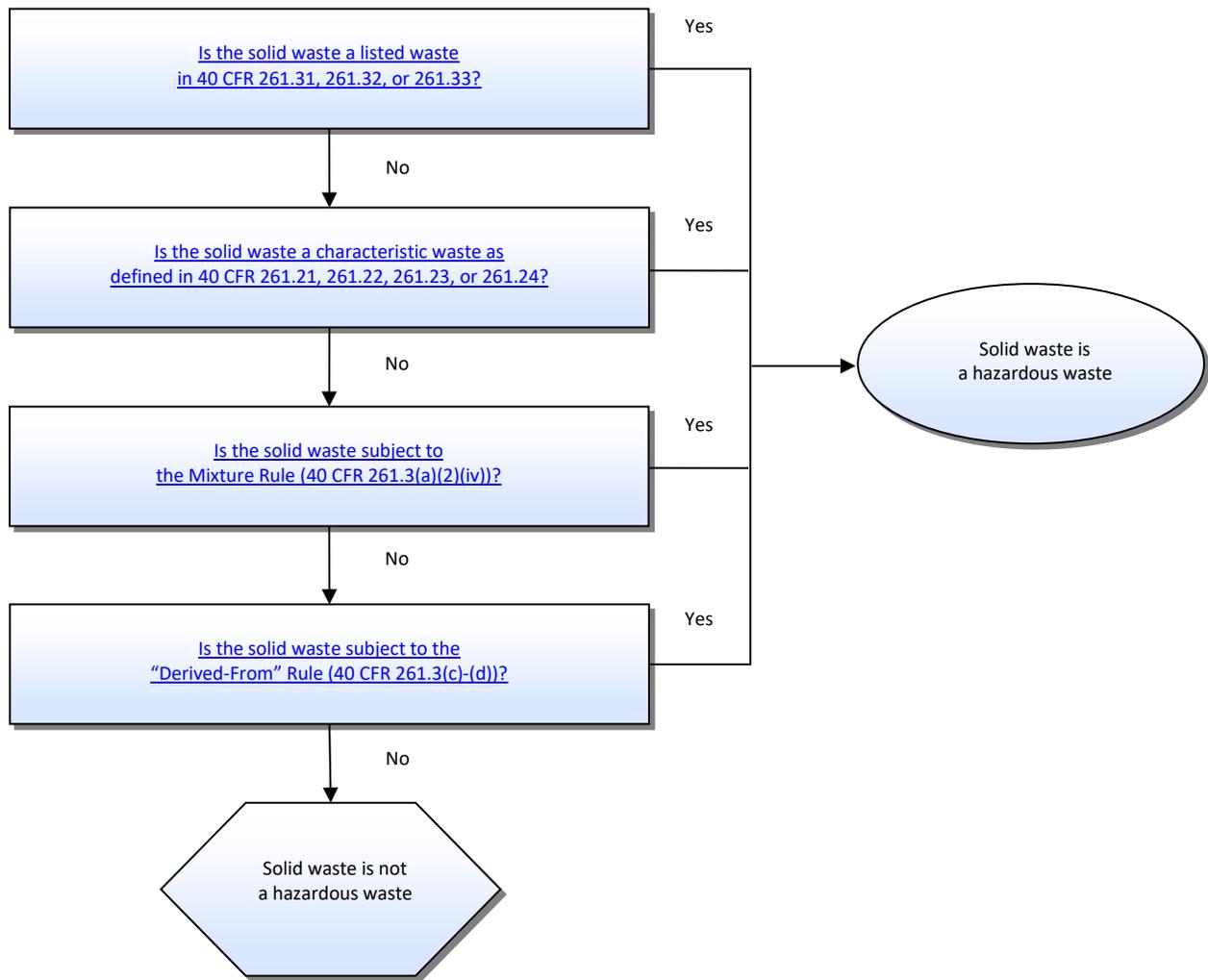


Exhibit 1-3. Determination Flowchart “Is the Solid Waste a Hazardous Waste?”

IS THE SOLID WASTE A LISTED WASTE?

“Listed waste” refers to waste that EPA has identified as hazardous as a result of its investigation of particular industries or because EPA has specifically recognized a commercial chemical waste’s toxicity. A solid waste is a listed hazardous waste if it is named on one of the following lists:

- **F-list.** This list, at 40 CFR 261.31, includes wastes from certain common manufacturing and industrial processes. Because they are not specific to one type of industry, they are called wastes from non-specific sources.
- **K-list.** This list, at 40 CFR 261.32, includes wastes from specific manufacturing or industrial processes.
- **P-list and U-list.** These two lists, at 40 CFR 261.33, designate certain commercial chemical products as hazardous when disposed of unused. The primary difference between P-listed and U-listed wastes is that, when discarded, P-listed wastes are considered “acutely hazardous,” while U-listed wastes are considered “hazardous.” Thus, U-listed wastes are regulated in a somewhat less stringent manner than P-listed wastes.

IS THE SOLID WASTE A CHARACTERISTIC WASTE?

A “characteristic waste” is any solid waste that exhibits one or more of the following characteristics: ignitability, corrosivity, reactivity, or toxicity. Additional information about each of the above characteristics may be reviewed at 40 CFR 261.21 through 261.24.

IS THE SOLID WASTE SUBJECT TO THE MIXTURE RULE?

Hazardous wastes generated by a Federally-defined SQG or a Federally-defined LQG that are mixed with solid waste are subject to the “Mixture Rule.” The “Mixture Rule” states that mixtures of solid waste and listed hazardous waste must be regulated as hazardous waste. There are two ways to determine if a material is regulated under the mixture rule:

- If the material is a mixture of a solid waste and a hazardous waste, and the mixture exhibits one or more of the characteristics of hazardous waste; or
- If the material is a mixture of a solid waste and a listed waste.

Additional information on the Mixture Rule may be reviewed at 40 CFR 261.3(a)(2)(iv).

IS THE SOLID WASTE SUBJECT TO THE “DERIVED-FROM” RULE?

Hazardous waste treatment, storage, and disposal processes often generate residues that may contain high concentrations of hazardous constituents. The “Derived-From” Rule governs the regulatory status of such waste residues. According to the “Derived-From” Rule, any solid waste derived from the treatment, storage, or disposal of a hazardous waste is considered hazardous. This principle applies regardless of the actual risk to human health or the environment. Additional information on the “Derived-From” Rule and exemptions to the rule are included in 40 CFR 261.3(c)-(d).

WHICH MATERIALS ARE EXCLUDED FROM THE DEFINITION OF HAZARDOUS WASTE?

EPA also excludes certain solid wastes from the definition of hazardous waste, thereby excluding them from hazardous waste regulations.

There are several exclusions from the definition of hazardous waste, provided certain conditions are met. These exclusions are listed at 40 CFR 261.4(b)(1)-(15), 261.4(b)(18), and 261.4(g).^{10, 11} Examples of exclusions from the definition of hazardous waste include:

- Household waste;
- Agricultural waste;
- Oil, gas, and geothermal wastes;
- Mining and mineral processing wastes;
- Cement kiln dust;
- Arsenically treated wood or wood products;
- Injected groundwater;
- Spent chlorofluorocarbon refrigerants; and
- Used oil filters.

IS THE HAZARDOUS WASTE EXEMPT FROM BIENNIAL REPORTING REQUIREMENTS PER 40 CFR 261.6?

Under 40 CFR 261.6, certain hazardous wastes that are recycled, known as “recyclable materials,” are exempt from certain hazardous waste regulatory requirements, including counting and reporting requirements. Examples include: recyclable materials from which precious metals are reclaimed, as specified at 40 CFR Part 266, Subpart F (40 CFR 261.6(a)(2)(iii)); industrial ethyl alcohol that is reclaimed, unless provided otherwise in an international agreement as specified in 40 CFR Part 262, Subpart H (40 CFR 261.6(a)(3)(i)); and scrap metal that is not excluded under 40 CFR 261.4(a)(13) (40 CFR 261.6(a)(3)(ii)).

¹⁰ 40 CFR 261.4(b)(16) is “reserved.” Thus, there is no exclusion at this regulatory citation.

¹¹ 40 CFR 261.4(b)(17) was a conditional exclusion applicable to low-level mixed wastes (LLMW) generated at the Ortho-McNeil Pharmaceutical, Inc. (OMP Spring House) research and development facility in Spring House, Pennsylvania. Pursuant to 40 CFR 261.4(b)(17)(iv), this exclusion expired in June 2010.

DOES THE HAZARDOUS WASTE GENERATED AT THE SITE COUNT TOWARD GENERATOR STATUS DETERMINATION?

GENERATOR STATUS DETERMINATION

After determining which wastes are hazardous, **each month**, generators are responsible for totaling (or counting) the weight of all hazardous wastes generated in that month in order to determine if they will be regulated as a Federally-defined very small quantity generator (VSQG), a small quantity generator (SQG), or a large quantity generator (LQG) for that particular month. A generator's category may change from month to month.

The regulations stating the procedures to determine whether a generator is a VSQG, a SQG, or an LQG for a particular month are found in [40 CFR 262.13](#).

DO NOT COUNT THE FOLLOWING WASTES IN DETERMINING GENERATOR STATUS

Pursuant to [40 CFR 262.13](#), a generator must include (count) all hazardous waste that it generates, *except hazardous waste that:*¹²

- Is exempt from regulation under 40 CFR 261.4(c)-(f), 261.6(a)(3), 261.7(a)(1), or 261.8. (40 CFR 262.13(c)(1))
- Is managed immediately upon generation only in onsite elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 40 CFR 260.10. (40 CFR 262.13(c)(2))
- Is recycled, without prior storage or accumulation, only in an onsite process subject to regulation under 40 CFR 261.6(c)(2). (40 CFR 262.13(c)(3))
- Is used oil managed under the requirements of 40 CFR 261.6(a)(4) and 40 CFR Part 279. (40 CFR 262.13(c)(4))
- Is spent lead-acid batteries managed under the requirements of 40 CFR Part 266, Subpart G. (40 CFR 262.13(c)(5))
- Is universal waste managed under 40 CFR 261.9 and 40 CFR Part 273. (40 CFR 262.13(c)(6))
- Is a hazardous waste that is an unused commercial chemical product (listed in 40 CFR Part 261, Subpart D or exhibiting one or more characteristics in 40 CFR Part 261, Subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity pursuant to 40 CFR 262.213. (40 CFR 262.13(c)(7))

¹² Note, however, that all hazardous wastes received from offsite at a facility subject to 40 CFR 264.75 or 265.75 must be part of the Biennial Report.

- Is managed as part of an episodic event in compliance with the conditions of 40 CFR Part 262, Subpart L. (40 CFR 262.13(c)(8))
- Is a hazardous waste pharmaceutical, as defined in 40 CFR 266.500, that is subject to or managed in accordance with 40 CFR Part 266, Subpart P or is a hazardous waste pharmaceutical that is also a Drug Enforcement Administration (DEA) controlled substance and is conditionally exempt under 40 CFR 266.506. (40 CFR 262.13(c)(9))

In addition, a facility must not include (count) toward its generator status airbag waste at the airbag waste handler or during transport to an airbag waste collection facility or designated facility ([40 CFR 261.4\(j\)\(1\)](#)).

NOTE	<p>Under the Interim Final Rule on the Safe Management of Recalled Airbags, airbag waste is exempted from RCRA hazardous waste requirements while at the airbag waste handler and during transportation to airbag waste collection facility or designated facility, provided certain conditions are met. (40 CFR 261.4(j)(1))</p> <p>Once the airbag waste arrives at an airbag waste collection facility or designated facility, the airbag waste becomes subject to all applicable RCRA hazardous waste regulations, and the facility receiving airbag waste is considered the hazardous waste generator for the purposes of the hazardous waste regulations and must comply with the requirements of 40 CFR Part 262. (40 CFR 261.4(j)(2))</p>
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AVOID DOUBLE COUNTING

All of the following wastes have already been counted when they were initially generated. Thus, to avoid double counting, 40 CFR 262.13(d) states that the following types of waste **do not need to be counted** when determining generator classification:

- Hazardous waste when it is removed from onsite accumulation, so long as the hazardous waste was previously counted once. (40 CFR 262.13(d)(1))
- Hazardous waste generated by onsite treatment (including reclamation) of the generator's hazardous waste, so long as the hazardous waste that is treated was previously counted once. (40 CFR 262.13(d)(2))
- Hazardous waste spent materials that are generated, reclaimed, and subsequently reused onsite, so long as such spent materials have been previously counted once. (40 CFR 262.13(d)(3))

GROUNDWATER CONTAMINATED BY HAZARDOUS WASTES

In determining whether contaminated groundwater should count toward generator status determination, the key is to ascertain if a contaminated groundwater has been generated and/or actively managed as a hazardous waste. EPA Regions or Authorized States should make a determination on whether contaminated groundwater should be counted or reported in the Biennial Report. For additional information on whether contaminated groundwater should be counted toward generator status determination, refer to [Part 3](#) of this document.

WAS THE HAZARDOUS WASTE GENERATED AS A RESULT OF A ONCE PER 12 MONTH PER LABORATORY CLEAN-OUT UNDER 40 CFR PART 262, SUBPART K?

Under 40 CFR Part 262, Subpart K regulations (i.e., the Academic Laboratory Rule), eligible academic entities are allowed to conduct laboratory clean-outs once per 12-month period per laboratory. Hazardous wastes that are unused commercial chemical products and unused characteristic hazardous wastes that are generated solely as a result of the laboratory clean-outs do not count toward generator status determination. However, if these laboratory clean-out hazardous wastes are generated at an eligible academic entity that continues to meet the Federal definition of LQG, the laboratory clean-out hazardous waste should be part of the Biennial Report for that facility. For example, if a facility is normally a Federally-defined LQG because of routine laboratory operations and/or non-laboratory operations, and continues to be a Federally-defined LQG despite not counting laboratory clean-out hazardous wastes towards its generator status, a Biennial Report is required for *ALL* hazardous waste, including laboratory clean-out hazardous waste. For additional information on the Subpart K regulations, refer to [Part 4](#) of this document.

DID THE SITE QUALIFY AS A LARGE QUANTITY GENERATOR OR TREATMENT, STORAGE, AND DISPOSAL FACILITY DURING THE REPORTING YEAR? (GM FORM)?

COMPLETION OF GM FORM

By Federal statute, sites are required to complete and file the Biennial Report or the State's equivalent hazardous waste report (which must contain all the Federally-required data contained on the Biennial Report with the same instructions for completion), if the site:

- Met the definition of LQG at [40 CFR 260.10](#) during the reporting year; AND/OR
- Treated, stored, or disposed of hazardous wastes onsite during the reporting year.

Sites must report the generated and accumulated wastes in Generation and Management (GM) Forms of the Biennial Report.

DEFINITION OF LQG

Pursuant to [40 CFR 260.10](#), a site is an LQG if the site met any of the following criteria:

- The site generated, in any single calendar month, greater than or equal to 1,000 kilograms (kg) (2,200 pounds [lbs]) of non-acute hazardous waste; or
- The site generated, in any single calendar month, greater than 1 kg (2.2 lbs) of acute hazardous waste listed in 40 CFR 261.31 or 261.33(e); or
- The site generated, in any single calendar month, greater than 100 kg (220 lbs) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR 261.31 or 261.33(e).

Per [40 CFR 262.41](#), a generator who is an LQG for at least one month of a reporting year who treats, stores, or disposes of hazardous waste on site and/or ships any hazardous waste offsite to a TSDF within the U.S. must complete and submit the Biennial Report. **In their Biennial Report, LQGs must report all of the hazardous waste they generate for the entire reporting year, not just the month(s) the generator was an LQG.**¹³

WAS THE HAZARDOUS WASTE RECEIVED FROM OFFSITE AT A FACILITY SUBJECT TO 40 CFR 264.75 OR 265.75? (WR FORM)?

COMPLETION OF WR FORM

All hazardous wastes received from offsite for treatment, storage, disposal, or recycling at facilities subject to [40 CFR 264.75](#) or [40 CFR 265.75](#) must be reported in Waste Received from Offsite (WR) Forms of the Biennial Report or the State's equivalent hazardous waste report (which must contain all the Federally-required data contained on the Biennial Report with the same instructions for completion), regardless of the management method used.^{14, 15} Hazardous wastes received from offsite at facilities that are not subject to 40 CFR 264.75 or 265.75 do not need to be reported in WR Forms of the Biennial Report.

NOTE	The 2016 Hazardous Waste Generator Improvements Final Rule (81 FR 85732; effective on May 30, 2017) requires that both recycling facilities that do store prior to recycling and facilities that do not store prior to recycling submit a Biennial Report.
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¹³ EPA, "Hazardous Waste Generator Improvements Rule," [81 FR 85780](#); November 28, 2016.

¹⁴ 40 CFR Part 264 – Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

¹⁵ 40 CFR Part 265 – Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

WAS THE SITE THE RECEIVING FACILITY OR IMPORTER FOR HAZARDOUS WASTE IMPORT SHIPMENTS APPROVED TO ENTER THE U.S. DURING THE REPORTING YEAR?

Under the Federal requirements in [40 CFR 264.75](#) and [40 CFR 265.75](#) for TSDFs and/or the Federal requirements in [40 CFR 262.41](#) for importers complying with generator requirements, TSDFs and importers that are Federally-defined LQGs must report on imported hazardous waste as part of their Biennial Report submittals to their respective State agencies or Regional EPA offices (if the State agency is not authorized to implement the Biennial Report program).

When calculating the total quantity of hazardous waste generated in a month, importers should add the quantity of hazardous waste imported during the calendar month to any hazardous waste generated at the importer's physical site during that calendar month. Under the RCRA regulations, the date an import of hazardous waste entered the country is considered the date the waste was "generated." All hazardous waste import shipments listing the importer's EPA ID Number on the RCRA hazardous waste manifest should be included as part of the total monthly quantity, regardless of the port of entry or border crossing used.

Owners/operators of TSDFs receiving hazardous waste import shipments must report such hazardous waste import shipments using the WR Form, as appropriate. If the facility was also acting as the importer of record, the facility assumed generator requirements for those import shipments and also must report the import shipments as generated hazardous wastes from a foreign source using the GM Form if the facility's total monthly quantity met the Federally-defined LQG threshold for any month during the reporting year. An EPA-acceptable alternative for the facility to meet generator biennial reporting requirements for those import shipments would be for the facility to add a statement to the "Comment" field of the WR Form for those import shipments noting that the TSDF was the importer of record for the listed import shipment(s).¹⁶

¹⁶ Please consult your State agency on how best to meet the Federal and, if applicable, the State-specific generator biennial reporting requirements.

PART 2:

DETERMINING WHETHER A HAZARDOUS WASTEWATER SHOULD BE PART OF THE BIENNIAL REPORT

Most hazardous wastes generated take the form of wastewaters (approximately 85-90%). In addition, volumes of wastewaters generated by some facilities can be in the tens of millions of tons. Therefore, counting or not counting correctly wastewaters can significantly impact the accuracy of national waste generation estimates, and eventually affect decision-making for regulatory or program purposes.

This section of the document provides information to help determine: (1) whether a hazardous wastewater should be part of the Biennial Report and (2) whether a wastewater was managed in a unit that is eligible for the wastewater treatment unit (WWTU) exemption. In doing so, this section provides answers to the following questions:

- [Is the hazardous wastewater exempt from biennial reporting requirements?](#)
- [What regulatory citations are associated with elementary neutralization units, wastewater treatment units, and totally enclosed treatment facilities?](#)
- [What is an elementary neutralization unit?](#)
- [What is a wastewater treatment unit?](#)
- [What is a totally enclosed treatment facility?](#)
- [What is Section 402 of the Clean Water Act?](#)
- [What is Section 307\(b\) of the Clean Water Act?](#)
- [What is a tank or tank system?](#)
- [What is the wastewater treatment unit exemption?](#)
- [What is wastewater under the wastewater treatment unit exemption?](#)
- [Which units are eligible for the wastewater treatment unit exemption?](#)
- [What is the relationship between wastewater treatment facilities and the wastewater treatment unit exemption?](#)
- [Does the exemption apply to wastewater treatment units accepting wastewater generated from offsite sources?](#)
- [Does the exemption apply to facilities shipping their waste offsite to wastewater treatment facilities?](#)

IS THE HAZARDOUS WASTEWATER EXEMPT FROM BIENNIAL REPORTING REQUIREMENTS?

GENERATORS

One means of exemption from biennial reporting requirements is exemption from counting toward generation status determination. Under [40 CFR 262.13\(c\)\(2\)](#), hazardous waste that is managed immediately upon generation only in onsite elementary neutralization units, WWTUs, or totally enclosed treatment facilities as defined in [40 CFR 260.10](#) is exempt from the counting requirement.

TREATMENT, STORAGE, AND DISPOSAL FACILITIES

Another means of exemption from biennial reporting requirements is exemption from permitting requirements under the Resource Conservation and Recovery Act (RCRA), as amended, and/or compliance standards applicable to hazardous waste treatment, storage, and disposal facilities (TSDFs). Under [40 CFR 270.1\(c\)\(2\)\(v\)](#), owners and operators of elementary neutralization units or wastewater treatment units as defined in 40 CFR 260.10 are exempt from RCRA permitting requirements. Under [40 CFR 264.1\(g\)\(6\)](#) and [40 CFR 265.1\(c\)\(10\)](#), owners and operators of elementary neutralization units or wastewater treatment units as defined in 40 CFR 260.10 are exempt from the standards applicable to hazardous waste TSDFs, as it pertains to those units.

WHAT REGULATORY CITATIONS ARE ASSOCIATED WITH ELEMENTARY NEUTRALIZATION UNITS, WASTEWATER TREATMENT UNITS, AND TOTALLY ENCLOSED TREATMENT FACILITIES?

GENERATORS

- [40 CFR 262.13\(c\)\(2\)](#) states that hazardous waste that “is managed immediately upon generation only in onsite elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in 40 CFR 260.10” is exempt from the counting requirement.

TREATMENT, STORAGE, AND DISPOSAL FACILITIES

- Other regulatory citations include:
 - [40 CFR 264.1\(g\)\(6\)](#):
 - (g) The requirements of this part do not apply to:
 - (6) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §260.10 of this chapter...
 - [40 CFR 265.1\(c\)\(10\)](#):
 - (c) The requirements of this part do not apply to:
 - (10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §260.10 of this chapter...

- [40 CFR 270.1\(c\)\(2\)\(v\)](#):¹⁷
 - (2) Specific exclusions. The following persons are among those who are not required to obtain a RCRA permit:
 - (v) Owners and operators of elementary neutralization units or wastewater treatment units as defined in 40 CFR 260.10.

WHAT IS AN ELEMENTARY NEUTRALIZATION UNIT?

Elementary neutralization units are tanks, tank systems, containers, transport vehicles, or vessels used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic or because they are listed solely for the characteristic of corrosivity. (40 CFR 260.10)

A tank, tank system, container, transport vehicle, or vessel that meets the definition of an elementary neutralization unit is exempt from permitting requirements under Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended. (40 CFR 264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v))

In addition, generators managing hazardous waste immediately upon generation in an onsite elementary neutralization unit are not required to count those wastes toward their monthly generator status. (40 CFR 262.13(c)(2))

WHAT IS A WASTEWATER TREATMENT UNIT?

A WWTU is defined at 40 CFR 260.10 as a device which:

- Is part of a wastewater treatment facility that is subject to regulation under either Section 402 or 307(b) of the Clean Water Act (CWA); and
- Receives and treats or stores an influent wastewater that is a hazardous waste as defined in 40 CFR 261.3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in 40 CFR 261.3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in 40 CFR 261.3; and
- Meets the definition of tank or tank system in 40 CFR 260.10.

[Exhibit 2-1](#) illustrates the analytical framework for determining whether a waste is managed in a device eligible for the WWTU exemption.

¹⁷ 40 CFR Part 270 – EPA Administered Permit Programs: the Hazardous Waste Permit Program.

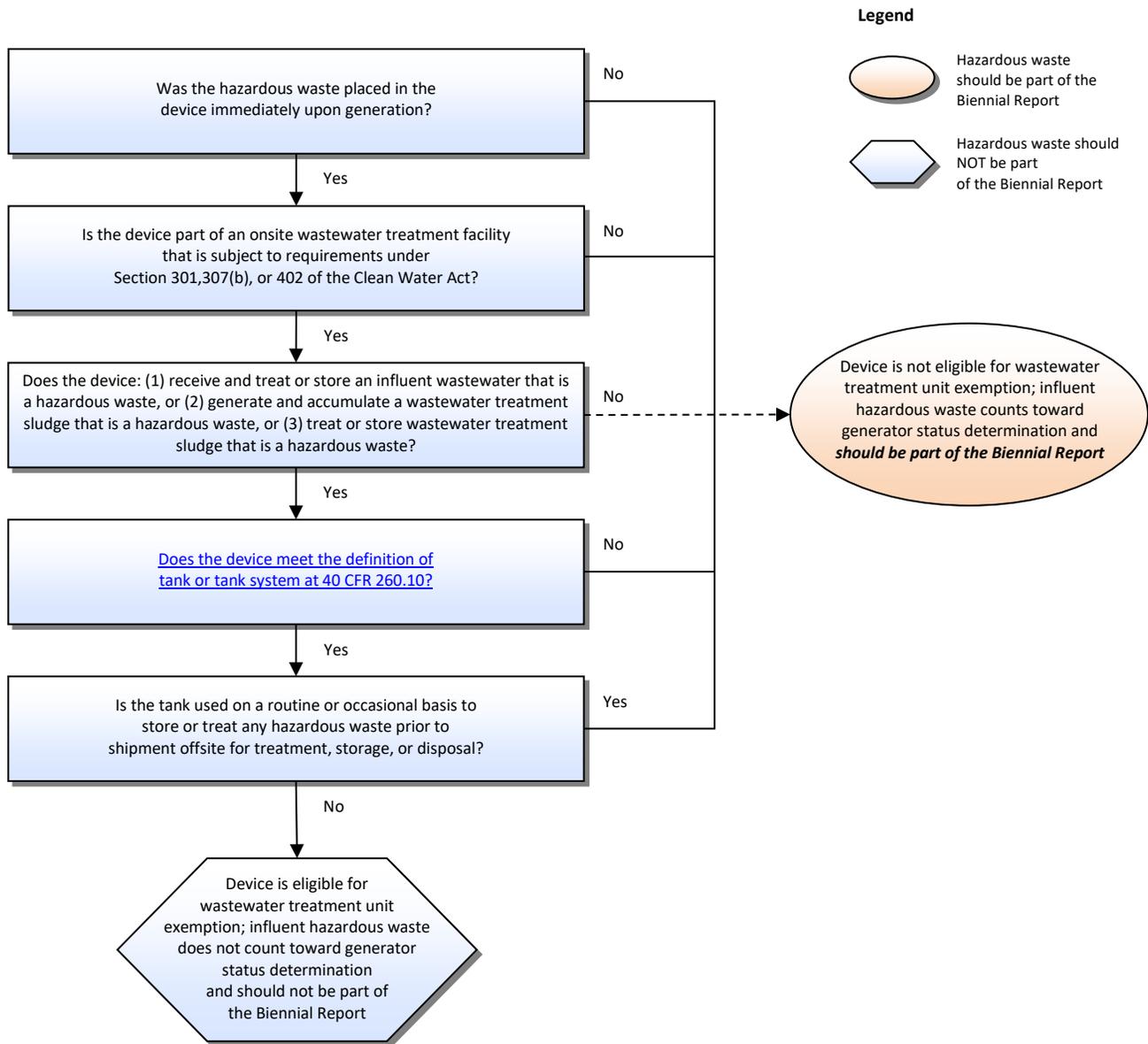


Exhibit 2-1. Determination Flowchart for Hazardous Wastewater Reporting “Was the Waste Managed in a Device Eligible for the Wastewater Treatment Unit Exemption?”

WHAT IS A TOTALLY ENCLOSED TREATMENT FACILITY?

A totally enclosed treatment facility is defined at [40 CFR 260.10](#) as a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

WHAT IS SECTION 402 OF THE CLEAN WATER ACT?

Section 402 of the CWA establishes the National Pollutant Discharge Elimination System (NPDES) Program. The NPDES Program controls direct discharges into navigable waters. Direct discharges or "point source" discharges are from sources such as pipes and sewers. NPDES permits, issued by either the U.S. Environmental Protection Agency (EPA) or an Authorized State contain industry-specific, technology-based and/or water-quality-based limits, and establish pollutant monitoring and reporting requirements. A facility that intends to discharge into the nation's waters must obtain a permit before initiating a discharge. A permit applicant must provide quantitative analytical data identifying the types of pollutants present in the facility's effluent. The permit will then set forth the conditions and effluent limitations under which a facility may make a discharge.

NOTE	EPA's " Enforcement and Compliance History Online " (or "ECHO") Web site provides information on NPDES permitted facilities.
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WHAT IS SECTION 307(B) OF THE CLEAN WATER ACT?

Section 307(b) of the CWA establishes the National Pretreatment Program. The National Pretreatment Program controls the indirect discharge of pollutants to publicly owned treatment works (POTWs) by "industrial users." Facilities regulated under Section 307(b) must meet certain pretreatment standards. The goal of the pretreatment program is to protect municipal wastewater treatment plants from damage that may occur when hazardous, toxic, or other wastes are discharged into a sewer system and to protect the quality of sludge generated by these plants. Discharges to a POTW are regulated primarily by the POTW itself, rather than the Authorized State or EPA.

WHAT IS A TANK OR TANK SYSTEM?

A tank is defined, in [40 CFR 260.10](#), as a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

A tank system is defined, in [40 CFR 260.10](#), as a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

WHAT IS THE WASTEWATER TREATMENT UNIT EXEMPTION?

DO NOT COUNT WASTES MANAGED IN EXEMPT WWTU

Under [40 CFR 262.13\(c\)\(2\)](#), a generator does not need to count hazardous waste that is managed immediately upon generation in an onsite WWTU. In addition, the WWTU exemption is an exemption from: RCRA permitting for the tank or tank system (see [40 CFR 270.1\(c\)\(2\)\(v\)](#)), compliance with the standards applicable to permitted TSDFs (see [40 CFR 264.1\(g\)\(6\)](#)), and compliance with the standards applicable to interim status TSDFs (see [40 CFR 265.1\(c\)\(10\)](#)). The exemption is intended to cover only tanks or tank systems that are part of a wastewater treatment facility subject to the requirements of the CWA.

APPLICABILITY OF WWTU EXEMPTION

The WWTU exemption is only for the WWTU itself and does not exempt the material that is treated or managed within the unit, or any waste removed from the unit (e.g., treatment sludge removed and disposed), from being a hazardous waste. **Any waste releases or treatment residuals generated from the WWTU process (e.g., wastewater, sludge) are subject to hazardous waste determination and regulations when they leave the exempt unit. If the sludges removed from the WWTU are subject to regulation (e.g., placed in 90-day containers), they need to be counted.**

To qualify for the WWTU exemption, a unit must meet the [definition of a WWTU](#) at 40 CFR 260.10.

WHAT IS WASTEWATER UNDER THE WASTEWATER TREATMENT UNIT EXEMPTION?

The term “wastewater,” in the context of the wastewater treatment unit exemption, is not defined in the hazardous waste regulations. While EPA has not promulgated a formal definition, the Agency interprets the term “wastewaters” to refer to “wastes which are substantially water with contaminants amounting to a few percent at most.”¹⁸

Note, however, that wastewater discharges from an exempt unit are regulated under the CWA. In general, most waste that is authorized to be treated in a wastewater treatment unit under a CWA wastewater permit can be managed in the exempt unit.

¹⁸ August 4, 2000 Memorandum from Elizabeth A. Cotsworth, Director of EPA’s Office of Solid Waste, to Samuel Coleman, P.E., Director of EPA Region VI’s Compliance Assurance and Enforcement Division, RCRA Online Number 14472. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=14472>, last accessed November 29, 2022.

WHICH UNITS ARE ELIGIBLE FOR THE WASTEWATER TREATMENT UNIT EXEMPTION?

For a tank or tank system to be covered by this exemption, it must be part of an onsite WWTU. Components of the onsite WWTU are not required to be mechanically or physically connected and means of conveyance of the waste between storage and treatment does not affect the applicability of this exemption. Any onsite tank or tank system that is used to store or treat the wastewater that is ultimately managed at the onsite WWTU is considered part of the WWTU and is included under the exemption. However, if a tank or tank system, in addition to being used in conjunction with an onsite WWTU, is used on a routine or occasional basis to store or treat any hazardous waste, it is not included under this exemption.

WHAT IS THE RELATIONSHIP BETWEEN WASTEWATER TREATMENT FACILITIES AND THE WASTEWATER TREATMENT UNIT EXEMPTION?

To be eligible for the WWTU exemption, the unit must be part of an onsite wastewater treatment facility that is subject to CWA requirements. This means that the facility must:

- Have a National Pollutant Discharge Elimination System (NPDES) permit under [Clean Water Act \(CWA\) Section 402](#);
- Be subject to an effluent guideline issued under CWA Sections 301 and 402; or
- Be subject to the pretreatment requirements of [CWA Section 307\(b\)](#).

It is not necessary that a CWA permit actually be issued for the unit in order to be eligible for the exemption.

DOES THE EXEMPTION APPLY TO WASTEWATER TREATMENT UNITS ACCEPTING WASTEWATER GENERATED FROM OFFSITE SOURCES?

The applicability of the WWTU exemption does not depend on whether the unit treats wastewater generated onsite or received from offsite. Thus, the exemption also applies to WWTUs accepting wastewater generated by offsite sources. Note, however, that biennial reporting is required for hazardous waste received if the receiving facility is subject to 40 CFR 264.75 or 265.75 (e.g., a permitted TSD), but not for wastewater generated onsite and managed in an exempt WWTU.^{19, 20}

¹⁹ 40 CFR Part 264 – Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

²⁰ 40 CFR Part 265 – Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.

DOES THE EXEMPTION APPLY TO FACILITIES SHIPPING THEIR WASTE OFFSITE TO WASTEWATER TREATMENT FACILITIES?

The exemption does not apply to facilities sending wastewater offsite to a wastewater treatment facility (i.e., the offsite source); it only applies to the wastewater treatment facility. The facility sending wastewater offsite must manage that wastewater according to the applicable hazardous waste regulations.

PART 3:

DETERMINING WHETHER GROUNDWATER CONTAMINATED BY HAZARDOUS WASTES SHOULD BE PART OF THE BIENNIAL REPORT

Groundwater contamination occurs when hazardous substances, including hazardous wastes, get into the groundwater and cause it to become unsafe and unfit for human use. Counting or not counting correctly groundwater contaminated by hazardous wastes (i.e., contaminated groundwater) can significantly impact the accuracy of national waste generation and management estimates, and eventually affect decision-making for regulatory or program purposes.

This appendix provides information to help determine whether contaminated groundwater should be part of the Biennial Report. In doing so, this appendix provides answers to the following questions:

- [What is groundwater?](#)
- [What is groundwater contamination?](#)
- [What is the Contained-In Policy?](#)
- [Should contaminated groundwater be part of the Biennial Report?](#)
- [Who should determine whether contaminated groundwater be part of the Biennial Report?](#)
- [How should contaminated groundwater be reported in the Biennial Report forms?](#)

WHAT IS GROUNDWATER?

Groundwater is rain water or water from surface water bodies (e.g., lakes, streams) that soaks into the soil and bedrock and is stored underground in the tiny spaces between rocks and particles of soil.

WHAT IS GROUNDWATER CONTAMINATION?

Groundwater contamination occurs when hazardous substances, including hazardous wastes, get into the groundwater and cause it to become unsafe and unfit for human use. Groundwater can become contaminated in many ways. For example, when rain water or surface water comes into contact with contaminated soil while seeping into the ground, or when liquid hazardous substances soak down through the soil or rock into the groundwater.

WHAT IS THE CONTAINED-IN POLICY? ²¹

The U.S. Environmental Protection Agency's (EPA's) Contained-In Policy is intended to clarify the application of hazardous waste regulations to mixtures of environmental media and hazardous waste. This policy applies to groundwater contaminated by hazardous waste (i.e., contaminated groundwater).

Contaminated groundwaters are not considered solid wastes in the sense of being abandoned, inherently waste-like, or recycled as those terms are defined in the RCRA regulations. However, contaminated groundwaters can become subject to regulation under RCRA if they "contain" hazardous waste. EPA generally considers contaminated groundwaters to contain hazardous waste: (1) when they exhibit a characteristic of hazardous waste; or, (2) when they are contaminated with concentrations of hazardous constituents from listed hazardous waste that are above health-based levels.

If contaminated groundwaters contain hazardous waste, they are subject to all applicable RCRA requirements until they no longer contain hazardous waste. The determination that any given volume of contaminated groundwaters does not contain hazardous waste is called a "contained-in determination."

In the case of contaminated groundwaters that exhibit a characteristic of hazardous waste, the contaminated groundwaters are considered to "contain" hazardous waste for as long as they exhibit a characteristic. Once the characteristic is eliminated (e.g., through treatment), the contaminated groundwaters are no longer considered to "contain" hazardous waste.

In the case of contaminated groundwaters that are contaminated by listed hazardous waste, current EPA guidance recommends that contained-in determinations be made based on site-specific, health-based standards.

In certain circumstances, the RCRA land disposal restrictions (LDRs) will continue to apply to contaminated groundwaters that have been determined not to contain hazardous waste. For example, this is the case when contaminated groundwaters contain hazardous waste when they are first generated (i.e., removed from the land, or area of contamination) and are subsequently determined to no longer contain hazardous waste (e.g., after treatment), but still contain hazardous constituents at concentrations above LDR treatment standards.

SHOULD CONTAMINATED GROUNDWATER BE PART OF THE BIENNIAL REPORT?

In the Hazardous Waste Report Instructions and Form booklet [EPA Form 8700-13 A/B] (Section "Special Instructions"), EPA provides special instructions on how to report groundwater contaminated by hazardous waste:

Groundwater contaminated by RCRA hazardous waste **is not** considered a solid waste and is, therefore, not classified as a hazardous waste. However, because hazardous waste is "contained in" the

²¹ "Management of Remediation Waste Under RCRA;" EPA530-F-98-026; October 14, 1998; pages 9-11; RCRA Online Document Number 14291. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=14291>, last accessed November 29, 2022.

groundwater, it must be treated “as if” it were a RCRA hazardous waste if it is removed for treatment, storage or disposal.

Applying the following general principles can help simplify the process of determining whether contaminated groundwater should be part of the Biennial Report:

- Do NOT count and report contaminated groundwater that is regulated via the [Contained-In Policy](#) (and not via the [Mixture Rule](#) at 40 CFR 261.3(a)(2)(iv) or the [“Derived-From” Rule](#) at 40 CFR 261.3(c)-(d)).
- Do count and report any hazardous waste constituents that are removed from the contaminated groundwater for further treatment or disposal.

WHO SHOULD DETERMINE WHETHER CONTAMINATED GROUNDWATER SHOULD BE PART OF THE BIENNIAL REPORT?

EPA Regions or Authorized States should make a determination on whether contaminated groundwater should be counted or reported in the Biennial Report. In particular, EPA Regions or Authorized States should determine at what levels the groundwater no longer contains hazardous waste and make a site-specific determination on whether to count or report contaminated groundwater in the Biennial Report.²²

In determining whether contaminated groundwater should count toward generator status determination or be part of the Biennial Report, **the key** is to ascertain if a contaminated groundwater has been generated and/or actively managed as a hazardous waste.

Following are examples of situations in which it is necessary to determine whether the contaminated groundwater should be part of the Biennial Report:

- If the contamination is due to a characteristic waste, then it is the generator’s responsibility to determine if the contaminated groundwater is a hazardous waste. EPA Regions or Authorized States need not make site-specific determination.
- If it is a situation where a facility has pumped groundwater and is claiming that the groundwater is contaminated with leachate (i.e., a listed hazardous waste), or “contains” leachate, EPA Regions or Authorized States should make a site-specific determination.

²² “Management of Remediation Waste Under RCRA;” EPA530-F-98-026; October 14, 1998; pages 9-11; RCRA Online Document Number 14291. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=14291>, last accessed November 29, 2022.

HOW SHOULD CONTAMINATED GROUNDWATER BE REPORTED IN THE BIENNIAL REPORT FORMS?

When reporting groundwater contaminated by hazardous waste in the Biennial Report, observe the following conventions:

- Enter “0” in the GM Form – Item 1.H (Quantity Generated/UOM and Density). Explain in Item 4 (Comments) that it is groundwater regulated via the Contained-In Policy, not a hazardous waste that was generated on-site. [Exhibit 3-1](#) provides an example of how to report groundwater contaminated by hazardous waste.
- Report quantities managed on-site (GM Form, Item 2, On-site Process Systems 1 and 2); quantities shipped off-site for management (GM Form, Item 3); and quantities received from off-site and managed on-site (WR Form, Item G).

Exhibit 3-1 Example of How to Report Groundwater Contaminated by Hazardous Waste

EPA ID Number	<input type="text"/>	OMB# 2050-0024; Expires 04/30/2024
United States Environmental Protection Agency HAZARDOUS WASTE REPORT <u>2023</u> (reporting cycle) WASTE GENERATION AND MANAGEMENT (GM) FORM		
1. Waste Characteristics		
A. Waste Description		
B. EPA Hazardous Waste Code(s)	<input type="text"/>	<input type="text"/>
C. State Hazardous Waste Code(s)	<input type="text"/>	<input type="text"/>
D. Source Identification Number (SIN)	E. Treatment Method (G25)	F. Country Code (G62)
E. Formulation	G. Minimization Code	H. Radioactive Mixed <input type="checkbox"/> Y <input type="checkbox"/> N
H. Quantity	0 UOM	Density <input type="checkbox"/> lbs/gal <input type="checkbox"/> sg
4. Comments		
Groundwater regulated via the Contained-In Policy, not a hazardous waste that was generated on site.		
Explain in Item 4 (Comments) that it is groundwater regulated via the Contained-In Policy, not a hazardous waste that was generated on site.		

PART 4:

DETERMINING WHETHER LABORATORY CLEAN-OUT HAZARDOUS WASTE UNDER THE ACADEMIC LABORATORY RULE SHOULD BE PART OF THE BIENNIAL REPORT

[40 CFR Part 262, Subpart K](#) ("Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities") is an alternative set of regulations that is specifically tailored to hazardous waste generation patterns in academic laboratories. It allows flexibility regarding where, at the eligible academic entity, the hazardous waste determination may be made, provided certain provisions are met that are designed to protect human health and the environment.

Operating under Subpart K does not remove the responsibility to complete the Biennial Report. Eligible academic entities that opt into Subpart K must complete a Biennial Report if they meet the Federal regulatory definition of a large quantity generator (LQGs).²³

This appendix provides information to help determine whether a laboratory clean-out hazardous waste should be part of the Biennial Report. In doing so, this appendix provides answers to the following questions:

- [Who is an eligible academic entity?](#)
- [What is the definition of laboratory under Subpart K?](#)
- [What is a regularly scheduled removal of unwanted materials?](#)
- [What is the definition of laboratory clean-out under Subpart K?](#)
- [Does a regularly scheduled removal of unwanted materials qualify as a laboratory clean-out?](#)
- [Does hazardous waste generated as part of a laboratory clean-out under Subpart K count toward generator status determination?](#)
- [Do laboratory clean-outs affect who is a large quantity generator?](#)
- [What biennial reporting requirements remain the same under Subpart K?](#)
- [What biennial reporting requirements are different under Subpart K?](#)

²³ Authorized States may have regulations that are more stringent and/or broader in scope than the Federal regulations. It is the site's responsibility to make sure that it complies with all applicable requirements under the Federal and the respective State hazardous waste program.

WHO IS AN ELIGIBLE ACADEMIC ENTITY?

An eligible academic entity is defined, in [40 CFR 262.200](#), as a college or university, or a non-profit research institute that is owned by or has a formal written affiliation agreement with a college or university, or a teaching hospital that is owned by or has a formal written affiliation agreement with a college or university.

WHAT IS THE DEFINITION OF LABORATORY UNDER SUBPART K?

A laboratory is defined, in [40 CFR 262.200](#), as an area owned by an eligible academic entity where relatively small quantities of chemicals and other substances are used on a non-production basis for teaching or research (or diagnostic purposes at a teaching hospital) and are stored and used in containers that are easily manipulated by one person. Photo laboratories, art studios, and field laboratories are considered laboratories. Areas such as chemical stockrooms and preparatory laboratories that provide a support function to teaching or research laboratories (or diagnostic laboratories at teaching hospitals) are also considered laboratories.

WHAT IS A REGULARLY SCHEDULED REMOVAL OF UNWANTED MATERIALS?

A regularly scheduled removal of unwanted materials mostly involves the removal of routinely generated hazardous wastes from a laboratory (e.g., used chemicals generated during the course of experiments). Under [40 CFR 262.208](#), unwanted materials must be removed from the laboratory on a regular schedule.

To comply with this requirement, an eligible academic entity must either:

- Remove all containers of unwanted material from each laboratory on a regular interval, not to exceed 12 months; or
- Remove containers of unwanted material from each laboratory within 12 months of each container's accumulation start date.

WHAT IS THE DEFINITION OF LABORATORY CLEAN-OUT UNDER SUBPART K?

Laboratory clean-out is defined, in [40 CFR 262.200](#), as an evaluation of the inventory of chemicals and other materials in a laboratory that are no longer needed or that have expired and the subsequent removal of those chemicals or other unwanted materials from the laboratory. A clean-out may occur for several reasons. It may be on a routine basis (e.g., at the end of a semester or academic year) or as a result of a renovation, relocation, or change in laboratory supervisor/occupant. A regularly scheduled removal of unwanted material as required by 40 CFR 262.208 does not qualify as a laboratory clean-out.

DOES A REGULARLY SCHEDULED REMOVAL OF UNWANTED MATERIALS QUALIFY AS A LABORATORY CLEAN-OUT?

Under the Subpart K regulations, a regularly scheduled removal of unwanted materials is considered to be different than a laboratory clean-out. Regularly scheduled removals mostly involve removing routinely generated hazardous wastes. Laboratory clean-outs, on the other hand, involve an evaluation of the laboratory's chemical inventory and the removal of excess/outdated/expired ("legacy") chemicals. Each of these types of events is regulated differently.

Based on the definition of "laboratory clean-out" at [40 CFR 262.200](#), a regularly scheduled removal of unwanted materials does not qualify as a laboratory clean-out.

DOES HAZARDOUS WASTE GENERATED AS PART OF A LABORATORY CLEAN-OUT UNDER SUBPART K COUNT TOWARD GENERATOR STATUS DETERMINATION?

Subpart K regulations allow laboratory clean-outs that are conducted once per 12-month period per laboratory to be eligible for special clean-out procedures. For example:

- Laboratories have 30 days to conduct a laboratory clean-out, and there are no limits on the volume of unwanted materials that may accumulate in the laboratory during that time.
- For the purposes of onsite accumulation, an eligible academic entity is not required to count a hazardous waste that is an unused commercial chemical product (i.e., P- and U-listed hazardous wastes) and unused characteristic hazardous wastes generated solely during the laboratory clean-out toward its generator status determination.
- For the purposes of offsite management:
 - An eligible academic entity must count all its hazardous waste, regardless of whether the hazardous waste was counted toward generator status determination.
 - If an academic entity generates more than 1 kilogram per month of acute hazardous waste or more than 100 kilograms per month of non-acute hazardous waste (i.e., the very small quantity generator [VSQG] limits as defined in [40 CFR 260.10](#)), the hazardous waste is subject to all applicable hazardous waste regulations when it is transported offsite.

DO LABORATORY CLEAN-OUTS AFFECT WHO IS A LARGE QUANTITY GENERATOR?

If a facility maintains its normal generator status of a Federally-defined very small quantity generator (VSQG) or small quantity generator (SQG) because of not having to count unused hazardous waste from a laboratory clean-out (i.e., does not get bumped up to a Federally-defined large quantity generator (LQG)), a Biennial Report is NOT required.

If a facility is normally a Federally-defined LQG because of routine laboratory operations and/or non-laboratory operations, and continues to be a Federally-defined LQG despite not counting unused

hazardous waste towards its generator status, a Biennial Report is required for *all* hazardous waste, including laboratory clean-out hazardous waste.

WHAT BIENNIAL REPORTING REQUIREMENTS REMAIN THE SAME UNDER SUBPART K?

Federally-defined LQGs have to count and report the following hazardous waste just as they always have on the Generation and Management (GM) Form of the Biennial Report. For example:

- Routinely generated laboratory hazardous waste (e.g., spent solvents, spent acids/bases); and
- Hazardous waste from non-laboratory operations (e.g., hazardous waste from vehicle or facility maintenance).

In reporting the above wastes, LQGs must use one of the source codes provided in the Biennial Report instructions, except Source Code G17 (i.e., Subpart K laboratory waste clean-out).

[Exhibit 4-1](#) provides an example of how to complete a GM Form for a common laboratory waste: “spent halogenated solvents.”

WHAT BIENNIAL REPORTING REQUIREMENTS ARE DIFFERENT UNDER SUBPART K?

In reporting laboratory clean-out waste, Federally-defined LQGs have to use Source Code G17 (i.e., Subpart K laboratory waste clean-out) to report unused commercial chemical products and unused characteristic hazardous wastes that are not counted toward generator status determination because they are from a laboratory clean-out. Examples of laboratory clean-out wastes include: unused solvents and unused acids/bases.

[Exhibit 4-2](#) provides an example of how to complete a GM Form for unused acetone that is being discarded as part of a once-per-12 month laboratory clean-out under Subpart K.

EPA ID Number OMB# 2050-0024; Expires 04/30/2024

United States Environmental Protection Agency
 HAZARDOUS WASTE REPORT **2023** (reporting cycle)
 WASTE GENERATION AND MANAGEMENT (GM) FORM

1. Waste Characteristics

A. Waste Description			
B. EPA Hazardous Waste Code(s)	F002		
C. State Hazardous Waste Code(s)			
D. Source Code	G22	Country Code (G62)	
E. Form Code	W202	F. Waste Minimization Code	G. Radioactive Mixed <input type="checkbox"/> Y <input type="checkbox"/> N
H. Quantity	13	UOM	Density <input type="checkbox"/> lbs/gal <input type="checkbox"/> sg

2. Management of Hazardous Waste

Was any of this waste that was generated at this facility treated, disposed, and/or recycled on-site? If yes, continue to On-site Process System 1.

Process System	Management Method Code	Quantity
Process System 1		
Process System 2		

3. Off-site Shipment of Hazardous Waste

Y N A. Was any of this waste that was generated at this facility shipped off-site for treatment, disposal, or recycling? If yes, continue to Site 1.

Site 1			
B. EPA ID of facility to which waste was shipped	C. Management Method Code	D. Total Quantity Shipped	
	H040	13	
Site 2			
B. EPA ID of facility to which waste was shipped	C. Management Method Code	D. Total Quantity Shipped	
Site 3			
B. EPA ID of facility to which waste was shipped	C. Management Method Code	D. Total Quantity Shipped	

4. Comments

EPA Form 8700-12, 8700-13 A/B, 8700-23 Page __ of __

Exhibit 4-1. Example of How to Report Routinely Generated Laboratory Hazardous Waste under Subpart K

EPA ID Number OMB# 2050-0024; Expires 04/30/2024

United States Environmental Protection Agency
HAZARDOUS WASTE REPORT **2023** (reporting cycle)
WASTE GENERATION AND MANAGEMENT (GM) FORM



1. Waste Characteristics

A. Waste Description		
B. EPA Hazardous Waste Code(s)	U002	Hazardous waste code for unused acetone
C. State Hazardous Waste Code(s)		
D. Source Code	G17	Source code for Subpart K laboratory waste clean-out
E. Form Code	W203	Form code for concentrated non-halogenated solvent
F. Waste Minimization Code	0	Because laboratory clean-out hazardous waste is not counted toward generator status, quantity generated is 0
G. Radioactive Mixed	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	
UOM	Density	<input type="checkbox"/> lbs/gal <input type="checkbox"/> sg

3. Off-site Shipment of Hazardous Waste

Y N A. Was any of this waste that was generated at this facility shipped off-site for treatment, disposal, or recycling? If yes, continue to Site 1.

Site	B. EPA ID of facility to which waste was shipped	C. Management Method Code	D. Total Quantity Shipped
Site 1		H040	4
Site 2			
Site 3			

Management method code for incineration

Because it is hazardous waste, it is reported as shipped offsite as hazardous waste

4. Comments

EPA Form 8700-12, 8700-13 A/B, 8700-23 Page __ of __

Reporting Laboratory Clean-Out Waste

This exhibit provides an example of how to report unused acetone that is being discarded as part of a one-per-12-month laboratory clean-out under 40 CFR Part 262, Subpart K (i.e., the Academic Laboratory Rule).

Exhibit 4-2. Example of How to Report Laboratory Clean-Out Hazardous Waste under Subpart K

PART 5:

RCRA BIENNIAL REPORT REQUIREMENTS FOR COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) RESPONSE ACTIONS

EPA considers the RCRA biennial reporting requirement an administrative requirement for purposes of CERCLA response actions. EPA has determined that CERCLA response actions conducted onsite generally should be subject only to substantive, not administrative requirements of state and other federal environmental protection laws, and that it would be inappropriate to formally subject onsite CERCLA response actions to the multitude of administrative requirements of other federal and state offices and agencies. Administrative requirements do not, in and of themselves, define a level or standard of control; they include the approval of, or consultation with, administrative bodies, issuance of permits, documentation and reporting and recordkeeping.

In contrast, CERCLA cleanup actions involving treatment, storage, and disposal of RCRA hazardous wastes at an offsite RCRA permitted facility are subject to all RCRA requirements, including administrative requirements such as biennial report submissions, for those wastes sent offsite.

Therefore, biennial report submissions for hazardous waste generated as part of CERCLA response actions should be consistent with the following:

- *Onsite Hazardous Waste Management:* Any RCRA hazardous waste generated onsite as part of a Superfund response action and managed onsite must comply with all substantive RCRA requirements but need not comply with administrative requirements, such as RCRA biennial reporting requirements.
- *Offsite Hazardous Waste Management:* Any RCRA hazardous waste generated onsite as part of a Superfund response action and managed offsite is subject to all RCRA requirements, including, where applicable, biennial report requirements.

On-scene coordinators (OSCs), remedial project managers (RPMs), potentially responsible parties (PRPs), and federal facility site managers have two options for complying with the biennial reporting requirements. These options are:

1. Report all RCRA hazardous waste managed offsite without evaluating whether they are an LQG; or
2. Determine if, in any single calendar month, the site is an LQG, by following the requirements in 40 CFR 261 and 262; and if so, report all RCRA hazardous waste that is generated onsite, but managed offsite for the entire biennial reporting calendar year.

Under Option 1, a facility/site would submit a Biennial Report of all RCRA hazardous waste shipments sent offsite during the biennial reporting calendar year (i.e., odd-numbered year). This would generally be the same as reporting the total amount of hazardous waste leaving the site and recorded in the hazardous waste manifest system during the year. Under this option, some Superfund sites would submit a Biennial Report even if they are not LQGs. If the site manager chooses to follow Option 1 but turns out to not be an LQG, they would be considered a protective filer.

Under Option 2, Superfund site managers would determine if the site is an LQG. In determining whether a site is an LQG, the site manager must account for all waste generated each month by following the requirements in 40 CFR 261 and 262, regardless of whether the waste is managed onsite or offsite. If the site is an LQG, then Superfund site managers would need to submit a Biennial Report for that portion of

the hazardous waste that was generated onsite, but managed offsite for the entire biennial reporting calendar year.

For Superfund fund-lead response actions, EPA or their agents (i.e., U.S. Army Corps of Engineers or a contractor) would submit a Biennial Report. For PRP-lead clean ups, the PRP is responsible for reporting. For federal facilities, the lead federal facility overseeing the cleanup or their agent is responsible for reporting. Those responsible for reporting should carefully consider and clarify who should fill out and submit the report and work with their states (or the regional office if the state is not authorized) to ensure that required information is submitted to the appropriate entity.

WHAT BIENNIAL REGULATORY REQUIREMENTS MUST EPA OR ITS AGENTS COMPLY WITH WHEN HAZARDOUS WASTE IS SHIPPED OFFSITE AS A RESULT OF A CERCLA RESPONSE ACTION?

EPA or its agents should follow the directions described under the Superfund document, “RCRA-Specific ARARs” found at: <http://www.epa.gov/Superfund/applicable-or-relevant-and-appropriate-requirements-arars>.

Another useful document for providing additional information related to RCRA hazardous waste generator regulations is the Hazardous Waste Generator Regulations: A User-Friendly Reference Document. This document can be found at: <http://www.epa.gov/hwgenerators/hazardous-waste-generator-regulations-user-friendly-reference-document>.

IF RCRA HAZARDOUS WASTES AND OTHER WASTES ARE SHIPPED TO A FACILITY FOR TREATMENT, STORAGE OR DISPOSAL, WHAT SHOULD BE DONE TO SEPARATE RCRA HAZARDOUS WASTES AND OTHER WASTES FOR REPORTING PURPOSES?

The hazardous waste manifest form should be filled out so that it distinguishes between RCRA hazardous waste and other waste components, because any other waste component does not need to be reported in the Biennial Report. The RCRA hazardous waste component must always have a RCRA hazardous waste code for each hazardous waste shipped offsite to a RCRA treatment, storage, or disposal facility. Generally, only the RCRA hazardous waste should be reported when supplying information for the Biennial Report, but hazardous waste generators must be mindful that there may be additional state requirements for reporting.

WHO SHOULD REPORT?

For Superfund fund-lead response actions, EPA or its agents (e.g., contractor, U.S. Army Corps of Engineers) should report the information required in the Biennial Report. For PRP-lead cleanups, the PRP is responsible for reporting. For federal facilities, the lead federal facility overseeing the cleanup of their agent is responsible for reporting.

WHERE SHOULD EPA OR ITS AGENTS SUBMIT THE BIENNIAL REPORT?

You should send the report to the authorized state where the hazardous waste is generated, or if the state is not authorized, to the respective EPA Region. A list of state addresses and contacts can be found on the [RCRAInfo Web](#) website.

WHAT ACTION SHOULD BE TAKEN IF THE REPORTING THRESHOLD AMOUNT FOR AN LQG IS NO LONGER MET?

If a CERCLA response action had previously resulted in the site meeting the definition of LQG and a portion of that waste had been reported in a biennial reporting cycle, but the cleanup activity no longer qualifies as such, the site manager should let the RCRA federal or RCRA authorized state know of the change in status. This change is accomplished by filling out the RCRA Subtitle C Site Identification Form (EPA Form 8700-13 A/B) found on the [RCRAInfo Web](#) website and submitting it to either the authorized state office or Regional RCRA unit responsible for this reporting.

INFORMATION RESOURCES

DETERMINING WHETHER A WASTE SHOULD BE PART OF THE BIENNIAL REPORT

HAZARDOUS WASTES (IN GENERAL)

- EPA’s “Hazardous Waste” Web page at: <https://www.epa.gov/hw>, last accessed on November 29, 2022.
- EPA Memorandum on “Determining Whether State Hazardous Waste Requirements Are More Stringent or Broader in Scope Than the Federal RCRA Program;” December 23, 2014; RCRA Online Number 14848. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=14848> last accessed November 29, 2022.

HAZARDOUS WASTEWATERS

- EPA’s “Summary of the Clean Water Act” Web page at: <https://www.epa.gov/laws-regulations/summary-clean-water-act>, last accessed on November 29, 2022.
- EPA Memorandum on “Guidance on Wastewater Treatment;” August 4, 2000; RCRA Online Number 14472. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=14472>, last accessed November 29, 2022.
- EPA Letter on “Exemption from Permitting Requirements for Waste Water Treatment Units;” January 16, 1992; RCRA Online Number 13526. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=13526>, last accessed November 29, 2022.
- EPA Memorandum on “Permit Requirements for Zero Wastewater Treatment System;” March 20, 1989; RCRA Online Number 11408. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=11408>, last accessed November 29, 2022.
- EPA Letter on “Elementary Neutralization Units;” July 1, 1988; RCRA Online Number 13204. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=13204>, last accessed November 29, 2022.
- EPA Letter on “Request for Guidance/Clarification of Wastewater Treatment Unit Definition;” December 26, 1984; RCRA Online Number 11050. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=11050>, last accessed November 29, 2022.

- EPA Letter on “Totally Enclosed Treatment Facility, Regulatory Clarification of;” February 18, 1983; RCRA Online Number 12097. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=12097>, last accessed November 29, 2022.
- EPA Letter on “Wastewater Treatment Unit Exemption;” July 31, 1981; RCRA Online Number 11020. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=11020>, last accessed November 29, 2022.

GROUNDWATER CONTAMINATED BY HAZARDOUS WASTES

- “Management of Remediation Waste Under RCRA;” EPA530-F-98-026; October 14, 1998; RCRA Online Number 14291. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=14291>, last accessed November 29, 2022.
- EPA Letter on “Contained-In Policy;” March 26, 1991; RCRA Online Number 11593. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=11593>, last accessed November 29, 2022.
- EPA Letter on “Environmental Media Contaminated with RCRA-Listed Hazardous Waste;” June 19, 1989; RCRA Online Number 11434. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=11434>, last accessed November 29, 2022.

SPILL AND CLEANUP WASTES

- “Management of Remediation Waste Under RCRA;” EPA530-F-98-026; October 14, 1998; RCRA Online Number 14291. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=14291>, last accessed November 29, 2022.
- “EPA Letter on “Solid Waste Determination for Spilled Commercial Chemical Products;” May 1, 1995; RCRA Online Number 13743. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=13743>, last accessed November 29, 2022.
- EPA Letter on “Regulatory Status of Soils Contaminated from Releases of Commercial Chemical Products;” October 15, 1992; RCRA Online Number 13568. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=13568>, last accessed November 29, 2022.
- EPA Letter on “Environmental Media Contaminated with RCRA-Listed Hazardous Waste;” June 19, 1989; RCRA Online Number 11434. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=11434>, last accessed November 29, 2022.

- EPA Memorandum on “Resource Conservation and Recovery Act (RCRA) Biennial Report Requirements for Comprehensive Environmental Response, Compensation, And Liability Act (CERCLA) Response Actions;” December 14, 2011; RCRA Online Number 14842. Available at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=14842>, last accessed November 29, 2022.

LABORATORY CLEAN-OUT HAZARDOUS WASTES

- EPA’s “Regulations for Hazardous Waste Generated at Academic Laboratories” Web page at: <https://www.epa.gov/hwgenerators/regulations-hazardous-waste-generated-academic-laboratories>, last accessed on November 29, 2022.
- EPA’s “Managing Hazardous Waste at Academic Laboratories Rulemaking” Web page at: <https://www.epa.gov/hwgenerators/managing-hazardous-waste-academic-laboratories-rulemaking>, last accessed on January 9, 2020.
- “Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated with Colleges and Universities,” 73 FR 72912, December 1, 2008. Available at: <https://www.epa.gov/hwgenerators/managing-hazardous-waste-academic-laboratories-rulemaking>, last accessed on November 29, 2022.
- “Technical Corrections to the Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated with Colleges and Universities,” 75 FR 79304, December 20, 2010. Available at: <https://www.epa.gov/hwgenerators/managing-hazardous-waste-academic-laboratories-rulemaking>, last accessed on November 29, 2022.
- EPA’s “Frequent Questions About Managing Hazardous Waste at Academic Laboratories” Web page at: <https://www.epa.gov/hwgenerators/frequent-questions-about-managing-hazardous-waste-academic-laboratories>, last accessed on November 29, 2022.
- EPA’s “Where is the Managing Hazardous Waste at Academic Laboratories Rule in Effect?” Web page at: <https://www.epa.gov/hwgenerators/where-managing-hazardous-waste-academic-laboratories-rule-effect>, last accessed on November 29, 2022.

MOST RECENT RULEMAKINGS

HAZARDOUS WASTE EXPORT-IMPORT REVISIONS FINAL RULE

(Published in the *Federal Register* on December 21, 2016 (81 FR 85696); effective on December 31, 2016)

- EPA’s “Final Rule: Hazardous Waste Export-Import Revisions” Web page at: <https://www.epa.gov/hwgenerators/final-rule-hazardous-waste-export-import-revisions>, last accessed on November 29, 2022.
- EPA’s “Frequent Questions about the Hazardous Waste Export-Import Revisions Final Rule” Web page at: <https://www.epa.gov/hwgenerators/frequent-questions-about-hazardous-waste-export-import-revisions-final-rule>, last accessed on November 29, 2022.
- “Hazardous Waste Import-Export Final Rule: Requirements and Implementation.” Public Webinars Presented by EPA, December 2016. Available at: <https://clu-in.org/conf/tio/HazWasteEx-ImRule/>, last accessed on November 29, 2022.
- “Federal Register Notice: Compliance Date for Automated Export System (AES) Filing” Web page at: <https://www.epa.gov/hwgenerators/federal-register-notice-compliance-date-automated-export-system-aes-filing>, last accessed on November 29, 2022.
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HAZARDOUS WASTE GENERATOR IMPROVEMENTS FINAL RULE

(Published in the *Federal Register* on December 21, 2016 (81 FR 85732); effective on May 30, 2017)

- EPA’s “Final Rule: Hazardous Waste Generator Improvements” Web page at: <https://www.epa.gov/hwgenerators/final-rule-hazardous-waste-generator-improvements>, last accessed on November 29, 2022.
- EPA’s “Fact Sheet About the Hazardous Waste Generator Improvements Final Rule” Web page at: <https://www.epa.gov/hwgenerators/fact-sheet-about-hazardous-waste-generator-improvements-final-rule>, last accessed on November 29, 2022.
- EPA’s “Frequent Questions about the Hazardous Waste Generator Improvements Final Rule” Web page at: <https://www.epa.gov/hwgenerators/frequent-questions-about-hazardous-waste-generator-improvements-final-rule>, last accessed on November 29, 2022.

- EPA’s “Where is the Hazardous Waste Generator Improvements Rule in Effect?” Web site at: <https://www.epa.gov/hwgenerators/where-hazardous-waste-generator-improvements-rule-effect>, last accessed on November 29, 2022.
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2018 DEFINITION OF SOLID WASTE (DSW) FINAL RULE – RESPONSE TO COURT VACATUR

(Published in the *Federal Register* on May 30, 2018 (83 FR 24664); effective on May 30, 2018)

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INTERIM FINAL RULE: SAFE MANAGEMENT OF RECALLED AIRBAGS

(Published in the *Federal Register* on November 30, 2018 (83 FR 61552); effective on November 30, 2018)

- EPA’s “Interim Final Rule: Safe Management of Recalled Airbags” Web page at: <https://www.epa.gov/hw/interim-final-rule-safe-management-recalled-airbags>, last accessed on November 29, 2022.
- EPA’s “Frequent Questions About the Regulation of Airbag Waste” Web page at: <https://www.epa.gov/hw/frequent-questions-about-regulation-airbag-waste>, last accessed on November 29, 2022.
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MANAGEMENT STANDARDS FOR HAZARDOUS WASTE PHARMACEUTICALS AND AMENDMENT TO THE P075 LISTING FOR NICOTINE

(Published in the *Federal Register* on February 22, 2019 (84 FR 5816); effective on August 21, 2019)

- EPA’s “Final Rule: Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine” Web page at: <https://www.epa.gov/hwgenerators/final-rule-management-standards-hazardous-waste-pharmaceuticals-and-amendment-p075>, last accessed on November 29, 2022.

- EPA’s “Frequent Questions about the Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine Final Rule” Web page at: <https://www.epa.gov/hwgenerators/frequent-questions-about-management-standards-hazardous-waste-pharmaceuticals-and>, last accessed on November 29, 2022.
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INCREASING RECYCLING: ADDING AEROSOL CANS TO THE UNIVERSAL WASTE REGULATIONS

(Published in the *Federal Register* on December 9, 2019 (84 FR 67202); effective on February 7, 2020)

- EPA’s “Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations” Web page at: <https://www.epa.gov/hw/increasing-recycling-adding-aerosol-cans-universal-waste-regulations>, last accessed on November 29, 2022.

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