

Hazardous Secondary Materials and the Generator-Based Exclusion

Guidance on Hazardous Waste Requirements



Introduction

Hazardous secondary materials (HSM) are generated across a wide variety of business, manufacturing, and institutional sectors. Federal regulations, commonly referred to as “Definition of Solid Waste” (DSW) regulations, were developed between 2008 and 2018 to encourage reclamation and recycling of HSM in a way that does not result in increased risk to human health and the environment.

Hazardous waste regulations are found in chapters [NR 660-679](#) of the Wisconsin Administrative Code

An HSM is a secondary material such as a spent material, by-product, or sludge that, when discarded, would be identified as a hazardous waste under s. NR 660.10(52), Wis. Adm. Code.

This publication provides guidance on the management of HSM through the generator-based exclusion under the Wisconsin DSW rules. It should not be considered a substitute for the applicable portions of chs. NR 660 and NR 661 of the Wisconsin Administrative Code. Please refer to *Legitimate Recycling and Speculative Accumulation of Hazardous Wastes (WA-2032)* for more information on legitimate recycling, speculative accumulation, or the transfer-based exclusion.

Understanding the HSM Exclusion

The HSM exclusions do not affect or replace any existing exclusion, exemption, or determination regarding the regulation of hazardous waste. Facilities may have the option to manage certain hazardous wastes as a hazardous secondary material under the HSM exclusions. These HSM exclusions are located at ss. NR 661.0004(1)(w), (x) and (za), Wis. Adm Code.

Hazardous waste that is otherwise subject to material-specific management conditions under s. NR 661.0004(1), Wis. Adm Code, when reclaimed will not fall under HSM exclusions (e.g., lead acid batteries being recycled must still be managed under ss. NR 666.80 or 673.02, Wis. Adm Code). If the receiving (or transfer) state has not adopted the applicable HSM exclusions, then the HSM is subject to the hazardous waste requirements of the receiving state when the HSM crosses the border of that state (e.g., manifesting requirements).

When **all conditions** of the HSM exclusion are met, then the HSM that are legitimately reclaimed are not solid waste and therefore **not a hazardous waste**. If any of the conditions of the exclusion are not met, then the HSM is considered a solid waste and thus a hazardous waste and therefore are subject to full subtitle C regulation under the Resource and Conservation Recovery Act (RCRA), including all applicable requirements of chapters NR 660 to 679, Wis. Adm. Code.

The following HSMs are eligible for conditional exclusion:

- HSM that is generated and legitimately reclaimed within the United States or its territories and under the control of the generator. This is also known as the Generator-based Exclusion. [s. NR 661.0004(1)(w), Wis. Adm. Code]
- HSM that is generated and then transferred to a facility for the purpose of reclamation. This is known as the Transfer-based Exclusion [s. NR 661.0004(1)(x), Wis. Adm. Code]. See *Hazardous Secondary Materials Transfer-based Exclusion (WA-2034)* for more information.
- HSM that is generated and then transferred to another person for the purpose of remanufacturing. This is known as the Remanufacturing Exclusion and is briefly described in the definitions section of this guidance. [s. NR 661.0004(1)(za), Wis. Adm. Code]

Definitions

Before addressing exclusion conditions, it is important to define some key terms as they relate to HSM that are legitimately recycled under ss. NR 661.0004(1)(w), 661.0004(1)(x), and 661.0004(1)(za), Wis. Adm. Code.

Contained means held in a unit, including a land-based unit, which meets the following criteria [s. NR 660.10(13m), Wis. Adm. Code]:

- The unit is in good condition, with no leaks or other continuing or intermittent unpermitted HSM releases to the environment, and is designed, as appropriate for materials, to prevent releases of the materials to the environment. Unpermitted releases are releases that are not covered by a permit, such as a permit to discharge to water or air. Unpermitted releases may include releases through surface transport by precipitation runoff, releases to the soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic failures.
- Hazardous secondary material in units that meet the applicable requirements under chs. NR 664 and NR 665 are presumptively contained.
- The unit is properly labeled or otherwise has a system, such as a log, to immediately identify the HSM in the unit.
- The unit holds HSM that is compatible with other HSM placed in the unit and with the materials used to construct the unit and addresses any potential risks of fires or explosions.

Note that for HSM managed under the remanufacturing exclusion, the RCRA tank system and air emissions standards found in chapters NR 664 and 665, Wis. Adm. Code, apply and are included in s. NR 661.0004(1)(za), Wis. Adm. Code.

Control means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise. Where a contractor operates 2 facilities, each of which is owned by a different company, hazardous secondary materials generated at the first facility and reclaimed at the second facility are not considered under the control of the generator. [s. NR 661.0004(1)(w)1.b., Wis. Adm. Code].

HSM means a secondary material such as a spent material, by-product, or sludge that, when discarded, would be identified as a hazardous waste under s. NR 660.10(52), Wis. Adm. Code. [s. NR 660.10(51m), Wis. Adm. Code]

HSM generator means any person whose act or process produces hazardous secondary material at the generating facility. Generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of ss. NR 661.0002(1)(b)

2. and 661.0004(1)(w), Wis. Adm. Code, a facility that collects hazardous secondary material from other persons is not the hazardous secondary material generator. [s. NR 660.10(51t), Wis. Adm. Code]

Intermediate facility means a facility that stores hazardous secondary material for more than 10 days, other than a hazardous secondary material generator or reclaimer of such material. [s. NR 660.10(65m), Wis. Adm. Code]

Legitimate recycling means the 3 legitimacy factors in s. NR 660.43(1), Wis. Adm. Code, must be met and the fourth factor in s. NR 660.43(2), Wis. Adm. Code, must be considered. See guidance document, *Legitimate Recycling and Speculative Accumulation of Hazardous Wastes (WA-2032)* for more on this topic.

Person means an individual, trust, firm, joint stock company, limited liability company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state or any interstate body. [s. NR 660.10(90), Wis. Adm. Code]

Reclaimed means a material that has been processed to recover a usable product or that has been regenerated. Examples of “reclaimed material” are recovery of lead values from spent batteries, regeneration of spent solvents, and, for the purposes of s. NR 661.0004(1)(w) and (x), Wis. Adm. Code, smelting, melting, and refining furnaces solely engaged in metals reclamation if the metal recovery from the hazardous secondary material meets the requirements specified for metals recovery from hazardous waste found in ss. NR 666.100(4)(a) to (c), Wis. Adm. Code, and if the residuals meet the requirements specified in s. NR 666.112, Wis. Adm. Code. [s. NR 661.0001(3)(d), Wis. Adm. Code]

Reclaimer means a person who reclaims an HSM.

Remanufacturing Exclusion is in s. NR 661.0004(1)(za), Wis. Adm. Code, and encourages the recycling of 18 higher-value hazardous spent solvents used for reacting, extracting, blending, or purifying chemicals in the pharmaceutical, organic chemical, plastics and resins, and the paint and coatings sectors. The term **Remanufacturing** is defined in s. NR 660.10(97t), Wis. Adm. Code.

Speculative Accumulation information can be found in the guidance document, *Legitimate Recycling and Speculative Accumulation of Hazardous Wastes (WA-2032)*.

Tolling Contractor means a person who arranges for the manufacturing of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. [s. NR 661.0004(1)(w)1.c., Wis. Adm. Code]

Tolling Manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor. [s. NR 661.0004(1)(w)1.c., Wis. Adm. Code]



If under any of the DSW exclusions, a tank or container being used is leaking or not controlling fugitive emissions, the HSM is not considered CONTAINED.

Notification of HSM Activity

To notify the DNR of HSM activities, complete the EPA 8700-12 form. There are two ways to prepare and submit the form: EPA’s MyRCRAid online application or a fillable form.

Notifying with MyRCRAid: The facility may electronically submit the EPA 8700-12 form through EPA's RCRAInfo database in the Industry Application - MyRCRAid.

1. Link to EPA's RCRAInfo database: <https://rcrainfo.epa.gov/rcrainfoprod/action/secured/login>
2. If you are already registered in RCRAInfo (or CDX), sign in using your username and password. If you are not already registered for RCRAInfo or CDX, see the below tutorial.
3. Link to a tutorial with information on how to register and use RCRAInfo Industry Application: <https://files.nc.gov/ncdeq/Waste%20Management/DWM/HW/8700-guidelines/Electronic-Filing-of-EPA-Notifications.pdf>

Notifying with fillable PDF: The facility may also notify by completing the fillable 8700-12 form. Once the form is completed, print, sign and mail or email to [the appropriate DNR regional environmental program associate](#).

To access the form and get additional, visit the DNR's webpage on [Notification of Hazardous Waste Activities](#).

Conditions for the Generator-Controlled Exclusion

The generator-controlled exclusion in s. NR 661.0004(1)(w), Wis. Adm. Code, allows HSMs to be conditionally reclaimed by the HSM generator when all of the following conditions are met:

1. **The HSM must fall into one of the following categories:**
 - a. Generated and reclaimed at the generating facility.

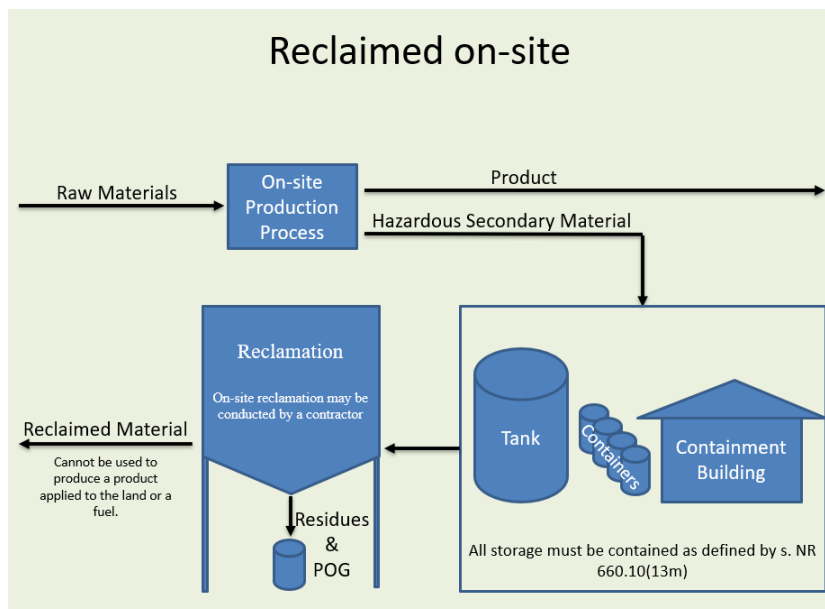


Figure 1: Adapted from McCoy and Associates, Inc.'s Definition of Solid Waste Rules White Paper, 2018

- b. Generated and then reclaimed at a different facility controlled by the generator.

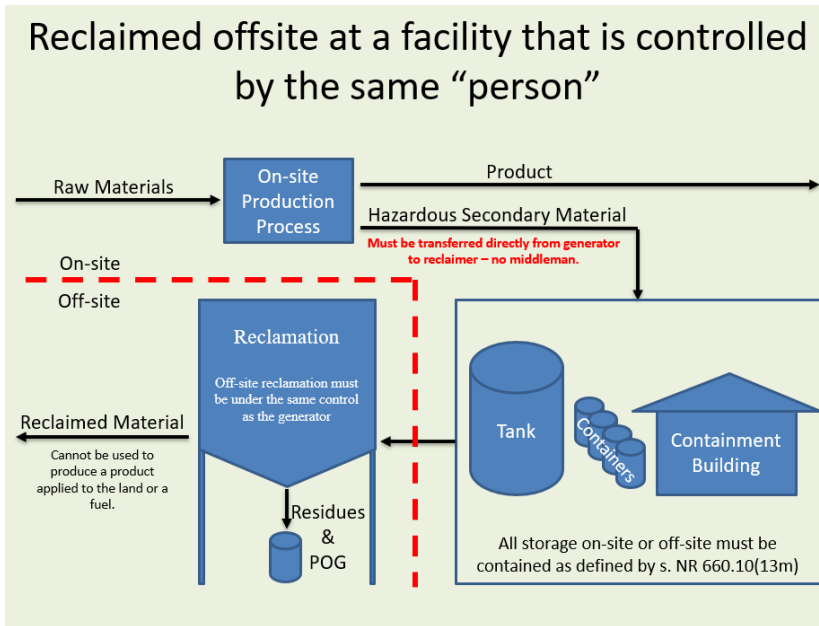


Figure 1: Adapted from McCoy and Associates, Inc.'s Definition of Solid Waste Rules White Paper, 2018

- c. Generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor.

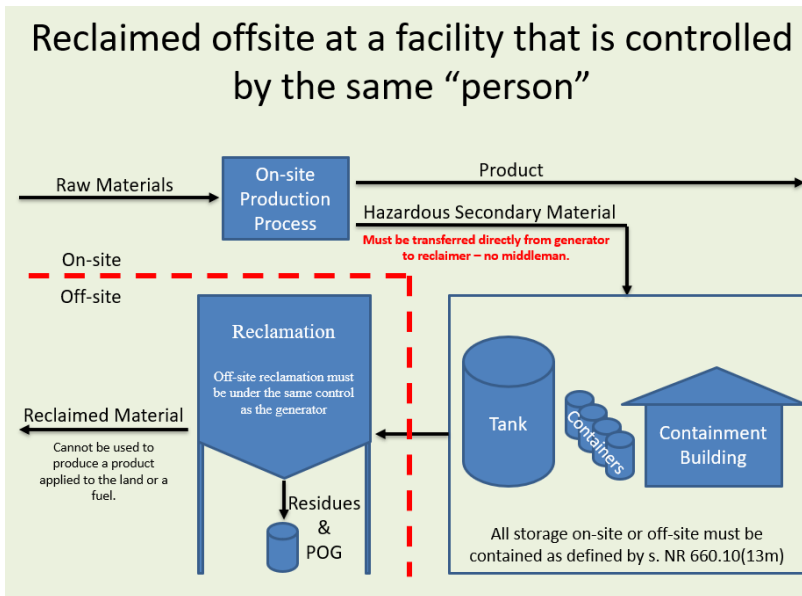


Figure 2: Adapted from McCoy and Associates, Inc.'s Definition of Solid Waste Rules White Paper, 2018

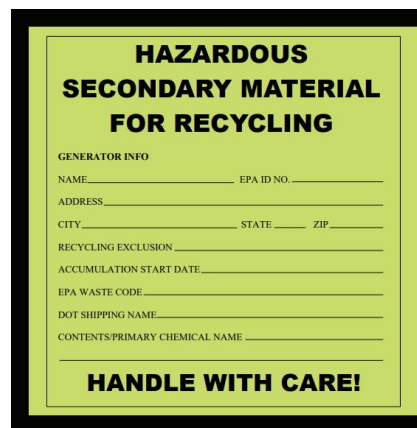
2. All facilities (identified in item 1 above) managing HSM under the generator-controlled exclusion must provide notification under s. NR 660.42, Wis. Adm. Code.

- a. Initial notification to the department must be submitted prior to managing any HSM.

- b. Renotification must be submitted to the department by March 1 of each even-numbered year after initial notification, submitted either via EPA form 8700-12 or through the annual report.
 - c. Notification to the department must be submitted within 30 days after the facility stops managing HSM.
3. **The HSM must be legitimately reclaimed as defined by s. NR 660.43, Wis. Adm. Code, and under the control of the HSM generator.**

4. **The HSM must be contained.**

- a. HSM released to the environment is discarded and is a solid waste unless it is immediately recovered for the purpose of reclamation.
- b. HSM managed in a unit with leaks, or other continuing or intermittent unpermitted releases, is considered discarded and is a solid waste.
- c. An HSM unit must be properly labeled or otherwise have a system (such as a log) to immediately identify the hazardous secondary materials in the unit. The precise wording on the label is not prescribed by regulation. To the right is an example of a label developed by EPA. This HSM label is available on EPA's website at: <https://www.epa.gov/hwgenerators/voluntary-label-hazardous-secondary-materials-recycling>



5. **All facilities, including HSM generators, HSM reclaimers and HSM intermediate facilities, must not speculatively accumulate HSM.** To demonstrate that speculative accumulation is not occurring, recordkeeping is required. Speculative accumulation is covered in more detail in *Legitimate Recycling and Speculative Accumulation of Hazardous Wastes (WA-2032)*.
6. **The HSM is not otherwise subject to material-specific management conditions when reclaimed and it is not a spent lead-acid battery under ss. NR 666.080 and 673.02, Wis. Adm. Code.**
7. **The persons performing the recycling of HSM must maintain, on-site, documentation of the legitimacy determination.**
- a. Documentation must include a written description of how the recycling meets all three factors in s. NR 660.43(1), Wis. Adm. Code, and how the factor in s. NR 660.43(2), Wis. Adm. Code, was considered. See Appendix A for a Template for Documenting Legitimacy.
 - b. Documentation must be maintained for 3 years after the recycling operation has ceased.
8. **The HSM generator must meet emergency preparedness and response requirements described in subchapter M of chapter NR 661, Wis. Adm. Code.**
- a. If accumulating 6,000 kg or less of HSM, then the generator must comply with ss. NR 661.0410 and 661.0411, Wis. Adm. Code (essentially equivalent to small quantity generator of hazardous waste requirements for emergency preparedness and prevention).
 - b. If accumulating greater than 6,000 kg of HSM, then the generator must comply with ss. NR 661.0410 and 661.0420, Wis. Adm. Code (essentially equivalent to large quantity generator of hazardous waste requirements for contingency plan and emergency preparedness and prevention).

9. If the HSM is generated and reclaimed at different facilities (reclaiming facility is controlled by the generator or the generating facility and the reclaiming facility is controlled by a person), all the following must be met: [s. NR 661.0004(1)(w)1.b., Wis. Adm. Code]

- a. The generator must provide one of the following certifications:
 - i. "On behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material."
 - ii. "On behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], that both facilities are under common control, and that [insert name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material."
 - b. The generating and receiving facilities must both maintain at their facilities for no less than 3 years, records of HSM sent or received under the exclusion.
 - i. Records must contain all the following:
 - The name of the transporter.
 - The date of the shipment.
 - The type and quantity of the HSM shipped or received under the exclusion.
- These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations).

10. If the HSM is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, all the following must be met:

[s. NR 661.0004(1)(w)1.c., Wis. Adm. Code]

- a. The tolling contractor must certify the following:
 - i. "On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name]. I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any release of hazardous secondary materials that occur during the manufacturing process."
 - b. Records requirements for the tolling contractor and tolling manufacturer include:
 - i. The tolling contractor must maintain at its facility for no less than 3 years records of HSM received pursuant to its written contract with the tolling manufacturer. Records must contain all the following:
 - The name of the transporter.
 - The date of the shipment.
 - The type and quantity of the HSM shipped or received pursuant to the written contract.
- These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations).

- ii. The tolling manufacturer must maintain at its facility for no less than 3 years records of HSM shipped pursuant to its written contract with the tolling contractor. Records must contain the following:
 - The name of the transporter.
 - The date of the shipment.
 - The type and quantity of the HSM shipped or received pursuant to the written contract.

These requirements may be satisfied by routine business records (e.g., financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations).

If any of the above conditions of the exclusion are not met, then the HSM is considered a solid waste and thus a hazardous waste and therefore **subject to full subtitle C regulation under the Resource and Conservation Recovery Act (RCRA)**, including all applicable requirements of chapters NR 660 to 679 Wis. Adm. Code.

Resources and Contact Information

For more information including [publications, inspection forms, and administrative codes and statutes](#), go to dnr.wi.gov and search “hazardous waste resources.” Use the *Additional Resources* menu to navigate to specific topics. For staff contact information, go to the [staff directory](#) and enter “hazardous waste requirements” in the subject field and choose the appropriate county contact.

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