

**Environmental Protection Agency**

**§ 261.2**

is also known as industrial or new scrap metal.

[45 FR 33119, May 19, 1980, as amended at 48 FR 14293, Apr. 1, 1983; 50 FR 663, Jan. 4, 1985; 51 FR 10174, Mar. 24, 1986; 51 FR 40636, Nov. 7, 1986; 62 FR 26018, May 12, 1997]

**§ 261.2 Definition of solid waste.**

(a)(1) A *solid waste* is any discarded material that is not excluded by § 261.4(a) or that is not excluded by variance granted under §§ 260.30 and 260.31.

(2) A *discarded material* is any material which is:

(i) *Abandoned*, as explained in paragraph (b) of this section; or

(ii) *Recycled*, as explained in paragraph (c) of this section; or

(iii) Considered *inherently waste-like*, as explained in paragraph (d) of this section; or

(iv) A *military munition* identified as a solid waste in 40 CFR 266.202.

(b) Materials are solid waste if they are *abandoned* by being:

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are *recycled*—or accumulated, stored, or treated before recycling—as specified in paragraphs (c)(1) through (4) of this section.

(1) *Used in a manner constituting disposal*. (i) Materials noted with a “\*” in

Column 1 of Table 1 are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

(ii) However, commercial chemical products listed in § 261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) *Burning for energy recovery*. (i) Materials noted with a “\*” in column 2 of Table 1 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

(ii) However, commercial chemical products listed in § 261.33 are not solid wastes if they are themselves fuels.

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

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

TABLE 1

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

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

### § 261.3

### 40 CFR Ch. I (7–1–07 Edition)

(d) *Inherently waste-like materials.* The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in subparts C or D of this part, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(3) The Administrator will use the following criteria to add wastes to that list:

(1)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in appendix VIII of part 261 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) *Materials that are not solid waste when recycled.* (1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no place-

ment on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at § 261.4(a)(17) apply rather than this paragraph.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraphs (e)(1) (i) through (iii) of this section):

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

(f) *Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation.* Respondents in actions to enforce regulations implementing subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

[50 FR 664, Jan. 4, 1985, as amended at 50 FR 33542, Aug. 20, 1985; 56 FR 7206, Feb. 21, 1991; 56 FR 32688, July 17, 1991; 56 FR 42512, Aug. 27, 1991; 57 FR 38564, Aug. 25, 1992; 59 FR 48042, Sept. 19, 1994; 62 FR 6651, Feb. 12, 1997; 62 FR 26019, May 12, 1997; 63 FR 28636, May 26, 1998; 64 FR 24513, May 11, 1999; 67 FR 11253, Mar. 13, 2002; 71 FR 40258, July 14, 2006]

#### § 261.3 Definition of hazardous waste.

(a) A solid waste, as defined in § 261.2, is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under § 261.4(b); and