

WAC 173-303-017 Recycling processes involving solid waste. (1)

The purpose of this section is to identify those materials that are and are not solid wastes when recycled. Certain materials, as described in subsection (2) of this section, would not typically be considered to involve waste management and are exempt from the requirements of this chapter. All recycling processes not exempted by subsection (2) of this section are subject to the recycling requirements of WAC 173-303-120.

(2) General categories of materials that are not solid waste when recycled.

(a) Except as provided in subsection (3) of this section, 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 placement on the land.

(b) Except as provided in subsection (3) of this section, the department has determined that the following materials when used as described are not solid wastes:

(i) Pulping liquors (e.g., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process;

(ii) Spent pickle liquor which is reused in wastewater treatment at a facility holding a national pollutant discharge elimination system (NPDES) permit, or which is being accumulated, stored, or treated before such reuse;

(iii) Spent sulfuric acid used to produce virgin sulfuric acid provided it is not accumulated speculatively as defined in WAC 173-303-016 (5) (d) (ii).

(3) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (as described in subsection (2) (a) of this section):

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

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

(c) Materials accumulated speculatively as defined in WAC 173-303-016 (5) (d) (ii); or

(d) Materials listed in WAC 173-303-016(6); or

(e) Any materials that the department determines are being accumulated, used, reused or handled in a manner that poses a threat to public health or the environment.

(4) Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation. Respondents in actions to enforce regulations implementing chapter 70.105 RCW 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 ma-

terial 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.

(5) Variances from classification as a solid waste.

(a) In accordance with the standards and criteria in (b) of this subsection and the procedures in subsection (7) of this section, the department may determine on a case-by-case basis that the following recycled materials are not solid wastes:

(i) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in WAC 173-303-016 (5)(d)(ii));

(ii) Materials that are reclaimed and then reused within the original production process in which they were generated;

(iii) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered;

(iv) Materials that are reclaimed in a continuous process;

(v) Materials that are indistinguishable in all relevant aspects from a product or intermediate; and

(vi) State-only dangerous materials (not regulated as hazardous wastes (defined in WAC 173-303-040) by EPA) which serve as an effective substitute for a commercial product or raw material.

(b) Standards and criteria for variances from classification as a solid waste.

(i) The department may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The department's decision will be based on the following criteria:

(A) The manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(B) The reason that the applicant has accumulated the material for one or more years without recycling seventy-five percent of the volume accumulated at the beginning of the year;

(C) The quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(D) The extent to which the material is handled to minimize loss;

(E) Other relevant factors.

(ii) The department may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(A) How economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(B) The extent to which the material is handled before reclamation to minimize loss;

(C) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(D) The location of the reclamation operation in relation to the production process;

(E) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(F) Whether the person who generates the material also reclaims it;

(G) Other relevant factors.

(iii) The department may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially reclaimed hazardous secondary material for which the variance is sought is commodity-like will be based on whether the material is legitimately recycled as specified in WAC 173-303-019 and on whether all of the following decision criteria are satisfied:

(A) Whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the dangerous waste;

(B) Whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(C) Whether the partially reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(D) Whether there is a market for the partially reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading);

(E) Whether the partially reclaimed material is handled to minimize loss; and

(F) Other relevant factors.

(iv) The department may grant requests for a variance from classifying as a solid waste those materials that serve as an effective substitute for a commercial product or raw material, when such material is not regulated as hazardous waste (defined in WAC 173-303-040) by EPA, if the materials are recycled in a manner such that they more closely resemble products or raw materials rather than wastes. This determination will be based on the following factors:

(A) The effectiveness of the material for the claimed use;

(B) The degree to which the material is like an analogous raw material or product;

(C) The extent to which the material is handled to minimize loss or escape to the environment;

(D) The extent to which an end market for the reclaimed material is guaranteed;

(E) The time period between generating the material and its recycling;

(F) Other factors as appropriate.

(6) Variance to be classified as a boiler.

In accordance with the standards and criteria in WAC 173-303-040 (definition of "boiler"), and the procedures in subsection (7) of this

section, the department may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in WAC 173-303-040, after considering the following criteria:

(a) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(b) The extent to which the combustion chamber and energy recovery equipment are of integral design; and

(c) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(d) The extent to which exported energy is utilized; and

(e) The extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

(f) Other factors, as appropriate.

(7) Procedures for variances from classification as a solid waste or to be classified as a boiler.

The department will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers:

(a) The applicant must apply to the department for the variance. The application must address the relevant criteria contained in subsection (5)(b) or (6) of this section, as applicable.

(b) The department will evaluate the application and issue a draft public notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the recycler is located. The department will accept comment on the tentative decision for thirty days, and may also hold a public hearing upon request or at its discretion. The department will issue a final decision after receipt of comments and after the hearing (if any).

(c) In the event of a change in circumstances that affect how a material meets the relevant criteria contained in subsection (5) or (6) of this section, as applicable, upon which a variance has been based, the applicant must send a description of the change in circumstances to the department. The department may issue a determination that the material continues to meet the relevant criteria of the variance or may require the facility to reapply for the variance.

(d) Variances shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, facilities must reapply for a variance. If a facility reapplies for a variance within six months, the facility may continue to operate under an expired variance until receiving a decision on their reapplication from the department.

(e) Facilities receiving a variance must provide notification as required by subsection (8) of this section.

(8) Notification requirements for materials managed under variances from classification as a solid waste.

(a) Facilities managing hazardous secondary materials under WAC 173-303-017(5) must send a notification prior to operating under the regulatory provision and by March 1st of each even-numbered year thereafter to the department using ecology's site identification form that includes the following information:

- (i) The name, address, and EPA/state identification number (if applicable) of the facility;
 - (ii) The name and telephone number of a contact person;
 - (iii) The NAICS code of the facility;
 - (iv) The regulation under which the hazardous secondary materials will be managed;
 - (v) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
 - (vi) A list of hazardous secondary materials that will be managed according to the regulation (reported as the dangerous waste numbers that would apply if the hazardous secondary materials were managed as dangerous wastes);
 - (vii) The quantity of each hazardous secondary material to be managed annually; and
 - (viii) The certification (included in ecology's site identification form) signed and dated by an authorized representative of the facility.
- (b) If a facility managing hazardous secondary materials under this section has submitted a notification, but then subsequently stops managing those materials in accordance with the regulation(s) listed above, the facility must notify the department within thirty days using ecology's site identification form. For purposes of this section, a facility has stopped managing hazardous secondary materials under this section if the facility no longer generates, manages, or reclaims materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials under this section for at least one year.

[Statutory Authority: Chapters 70.105, 70.105D RCW and RCRA. WSR 19-04-038 (Order 16-03), § 173-303-017, filed 1/28/19, effective 4/28/19. Statutory Authority: Chapters 70.105 and 70.105D RCW. WSR 09-14-105 (Order 07-12), § 173-303-017, filed 6/30/09, effective 7/31/09; WSR 98-03-018 (Order 97-03), § 173-303-017, filed 1/12/98, effective 2/12/98; WSR 95-22-008 (Order 94-30), § 173-303-017, filed 10/19/95, effective 11/19/95. Statutory Authority: Chapters 70.105 and 70.105D RCW, 40 C.F.R. Part 271.3 and RCRA § 3006 (42 U.S.C. 3251). WSR 91-07-005 (Order 90-42), § 173-303-017, filed 3/7/91, effective 4/7/91. Statutory Authority: Chapter 70.105 RCW. WSR 87-14-029 (Order DE-87-4), § 173-303-017, filed 6/26/87; WSR 86-12-057 (Order DE-85-10), § 173-303-017, filed 6/3/86; WSR 84-14-031 (Order DE 84-22), § 173-303-017, filed 6/27/84.]