



## Early Stakeholder Outreach- Hazardous Waste Management- Federal Definition of Solid Waste

*Ohio EPA prepares early stakeholder outreach fact sheets to ensure stakeholders are brought into the review process as early as possible and to obtain additional input and discussion before development of interested party draft rules.*

### What does the DoSW rulemaking cover?

The federal Definition of Solid Waste Rule (DoSW Rule) provides a means by which some materials may be regulated differently under the federal RCRA Subtitle C (hazardous waste) program. The federal program provides a number of amended and new rules, which may be examined in the Federal Registers (FRs) listed below. The purpose of the changes is to protect human health and the environment from the mismanagement of hazardous secondary material, while promoting sustainability through the encouragement of safe and environmentally responsible recycling of such materials. The Ohio rules that would be added and amended are primarily in the Ohio Administrative Code (OAC) Chapters 3745-50 and 3745-51, although there may be supporting amendments in other hazardous waste management rules in chapters 3745-52 to 3745-69, 3745-205, 3745-256, 3745-266, 3745-270, 3745-273 and 3745-279.

### Why is this rulemaking concept being sent out for Early Stakeholder Outreach?

The first step in the rulemaking process is for Ohio EPA to identify that a rule needs to be amended, rescinded or created. In response to Executive Order 2011-01K, Ohio EPA has added an additional step to ensure stakeholders are brought into the rule process as early as possible. This additional request for information will allow for early feedback before the rule language is developed by Ohio EPA.

### How can I provide input?

Ohio EPA is seeking stakeholder input on whether to mirror the federal DoSW language in the Ohio hazardous waste management rules. When preparing your comments, be sure to:

- explain your views as clearly as possible;
- describe any assumptions used;
- provide any technical information and/or data used to support your views;
- explain how you arrived at your estimate for potential burdens, benefits or costs;
- provide specific examples to illustrate your views; and
- offer alternatives.

Written comments will be accepted through close of business **August 13, 2015**. Please submit input to:

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or  
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### What if I have questions?

Please contact Kit Arthur at (614) 644-2932 or Katherine.arthur@epa.ohio.gov.

## DMWM-HW Early Stakeholder Outreach- DoSW Rule

### What changes are being considered?

U.S. EPA has determined that some of the DoSW provisions make the RCRA program less stringent, so those provisions are optional for Ohio to adopt. Ohio EPA is suggesting that all of the federal DoSW changes be adopted into Ohio's hazardous waste management rules. Ohio EPA is seeking stakeholder input regarding the revision and creation of Ohio rules to be consistent with the federal rules published in the following two FRs:

- **Revisions to the Definition of Solid Waste, 73 FR 64667, dated 10/30/2008.** Amended Ohio rules: 3745-50-10, 3745-50-23, 3745-50-26, 3745-50-51, 3745-51-01, 3745-51-02 and 3745-51-04. New Ohio rules (rule numbers to be determined) to address new 40 CFR 260.34, 260.42, 260.43 and 40 CFR Part 261 subpart H (9 rules).
- **Definition of Solid Waste, 80 FR 1694, dated 01/13/2015.** Amended Ohio rules: 3745-50-10, 3745-50-23, 3745-50-24, 3745-50-26, 3745-51-01, 3745-51-02 and 3745-51-04. New Ohio rules (rule numbers to be determined) to address amended 40 CFR 260.34, 260.42, 260.43 and new 40 CFR Part 261 subpart I (8 rules), subpart J (9 rules), subpart M (4 rules), subpart AA (6 rules), subpart BB (15 rules) and subpart CC (9 rules).

A link to these FRs can be found at [www.epa.gov/epawaste/hazard/dsw/rulemaking.htm#2008](http://www.epa.gov/epawaste/hazard/dsw/rulemaking.htm#2008).

Under Ohio's current hazardous waste rules, many hazardous wastes (such as spent solvents and listed hazardous wastes) that are destined for reclamation are subject to the hazardous waste requirements for storage, transportation and recordkeeping. Under the revisions published in the above two FRs, hazardous wastes that are recycled by reclamation could be excluded from being defined as a waste (and thereby not a hazardous waste) when reclaimed under the following relationships and conditions.

#### A. Under the Control of the Generator Exclusion

There are three subcategories included under this exclusion. Each of the exclusions is based on the close business relationship that exists between the generator and the reclaimer.

- Generator (on-site) reclamation
- Intra-company reclamation
- Reclamation under a tolling contract between a contractor and a chemical manufacturer

This exclusion is self-implementing by the generator and reclaimer. If claiming this exclusion, the generator and reclaimer must: notify the overseeing agency; submit a biennial report; ensure no speculative accumulation; maintain a certification statement of eligibility; keep the material contained; maintain an emergency response and preparedness plan; conduct recordkeeping; document compliance with legitimacy criteria.

#### B. Verified Recyclers Exclusion

The verified recyclers exclusion is intended for third-party commercial reclamation facilities and the generators who use them. The reclamation is accomplished, in whole or in part, by a facility/business with either a hazardous waste storage permit or a variance from classification as a waste for materials that are received from off-site for reclamation.

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The conditions that pertain to the generator are self-implementing by the generator, and no prior approval is needed from the agency. The conditions that pertain to the reclaimer are partially self-implementing- the agency will need to issue the facility a hazardous waste permit or variance for the management of the material. If claiming this exemption, the generator and reclaimer must: notify overseeing agency; submit a biennial report; legitimately recycle the material; maintain shipping records; send/receive confirmation of receipt; manage material protectively. The reclaimer must maintain financial assurance and maintain an emergency response and preparedness plan.

### C. Remanufacturing Exclusion

This recycling exclusion involves inter-company transfer for off-site reclamation of certain solvents via “re-manufacturing” (i.e., transfer from one manufacturer to another for reclamation). The exclusion is limited to 18 specified solvents and is only available to the following industrial manufacturing sectors: pharmaceutical, basic organic chemical, plastics and resins, paints and coatings.

The exclusion is self-implementing by the generator and the reclaimer. No prior hazardous waste approval or permit is required from the agency. If claiming this exclusion, the generator and reclaimer must: notify the overseeing agency; submit a biennial report; ensure no speculative accumulation; maintain a certification statement of eligibility; develop a re-manufacturing plan; maintain shipping records; meet the tank and container management standards and the air emission standards (i.e., AABGCC).

In addition to the federal exclusions described above, U.S. EPA also revised the criteria that define when the recycling of hazardous waste is a legitimate operation; this is known as the legitimacy criteria. U.S. EPA is requiring that each of the four criteria be met. The legitimacy criteria are applicable to all forms of recycling activities (i.e., use, reuse and reclamation). The required factors are:

1. The material must provide a useful contribution to the process or product.
2. The resulting product must be of value and wanted for use in commerce.
3. The material is managed as a valued commodity.
4. The presence of toxic constituents contained in the recycled product is comparable to an analogous product made from virgin inputs or it can be demonstrated that the product poses low risk to human health and the environment.

### **Who will be regulated by these rules?**

Anyone currently regulated by the hazardous waste management rules potentially will be regulated by the rules summarized in this fact sheet.

DMWM estimates that in Ohio, approximately 300 large quantity generators and permitted facilities will be eligible to use the new exclusions. DMWM cannot estimate how many small quantity generators and conditionally exempt generators might be able to use the new exclusions.

The new and amended provisions predominately apply to the reclamation of hazardous wastes. Under these provisions, hazardous wastes that are recycled by reclamation would then be excluded from being defined as a waste (and thereby they would not be a hazardous waste and would no longer subject to the existing hazardous waste rules) when reclaimed under specific conditions.

## DMWM-HW Early Stakeholder Outreach- DoSW Rule

### What is the rulemaking schedule?

This early stakeholder outreach will provide stakeholders 90 days to consider the federal DoSW Rule and provide input to Ohio EPA. Ohio EPA will consider all the comments received and will prepare a package of draft rules to be reviewed by interested parties prior to the rules' submittal to the Joint Committee on Agency Rule Review as proposed rules.

### What input is Ohio EPA seeking?

The following questions may help guide you as you develop your comments.

- Is the general regulatory framework proposed the most appropriate? Should Ohio EPA consider any alternative framework?
- What options are available for improving an identified concept?
- Are there considerations Ohio EPA should take into account when developing a specific concept?
- Is there any information or data Ohio EPA should be aware of when developing program concepts or rule language?

Ohio EPA would especially like to hear information regarding the following from stakeholders who may be impacted by the new program elements.

- Would this regulatory program have a positive impact on your business? Please explain how.
- Would this regulatory program have an adverse impact on your business? If so, please identify the nature of the adverse impact (for example, license fees, fines, employer time for compliance).