

Colorado Hazardous Waste Regulations

Part 260

Hazardous Waste (HW) Management System: General

(amended 02/16/16, effective 03/30/16)

To obtain more information regarding the Colorado Hazardous Waste Regulations, please contact the Hazardous Materials and Waste Management Division at 303-692-3300.



COLORADO
Department of Public
Health & Environment

PART 260 - HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subpart A - General

- Sec.**
260.1 Purpose, scope applicability, and effective date.
260.2 Incorporation by Reference.
260.3 Use of number and gender.

Subpart B - Definitions

- 260.10 Definitions.
260.11 References.
260.12 Sampling and Analytical Methods.

Subpart C - Rulemaking Petitions

- 260.20 General.
260.21 Petitions for equivalent testing or analytical methods.
260.22 Petitions to amend Part 261 to exclude a waste produced at a particular facility.
260.23 Petitions to amend Part 273 to include additional hazardous wastes.
260.30 Non-Waste determinations and variances from classification as a solid waste.
260.31 Standards and criteria for variances from classification as a solid waste.
260.32 Variance to be classified as a boiler.
260.33 Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations.
260.34 Standards and criteria for non-waste determinations.
260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.
260.41 Procedures for case-by-case regulation of hazardous waste recycling activities.
260.42 Notification requirement for hazardous secondary materials.
260.43 Legitimate recycling of hazardous secondary materials.

Subpart A - General

§ 260.1 Purpose, scope, applicability.

(a) This part provides definitions of terms, general standards, and overview information applicable to Parts 260 through 268 and Parts 99, 100 and Part 2.

(b) In this part:

(1) Section 260.2 sets forth the rules that the Department will use in making information it receives available to the public and sets forth the requirements that generators, transporters, or owners or operators of treatment, storage, or disposal facilities must follow to assert claims of business confidentiality with respect to information that is submitted to the Department under Parts 260 through 268 and Parts 99, 100 and Part 2.

(2) Section 260.3 establishes rules of grammatical construction for Parts 260 through 268 and Parts 99, 100 and Part 2.

(3) Section 260.10 defines terms which are used in Parts 260 through 268 and Parts 99, 100 and Part 2 of these regulations.

(4) Section 260.20 establishes procedures for petitioning the Commission to amend, modify, or revoke any provision of Parts 260 through 268 and Parts 99, 100 and Part 2, establishes procedures governing the Commission's action on such petitions.

(5) Section 260.21 establishes procedures for petitioning the Commission to approve testing methods as equivalent to those prescribed in Parts 261, 264, or 265.

(6) Section 260.22 establishes procedures for petitioning the Department to amend Subpart D of Part 261 to exclude a waste from a particular facility.

(c) An attached statement of basis and purpose for these regulations has been adopted by the Board of Health and is hereby incorporated by reference in these regulations pursuant to C.R.S. 1973, 24-4-103, including for the amendments adopted in April 1984.

(d) These regulations, Parts 260 through 268, 99, 100, and Part 2 shall become effective on the date upon which the Department receives interim or final authorization under Section 3006 of the Resource Conservation and Recovery Act, or enters a cooperative agreement with the U. S. Environmental Protection Agency, to implement the amendments herein based on the Hazardous and Solid Waste Amendments of 1984.

§ 260.10

§ 260.2 Incorporation by Reference.

- (a) References to material incorporated by reference in these regulations refer to 1993 editions unless otherwise expressly noted, and do not include any later amendments or editions.
- (b) Information concerning all materials or regulations incorporated by reference in 6 CCR 1007-3 may be obtained by contacting:

Regulatory and Program Authorization Coordinator
Colorado Department of Public Health and Environment
Hazardous Materials & Waste Management Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

- (c) Materials or regulations incorporated by reference in these regulations are available for examination at the state publications depository libraries.

§ 260.3 Use of number and gender.

As used in Parts 260 through 268:

- (a) Words in the masculine gender also include the feminine and neuter genders; and
- (b) Words in the singular include the plural; and
- (c) Words in the plural include the singular.

Subpart B - Definitions

§ 260.10 Definitions

When used in Parts 260 through 273, and Parts 99 and 100 of these regulations, the following terms have the meanings given below:

"Aboveground tank" means a device meeting the definition of "tank" in § 260.10 and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

"Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. section 6901 et seq.

"Active ingredient" means a component or mixture that performs the function of the product, even if it is present in very low concentration in the product.

§ 260.10

"Active life" of a facility means the period from the initial receipt of hazardous waste at the facility until the Department receives certification of final closure.

"Active portion" means that portion of a facility where treatment, storage, or disposal operations are being or have been conducted after November 19, 1980 and which is not a closed portion. (See also "closed portion" and "inactive portion".)

"Administrator" means the Administrator of the Environmental Protection Agency, or his/her designee.

"Aerosol can" means a container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.

"Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or treatment tank(s), between hazardous waste storage and treatment tanks to a point of disposal onsite, or to a point of shipment for disposal off-site.

"Aquifer" means a geologic formation, group of formations or part of a formation capable of yielding a significant amount of ground water to wells or springs.

"Authorized representative" means the person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent or person of equivalent responsibility.

"Battery" means a device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

"Board" means the State Board of Health created by Section 25-1-103.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics (Effective January 1, 1986):

- (1)(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and
 - (ii) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by

§ 260.10

ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(2) The unit is one which the Department has determined, on a case-by-case basis, to be a boiler, after considering the standards in § 260.32.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon.

"CDH" means the Colorado Department of Health created by Section 25-1-102.

"CDPHE" means the Colorado Department of Public Health and Environment created by Section 25-1-102.

"Certification" means a statement of professional opinion based upon knowledge and belief.

"Chemical weapon" means agent or munition that, through its chemical properties, produces lethal or other damaging effects on human beings, except that such term does not include riot control agents, chemical herbicides, smoke and other obscuration materials.

"Closed portion" means that portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion".)

"Commercial use or value" means a material has commercial use or value when (1) it is being beneficially used or reused or legitimately recycled or reclaimed; or (2) it is being accumulated, stored, or physically, chemically, or biologically treated prior to beneficial use or reuse or legitimate recycling or reclamation, and not merely for speculation.

"Commission" means the Solid and Hazardous Waste Commission created pursuant to section 25-15-302, C.R.S.

"Committee" means the committee on Hazardous Waste Regulation created in SB 519, Colo. Sess. Laws Ch. 327, and replaced by the Hazardous Waste Commission created pursuant to section 25-15-302, C.R.S.

§ 260.10

"Component" means any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple.)

"Conditionally Exempt Small Quantity Generator (CESQG)" means a generator who meets the conditions specified in § 261.5 of these regulations.

"Confined aquifer" means an aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself: an aquifer containing confined ground water.

"Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

(1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary 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, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

(3) The unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.

(4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

"Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

"Containment building" means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of Subpart DD of Parts 264 or 265 of these regulations.

"Contingency plan" means a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

"Corrective action management unit (CAMU)" means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility.

"Corrosion expert" means a person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or

§ 260.10

submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

"Department" means the Colorado Department of Public Health and Environment as created by Section 25-1-102.

"Designated facility" means:

- (1) A hazardous waste treatment, storage, or disposal facility which:
 - (i) Has received a permit (or interim status) in accordance with the requirements of Parts 99 and 100 of these regulations;
 - (ii) Has received a permit (or interim status) from a State authorized in accordance with 40 CFR Part 271; or
 - (iii) Is regulated under § 261.6(c)(2) or Subpart F of Part 267 of these regulations; and
 - (iv) That has been designated on the manifest by the generator pursuant to § 262.20.
- (2) Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with § 264.72(f) or § 265.72(f) of these regulations.
- (3) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

"Destination facility" means a facility that treats, disposes of, or recycles a particular category of universal waste, except those management activities described in paragraphs (a) and (c) of §§ 273.13 and 273.33 of these regulations. A facility at which a particular category of universal waste is only accumulated, is not a destination facility for purposes of managing that category of universal waste.

"Dike" means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

"Dioxins and furans (D/F)" means tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

"Director" means the Executive Director of the Colorado Department of Public Health and Environment, or his/her designee, or the Department where appropriate.

"Discharge" or **"hazardous waste discharge"** means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

§ 260.10

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Disposal facility" * means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure. For the purposes of the application of the land disposal restrictions found in Part 268 and for the purposes of the application of the minimum technology requirements of 40 CFR § 268.5(h)(2), or of the minimum technology requirements of Subparts K, L, M, or N, or the groundwater protection requirements of Subpart F or the closure and post-closure requirements of Subpart G of Part 264 or 265 of these regulations, the term "disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

* Please note that for State siting purposes applicable to Part II, Title 25, Article 15 C.R.S., "Disposal site" means all contiguous land and, including publicly-owned land, used for hazardous waste disposal under common ownership.

"Domestic waste water" means untreated sanitary wastes that pass through a sewer system.

"Drip pad" is an engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

"Elementary Neutralization unit" means a device which:

- (1) Is used for neutralizing wastes that are hazardous only because they exhibit the corrosivity characteristic defined in § 261.22, or are listed in Subpart D of Part 261 of these regulations only for this reason; and
- (2) Meets the definition of tank, tank system, container, transport vehicle, or vessel in § 260.10 of these regulations.

"Electronic component" means components, subassemblies or other parts derived from the disassembly of electronic devices. While many waste electronic devices do not fail the toxicity test for heavy metals if left intact, individual components generated by disassembly may fail the toxicity test.

"Electronic device" means electronic equipment that contains one or more electronic circuit boards or other complex circuitry, including but not limited to computer monitors, televisions, central processing units (CPUs), laptops, printers, terminals, mainframes and stereo equipment.

"Environmental covenant" means an instrument containing environmental use restrictions created pursuant to § 25-15-321, C.R.S.

§ 260.10

"Environmental use restriction" means a prohibition of one or more uses of or activities on specified real property, including drilling for or pumping groundwater; a requirement to perform certain acts, including requirements for maintenance, operation, or monitoring necessary to preserve such prohibition of uses or activities; or both, where such prohibitions or requirements are relied upon in the remedial decision for an environmental remediation project for the purpose of protecting human health or the environment.

"EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in Part 261, Subpart D, of these regulations and to each characteristic identified in Part 261, Subpart C, of these regulations.

"EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.

"Equivalent method" means any testing or analytical method approved by the Administrator under § 260.20 and § 260.21.

"Existing hazardous waste management (HWM) facility" ** or "existing facility" means a facility which was in operation or for which construction commenced on or before November 19, 1980. A facility has commenced construction if:

- (1) The owner or operator has obtained the Federal, State and local approvals or permits necessary to begin physical construction; and either
- (2)(i) A continuous on-site physical construction program has begun; or
- (ii) The owner or operator has entered into contractual obligations which cannot be cancelled or modified without substantial loss -- for physical construction of the facility to be completed within a reasonable time.

** Please note that for State siting purposes applicable to Part II, Title 25, Article 15 C.R.S., "Existing hazardous waste disposal site" means a hazardous waste disposal site which is in active operation prior to July 1, 1981.

[RESERVED]

PAGE 7.1 IS RESERVED

§ 260.10

"Existing portion" means that land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

"Existing tank system" or "existing component" means a tank system or component that is used for the storage or treatment of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all Federal, State, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either

- (1) a continuous on-site physical construction or installation program has begun, or
- (2) the owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction of the site or installation of the tank system to be completed within a reasonable time.

"Explosives or munitions emergency response specialist" means an individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques. Explosives or munitions emergency response specialists include Department of Defense (DOD) emergency explosive ordnance disposal (EOD), DOD technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and other Federal, State, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

"Facility" means:

- (1) All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).
- (2) For the purpose of implementing corrective action under §§ 264.101, 265.5, or section 25-15-308, C.R.S., all contiguous property under the control of the owner or operator.
- (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to § 264.101 of these regulations, but is subject to corrective action requirements if the site is located within such a facility.

"Facility mailing list" means the mailing list for a facility maintained by the Department in accordance with § 100.506(c)(1)(iv).

"Federal Act" means the federal "Solid Waste Disposal Act", as amended by the federal "Resource Conservation and Recovery Act of 1976", and as from time to time amended (42 U.S.C. 6901 et seq.).

§ 260.10

[RESERVED]

PAGE 8.1 IS RESERVED

§ 260.10

"Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

"Federal, State and local approvals or permits necessary to begin physical construction" means permits and approvals required under Federal, State or local hazardous waste control statutes, regulations or ordinances.

"Final closure" means the closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Parts 264 and 265 of these regulations are no longer conducted at the facility unless subject to the provisions in § 262.34.

"Food-chain crops" means tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

"Freeboard" means the vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

"Free liquids" means liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

"Functionally equivalent component" means a component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

"Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of these regulations or whose act first causes a hazardous waste to become subject to regulation.

"Governmental unit" means the State of Colorado, every county, city and county, municipality, school district, special district and authority located in this state, every public body corporate created or established under the constitution or any law of this state, and every board, commission, department, institution, or agency of any of the foregoing or of the United States.

"Ground water" means water below the land surface in a zone of saturation.

"Hazardous Constituent" means any constituent identified in Appendix VIII of 6 CCR 1007-3, Part 261.

"Hazardous secondary material" means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under Part 261 of these regulations.

"Hazardous waste" means a hazardous waste as defined in Part 261 of these regulations.

"Hazardous waste constituent" means a constituent that caused the Department to list the hazardous waste in Part 261, Subpart D, of these regulations, or a constituent listed in Table 1 of § 261.24 of these regulations.

§ 260.10

"Hazardous waste generation" means the act or process of producing hazardous waste.

"Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, treatment, recovery, and disposal of hazardous waste.

"Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Inactive portion" means that portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion".)

"Incinerator" means any enclosed device that:

- (1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
- (2) Meets the definition of infrared incinerator or plasma arc incinerator.

"Incompatible wastes" means a waste unsuitable for commingling with another waste or material if the commingling might result in:

- (i) generation of extreme heat or pressure;
- (ii) fire;
- (iii) explosive or violent reaction;
- (iv) formation of substances which are shock-sensitive, friction-sensitive, or which otherwise have the potential of reacting violently;
- (v) the formation of toxic dusts, mists, fumes or gases or other chemicals;
- (vi) volatilization of ignitable or toxic chemicals due to heat generation in such a manner that the likelihood of contamination of groundwater or escape of the substances into the environment is increased; or
- (vii) any other similar reaction.

"Individual generation site" means the contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

§ 260.10

"Industrial furnace" means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

- (1) Cement kilns
- (2) Lime kilns
- (3) Aggregate kilns
- (4) Phosphate kilns
- (5) Coke ovens
- (6) Blast furnaces
- (7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters and foundry furnaces)
- (8) Titanium dioxide chloride process oxidation reactors
- (9) Methane reforming furnaces
- (10) Pulping liquor recovery furnaces
- (11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid
- (12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3 %, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as-generated.
- (13) Such other devices as the Department may, after notice and comment, add to this list on the basis of one or more of the following factors:
 - (i) The design and use of the device primarily to accomplish recovery of material products;
 - (ii) The use of the device to burn or reduce raw materials to make a material product;
 - (iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials in processes using raw materials as principal feedstocks;
 - (iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
 - (v) The use of the device in common industrial practice to produce a material product;and

(vi) Other factors as appropriate.

“Infrared incinerator” means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Inert material" means non-water-soluble and nondecomposable inert solids together with such minor amounts and types of other materials as will not significantly affect the inert nature of such solids according to rules and regulations of the Commission. The term includes but is not limited to earth, sand, gravel, rock, concrete which has been in a hardened state for at least sixty days, masonry, asphalt paving fragments, and other non-water-soluble and nondecomposable inert solids including those the Commission may by regulation identify.

"Inground tank" means a device meeting the definition of "tank" in § 260.10 whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

"In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

"Injection well" means a well into which fluids are injected. (See also "underground injection".)

"Inner liner" means a continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

"Installation inspector" means a person, who, by reason of his/her knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

"International shipment" means the transportation of hazardous waste into or out of the jurisdiction of the United States.

§ 260.10

"Lamp", also referred to as **"universal waste lamp"** is defined as the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste electric lamps include, but are not limited to, fluorescent, high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.

"Landfill" means a disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or, for the purposes of the application of the land disposal restrictions found in Part 268 and for the purposes of the application of the minimum technology requirements of 40 CFR § 268.5(h)(2), or of the minimum technology requirements of Subparts K, L, M, or N, or the groundwater protection requirements of Subpart F or the closure and post-closure requirements of Subpart G of Part 264 or 265 of these regulations, a corrective action management unit.

"Landfill cell" means a discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

"Land treatment facility" means a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

"Large Quantity Generator (LQG)" means a generator who generates greater than 1,000 kg of hazardous waste per calendar month, 1 kg of acutely hazardous waste per calendar month, or 100 kg of any residue, contaminated soil, waste, or debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous waste per calendar month.

"Leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

"Leak-detection system" means a system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

"Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

"Management" or **"hazardous waste management"** means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

§ 260.10

"Manifest" means the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A), originated and signed by the generator or offeror in accordance with the instructions in the Appendix to Part 262 and the applicable requirements of Parts 262 through 265 of these regulations.

"Manifest tracking number" means: The alphanumeric identification number (i.e., a unique three letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the Manifest by a registered source.

"Mercury-containing device" means any electrical or medical product or component (excluding batteries and lamps) which contains elemental mercury that is necessary for its operation where the mercury acts as a conductor of temperature, pressure or electricity. The mercury must be housed within an outer metal, glass or plastic casing. Mercury-containing devices include but are not limited to: barometers, blood pressure cuffs, electrical switches and relays, gauges and flow regulators, manometers, pyrometers, thermostats, thermometers, thermocouples, and mercury-filled vacuum pumps.

"Military munitions" means all ammunition products and components produced or used by or for the U.S. Department of Defense or the U.S. Armed Services for national defense and security, including military munitions under the control of the Department of Defense, the U.S. Coast Guard, the U.S. Department of Energy (DOE), and National Guard personnel. The term military munitions includes: confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. Military munitions do not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof. However, the term does include non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed.

"Miscellaneous unit" means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under § 100.25, or staging pile.

"Mining overburden returned to the mine site" means any material overlying an economic mineral deposit which is removed to gain access to that deposit and is then used for reclamation of a surface mine.

"Movement" means that hazardous waste transported to a facility in an individual vehicle.

§ 260.10

"New hazardous waste management facility" or **"new facility"** * means a facility which began operation, or for which construction commenced after November 19, 1980. (See also "Existing hazardous waste management facility".)

* Please note that for State siting purposes, the active operation date for an existing hazardous waste disposal site is July 1, 1981, pursuant to Part II, Title 25, Article 15 C.R.S.

"New tank system" or **"new tank component"** means a tank system or component that will be used for the storage or treatment of hazardous waste and for which installation has commenced after the effective date of these regulations; except, however, for purposes of § 264.193(g)(2) and § 265.193(g)(2), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system".)

"Notice of environmental use restriction" means an instrument containing environmental use restrictions created pursuant to section 25-15-321.5, C.R.S.

"Onground tank" means a device meeting the definition of "tank" in § 260.10 and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

"On-site" means the same or geographically contiguous property which may be divided by public or private right-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing as opposed to going along, the right-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he/she controls and to which the public does not have access, is also considered on-site property.

"Open burning" means the combustion of any material without the following characteristics:

- (1) Control of combustion air to maintain adequate temperature for efficient combustion,
- (2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
- (3) Control of emission of the gaseous combustion products. (See also "Incineration" and thermal treatment".)

"Operation", when used in connection with hazardous waste management, means the use of procedures, equipment, personnel, and other resources to provide hazardous waste management.

"Operator" means the person operating a hazardous waste management facility or site either by contract or permit.

"Owner" means the person who owns a facility or part of a facility.

§ 260.10

[RESERVED]

PAGE 14.1 IS RESERVED

§ 260.10

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of Parts 264 and 265 of these regulations at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment system), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

"Person" means any individual, public or private corporation, partnership, association, firm, trust or estate; the state or any executive department, institution, or agency thereof; any municipal corporation, county, city and county, or other political subdivision of the state; or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

"Personnel" or **"facility personnel"** means all persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of Parts 264 or 265 of these regulations.

"Pesticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

- (1) Is a new animal drug under section 201(w) of the Federal Food, Drug and Cosmetic Act (FFDCA), or
- (2) Is an animal drug that has been determined by regulation of the Secretary of Health and Human Services not to be a new animal drug, or
- (3) Is an animal feed under FFDCA section 201(x) that bears or contains any substances described by paragraph (1) or (2) of this section.

"Pile" means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

"Plasma arc incinerator" means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

"Point source" means any discernible, confined, and discrete conveyance, including, but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Publicly-owned land" means any land owned by the federal government or any agency thereof or land owned by the state or any agency or political subdivision thereof.

§ 260.10

"Publicly owned treatment works" or **"POTW"** means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State or "Municipality" (as defined by Section 502(4) of the CWA). This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

"Qualified Ground-Water Scientist" means a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgements regarding ground-water monitoring and contaminant fate and transport.

"Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or his/her designee.

"Remedial Action Plan (RAP)" means a special form of RCRA permit that a facility owner or operator may obtain under § 100.27 of these regulations, to authorize the treatment, storage or disposal of hazardous remediation waste (as defined in § 260.10 of these regulations) at a remediation waste management site.

§ 260.10

"Remediation waste" means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that are managed for implementing cleanup.

"Remediation waste management site" means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under § 264.101 of these regulations, but is subject to corrective action requirements if the site is located in such a facility.

"Replacement unit" means a landfill, surface impoundment, or waste pile unit (1) from which all or substantially all of the waste is removed, and (2) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

"Representative sample" means a sample of a universe or whole (e.g., waste pile, lagoon, ground water) which can be expected to exhibit the average properties of the universe or whole.

"Resource recovery", when used in connection with hazardous waste, means the operation of preparing and treating any such material or portion thereof for recycling or reuse or the recovery of material or energy.

"Run-off" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" or **"zone of saturation"** means that part of the earth's crust in which all voids are filled with water.

"Self-Certification Checklist" means a checklist of regulatory requirements under 6 CCR 1007-3 that are applicable to specific types of hazardous waste generators (e.g., dry cleaners, autobody shops, hospitals, etc.).

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Sludge dryer" means any enclosed thermal device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

"Small Quantity Generator (SQG)" means a generator who generates between 100kg and 1,000 kg of hazardous waste per calendar month and accumulates no more than 6,000 kg of hazardous waste at any time.

"Solid Waste" means a solid waste as defined in § 261.2 of these regulations.

§ 260.10

"Sorbent" means a material that is used to soak up free liquids by either adsorption or absorption, or both. **"Sorb"** means to either adsorb or absorb, or both.

"Staging pile" means an accumulation of solid, non-flowing remediation waste (as defined in this section) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Director according to the requirements of § 264.554 of these regulations.

"State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Storage" when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of hazardous waste. The term does not apply to any hazardous waste generation if such waste is retained on the site by the Generator in quantities or for time periods exempted by rules and regulations promulgated by the Commission.

"Sump" means any pit or reservoir that meets the definition of tank and those troughs/trenches connected to it that serves to collect hazardous waste for transport to hazardous waste storage, treatment, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

"Surface impoundment" or **"impoundment"** means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

"Tank system" means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system.

"TEQ" means toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxins.

"Thermal treatment" means the treatment of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal treatment processes are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)

§ 260.10

"Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during treatment. An example is a pipe in which waste acid is neutralized.

"Transfer facility" means any transportation related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

§ 260.10

"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer railroad freight car, etc.) is a separate transport vehicle.

"Transportation", when used in connection with hazardous waste, means the off-site movement of hazardous waste to any intermediate point or any point of storage, treatment, or disposal.

"Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

"Treatability Study" means a study in which a hazardous waste is subjected to a treatment process to determine:

- (1) Whether the waste is amenable to the treatment process,
- (2) what pretreatment (if any) is required,
- (3) the optimal process conditions needed to achieve the desired treatment,
- (4) the efficiency of a treatment process for a specific waste or wastes, or
- (5) the characteristics and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of the § 261.4(e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

"Treatment" when used in connection with an operation involved in hazardous waste management, means any method, technique, or process, including neutralization or incineration, designed to change the physical, chemical, or biological character or composition of a hazardous waste, so as to neutralize such waste or to render such waste less hazardous, safer for transport, amenable for recovery or reuse, amenable for storage, or reduced in volume.

"Treatment, storage, or disposal site or facility" means a location at which hazardous waste is subjected to treatment, storage, or disposal and may include a facility where hazardous waste is generated.

"Treatment zone" means a soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transformed, or immobilized.

"Underground injection" means the subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well".)

§ 260.10

"Underground tank" means a device meeting the definition of "tank" in § 260.10 whose entire surface area is totally below the surface of and covered by the ground.

"Unfit-for-use tank system" means a tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or treating hazardous waste without posing a threat of release of hazardous waste to the environment.

"Universal Waste" means any of the following hazardous wastes that are managed under the universal waste requirements of Part 273 of these regulations:

- (1) Batteries as described in § 273.2(a) of these regulations;
- (2) Pesticides as described in § 273.2(b) of these regulations;
- (3) Mercury-containing devices as described in § 273.2(c) of these regulations;
- (4) Aerosol cans as described in § 273.2(d) of these regulations;
- (5) Lamps as described in § 273.2(e) of these regulations; and
- (6) Electronic devices and electronic components as described in § 273.2(f) of these regulations.

"Universal Waste Handler":

- (1) Means:
 - (i) A generator (as defined in this section) of universal waste; or
 - (ii) The owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination.
- (2) Does not mean:
 - (i) A person who treats (except under the provisions of § 273.13(a), (c), (d), (e), or (f), or § 273.33(a), (c), (d), (e), or (f)), disposes of, or recycles universal waste; or
 - (ii) A person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

"Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

§ 260.10

"Unsaturated zone" or **"zone of aeration"** means the zone between the land surface and the water table.

"United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Used oil" means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

"Wastewater treatment unit" means a device which:

- (1) Is part of a wastewater treatment facility that is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act; and
- (2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in § 261.3 of these regulations, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined in § 261.3 of these regulations, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in § 261.3 of these regulations; and
- (3) Meets the definition of tank or tank system in § 260.10 of these regulations.

"Well" means any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

"Well injection": (See "underground injection".)

"Zone of engineering control" means an area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to ground water or surface water.

§ 260.11 References.

(a) When used in parts 260 through 100 of these regulations, the following publications are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW. (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. These documents are also available for review at the Colorado Department of Public Health and Environment (See § 260.2(b))

(b) The following materials are available for purchase from the American Society for Testing and Materials, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428-2959.

(1) ASTM D-93-79 or D-93-80, "Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester," IBR approved for § 261.21.

(2) ASTM D-1946-82, "Standard Method for Analysis of Reformed Gas by Gas Chromatography," IBR approved for §§ 264.1033, 265.1033.

(3) ASTM D 2267-88, "Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," IBR approved for § 264.1063.

(4) ASTM D 2382-83, "Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method)," IBR approved for §§ 264.1033, 265.1033.

(5) ASTM D 2879-92, "Standard Test Method for Vapor Pressure--Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope," IBR approved for § 265.1084.

(6) ASTM D-3278-78, "Standard Test Methods for Flash Point for Liquids by Setaflash Closed Tester," IBR approved for § 261.21(a).

(7) ASTM E 168-88, "Standard Practices for General Techniques of Infrared Quantitative Analysis," IBR approved for § 264.1063.

(8) ASTM E 169-87, "Standard Practices for General Techniques of Ultraviolet-Visible Quantitative Analysis," IBR approved for § 264.1063.

(9) ASTM E 260-85, "Standard Practice for Packed Column Gas Chromatography," IBR approved for § 264.1063.

(10) ASTM E 926-88, "Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analyses of Metals," Test Method C--Bomb, Acid Digestion Method.

§ 260.11

(c) The following materials are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; or for purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800.

(1) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for §§ 264.1035, 265.1035, 270.24, 270.25.

(2) Method 1664, Revision A, n-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated n-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry, PB99-121949, IBR approved for Part 261, Appendix IX.

(3) The following methods as published in the test methods compendium known as "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, Third Edition. A suffix of "A" in the method number indicates revision one (the method has been revised once). A suffix of "B" in the method number indicates revision two (the method has been revised twice). A suffix of "C" in the method number indicates revision three (the method has been revised three times). A suffix of "D" in the method number indicates revision four (the method has been revised four times).

(i) Method 0010, dated September 1986 and in the Basic Manual, IBR approved for Part 261, Appendix IX.

(ii) Method 0020, dated September 1986 and in the Basic Manual, IBR approved for Part 261, Appendix IX.

(iii) Method 0030, dated September 1986 and in the Basic Manual, IBR approved for Part 261, Appendix IX.

(iv) Method 1320, dated September 1986 and in the Basic Manual, IBR approved for Part 261, Appendix IX.

(v) Method 1311, dated September 1992 and in Update I, IBR approved for Part 261, Appendix IX, and §§ 261.24, 268.7, 268.40.

(vi) Method 1330A, dated September 1992 and in Update I, IBR approved for Part 261, Appendix IX.

(vii) Method 1312 dated September 1994 and in Update II, IBR approved for Part 261, Appendix IX.

(viii) Method 0011, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX, and Part 266, Appendix IX.

(ix) Method 0023A, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX, Part 266, Appendix IX, and § 266.104.

(x) Method 0031, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX.

§ 260.11

- (xi) Method 0040, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX.
- (xii) Method 0050, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX, Part 266, Appendix IX, and § 266.107.
- (xiii) Method 0051, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX, Part 266, Appendix IX, and § 266.107.
- (xiv) Method 0060, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX, § 266.106, and Part 266, Appendix IX.
- (xv) Method 0061, dated December 1996 and in Update III, IBR approved for Part 261, Appendix IX, § 266.106, and Part 266, Appendix IX.
- (xvi) Method 9071B, dated April 1998 and in Update IIIA, IBR approved for Part 261, Appendix IX.
- (xvii) Method 1010A, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX.
- (xviii) Method 1020B, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX.
- (xix) Method 1110A, dated November 2004 and in Update IIIB, IBR approved for § 261.22 and Part 261, Appendix IX.
- (xx) Method 1310B, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX.
- (xxi) Method 9010C, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX and §§ 268.40, 268.44, 268.48.
- (xxii) Method 9012B, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX and §§ 268.40, 268.44, 268.48.
- (xxiii) Method 9040C, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX and § 261.22.
- (xxiv) Method 9045D, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX.
- (xxv) Method 9060A, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX, and §§ 264.1034, 264.1063, 265.1034, 265.1063.
- (xxvi) Method 9070A, dated November 2004 and in Update IIIB, IBR approved for Part 261, Appendix IX.

§ 260.11

(xxvii) Method 9095B, dated November 2004 and in Update IIIB, IBR approved, Part 261, Appendix IX, and §§ 264.190, 264.314, 265.190, 265.314, 265.1081, 268.32.

(d) The following materials are available for purchase from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

(1) “Flammable and Combustible Liquids Code” (1977 or 1981), IBR approved for §§ 264.198, 265.198.

(2) [Reserved]

(e) The following materials are available for purchase from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.

(1) API Publication 2517, Third Edition, February 1989, “Evaporative Loss from External Floating-Roof Tanks,” IBR approved for § 265.1084.

(2) [Reserved]

(f) The following materials are available for purchase from the Environmental Protection Agency, Research Triangle Park, NC.

(1) “Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised”, October 1992, EPA Publication No.EPA-450/R-92-019, IBR approved for Part 266, Appendix IX.

(2) [Reserved]

(g) The following materials are available for purchase from the Organisation for Economic Co-operation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France.

(1) OECD Green List of Wastes (revised May 1994), Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4 and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations), IBR approved for § 262.89 of these regulations.

(2) [Reserved]

§ 260.12 Sampling and Analytical Methods

(a) Except where these regulations require the use of specific sampling or analytical methods identified in SW-846 or another publication incorporated by reference in § 260.11, whenever the Department finds, based on tests, studies, or other information, that the sampling or analytical methods proposed for use or in use at a particular site or facility are inadequate to achieve the performance objectives of the activity, the Department may require use of alternative methods which the Department finds are adequate to meet the performance objectives of the activity, including sensitivity, accuracy, precision (i.e. reproducibility), and safety. In making the findings described above, the Department shall consider relevant factors and information, including:

- (1) the procedural steps and equipment used in the method;
- (2) the types of wastes or waste matrices for which the proposed method may be used;
- (3) factors which may interfere with, or limit the use of, the method;
- (4) quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the method;
- (5) supporting tests, studies and other information; and
- (6) where these regulations recommend, but do not require, a particular method to be used, data comparing results from the method under consideration with results from the recommended method.

(b) Except where these regulations require the use of specific sampling or analytical methods identified in SW-846 or another publication incorporated by reference in § 260.11, any person may request the Department to approve a sampling or analytical method for use at a specified site or facility. Any person making such a request shall submit the following information:

- (1) the name and address of the site or facility;
- (2) a full description of the proposed method, including all procedural steps and equipment used in the method;
- (3) a description of the types of wastes or waste matrices for which the proposed method may be used;

§ 260.20

- (4) an assessment of any factors which may interfere with, or limit the use of, the proposed method;
- (5) a description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method;
- (6) supporting tests, studies, or other information; and
- (7) where these regulations recommend, but do not require, a particular method to be used, or where the Department has previously required an alternative method, data comparing results from the method under consideration with results from the recommended or previously required method.

If the Department finds, based on tests, studies, or other information, that sampling or analytical methods proposed for use by any person are adequate to meet the performance objectives of the activity, including sensitivity, accuracy, precision (i.e. reproducibility), and safety, the Department may approve use of the methods at a specified site or facility.

(c) In cases where these regulations require the use of specific sampling or analytical methods identified in SW-846, or another publication incorporated by reference in § 260.11, alternate sampling and analytical methods may only be approved by rulemaking petition, as provided in §§ 260.20 and 260.21.

Subpart C - Rulemaking Petitions

§ 260.20 General.

(a) In accordance with the Colorado Administrative Procedures Act, C.R.S. 1988, 24-4-101 et seq., and with the Procedural Rules for the Solid and Hazardous Waste Commission as found in Part 7 of these regulations, to the extent that there is no conflict with the following provisions, any person may petition the Commission to modify or revoke any provision in Parts 260 through 267, 268, and 273 of these regulations. This section sets forth general requirements which apply to all such petitions. Section 260.21 sets forth additional requirements for petitions to add a testing or analytical method to Part 261, 264 or 265 of these regulations. Section 260.22 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from § 261.3 of these regulations or the lists of hazardous wastes in Subpart D of Part 261 of these regulations. Section 260.23 sets forth additional requirements for petitions to amend Part 273 of these regulations to include additional hazardous wastes or categories of hazardous waste as universal waste.

§ 260.21

- (b) Each petition must be submitted to the Commission by certified mail and must include:
- (1) The petitioner's name and address;
 - (2) A statement of the petitioner's interest in the proposed action;
 - (3) A description of the proposed action, including (where appropriate) suggested regulatory language; and
 - (4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.
- (c) The Commission will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision, either in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, in the Colorado Register for written public comment.
- (d) Upon the written request of any interested person, the Commission may, at its discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The Commission may in any case decide on its own motion to hold an informal public hearing.
- (e) After evaluating all public comments the Commission will make a final decision by publishing in the Colorado Register a regulatory amendment or a denial of the petition.

§ 260.21 Petitions for equivalent testing or analytical methods.

- (a) Any person seeking to add a testing or analytical method to Parts 261, 264, or 265 may petition for a regulatory amendment under this section and § 260.20. To be successful, the person must demonstrate to the satisfaction of the Commission that the proposed method is equal to or superior to the corresponding method prescribed in Parts 261, 264, or 265, in terms of its sensitivity, accuracy, and precision (i.e., reproducibility).
- (b) Each petition must include, in addition to the information required by § 260.20(b):
- (1) A full description of the proposed method, including all procedural steps and equipment used in the method;
 - (2) A description of the types of wastes or waste matrices for which the proposed method may be used;

§ 260.22

- (3) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in Parts 261, 264, or 265;
 - (4) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and
 - (5) A description of the quality control procedures necessary to ensure the sensitivity, accuracy and precision of the proposed method.
- (c) After receiving a petition for an equivalent method, the Commission may request any additional information on the proposed method which it may reasonably require to evaluate the method.
- (d) If the Director amends the regulations to permit use of a new testing method, the method will be incorporated by reference in § 260.11 and added to “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington, DC 20460.

§ 260.22 Petitions to amend Part 261 to exclude a waste produced at a particular facility.

- (a) Any person seeking to exclude a waste at a particular generating facility from the lists in Subpart D of Part 261 may petition for a regulatory amendment under this section and § 260.20. To be successful:
- (1) The petitioner must demonstrate to the satisfaction of the Commission that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste; and
 - (2) Based on a complete application the Commission must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.
- (b) The procedures in this section and § 260.20 may also be used to petition the Commission for a regulatory amendment to exclude from § 261.3(a)(2)(ii) or (c), a waste which is described in these sections and is either a waste listed in Subpart D, or is derived from a waste listed in Subpart D. This exclusion may only be issued for a particular generating, storage, treatment, or disposal facility. The petitioner must make the same demonstration as required by paragraph (a) of this section. Where the waste is a mixture of solid waste and one or more listed hazardous wastes or is derived from one or more hazardous wastes, his/her demonstration must be made with respect to the waste mixture as a whole; analyses must be conducted for not only those constituents for which the listed waste contained in the mixture was listed as hazardous, but also for factors (including

additional constituents) that could cause the waste mixture to be a hazardous waste. A waste which is so excluded may still be a hazardous waste by operation of Subpart C of Part 261.

(c) If the waste is listed with codes "I", "C", "R", or "E" in Subpart D,

(1) The petitioner must show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in §§ 261.21, 261.22, 261.23, or 261.24 using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in §§ 261.21, 261.22, 261.23, or 261.24 using any applicable methods prescribed therein;

(2) Based on a complete application the Commission must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

(d) If the waste is listed with code "T" in Subpart D,

(1) The petitioner must demonstrate that the waste:

(i) Does not contain the constituent or constituents (as defined in Appendix VII of Part 261 of these regulations) that caused the Commission to list the waste; or

(ii) Although containing one or more of the hazardous constituents (as defined in Appendix VII of Part 261) that caused the Commission to list the waste, does not meet the criterion of § 261.11(a)(3) when considering the factors used by the Commission in § 261.11(a)(3)(i) through (xi) under which the waste was listed as hazardous; and

(2) Based on a complete application, the Commission must determine, where it has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in §§ 261.21, 261.22, 261.23, and 261.24 using any applicable methods prescribed therein; and

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

(e) If the waste is listed with the code "H" in Subpart D,

(1) The petitioner must demonstrate that the waste does not meet the criterion of § 261.11(a)(2); and

(2) Based on a complete application, the Commission must determine, where it has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in §§ 261.21, 261.22, 261.23, and 261.24 using any applicable methods prescribed therein; and

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

(f) [Reserved for listing radioactive wastes.]

(g) [Reserved for listed infectious wastes.]

(h) Demonstration samples must consist of enough representative samples, but in no case less than four samples, taken over a period of time sufficient to represent the variability or the uniformity of the waste.

(i) Each petition must include, in addition to the information required by § 260.20(b):

(1) The name and address of the laboratory facility performing the sampling or tests of the waste;

(2) The names and qualifications of the persons sampling and testing the waste;

(3) The dates of sampling and testing;

(4) The location of the generating facility;

(5) A description of the manufacturing processes or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration;

(6) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste covered by the demonstration;

(7) Pertinent data on and discussion of the factors delineated in the respective criterion for listing a hazardous waste, where the demonstration is based on the factors in § 261.11(a)(3);

§ 260.23

- (8) A description of the methodologies and equipment used to obtain the representative samples;
- (9) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization and preservation of the samples;
- (10) A description of the tests performed (including results);
- (11) The names and model numbers of the instruments used in performing the tests; and
- (12) The following statement signed by the generator of the waste or the generator's authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

- (j) After receiving a petition for an exclusion, the Commission may request any additional information which it may reasonably require to evaluate the petition.
- (k) An exclusion will only apply to the waste generated at the individual facility covered by the demonstration and will not apply to waste from any other facility.
- (l) The Commission may exclude only part of the waste for which the demonstration is submitted where it has reason to believe that variability of the waste justifies a partial exclusion.

§ 260.23 Petitions to amend Part 273 to include additional hazardous wastes.

- (a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of Part 273 of these regulations may petition for a regulatory amendment under this section, § 260.20, and Subpart G of Part 273.
- (b) To be successful, the petitioner must demonstrate to the satisfaction of the Commission that regulation under the universal waste regulations of Part 273: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by § 260.20(b). The petition should also address as many of the factors listed in § 273.81 as are appropriate for the waste or category of waste addressed in the petition.

§ 260.31

- (c) The Commission will grant or deny a petition using the factors listed in § 273.81. The decision will be based on the weight of evidence showing that regulation under Part 273 is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.
- (d) The Commission may request additional information needed to evaluate the merits of the petition.

§ 260.30 Non-Waste determinations and variances from classification as a solid waste.

In accordance with the standards and criteria in § 260.31 and § 260.34 and the procedures in § 260.33, the Department may determine on a case-by-case basis that the following recycled materials are not solid wastes:

- (a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in § 261.1(d)(8) of these regulations);
- (b) Materials that are reclaimed and then reused within the original production process in which they were generated;
- (c) Materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.
- (d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and
- (e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

§ 260.31 Standards and criteria for variances from classification as a solid waste.

(a) 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 standards and criteria:

- (1) 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);
- (2) The reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;

§ 260.31

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

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

(5) Other relevant factors.

(b) 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:

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

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

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

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

(5) 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;

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

(7) Other relevant factors.

(c) 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 material for which the variance is sought is commodity-like will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 of this part and on whether all of the following decision criteria are satisfied:

(1) 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 hazardous waste;

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

(3) 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;

§ 260.33

(4) 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); and

(5) Whether the partially-reclaimed material is handled to minimize loss.

§ 260.32 Variance to be classified as a boiler.

In accordance with the standards and criteria in § 260.10 (definition of "boiler"), and the procedures in § 260.33, 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 § 260.10, 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.

§ 260.33 Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, or for non-waste determinations.

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 or non-waste determination. The application must address the relevant criteria contained in § 260.31, § 260.32, or § 260.34 of this Part, as applicable.

(b) The Department will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The Department will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon

§ 260.34

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 hazardous secondary material meets the relevant criteria contained in § 260.31, § 260.32, or § 260.34 upon which a variance or non-waste determination 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 hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination.

(d) Variances and non-waste determinations 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 re-apply for a variance or non-waste determination. If a facility re-applies for a variance or non-waste determination within six months, the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the Department.

(e) Facilities receiving a variance or non-waste determination must provide notification as required by § 260.42 of these regulations.

§ 260.34 Standards and criteria for non-waste determinations.

(a) An applicant may apply to the Department for a formal determination that a hazardous secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in paragraphs (b) or (c) of this section, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under § 260.31).

(b) The Department may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 and on the following criteria:

- (1) The extent that the management of the hazardous secondary material is part of the continuous primary production process and is not waste treatment;
- (2) Whether the capacity of the production process would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);
- (3) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and

§ 260.40

(4) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under § 261.2 or § 261.4 of these regulations.

(c) The Department may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 and on the following criteria:

- (1) Whether market participants treat the hazardous secondary material as a product or intermediate rather than a waste (for example, based on the current positive value of the hazardous secondary material, stability of demand, or any contractual arrangements);
- (2) Whether the chemical and physical identity of the hazardous secondary material is comparable to commercial products or intermediates;
- (3) Whether the capacity of the market would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the nature of the hazardous secondary material, or any contractual arrangements);
- (4) Whether the hazardous constituents in the hazardous secondary material are reclaimed rather than released to the air, water or land at significantly higher levels from either a statistical or from a health and environmental risk perspective than would otherwise be released by the production process; and
- (5) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under § 261.2 or § 261.4 of these regulations.

§ 260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

(a) The Department may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in § 261.6(a)(2)(iii) of these regulations should be regulated under § 261.6(b) and (c) of these regulations. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Department will consider the following factors:

- (1) The types of materials accumulated or stored and the amounts accumulated or stored;
- (2) The method of accumulation or storage;

§ 260.41

- (3) The length of time the materials have been accumulated or stored before being reclaimed;
- (4) Whether any contaminants are being released into the environment, or are likely to be so released; and
- (5) Other relevant factors.

The procedures for this decision are set forth in § 260.41 of these regulations.

§ 260.41 Procedures for case-by-case regulation of hazardous waste recycling activities.

The Department will use the following procedures when determining whether to regulate hazardous waste recycling activities described in § 261.6(a)(2)(iv) under the provisions of § 261.6(b) and (c), rather than under the provisions of Subpart F of Part 267 of these regulations.

(a) If a generator is accumulating the waste, the Department will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subparts A, C, D, and E of Part 262 of these regulations. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Department will hold a public hearing. The Department will provide notice of the hearing to the public and allow public participation at the hearing. The Department will issue a final order after the hearing stating whether or not compliance with Part 262 is required. The order becomes effective 30 days after service of the decision unless the Department specifies a later date. Final agency action occurs when a final order is issued.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Part 100 of these regulations. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Department's decision, he/she may do so in his/her permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Department's determination.

§ 260.42 Notification requirement for hazardous secondary materials.

(a) Facilities managing hazardous secondary materials under § 260.30 must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Department using the Colorado Hazardous Waste Notification Form that includes the following information:

- (1) The name, address, and EPA ID number (if applicable) of the facility;
- (2) The name and telephone number of a contact person;
- (3) The NAICS code of the facility;
- (4) The regulation under which the hazardous secondary materials will be managed;
- (5) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;
- (6) A list of hazardous secondary materials that will be managed according to the regulation (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);
- (7) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;
- (8) The quantity of each hazardous secondary material to be managed annually; and
- (9) The certification (included in the Colorado Hazardous Waste Notification Form) signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the Department within thirty (30) days using the Colorado Hazardous Waste Notification Form. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least 1 year.

§ 260.43 Legitimate recycling of hazardous secondary materials.

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph.

(1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

- (i) Contributes valuable ingredients to a product or intermediate; or
- (ii) Replaces a catalyst or carrier in the recycling process; or
- (iii) Is the source of a valuable constituent recovered in the recycling process; or
- (iv) Is recovered or regenerated by the recycling process; or
- (v) Is used as an effective substitute for a commercial product.

(2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

- (i) Sold to a third party; or
- (ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity when it is under their control. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(4) The product of the recycling process must be comparable to a legitimate product or intermediate:

- (i) Where there is an analogous product or intermediate, the product of the recycling process is comparable to a legitimate product or intermediate if:
 - (A) The product of the recycling process does not exhibit a hazardous characteristic (as defined in Part 261 Subpart C) that analogous products do not exhibit, and
 - (B) The concentrations of any hazardous constituents found in Appendix VIII of Part 261 of these regulations that are in the product or intermediate are at levels that

§ 260.43

are comparable to or lower than those found in analogous products or at levels that meet widely-recognized commodity standards and specifications, in the case where the commodity standards and specifications include levels that specifically address those hazardous constituents.

(ii) Where there is no analogous product, the product of the recycling process is comparable to a legitimate product or intermediate if:

(A) The product of the recycling process is a commodity that meets widely recognized commodity standards and specifications (e.g., commodity specification grades for common metals), or

(B) The hazardous secondary materials being recycled are returned to the original process or processes from which they were generated to be reused (e.g., closed loop recycling).

(iii) If the product of the recycling process has levels of hazardous constituents that are not comparable to or unable to be compared to a legitimate product or intermediate per paragraph (a)(4)(i) or (ii) of this section, the recycling still may be shown to be legitimate, if it meets the following specified requirements. The person performing the recycling must conduct the necessary assessment and prepare documentation showing why the recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk. The documentation must include a certification statement that the recycling is legitimate and must be maintained on-site for three years after the recycling operation has ceased. The person performing the recycling must notify the Department of this activity using the Colorado Hazardous Waste Notification Form.

(b)-(c) [Reserved]

Statement of Basis and Purpose
Part 260 - Hazardous Waste Management System: General

PURPOSE

The fundamental purpose of these regulations, which are promulgated pursuant to C.R.S. 1973, 25-15-302(2), is to provide definitions of terms, general standards, and overview information applicable to the hazardous waste regulations: Parts 260 through 265. These regulations are necessary in order to ensure protection of public health and safety and the environment.

Additionally, regulations concerning the general hazardous waste management system are a necessary and required component in conducting a hazardous waste management program; the State intends to obtain EPA authorization for a hazardous waste management program pursuant to C.R.S. 1973, 25-15-302. Such full state authorization to conduct the hazardous waste regulatory program can be granted only upon the determination that the State program is equivalent to that of the EPA.

BASIS

These regulations are based upon a "cradle-to-grave" system of regulation of hazardous waste. Under this system, hazardous waste is tracked and regulated from the point of generation through storage and transportation to the point of treatment and/or disposal. In this manner, a major portion of the hazardous waste generated in the State is regulated and accounted for, thereby minimizing the potential for public health and environmental problems resulting from improper management, handling, transportation and disposal of these wastes. The great potential for public health and environmental problems, including hazards associated with fire, explosion, direct contact, and air, surface water and groundwater contamination resulting from inadequate management of hazardous wastes has been documented at hundreds of sites throughout the nation and has spurred the development of hazardous waste regulations pursuant to the Resource Conservation and Recovery Act (RCRA) of 1976, Public Law 94-580.

These regulations are based, for the most part, on those developed by the EPA under Subtitle C of RCRA. This was done for the reasons discussed below. Because the Federal hazardous waste regulations are comprehensive and technically complex, it was felt that adopting the Federal format and amending specific sections to the needs of the State, as opposed to developing State regulations "from scratch", would save substantial amounts of time and financial resources. Also, it was felt that the process of determination of initial program equivalency would be greatly simplified through adoption of the Federal format. Further, because the Federal regulations are presently subject to frequent amendment, adoption of the Federal format greatly enhances maintaining equivalency of the State regulations to the Federal program.

As stated above, much of the scientific basis for these regulations was developed in the course of EPA research and investigations over a period of several years. Therefore, all information utilized by EPA in developing and proposing these regulations, including that referenced in the Federal Register Volume 45, Number 98, May 19, 1980 p. 33066 et seq. is hereby incorporated in this statement by reference.

The basis for these regulations was further developed through a series of twelve public meetings at which comments were received from interested parties. Accordingly, certain changes from the Federal regulations have been incorporated in these regulations where it was deemed advisable as a result of public comment and study of the issues, in order to tailor the regulations more to Colorado's needs. Such departures from the approach taken in the Federal regulations are discussed in this document under the pertinent topics.

The Regulations

GENERAL

All or part of the information submitted to the Department pursuant to Parts 260 through 265 of these hazardous waste regulations may contain trade secrets. Therefore the regulations provide that any person who submits information to the Department may assert a claim of confidentiality by following procedures set forth in C.R.S. 1973, 25-72-204. Information covered by such a claim will be disclosed by the Department only to the extent, and by means of procedures, set forth in C.R.S. 1973, 24-72-204(IV)-(V). However, in accord with the Public Records Act, if no such claim accompanies the information when it is received by the Department, it may be made available to the public without further notice to the person submitting it.

DEFINITIONS

In order to ensure that the definition section is comprehensive, the following definitions from C.R.S. 1973, 25-15-101 were added and incorporated into the set of definitions which exist in the Federal regulations in § 260.10:

- "Board"
- "Committee"
- "Department"
- "Domestic waste water"
- "Federal Act"
- "Governmental Unit"
- "Hazardous waste disposal site"
- "Hazardous waste management"
- "Inert material"
- "Operation"
- "Publicly-owned land"
- "Resource recovery"
- "Storage"
- "Treatment, storage, or disposal facility"

Where the same or similar terms were defined in both the Federal regulations and C.R.S. 25-15-101, the definitions from the State hazardous waste statute were given precedence and the following EPA definitions were deleted:

"Manifest"
"Person"
"Transportation"
"Treatment"

The following State Statute definitions were not incorporated since they are clearly applicable only to C.R.S. 1973, 25-15 Part 2 siting provisions and conflict with these hazardous waste regulations promulgated pursuant to Part 3 of the Statute:

"Existing hazardous waste disposal site"
"Hazardous Waste Disposal"

The definition of "Incompatible wastes" from the State regulations for Siting of Hazardous Waste Disposal Sites was incorporated into these regulations and replaced the EPA definition of incompatible wastes.

The term "Commercial use or value" which is found in the C.R.S. 1973, 25-15-101 definition of "Hazardous waste" was not defined elsewhere. The proposed definition represents an initial attempt to adequately define this term. In proposing this definition, the Committee recognized that it may be necessary to amend it in the future in light of comments from EPA and the public.

The following EPA definitions were intentionally deleted due to inapplicability or redundancy:

"EPA region"
"Vessel"
"Water (bulk shipment)"

The C.R.S. 1973, 25-15-101 definition of "Hazardous Waste" was incorporated into the definitions under Part 261.

RULEMAKING PETITIONS

This section provides that any person may petition the Board to modify or revoke any provision in Parts 260 through 265 of these regulations. Certain general requirements are outlined which apply to all such petitions. Additional requirements are outlined for petitions to add a testing or analytical method to Part 261, 264 or 265.

There are also additional requirements for petitions to exclude a waste at a particular facility from the lists of hazardous wastes in Subpart D of Part 261. In order to successfully exclude a waste, the petitioner must demonstrate to the satisfaction of the Department that the waste produced at that facility does not meet any of the criteria under which the waste was listed as a hazardous waste.