

The Definition of Solid Waste and How the Recently Released Rule on Legitimate Recycling Can Impact Your Business

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Barry Hartman

barry.hartman@klgates.com

1.202.778.9338

Cliff Rothenstein

cliff.rothenstein@klgates.com

1.202.778.9381

ISSUES TO BE ADDRESSED

- A brief background—why are we talking about this at all?
- What do new regulations defining “legitimate” recycling mean for ISRI members?
- How much will it cost me to meet these “new” requirements?

BRIEF ANSWERS

- Latest EPA effort to define what kind of recycling is “legitimate” and, therefore, isn’t regulated under the hazardous waste laws.
- Bad news: The new rule takes the 30 year old EPA policy on what constitutes “legitimate recycling” and turns it into 4 “mandatory” regulations.
- Good news:
 - Little should change for ISRI members.
 - ISRI members don’t have to prove that they are legitimate recyclers before operating, but may have to if inspected.
 - ISRI members need to be prepared to prove legitimacy if asked.

THE “NEW” FOUR QUESTIONS

- Did you **pay** for the scrap materials that you accepted for recycling (are they valuable)?
- Are you **managing** those materials to prevent them from being ‘discarded’?
- Did you **sell** the output of the recycling process?
- Does the output you sold **meet** some commodity **specifications**?

A BRIEF BACKGROUND

- The Federal Resource Conservation and Recovery Act (“RCRA”) regulates the treatment, storage and handling of hazardous waste in the US.
- Existing EPA Rule:
 - Scrap metal coming into a facility would test as hazardous due to metals.
 - Incoming scrap metal is exempt from the definition of solid waste by regulation because it is being recycled.
 - Processed scrap metal/shredded circuit board leaving a facility is excluded from regulation.
- Recycling has to be legitimate—EPA policy described what this means.

A BRIEF BACKGROUND (*cont.*)

- New EPA Rule: The 30 year old policy is now a regulation—must be met to be a legitimate recycler.

- If it is not met (just like if the policy was not met), the activity will be considered disposal of hazardous waste.

WHAT THE NEW RULE MEANS FOR ISRI MEMBERS

- No upfront registration or approval.
- Most ISRI members **will not** need to change the way they operate.
- Be prepared to show agency officials that you are engaged in legitimate recycling.
 - You can answer questions similarly to how you answered questions from officials before.
 - **Now** you must also be able to document your answers.

HOW TO DEMONSTRATE THAT YOU ARE LEGITIMATE

- 2 legitimacy factors related to incoming material:
 - “Factor 1”: Show that what you are bringing in for recycling is actually recycled for valuable products.
 - “Factor 3”: Show that you are handling what is coming in like it is valuable by making sure it is managed so there is no excessive run-off or dust.

HOW TO DEMONSTRATE THAT YOU ARE LEGITIMATE (*cont.*)

- 2 legitimacy factors related to output from recycling:
 - “Factor 2”: Show that you actually did sell the output.
 - “Factor 4”: Show that the output product meets objective commodity specifications.

A BRIEF INTERLUDE.....

- “Factor 1” – applies to incoming material
- “Factor 3” - applies to incoming material
- “Factor 2” – applies to outgoing material
- “Factor 4” – applies to outgoing material

Only the government would do this.....

A BRIEF INTERLUDE.....

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Only the government would do this.....

FACTOR 1: INCOMING MATERIALS MUST BE RECYCLED FOR VALUABLE PRODUCTS

- **Requirements:**
 - Incoming materials must be:
 - *an effective substitute* for a commercial material;
 - *have a valuable constituent* that is obtained from recycling.

- **Practical Considerations:**
 - Most objects with usable scrap metal should qualify as something recycled for valuable products.
 - The whole item does not have to be valuable, but whatever isn't valuable/recycled has to be disposed of properly.

FACTOR 1: INCOMING MATERIALS MUST BE RECYCLED FOR VALUABLE PRODUCTS (*cont.*)

- **Documentation:**

- Maintain copies of invoices, bills of lading, or other shipping records for incoming scrap metal (by weight) so that if needed you can roughly demonstrate that what comes in is all accounted for before it leaves.
- Keep sales receipts showing metal or other recovered material sales.
- Keep records showing what might have ultimately become waste and is discarded.

FACTOR 3: INCOMING MATERIALS MUST BE HANDLED LIKE THEY ARE VALUABLE

- “Contained in” Requirements:
 - You cannot let material “escape into the environment where it cannot be used for production.”
 - *If the incoming material is like some raw material in its function or use, then it should be managed like that raw material.*
 - *Example:* Raw iron ore is a raw material used to make metal. If you use refrigerators to make metal, the refrigerator should be treated like the raw iron ore.
 - *If the incoming scrap material is NOT like a raw material, then it has to be “contained.”*

FACTOR 3: INCOMING MATERIALS MUST BE MANAGED LIKE THEY ARE VALUABLE (*cont.*)

- Application to scrap metal:
 - Scrap metal is a solid material whose hazardous constituents are generally immobile and is unlikely to be carried off by the wind.
 - Scrap metal piles are subject to occasional precipitation run-off.
 - As long as the hazardous secondary material itself is not swept away by the run-off, precipitation run-off would not be a release of such a material.

FACTOR 3: INCOMING MATERIALS MUST BE HANDLED LIKE THEY ARE VALUABLE (*cont.*)

- Practical Considerations:
 - How can you contain scrap metal (like a car)?
 - EPA has said that “managing scrap metal as a valuable commodity can include situations where it is stored on the ground.”

FACTOR 3: INCOMING MATERIALS MUST BE MANAGED LIKE THEY ARE VALUABLE (*cont.*)

- If you do use actual containers:
 - Container must be good condition, with no leaks.
 - Container must be designed to prevent releases to the environment including:
 - Precipitation runoff,
 - Releases to soil and groundwater,
 - Wind-blown dust and fugitive air emissions, and
 - Catastrophic unit failures;
 - Container must be labeled to immediately identify the hazardous secondary materials in the unit.
 - Materials must be compatible.
 - An uncovered pile placed on the ground could be considered “contained” if constituents are generally immobile and the material is unlikely to be carried off by the wind.

FACTOR 3: INCOMING MATERIALS MUST BE HANDLED LIKE THEY ARE VALUABLE (*cont.*)

- Practical Considerations (*cont.*):
 - **Q:** What if there is run-off from the site during rain or snow where the run-off might contain rust?
 - **A:** Occasional precipitation run-off is ok if you have an effective storm water management plan.

 - **Q:** What if dust contains metal from rust and the dust is blown off the materials waiting to be recycled?
 - **A:** Ordinary non-hazardous dust or dirt would not be subject to the contained standard. Use reasonable housekeeping controls to limit dust (and meet any local requirements that address this).

FACTOR 3: INCOMING MATERIALS MUST BE HANDLED LIKE THEY ARE VALUABLE (*cont.*)

- Documentation:

- An effective written storm water management plan that meets local requirements.
- A dust management program.
- Clear housekeeping procedures that show you are preserving this incoming material because it will generate a valuable product.

FACTOR 2: OUTPUT MATERIALS MUST BE SOLD OR BE AN EFFECTIVE SUBSTITUTE FOR ANOTHER MATERIAL

- **Requirements:** Sell or arrange for the recycling of scrap metal to a company that uses it for a manufacturing input or further recycles it.
- **Documentation:**
 - Maintain invoices and receipts from sale of recycling materials.
 - Keep records for 3-6 years.
 - EPA requires other companies handling hazardous waste to maintain certain records for 3 years.
 - EPA must bring an enforcement action for sham recycling within 5 years.
 - IRS requires that records to support a tax filing be kept until the end of the limitations period for that return (typically 3-6 years).

FACTOR 4: OUTPUT MATERIAL MUST MEET INDUSTRY COMMODITY TYPE SPECIFICATIONS

- The metal output from the recycling process meets widely recognized commodity specifications.
- The output is a specialty product and you agree with your purchaser what standards it must meet.

FACTOR 4: OUTPUT MATERIAL MEETS INDUSTRY COMMODITY TYPE SPECIFICATIONS (*cont.*)

- Requirements:
 - EPA does not want recycled materials to contain MORE toxics *than* the raw material that it replaces.
 - To meet this requirement, EPA requires:
 - Testing to determine:
 - Recycling output has no hazardous characteristics that the analogous product does not have; and
 - Concentrations of listed hazardous constituents are comparable to or lower than those in analogous products; or
 - A showing of legitimacy based on one of four other methods, including finding that the recycled product meets recognized commodity standards, if they exist, if there is no analogous product.

FACTOR 4: OUTPUT MATERIAL MUST MEET INDUSTRY COMMODITY TYPE SPECIFICATIONS (*cont.*)

- Requirements (*cont.*):
 - Testing to determine whether scrap metal contains no hazardous characteristics that an analogous product does not have is very expensive and EPA recognizes that it may be unrealistic for scrap metal recyclers.
 - Scrap metal recyclers can meet this factor without testing by showing that:
 - The metal output from the recycling process meets widely recognized commodity specifications; or
 - The output is a specialty product and you agree with your purchaser what standards it must meet.

FACTOR 4: OUTPUT MATERIAL MUST MEET INDUSTRY COMMODITY TYPE SPECIFICATIONS (*cont.*)

■ Documentation:

- Keep records of the specifications that your scrap metal meets.
 - If there is no analogous product from virgin materials, the product must meet widely recognized commodity specifications.
 - If there is an analogous product from virgin materials, the product must meet widely recognized commodity specifications that address hazardous constituents.
- Examples of widely recognized commodity specifications:
 - <http://www.isri.org/docs/default-source/commodities/specsupdatejuly2014.pdf>

SUMMARY: THE “NEW” FOUR QUESTIONS

Did you pay for the scrap materials that you accept for recycling?

Is the incoming material valuable and does it take the place of virgin materials?

SUMMARY: THE “NEW” FOUR QUESTIONS

Are you **managing** those materials to prevent them from being “discarded”?

Are you containing the incoming material so that it doesn't float away or lay around indefinitely?

SUMMARY: THE “NEW” FOUR QUESTIONS

Did you **sell** the output of the recycling process to someone who was actually using it?

Is the output an effective substitute for virgin materials?

SUMMARY: THE “NEW” FOUR QUESTIONS

Does the output of your process meet accepted commodity standards for that product?



QUESTIONS?

SOURCES

- A copy of the final 2015 rule on the Definition of Solid Waste can be found at <http://www.gpo.gov/fdsys/pkg/FR-2015-01-13/pdf/2014-30382.pdf>.
- A copy of the fact sheet on the final rule can be found at http://www.epa.gov/waste/hazard/dsw/dsw_fs_fnl_rl_120814.pdf.
- A copy of a Q&A on the final rule can be found at http://www.epa.gov/waste/hazard/dsw/expanded_faq_%20033115.pdf.
- A copy of the ISRI comments on the proposed rule can be found at <https://www.isri.org/docs/default-source/environment/detailed-comments47AC64213BFA7DED0C8771C0.pdf?sfvrsn=4>.

THIS PRESENTATION IS AVAILABLE

<http://www.klgates.com/definition-of-solid-waste-the-epa-and-how-the-recently-released-rule-can-impact-your-business-04-25-2015/>

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ISRI 2015 Convention & Exposition

Definition of Solid Waste, the EPA, and How the Recently Released Rule Can Impact Your Business

24 April 2015
3:30 - 4:45 p.m.

Vancouver, BC

Presenters: Barry M. Hartman , Cliff L. Rothenstein

In January 2015, EPA issued new regulations that affect recyclers and related industries and their designation as either recyclers or as "handlers of waste." Through ISRI's hard work, these new rules are a lot less burdensome than what EPA originally proposed. This session will outline the new requirements, and discuss what ISRI members need to consider doing to make sure they are protected. ISRI will also be seeking feedback from members on questions they might have in order to finalize the guidance for members.

To learn more about this event and to register, [click here](#).

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barry.hartman@klgates.com
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Washington, DC



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