

Hazardous Secondary Materials Transfer-Based Exclusion

Guidance on Hazardous Waste Requirements



Introduction

Hazardous secondary materials (HSMs) 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

Per s. NR 660.10(51m), Wis. Adm. 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 under the transfer-based exclusion under the Wisconsin DSW rules. This guidance document should not be considered a substitute for the applicable portions of chs. NR 660 and NR 661 Wisconsin Administrative Code.

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 HSMs 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 (U.S.) or its territories and under the control of the generator. This is also known as the Generator-based Exclusion. [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. [NR 661.0004(1)(x), Wis. Adm. Code]
- HSM that is generated and then transferred to another person for the purpose of remanufacturing. This is known as the Remanufacturing Exclusion [NR 661.0004(1)(za), Wis. Adm. Code]

For information on the Generator-based Exclusion, refer to DNR publication *Hazardous Secondary Materials and the Generator-based Exclusion (WA-2033)*. This publication focuses on the Transfer-based Exclusion.

It is important to be aware the of the applicable regulations for both the state where the HSM was generated and the state where the HSM will be received. The table below outlines the various scenarios:

Status of HSM shipments depends on which version of the federal 40 CFR 261.4(a)(24) was adopted by each state		Receiving State		
		No exclusion adopted	2015 Verified recycler exclusion adopted	2018 Transfer based exclusion was adopted (WI)
Generating State	No exclusion adopted	Shipments are hazardous waste	Shipments are hazardous waste	Shipments are RCRA hazardous waste
	2015 Verified recycler exclusion adopted	Shipments excluded in generator state but hazardous waste in receiving state	Shipments are excluded	HSM shipments are excluded from full hazardous waste regulation if sent to RCRA licensed/permitted recycler
	2018 Transfer-based exclusion was adopted (WI)	HSM shipments are excluded from full RCRA regulation in the generator state but are fully regulated hazardous waste in the receiving state	HSM shipments are excluded from full RCRA regulation if sent to RCRA licensed/permitted recycler or to a verified recycler which passes the Reasonable Efforts audit	HSM shipments are excluded from full RCRA regulation if HSM conditions are met

What to Ask When Choosing an HSM Recycler

Learn the basics

- Can the recycler give you a general description of its business, including a point of contact, number of employees, years in business and ownership history, site information and history, summary of operations, services offered, etc.?
- Can the recycler provide the facility's compliance record with federal and state environmental and occupational safety regulations?
- Does the facility's record indicate a commitment to sound environmental stewardship?

Understand the recycling process

- Does the recycler normally accept the materials you want recycled?

- After receiving your materials, does the recycler track them through its process?
- Can the recycler describe its processes and procedures for recycling, reuse or resale?
- Does the recycler have environmental, health and safety management systems in place to ensure environmentally sound management practices?

Ask about what happens afterwards

- Is there a reliable market for the saleable products or intermediates that are made from recycling your hazardous secondary material?
- Are residuals, if any are generated from the recycling process, managed in a manner that is protective of human health and the environment?
- Can the recycler provide names and locations of businesses, landfills or incinerators to which it sends products and/or residuals?
- Can the recycler supply certification of final disposition for your materials, if necessary?

Consider a few other things

- Are you interested in verifying information through an onsite evaluation, such as an environmental compliance audit?
- Check the facility's record in public databases:
 - EPA's ECHO: <https://echo.epa.gov/>
 - WDNR's SHWIMS on the Web: <https://dnr.wi.gov/sotw/SetUpBasicSearchForm.do>
 - Wisconsin's Circuit Court Access: <https://wcca.wicourts.gov/>
- Does the recycler maintain appropriate environmental liability insurance and are mechanisms in place to ensure clean-up costs would be covered if the facility unexpectedly closes or has to perform an environmental clean-up?
- For more information on understanding the regulatory exclusions and alternative standards for the recycling of HSM, solid wastes, and hazardous wastes:
 - EPA: <https://www.epa.gov/hw/regulatory-exclusions-and-alternative-standards-recycling-materials-solid-wastes-and-hazardous>
 - McCoy and Associates, Inc.: https://www.mccoyseminars.com/library/rcra/wp/DSW_Rules.pdf

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 and 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 are compatible with other HSMs placed in the unit and with the materials used to construct the unit and addresses any potential risks of fires or explosions.

For HSM managed under the remanufacturing exclusion, the RCRA tank system and air emissions standards found in chapters NR 664 and 665 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 two 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. [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 *Legitimate Recycling and Speculative Accumulation of Hazardous Wastes (WA-2032)* for more information.

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 process that result in “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]

Remanufacturing means processing a higher-value hazardous secondary material to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material. [s. NR 660.10(97t), Wis. Adm. Code]

Speculative accumulation means a material that is accumulated before being recycled. A material is not accumulated speculatively if the person accumulating it can show the material meets the requirements of s. NR 661.0001(3)(h)1., Wis. Adm. Code. See *Legitimate Recycling and Speculative Accumulation of Hazardous Wastes (WA-2032)* for more information.

Tolling contractor means a person who arranges for the production 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 information, visit the DNR's webpage on [Notification of Hazardous Waste Activities](#).

Conditions for the Transfer-based Exclusion

The transfer-based exclusion under s. NR 661.0004(1)(x), Wis. Adm. Code, allows a generator to send HSMs to a reclaimer that does not have a RCRA permit/license or interim status provided the generator has made reasonable efforts to ensure that the chosen reclaimer will properly and legitimately reclaim the HSM and not discard it.

1. **All facilities (HSM generators, HSM reclaimers, and HSM intermediate facilities) managing HSM under the transfer-based exclusion must provide notification under s. NR 660.42 Wis. Adm. Code, including the following:**
 - 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.

- d. Reclaimers and intermediate facilities managing HSM under the transfer-based exclusion must notify whether the reclaimer or intermediate facility has financial assurance.

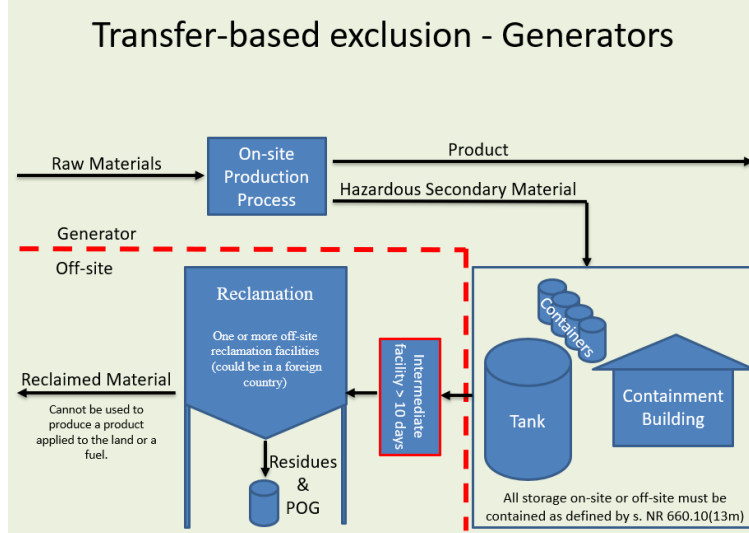


Figure 1: Adapted from McCoy and Associates, Inc.'s Definition of Solid Waste Rules White Paper, 2018

2. **All facilities (HSM generators, HSM reclaimers and HSM intermediate facilities) managing HSM must contain the HSM, and consider the following:**
 - a. HSM released to the environment is discarded and is a solid waste and therefore a hazardous 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 and therefore a hazardous 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. An example HSM label is available on EPA's website at: <https://www.epa.gov/hwgenerators/voluntary-label-hazardous-secondary-materials-recycling>
3. **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.
4. **The HSM is not handled by any person or facility other than the HSM generator, the transporter, an intermediate facility, or a reclaimer, and, while in transport, is not stored for more than 10 days at a transfer facility, as defined in s. NR 660.10(122), Wis. Adm. Code.**
5. **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.**
6. **HSM must be legitimately reclaimed as defined by s. NR 660.43, Wis. Adm. Code.**
 - 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.
 - b. Documentation must be maintained for 3 years after the recycling operation has ceased.
7. **The HSM generator must meet all of the following** [s. NR 661.0004(1)(x)5, Wis. Adm. Code]:

- a. Prior to arranging for transport of HSM to a reclamation facility where the management of the HSM is not addressed under a RCRA part B permit or interim status standards, the HSM generator made reasonable efforts to ensure that each reclaimer intends to properly and legitimately reclaim the HSM and not discard it, and that each reclaimer will manage the HSM in a manner that is protective of human health and the environment.
- b. If the HSM will be passing through an intermediate facility where the management of the HSM is not addressed under a RCRA part B permit or interim status standards, the HSM generator must make contractual arrangements with the intermediate facility to ensure that the HSM is sent to the reclamation facility identified by the HSM generator and the HSM generator must perform reasonable efforts to ensure that the intermediate facility will manage the HSM in a manner that is protective of human health and the environment.
- c. Reasonable efforts to ensure proper management must be repeated, at a minimum of every 3 years, for the HSM generator to claim the exclusion and to send the HSM to each reclaimer and any intermediate facility.
- d. In making these reasonable efforts, the generator may use any credible evidence available, including information gathered by the HSM generator, provided by the reclaimer or intermediate facility, or provided by a third party.
- e. The hazardous secondary material generator must affirmatively answer all of the following questions for each reclamation facility and any intermediate facility:
 - i. Does the available information indicate that the reclamation process is legitimate pursuant to s. NR 660.43, Wis. Adm. Code?
 - ii. Does the publicly available information indicate that the reclamation facility and any intermediate facility that is used by the HSM generator notified the appropriate authorities of HSM reclamation activities pursuant to s. NR 660.42, Wis. Adm. Code, and have they notified the appropriate authorities that the financial assurance condition is satisfied s. NR 661.0004(1)(x)6.f., Wis. Adm. Code?
 - iii. Does publicly available information indicate that the reclamation facility or any intermediate facility that is used by the HSM generator has not had any formal enforcement actions taken against the facility in the previous 3 years for violations of the RCRA hazardous waste regulations and has not been classified as a significant non-complier with RCRA Subtitle C?
 - iv. Does the available information indicate that the reclamation facility and any intermediate facility that is used by the HSM have the equipment and trained personnel to safely recycle the HSM?
 - v. If residuals are generated from the reclamation of the excluded HSM, does the reclamation facility have the license required (if any) to manage the residuals? If not, does the reclamation facility have a contract with an appropriately licensed facility to dispose of the residuals? Or alternatively, does the HSM generator have credible evidence that the residuals will be managed in a manner that is protective of human health and the environment?
- f. Documentation and certification must be made available upon request by the department within 72 hours, or within a longer period of time as specified by the department.
- g. The certification statement must include all the following:
 - i. Include the printed name and official title of an authorized representative of the hazardous secondary material generator company, the authorized representative's signature, and the date signed.

- ii. Incorporate the following language: "I hereby certify in good faith and to the best of my knowledge that, prior to arranging for transport of excluded hazardous secondary materials to [insert name(s) of reclamation facility and any intermediate facility], reasonable efforts were made in accordance with s. NR 661.0004(1)(x)5.b., Wis. Adm. Code, to ensure that the hazardous secondary materials would be recycled legitimately, and otherwise managed in a manner that is protective of human health and the environment, and that such efforts were based on current and accurate information."
- h. The HSM Generator must maintain records of off-site shipments and confirmations of receipt:
- i. The HSM generator must maintain, at the generating facility, for no less than 3 years, records of all off-site shipments of HSM. For each shipment, these records must, at a minimum, contain the following information:
 - Name of the transporter and date of the shipment;
 - Name and address of each reclaimer and, if applicable, the name and address of each intermediate facility to which the hazardous secondary material was sent;
 - The type and quantity of hazardous secondary material in the shipment.
 - ii. The HSM generator must maintain, at the generating facility, for no less than 3 years, records of confirmations of receipt from each reclaimer and, if applicable, each intermediate facility for all off-site shipments of HSM. For each shipment, these records must, at a minimum, contain the following information:
 - Name and address of the reclaimer (or intermediate facility).
 - The type and quantity of the HSM received.
 - Date on which HSM was received.
- i. The HSM generator must meet emergency preparedness and response requirements described in subchapter M of chapter NR 661, Wis. Adm. Code.
- i. 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).
 - ii. 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).

8. Reclaimers of HSM excluded from regulation under the transfer-based exclusion and intermediate facilities as defined in s. NR 660.10(65m), Wis. Adm. Code must satisfy all of the following [NR 661.0004(1)(x)6.]:

- a. Maintain 3 years of records of HSM shipments received at the facility and, if applicable, sent off for further reclamation. Records must include all of the following:
 - i. Name of transporter.
 - ii. Date of shipment.
 - iii. Name and address of the HSM generator.
 - iv. Name and address of the reclaimer(s) or intermediate facility/facilities.
 - v. Type and quantity of HSM in the shipment.
- b. Intermediate facilities must send HSM to the reclaimer(s) designated by the generator.

- c. Reclaimers and intermediate facilities of HSM must send a confirmation of receipt to the HSM generator for all off-site shipments of HSM. Confirmations of receipt records must include all of the following:
 - i. Name and address of the reclaimer or intermediate facility.
 - ii. Type and quantity of HSM received.
 - iii. Date on which HSM was received.
- d. Reclaimers and intermediate facilities of HSM must manage HSM in a manner that is at least as protective as that employed for analogous raw material. An "analogous raw material" is a raw material for which a HSM is a substitute and serves the same function and has similar physical and chemical properties as the HSM.
- e. Reclaimers and intermediate facilities of HSM must manage any residuals generated from reclamation in a manner protective of human health and the environment. If the residuals from reclamation exhibit a hazardous characteristic (as defined in subchapter C of chapter NR 661, Wis. Adm. Code) or they themselves are listed (as defined in subchapter C of chapter NR 661, Wis. Adm. Code), they must be managed by all applicable hazardous waste regulations.
- f. The reclaimer and intermediate facility have financial assurance as required under subchapter H of chapter NR 661, Wis. Adm. Code.

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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Mailing address: DNR Waste and Materials Management Program, PO Box 7921, Madison, WI 53707

Email: DNRWasteMaterials@Wisconsin.gov

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