Title 128 - Department of Environmental Quality

Chapter 2 - DEFINITION OF SOLID WASTE AND HAZARDOUS WASTE

001 Purpose and scope. This Chapter and Chapter 3 identify those solid wastes which are subject to regulation as hazardous waste under this Title:

001.01 Section 003 of this Chapter defines the term "solid waste."

001.02 Sections 004 through 007 of this Chapter define the term "hazardous waste."

001.03 Sections 008 through 016 of this Chapter identify those wastes which are excluded from regulation under this Title.

001.04 Chapter 3, 001 through 004 set forth the criteria used by the Council to identify characteristics of hazardous waste and to list particular hazardous wastes.

001.05 Chapter 3, 005 through 010 identify characteristics of hazardous wastes.

001.06 Chapter 3, 011 through 016 list particular hazardous wastes.

001.07 Chapter 25 identifies universal wastes and the standards for universal waste management.

002 For the purposes of defining solid waste pursuant to Section 003 of this Chapter and Chapter 7, 001 through 006:

002.01 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.

002.02 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.

002.03 A material is "reclaimed" if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead from spent batteries and regeneration of spent solvents. In addition, for purposes of Sections 008.25 and 008.26 of this Chapter, smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the

same requirements as those specified for metals recovery from hazardous waste found in 40 CFR 266.100(d)(1) through (3), as adopted and incorporated by reference in Chapter 7, Section 008.01C of this Title, and if the residuals meet the requirements specified in 40 CFR 266.112, as adopted and incorporated by reference in Chapter 7, Section 008.03 of this Title.

002.04 A material is "used or reused" if it is either:

002.04A Employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process.) However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal containing secondary materials); or

002.04B Employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

002.05 "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.

002.06 A material is "recycled" if it is used, reused, or reclaimed.

002.07 A material is "accumulated speculatively" if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that -- during the calendar year (commencing on January 1) -- the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulations under Section 010 of this Chapter are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) However, materials are no longer in this category once they are removed from accumulation for recycling.

002.08 “Excluded scrap metal” is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

002.09 “Processed scrap metal” is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (Section 008.15)).

002.10 “Home scrap metal” is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

002.11 “Prompt scrap metal” is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

003 Definition of solid waste.

003.01 A solid waste is any discarded material that is not excluded by Section 008 of this Chapter or that is not excluded by variance granted under Chapter 5, 001.

003.02 A discarded material is any material which is:

003.02A Abandoned, by being:

003.02A1 Disposed of; or

003.02A2 Burned or incinerated; or

003.02A3 Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

003.02A4 Sham recycled, as described in Section 003.07 of this Chapter.

003.02B Recycled, as explained in Section 003.03 of this Chapter; or

003.02C Considered inherently waste-like, as explained in Section 003.04 of this Chapter.

003.03 Materials are solid wastes if they are recycled - or accumulated, stored, or treated before recycling - as specified in Sections 003.03A through 003.03D of this Chapter.

003.03A Used in a manner constituting disposal. Materials noted with a "*" in Column 1 of Table 1 of this Title are solid wastes when they are:

003.03A1 Applied to or placed on the land in a manner that constitutes disposal; or

003.03A2 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)

003.03A3 However, commercial chemical products listed in Chapter 3, 015 and 016 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

003.03B Burning for energy recovery. Materials noted with a "*" in Column 2 of Table 1 of this Title are solid wastes when they are:

003.03B1 Burned to recover energy; or,

003.03B2 Used to produce a fuel or are otherwise contained in fuels (in which case the fuel itself remains a solid waste).

003.03B3 However, commercial chemical products listed in Chapter 3, 015 and 016 are not solid wastes if they are themselves fuels.

003.03C Reclaimed. Materials noted with a "……." in Column 3 of Table 1 of this Title are not solid wastes when reclaimed. Materials noted with a "*" in Column 3 of Table 1 of this Title are solid wastes when reclaimed unless they meet the requirements of Sections 008.25, 008.26, or 008.27.

003.03D Accumulated speculatively. Materials noted with a "*" in Column 4 of Table 1 of this Title are solid wastes when accumulated speculatively.

TABLE 1

	COLUMN 1 Use constituting disposal (003.03A)	**COLUMN 2 Energy recovery/ fuel (003.03B)**	**COLUMN 3 Reclamation (003.03C), except as provided in Sections 008.25, 008.26, or 008.27**	**COLUMN 4 Speculative accumulation (003.03D)**
Spent Materials	*	*	*	*
Sludges (listed in Chapter 3, 013 or 014)	*	*	*	*
Sludges exhibiting a characteristic of hazardous waste	*	*	.....	*
By-products (listed in Chapter 3, 013 or 014)	*	*	*	*
By-products exhibiting a characteristic of hazardous waste	*	*	.....	*
Commercial chemical products listed in Chapter 3, 015 or 016)	*	*	.....	.....
Scrap metal other than excluded scrap metal (see Section 002.08 of this Chapter)	*	*	*	*

003.04 Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

003.04A Hazardous Waste Nos. F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028 as listed in Chapter 3, 013.

003.04B Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste as defined in Chapter 3, 005 through 010, or are listed hazardous waste as defined in Chapter 3, 011 through 018 except for brominated material that meets the following criteria:

003.04B1 The material must contain a bromine concentration of at least 45%; and

003.04B2 The material must contain less than a total of 1% of toxic organic compounds listed in Appendix I of Title 128; and

003.04B3 The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

003.04C The Council will use the following criteria to add wastes to that list:

003.04C1 The materials are ordinarily disposed of, burned, or incinerated; or the materials contain toxic constituents listed in Appendix I 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

003.04C2 The material may pose a substantial hazard to human health and the environment when recycled.

003.05 Materials that are not solid waste when recycled.

003.05A Materials are not solid wastes when they can be shown to be recycled by being:

003.05A1 Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

003.05A2 Used or reused as effective substitutes for commercial products; or

003.05A3 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 placement on the land.

003.05B The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in Section 003.05A of this Chapter).

003.05B1 Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

003.05B2 Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

003.05B3 Materials accumulated speculatively; or

003.05B4 Materials listed in Sections 003.04A and 003.04B of this Chapter.

003.05C Material removed from a container or other device used to store a substance which was manufactured or formulated for commercial or manufacturing use, provided the recycled material is used for the same purpose as the substance being stored.

003.06 Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce these regulations 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.

003.07 Sham recycling. A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in Chapter 5, Section 009.

004 Solid waste, as defined in Section 003 of this Chapter is a hazardous waste if:

004.01 It is not excluded from regulation as a hazardous waste under Section 009 of this Chapter; and

004.02 It meets any of the following:

004.02A It exhibits any of the characteristics of hazardous waste identified in Chapter 3, 005 through 010. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under Section 009.05 of this Chapter and any other solid waste exhibiting a characteristic of hazardous waste under Chapter 3, 005 through 010 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in Table 3 of Chapter 3, 010 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the

maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

004.02B It is listed in Chapter 3, 013 through 018 and has not been excluded from Chapters 3, 013 through 018 under Chapter 6, 001 and 003.

004.02C It is a mixture of solid waste and one or more hazardous wastes listed in Chapter 3, 013 through 018 and has not been excluded from 004.02 of this Section under Chapter 6, 001 and 003, 007.03 of this Chapter, or 007.04 of this Chapter; however, the following mixtures of solid wastes and hazardous wastes listed in Chapter 3, 013 through 018 are not hazardous wastes (except by application of Section 004.02A or 004.02B of this Chapter) if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and;

004.02C1 One or more of the following solvents listed in Chapter 3, 013 - carbon tetrachloride, tetrachloroethylene, trichloroethylene -- Provided, That the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million; or

004.02C2 One or more of the following spent solvents listed in Chapter 3, 013 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents-provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million; or

004.02C3 One of the following wastes listed in Chapter 3, 014, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation-heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste No. K050), crude oil storage tank sediment from petroleum refining operations (EPA Hazardous Waste No. K169), clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations(EPA Hazardous Waste No. K170), spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and spent hydrorefining catalyst (EPA Hazardous Waste No. K172); or

004.02C4 A discarded commercial chemical product, or chemical intermediate listed in Chapter 3, 015 through 016, arising from de minimis losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this section, "de minimis" losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

004.02C5 Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Chapter 3, 013 through 018, of this part, Provided, That the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

004.02C6 One or more of the following wastes listed in Chapter 3, 014 - wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157)-Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

004.02C7 Wastewaters derived from the treatment of one or more of the following wastes listed in Chapter 3, 014 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156).-Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

005 A solid waste which is not excluded from regulation under Section 004 of this Chapter becomes a hazardous waste when any of the following events occur:

005.01 In the case of a waste listed in Chapter 3, 013 through 018 when the waste first meets the listing description specified in Chapter 3, 011 through 018.

005.02 In the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in Chapter 3, 013 through 018 is first added to the solid waste.

005.03 In the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in Chapter 3, 005 through 010.

006 Unless and until it meets the criteria of Section 007 of this Chapter:

006.01 A hazardous waste will remain a hazardous waste.

006.02 Except as otherwise provided in Section 006.03, 007.03 or 007.04 of this Chapter, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust or leachate (but not including precipitation runoff) is a hazardous waste. (However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

006.03 The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

006.03A Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC codes 331 and 332).

006.03B Waste from burning any of the materials exempted from regulation by Chapter 7, 002.04 and 002.06 through ~~002.08~~ 002.07.

006.03C Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in Chapter 1, 069.06, 069.07, and 069.13), that are disposed in subtitle D or state equivalent units, provided that these residues meet the generic exclusion levels identified in Table 2 of this Title for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis

plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE 2

Constituent	Maximum for any single composite sample-TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70
Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

006.03C1 A one-time notification and certification must be placed in the facility's files and sent to the EPA region or authorized state for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D

or state equivalent units. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the subtitle D or state equivalent unit receiving the waste changes. However, the generator or treater need only notify the EPA region or an authorized state on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the subtitle D or state equivalent unit receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

006.03D Biological treatment sludge from the treatment of one of the following wastes listed in Chapter 3, 014 - Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (K156) and wastewaters from the production of carbamates and carbamoyl oximes (K157).

006.03E Catalyst inert support media separated from one of the following wastes listed in Chapter 3, 014 – Spent hydrotreating catalyst (EPA Hazardous Waste No. K171), and Spent hydrorefining catalyst (EPA Hazardous Waste No. K172).

007 Exclusions.

007.01 Any solid waste described in Section 006 is not a hazardous waste if it meets the following criteria:

007.01A In the case of solid waste, it does not exhibit any of the characteristics identified in Chapter 3, 005 through 010.(However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of Chapter 20, even if they no longer exhibit a characteristic at the point of land disposal.)

007.01B In the case of a waste listed in Chapter 3, 011 through 018, contains a waste listed in Chapter 3, 013 through 018 or is derived from a waste listed in Chapter 3, 013 through 018, it also has been excluded from Section 006 of this Chapter under Chapter 6, 001 and 003.

007.02 Notwithstanding Sections 004 through 007.01B of this Chapter and provided the debris as defined in Chapter 20 does not exhibit a characteristic identified at Chapter 3, 005 through 010, the following materials are not subject to regulation under this Title:

007.02A Hazardous debris as defined in Chapter 20 that has been treated using one of the required extraction or destruction technologies specified in Chapter 20, 011, Table 11; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

007.02B Debris as defined in Chapter 20 that the Director, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

007.03 A hazardous waste that is listed in Chapter 3, 013 through 018 of this Title solely because it exhibits one or more characteristics of ignitability as defined under Chapter 3, 007, corrosivity as defined under Chapter 3, 008, or reactivity as defined under Chapter 3, 009 is not a hazardous waste, if the waste no longer exhibits any characteristic of hazazardous waste identified in Chapter 3, 006 through 010 of this Title.

007.03A The exclusion described in 007.03 of this Section also pertains to:

007.03A1 Any mixture of a solid waste and a hazardous waste listed in Chapter 3, 013 through 018 of this Title solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under 004.02C of this Chapter; and

007.03A2 Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in Chapter 3, 006 through 010 of this Title solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under 006.02 of this Chapter.

007.03B Wastes excluded under this section are subject to Chapter 20 of this Title (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

007.03C Any mixture of a solid waste excluded from regulation under Section 009.05 of this chapter, and a hazardous waste listed in Chapter 3, Sections 011 through 018, solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under Section 004.02C of this chapter, is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in Chapter 3, Sections 005 through 010, for which the hazardous waste listed in Chapter 3, Sections 011 through 018, was listed.

007.04 Hazardous waste containing radioactive waste is no longer a hazardous waste when it meets the eligibility criteria and conditions of 40 CFR Part 266, Subpart N ("eligible radioactive mixed waste") as incorporated by reference in Chapter 7, 013.

007.04A The exemption described in 007.04 of this Section also pertains to:

007.04A1 Any mixture of a solid waste and an eligible radioactive mixed waste; and

007.04A2 Any solid waste generated from treating, storing, or disposing of an eligible radioactive mixed waste.

007.04B Waste exempted under this section must meet the eligibility criteria and specified conditions in 40 CFR 266.225 and 40 CFR 266.230 (for storage and treatment) and in 40 CFR 266.310 and 40 CFR 266.315 (for transportation and disposal) as incorporated by reference in Chapter 7, 013. Waste that fails to satisfy these eligibility criteria and conditions is regulated as hazardous waste.

008 Exclusions. The following materials are not solid wastes for the purposes of this Chapter, Chapter 3, Chapter 7, 001 through 006 and Chapter 6:

008.01 Any sewage which is exclusively domestic and any mixture of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

008.02 Industrial wastewater discharges that are point source discharges subject to regulation under Neb. Rev. Stat. §81-1505(3), (4), and (11).

008.03 Irrigation return flows.

008.04 Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et. seq. unless the material is mixed with hazardous waste as defined in Chapter 3, 005 through 016.

008.05 Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

008.06 Pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in Section 002 of this Chapter.

008.07 Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in Section 002 of this Chapter.

008.08 Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

008.08A Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

008.08B Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

008.08C The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

008.08D The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

008.09 Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

008.09A Wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

008.09B Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in Sections 008.09 and 008.09A of this Chapter, so long as they meet all of the following conditions:

008.09B1 The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose;

008.09B2 Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

008.09B3 Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

008.09B4 Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in Chapter 22, Section 018 of this Title, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

008.09B5 Prior to operating pursuant to this exclusion, the plant owner or operator submits to the State Director a one-time notification stating that the plant

intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language:

> I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation.

The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the State Director for reinstatement. The State Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

008.10 EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in section Chapter 3, 010 when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

008.11 Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

008.12 Oil-bearing hazardous secondary materials (i.e., sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are inserted into the petroleum refining process (SIC code 2911-including but not limited to, distillation, catalytic cracking, fractionation, or thermal cracking units (i.e., cokers)) unless material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this section, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in Section 008.12A of this Chapter, oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry (i.e., from sources other than petroleum refineries) are not excluded under this section. Residuals generated from processing or recycling materials excluded under Section 008.012, where such materials as generated would have otherwise met a listing under Chapter 3, 011 though 018, are designated as F037 listed wastes when disposed of or intended for disposal.

008.12A Recovered oil that is recycled in the same manner and with the same conditions as described in Section 008.12. Recovered oil is oil that has been reclaimed from secondary materials (including wastewater) generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation including thereto(SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5172.) Recovered oil does not include oil-bearing hazardous wastes listed in Chapter 3, 011 through 018; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in Chapter 1.

008.13 When used as a fuel, coke and coal tar from the iron and steel industry that contains or is produced from decanter tank tar sludge, Hazardous Waste K087. The process of producing coke and coal tar from such decanter tank tar sludge in a coke oven is likewise excluded from regulation.

008.14 Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being recycled.

008.15 Shredded circuit boards being recycled provided that they are:

008.15A Stored in containers sufficient to prevent a release to the environment prior to recovery; and

008.15B Free of mercury switches, mercury relays and nickel-cadmium batteries and lithium batteries.

008.16 Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e), as incorporated by reference in Title 129 – Nebraska Air Regulations, Chapter 28. The exemption applies only to combustion at the mill generating the condensates.

008.17 Comparable fuels or comparable syngas fuels (i.e., comparable/syngas fuels) that meet the requirements of Chapter 3, Section 018.

008.18 Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

008.18A The oil is hazardous only because it exhibits the characteristic of ignitability (as defined in Chapter 3, 007) and/or toxicity for benzene (Chapter 3, 010, waste code D018); and

008.18B The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the

petroleum refining process. An “associated organic chemical manufacturing facility” is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. “Petrochemical recovered oil” is oil that has been reclaimed from secondary materials (i.e., sludges, by-products, or spent materials, including watewater) from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

008.19 Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or napthenic acid unless the material is placed on the land, or accumulated speculatively as defined in Section 002.07.

008.20 Hazardous secondary materials used to make zinc fertilizers, provided that the following conditions specified are satisfied:

008.20A Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in Section 002.07 of this chapter.

008.20B Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

008.20B1 Submit a one-time notice to the State Director in whose jurisdiction the exclusion is being claimed, which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Section 008.20 of this chapter.

008.20B2 Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

008.20B2(a) Have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation; and

008.20B2(b) Provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

008.20B2(c) Prevent run-on into the containment system.

008.20B3 With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of Section 008.20 of this chapter.

008.20B4 Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

008.20B4(1) Name of the transporter and date of the shipment;

008.20B4(2) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

008.20B4(3) Type and quantity of excluded secondary material in each shipment.

008.20C Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

008.20C1 Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in Section 008.20B2 of this chapter.

008.20C2 Submit a one-time notification to the State Director that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in Section 008.20 of this chapter.

008.20C3 Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

008.20C4 Submit to the State Director an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

008.20D Nothing in this section preempts, overrides or otherwise negates the provision in Chapter 4, Section 002, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

008.20E Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in Section 008.20B1 of this chapter, and that afterward will be used only to store hazardous secondary materials excluded under this section, are not subject to the closure requirements of Chapters 21 and 22.

008.21 Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under Section 008.20 of this chapter, provided that:

008.21A The fertilizers meet the following contaminant limits:

008.21A1 For metal contaminants:

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc (ppm)
Arsenic……..	0.3
Cadmium……	1.4
Chromium……..	0.6
Lead……	2.8
Mercury……..	0.3

008.21A2 For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

008.21B The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the

sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

008.21C The manufacturer maintains for no less than three years records of all sampling and analysis performed for purposes of determining compliance with the requirements of Section 008.21B of this chapter. Such records must at a minimum include:

008.21C1 The dates and times product samples were taken, and the dates the samples were analyzed;

008.21C2 The names and qualifications of the person(s) taking the samples;

008.21C3 A description of the methods and equipment used to take the samples;

008.21C4 The name and address of the laboratory facility at which analyses of the samples were performed;

008.21C5 A description of the analytical methods used, including any cleanup and sample preparation methods; and

008.21C6 All laboratory analytical results used to determine compliance with the contaminant limits specified in Section 008.21 of this chapter.

008.22 Used cathode ray tubes (CRTs)

008.22A Used, intact CRTs as defined in Chapter 1 of this Title are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in Chapter 2, Section 002.07, by CRT collectors or glass processors.

008.22B Used, intact CRTs as defined in Chapter 1 of this Title are not solid wastes when exported for recycling provided that they meet the requirements of Chapter 3, Section 020.

008.22C Used, broken CRTs as defined in Chapter 1 of this Title are not solid wastes provided that they meet the requirements of Chapter 3, Section 019.

008.22D Glass removed from CRTs is not a solid waste provided that it meets the requirements of Chapter 3, Section 019.03.

008.23 Slag, a product that is a result of the steel manufacturing process and is managed as an item of value in a controlled manner and not as a discarded material.

008.24 Solvent-contaminated wipes that are sent for cleaning and reuse, provided they meet one or more of the eligibility criteria in 40 CFR 260.10 and all of the specified conditions in 40 CFR 261.4(a)(26), revised as of July 1, 2014, which is adopted and incorporated by this reference.

008.25 Hazardous secondary material generated and legitimately reclaimed within the United States or its territories and under the control of the generator is not a solid waste, provided that the conditions and requirements in 40 CFR Part 261.4(a)(23)(i) and (ii), issued at 80 Fed. Reg. 1774 (January 13, 2015) which are adopted and incorporated by this reference, are met.

008.26 Hazardous secondary material that is generated and then transferred to a verified reclamation facility for the purpose of reclamation is not a solid waste, provided that the conditions and requirements in 40 CFR Part 261.4(a)(24)(i) through (vii), issued at 80 Fed. Reg. 1775 (January 13, 2015) which are adopted and incorporated by this reference, are met.

008.27 Hazardous secondary material that is generated and then transferred to another person for the purpose of remanufacturing is not a solid waste, provided that the conditions and requirements in 40 CFR Part 261.4(a)(27)(i) through (vi), issued at 80 Fed. Reg. 1776 (January 13, 2015) which are adopted and incorporated by this reference, are met.

009 The following solid wastes are not hazardous wastes:

009.01 Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). A facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of these regulations if such facility:

009.01A Receives and burns only:

009.01A1 Household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

009.01A2 Solid waste from commercial or industrial sources that does not contain hazardous waste; and

009.01B Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate

notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

009.02 Solid wastes generated by any of the following and which are returned to the soils as fertilizers:

009.02A The growing and harvesting of agricultural crops.

009.02B The raising of animals, including animal manures.

009.03 Fly ash waste, bottom ash waste, slag waste and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by 40 CFR 266.112, as incorporated by reference in Chapter 7, 008.03, for facilities that burn or process hazardous waste.

009.04 Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

009.05 Solid waste from the extraction, beneficiation and processing of ores and minerals (including coal, phosphate rock and overburden from the mining of uranium ore), as described in 40 CFR 261.4(b)(7), which are hereby adopted and incorporated herein by reference.

009.06 Cement kiln dust waste, except as provided by 40 CFR 266.112, as incorporated by reference in Chapter 7, 008.03 for facilities that burn or process hazardous waste.

009.07 Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for hazardous waste codes D004 through D017 and which is not a hazardous waste for any other reason, if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

009.08 Mining overburden returned to the mine site.

009.09 Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in Chapter 3, 013 through 018 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

009.09A The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

009.09B The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

009.09C The waste is typically and frequently managed in non-oxidizing environments.

009.09D Specific wastes which meet the conditions of Sections 009.09A through 009.09C of this Chapter (so long as they do not fail the test for Toxicity Characteristic for any other constituent, and do not fail the test for any other characteristics) are:

009.09D1 Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

009.09D2 Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

009.09D3 Buffing dust generated by the following subcategories of the leather tanning and finishing industry; hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

009.09D4 Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

009.09D5 Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

009.09D6 Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: Hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

009.09D7 Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

009.09D8 Wastewater treatment sludges from the production of titanium dioxide pigment using chromium-bearing ores by the chloride process.

009.10 Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (Hazardous waste codes D018 through D043, only) and are subject to the corrective action regulations under 40 CFR Part 280 (RCRA Subtitle I - regulated underground storage tanks).

009.11 Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

009.12 Non-terne plated used oil filters that are not mixed with wastes listed in Chapter 3, 011 through 016 if these filters have been gravity hot-drained using one of the following methods:

009.12A Puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

009.12B Hot-draining and crushing;

009.12C Dismantling and hot-draining; or

009.12D Any other equivalent hot-draining method which will remove used oil.

009.12E "Hot-drained" means that the oil filter is drained near engine operating temperature and above room temperature.

009.13 Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

009.13A The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

009.13B The solid wastes described in Section 009.13A were disposed prior to the effective date of this listing;

009.13C The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

009.13D Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

009.13E As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this section after the emergency ends.

009.14 Solvent-contaminated wipes, except for wipes that are hazardous waste due to the presence of trichloroethylene, that are sent for disposal, provided they meet one or more of the eligibility criteria in 40 CFR 260.10 and all of the specified conditions in 40 CFR 261.4(b)(18), revised as of July 1, 2014, which is adopted and incorporated by this reference.

010 The following hazardous wastes are exempted from certain regulations:

010.01 A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline or in a manufacturing process unit or an associated non-waste-treatment manufacturing unit is not subject to this Title until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

011 Samples.

011.01 Except as provided in Section 011.02 of this Chapter, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of this Title when:

011.01A The sample is being transported to a laboratory for the purpose of testing; or

011.01B The sample is being transported to the sample collector after testing; or

011.01C The sample is being stored by the sample collector before transport to a laboratory for testing; or

011.01D The sample is being stored in a laboratory before testing; or

011.01E The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

011.01F The sample is being stored temporarily in a laboratory after testing for a specific purpose (for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

011.02 In order to qualify for the exemption in Section 011.01A and 011.01B of this Chapter, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

011.02A Comply with DOT, U. S. Postal Service (USPS), or any other applicable shipping requirements; or

011.02B Comply with the following requirements if the sample collector determines that DOT, USPS, and other shipping requirements do not apply to the shipment of the sample:

011.02B1 Assure that the following information accompanies the sample:

011.02B1(a) The sample collector's name, mailing address, and telephone number;

011.02B1(b) The laboratory's name, mailing address and telephone number;

011.02B1(c) The quantity of the sample;

011.02B1(d) The date of the shipment; and

011.02B1(e) A description of the sample.

011.02B2 Package the sample so that it does not leak, spill, or vaporize from its package.

011.03 This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in Section 011.01 of this Chapter.

012 Treatability study samples.

012.01 If the conditions and requirements of Section 012.02 of this Chapter, and of 40 CFR 261.4(e)(2) which are hereby adopted and incorporated herein by reference, are met, persons who generate or collect samples for the purpose of conducting treatability

studies as defined in Chapter 1, are not subject to the requirements of this Title, nor are such samples included in the quantity determinations of Chapters 8 through 10, when:

012.01A The sample is being collected and prepared for transportation by the generator or sample collector; or

012.01B The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

012.01C The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

012.02 The generator must report the information required under 40 CFR 261.4(e)(2)(v)(C), as incorporated by reference in Section 012.01 of this Chapter, in its biennial report.

012.03 The Director may grant requests, on a case-by-case basis, for quantity limits in excess of those specified in 40 CFR 261.4(e)(2), as incorporated by reference in Section 012.01 of this Chapter, in accordance with the conditions and requirements of 40 CFR 261.4(e)(3) which are hereby adopted and incorporated herein by reference.

013 Samples undergoing treatability studies at laboratories and testing facilities.

013.01 Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to the requirements of this Title or the Federal Act) are not subject to any requirement of this Title provided that Sections 013.02 and 013.03 of this Chapter are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to Section 013.02 and 013.03 of this Chapter. Where a group of MTUs are located at the same site, the limitations specified in Sections 013.02 and 013.03 of this Chapter apply to the entire group of MTUs collectively as if the group were one MTU.

013.02 The facility must comply with the requirements of 40 CFR 261.4(f)(1) through (9) and (11) which are hereby adopted and incorporated herein by reference.

013.03 The facility must determine whether any unused sample or residues generated by the treatability study are hazardous waste under Sections 004 through 007 of this Chapter and, if so, are subject to the requirements of this Title, unless the residues and unused samples are returned to the sample originator under the exemption of Section 012 of this Chapter.

014 Dredged material that is not a hazardous waste.

014.01 Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section

103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this section (014), the following definitions apply:

014.01A The term “dredged material” has the same meaning as defined in 40 CFR 232.2.

014.01B The term “permit” means:

014.01B1 A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

014.01B2 A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

014.01B3 In the case of Corps civil works projects, the administrative equivalent of the permits referred to in 014.01B1 and 014.01B2 of this section, as provided for in Corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).

015 Residues of hazardous waste in empty containers.

015.01 Any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in Sections 015.03 through 015.05 of this Chapter, is not subject to this Title.

015.02 Any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty, as defined in Sections 015.03 through 015.05 of this Chapter, is subject to this Title.

015.03 A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in Chapter 3, 012 or 016 is empty if:

015.03A All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

015.03B No more than 2.5 centimeters (one inch) of residue remain on the bottom of the container or inner liner; or

015.03C No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size; or

015.03D No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

015.04 A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

015.05 A container or an inner liner removed from a container that has held an acute hazardous waste listed in Chapter 3, 013 through 016 is empty if:

015.05A The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

015.05B The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

015.05C In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

016 The disposal of PCB-containing dielectric fluid and electrical equipment containing such fluid authorized for use and regulated under 40 CFR Part 761 and that are hazardous only because they fail the test for the Toxicity Characteristic (Hazardous waste codes D018 through D043, only) are exempt from this Title.

Enabling Legislation: Neb. Rev. Stat. §81-1505(13)

Legal Citation: Title 128, Chapter 2, Nebraska Department of Environmental Quality

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