

Fact Sheet: 2014 DSW Final Rule

- On December 10, 2014, the Administrator signed the final revisions to the Definition of Solid Waste Rule, also known as the DSW rule. This represents a major environmental justice milestone by directly addressing impacts to communities, disproportionately borne by minority and low-income populations, from the mismanagement of hazardous materials sent to recycling, that is a central part of the final rule.
- EPA conducted a rigorous environmental justice analysis of the DSW rule that examined the location of recycling facilities and their proximity and potential impact to adjacent residents. The methodology and scope was developed through a broad public engagement and expert peer review process. The analysis identified significant regulatory gaps in the 2008 DSW rule, which could negatively impact communities adjacent to third party recyclers, including disproportionately impacting minority and low-income populations. The analysis will be available in the docket for the final rule once the rule is published.
- In particular, EPA identified mismanagement by third-party hazardous materials recyclers as posing a risk of fires, explosions, accidents and releases of hazardous constituents to the environment. This is because the economics of commercial recycling contain market disincentives that encourage over-accumulation and mismanagement of hazardous secondary material. The 2008 DSW rule lacked the tools needed for proper oversight of these facilities by EPA, states and the communities affected by them.
- The 2014 DSW rule addresses the market disincentives that encourage over-accumulation and mismanagement of hazardous secondary material in a way that helps encourage safe and legitimate recycling while addressing the need to protect communities. The DSW revisions provide a strong protection against the potential for mismanagement of hazardous materials intended for recycling, while allowing legitimate recycling activities to continue.
- Specifically, the 2014 DSW rule withdraws the transfer-based exclusion and replaces it with the verified recycler exclusion.
 - This new provision requires that all hazardous materials recyclers operating under this provision have RCRA permits that address the materials, or obtain a variance prior to operating under the exclusion. This will allow EPA and the states to use the RCRA permitting process or solid waste variance process to verify that a facility has established rigorous safety measures to manage the material.
 - Under the variance process, EPA and the states will also be able to review and approve the facilities' financial assurance plans to ensure that they're financially stable and that there will be funds available should the unexpected happen.

- Requires that all entities subject to the new exclusions - both generators and recyclers - meet emergency response and preparedness requirements. This includes requiring facilities to make arrangements with local emergency response officials, which provides local fire departments and hospitals with critical information to enable them to tailor their preparations and response, thereby reducing risk to communities.
- Includes a public participation requirement for recyclers seeking a verified recycler variance, so that communities are notified prior to recycling operations beginning and have a chance to weigh in on the environmental decisions that affect them.
- Requires facilities seeking a verified recycler variance to address whether their activities pose a risk to nearby communities and whether their activities add to the cumulative environmental impacts.
- For generators, the conditions of the exclusion include: (1) notifying the authorized state or EPA; (2) ensuring that hazardous secondary materials are contained; (3) maintaining records of shipments and confirmations of receipt for transfers of hazardous secondary materials off-site; and (4) compliance with emergency preparedness requirements, which would be tailored according to the amount of hazardous secondary materials accumulated on-site. (These are similar to emergency preparedness requirements for hazardous waste generators.) The prohibition of sham recycling would also apply. Additionally, generators would no longer have to conduct an environmental audit of the recycler (since the recycler will have been verified by the state or EPA).
- For reclaimers without a RCRA permit, in order to obtain a variance and become verified, the third-party reclaimer must address criteria that essentially mirrors the criteria under the reasonable efforts condition in the transfer-based exclusion. This includes: (1) demonstrate their recycling is legitimate, (2) must have financial assurance in place to properly manage the hazardous secondary material, (3) must not have had any formal enforcement actions for RCRA violations in the previous three years and is not classified as a significant non-complier with RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly, (4) must have the proper equipment, trained personnel, and meet emergency preparedness and response requirements to safely reclaim the material, (5) must manage the residuals from reclamation properly, and (6) must address risk to nearby communities from potential releases of the hazardous secondary material and in consideration of existing environmental stressors.
- A recycler having a RCRA permit will have gone through the RCRA public participation process and have all of the protections currently required for recyclers managing hazardous waste. This includes financial assurance,

emergency preparedness and response requirements, specific management standards (e.g., tank and container standards), and recordkeeping and reporting requirements.

- These requirements are responsive to the concerns expressed by communities and addresses the evidence of mismanagement by some third party recyclers documented in EPA's record. The requirements provide strong protections against the potential for mismanagement of hazardous secondary materials intended for recycling.
- The final rule also establishes a clear, uniform legitimate recycling standard for all hazardous secondary materials recycling that will improve compliance and help ensure that the hazardous secondary materials are in fact legitimately recycled, rather than illegally disposed of. Setting the standard for legitimate recycling in the regulations makes it substantially harder for facilities who are illegally disposing under the guise of recycling to continue to operate in the marketplace.
- The four mandatory factors include: (1) the hazardous secondary material must provide a useful contribution to the recycling process or product; (2) the recycling process must produce a valuable product or intermediate; (3) the hazardous secondary material must be managed as a valuable commodity; and (4) the recycled product must be comparable to a legitimate product or intermediate.
- The new DSW rule also includes several provisions that result in both resource conservation and economic benefits by encouraging certain types of in-process recycling and remanufacturing.
 - The rule affirms the legitimacy of the pre-2008 DSW exclusions, such as the scrap metal exclusion, and does not change the regulatory status of material legitimately recycled under these long-standing exclusions. (We are also not taking final action regarding notification and contained for existing pre-2008 exclusions based on a number of comments that questions our record support and encouraged us to do further study before making changes in order to avoid the potential for unintended consequences.)
 - The final rule re-affirms the legitimacy of in-process recycling and of commodity-grade recycled products, such as metal commodities. In both of these cases, the demonstration of a legitimate recycled product is straightforward. In-process recycling involves hazardous secondary materials being returned to the original production process. Additionally, recycled products that meet widely recognized commodity specifications are clearly commodities in wide use in commerce. In both of these types of recycling, the recycled product is assumed to be legitimate.

- The rule retains the exclusion for recycling under the control of the generator, including recycling onsite, within the same company and through toll manufacturing agreements. Generators who maintain control over their hazardous secondary materials and recycling processes have strong economic incentives to maintain oversight of, and responsibility for, the hazardous secondary material that is reclaimed.
- Finally, the final rule includes a targeted remanufacturing exclusion for certain higher-value hazardous spent solvents, which are being remanufactured into commercial-grade products. Facilities that recycle these solvents have strong economic incentives to properly manage these materials due to the profits realized from sale or use of the remanufactured solvents, rather than from fees charged for receiving the spent solvents. This exclusion allows manufacturers to reduce the use of virgin solvents, resulting in both economic and environmental benefits, including energy conservation and reduced greenhouse gas emissions.
- Most states are authorized to administer and enforce the RCRA program in lieu of the federal program and these states will have to adopt the DSW rule before it becomes effective there.
- The impacts of the rule are dependent on how many states adopt the rule. Because the 2014 DSW rule addresses many of the concerns states raised about the 2008 DSW rule, state adoption rates – and thus cost savings – for the 2014 DSW rule may be much higher than the 2008 DSW final rule. EPA estimates that if 31 states and territories adopt the 2014 DSW rule, the rule will have an annual regulatory cost savings of \$24 million as compared to baseline cost savings in the 8 states and territories that have adopted the 2008 DSW final rule.
- More information about this rulemaking can be found on EPA’s website at: <http://www.epa.gov/epawaste/hazard/dsw/rulemaking.htm>.