

260 - HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL	2
<i>Subpart A - General</i>	<i>2</i>
260.1 Purpose, scope, and applicability	2
260.2 Availability of information; confidentiality of information	2
260.3 Use of number and gender	2
<i>Subpart B - Definitions.....</i>	<i>2</i>
260.10 Definitions.....	2
260.11 References	12
<i>Subpart C - Rulemaking Petitions.....</i>	<i>13</i>
260.20 General	13
260.21 Petitions for equivalent testing or analytical methods.....	13
260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility (11/90).....	14
260.23 Petitions to amend 40 CFR part 273 to include additional hazardous wastes (5/96)	16
260.24 - 260.29 [Reserved 5/96].....	16
260.30 Variances from classification as a solid waste	16
260.31 Standards and criteria for variances from classification as a solid waste.....	16
260.32 Variance to be classified as a boiler	17
260.33 Procedures for variances from classification as a solid waste or to be classified as a boiler	17
260.34 - 260.39 [Reserved].....	17
260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.....	17
260.41 Procedures for case-by-case regulation of hazardous waste recycling activities	18

260 - HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

Subpart A - General

260.1 Purpose, scope, and applicability

(a) This part provides definitions of terms, general standards, and overview information applicable to 260 through 266 and 268 (12/92).

(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 260 through 266 and 268 (12/92).

(2) Section 260.3 establishes rules of grammatical construction for 260 through 266 and 268 (12/92).

(3) Section 260.10 defines terms which are used in 260 through 266 and 268 (12/92).

(4) Section 260.20 establishes procedures for petitioning the Department to amend, modify, or revoke any provision of 260 through 266 and 268 and establishes procedures governing the Department's action on such petitions (12/92).

(5) Section 260.21 establishes procedures for petitioning the Department to approve testing methods as equivalent to those prescribed in 261, 264 or 265 (12/92).

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

260.2 Availability of information; confidentiality of information

(a) Any information provided to the Department under 260 through 266 and 268 will be made available to the public to the extent and in the manner authorized by the Freedom of Information Act, Section 30-4-10 *et seq.* of the S.C. Code of Law of 1976 as amended, or 5 U.S.C. section 552, section 3007(b) of RCRA or EPA regulations implementing the Freedom of Information Act, or section 3007(b), 40 CFR part 2 of RCRA as applicable. (12/92, 12/93).

(b) Any person who submits information to the Department in accordance with 260 through 266 and 268 may assert a claim of business confidentiality covering part or all of that information by following the procedures set forth in 30-4-10 *et seq.* and 40 CFR 2.203(b). Information covered by such a claim will be disclosed by the Department only to the extent, and by means of the provisions contained in the Freedom of Information Acts SC 30-4-10 *et seq.*, and by means of the procedures, set forth in 40 CFR Chapter 1, part 2, subpart B, except that information required by 262.53(a) and 262.83 that is submitted in a notification of intent to export a hazardous waste will be provided to the U. S. Department of State and the appropriate authorities in the transit and receiving or importing countries regardless of any claims of confidentiality. However, 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 (12/92; 12/93, 9/98).

260.3 Use of number and gender

As used in 260 through 266 and 268 (12/92):

(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 260 through 266, 268, 270, and 273, the following terms have the meanings given below (12/92, 5/96):

"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" means the S.C. Hazardous Waste Management Act, Section 44-56-10 *et seq.* of the Code of Laws of 1976 as amended or 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.* (12/93).

"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 the effective date of part 261 and which is not a closed portion (see also "closed portion" and "inactive portion") (12/93).

"Administrator" means the Administrator of the Environmental Protection Agency, or his designee (12/93).

"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 offsite.

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater 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. (5/96)

"Board" means the South Carolina Board of Health and Environmental Control.

"Boiler" means an enclosed device using controlled flame combustion and having the following characteristics:

- (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 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 section 260.32.

"Carbon regeneration unit" means any enclosed thermal treatment device used to regenerate spent activated carbon (12/92).

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

"Certified Laboratory" means a laboratory that has been approved by the Department to perform specific analyses referenced in 260 through 270. Laboratory certification is necessary for parameters of interest under SW-846 and other methods approved by EPA (5/95).

"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".)

"Commissioner" means the commissioner of the Department or his authorized agent.

"Component" means either the tank or ancillary equipment of a tank system.

"Conditionally exempt small quantity generators" generate less than 100 kg hazardous waste in a month (11/90).

"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 groundwater.

"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 264 or 265 (12/93).

"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.

"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 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 Department of Health and Environmental Control, including personnel thereof authorized by the Board to act on behalf of the Department or Board.

"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 270 and 124 of these regulations, or

(ii) has received a permit (or interim status) from a state authorized in accordance with part 271 of this chapter; or

(iii) is regulated under 261.6(c)(2) or subpart F of part 266 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 this chapter.

(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. (12/92; 12/93; 12/94; 6/95, 2/07).

"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 this chapter. 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. (5/96)

"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.

"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.

"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 groundwaters (12/92).

"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. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed. (12/93)

"Drip pad is an engineered structure consisting of a curbed, free-draining base, constructed of nonearthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water runoff to an associated collection system at wood preserving plants." (12/92)

"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 they are listed in subpart D of 261 of the chapter only for this reason (12/92); and

(2) Meets the definition of tank, tank system, container, transport vehicle, or vessel in 260.10 (11/90, 12/92).

"EPA" means the U. S. Environmental Protection Agency.

"EPA hazardous waste number" means the number assigned by EPA to each hazardous waste listed in 261, subpart D, and to each characteristic identified in 261 subpart C.

"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 Department under 260.20 and 260.21 (12/93).

"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 (12/92); and either

(2) (i) A continuous onsite, physical construction program has begun; or

(ii) The owner or operator has entered into contractual obligations - which cannot be canceled or modified without substantial loss - for physical construction of the facility to be completed within a reasonable time.

"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 (12/92).

"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 onsite 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" means a situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat. (9/98)

"Explosives or munitions emergency response" means all immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency. An explosives or munitions emergency response may include in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed. Any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency. Explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at RCRA facilities. (9/98)

"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), 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. (added 9/98)

"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) (12/92). (2) For the purpose of implementing corrective action under 264.101, all contiguous property under the control of the owner or operator seeking a permit under subtitle C of RCRA. This definition also applies to facilities implementing corrective action under RCRA Section 3008(h). (12/93) (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to 264.101, but is subject to corrective action requirements if the site is located within such a facility. (8/00)

"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 are no longer conducted at the facility unless subject to the provisions in 262.34.

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

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

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

"Gasification" For the purpose of complying with 40 CFR 261.4(a)(12)(i), gasification is a process, conducted in an enclosed device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas cleaning to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas. (5/10)

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

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

"Hazardous waste" means a hazardous waste as defined in 261.3.

"Hazardous waste constituent" means a constituent that caused the Administrator to list the hazardous waste in 261 subpart D, or a constituent listed in table I of 261.24. (11/99)

"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.

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

"Inactive portion" means that portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion") (12/93, 9/98).

"Incinerator" means any enclosed device that (12/92):

(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 waste" means a hazardous waste which is unsuitable for (12/92):

(1) Placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(2) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases. (See parts 264 and 265, Appendix V, for examples.)

"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.

"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 (12/92):

(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. (12/92)

(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 (12/92; 12/93).

"In-ground 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.

"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 (12/92).

"Installation inspector" means a person who, by reason of his 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.

"Laboratory" means any facility, including its agents or employees, that performs analyses related to environmental quality evaluations required by the Department or which will be officially submitted to the Department. The laboratory shall have equipment and instrumentation to enable the laboratory to conduct analyses for the tests for which application is made and for which the laboratory has been certified or approved by the Department to perform (6/95).

"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 infrared 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. (8/00)

"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 a corrective action management unit (11/90; 12/92; 12/93).

"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.

"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.

"Manifest" means: the shipping document EPA Form 8700-22 (and if necessary, EPA Form 8700-22A), originated and signed by the generator or offeror in accordance with the instructions in the Appendix to 262 and the applicable requirements of 262 through 265.-(12/92; 12/93, 2/07).

"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. (2/07)

"Mercury-containing equipment" means: a device or part of a device (including thermostats, but excluding batteries and lamps) that contains elemental mercury integral to its function (6/07)

"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. (9/98)

"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.

"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 270.65 or staging pile. (11/90, 12/92, 12/93, 8/00).

"Monitoring well" means a well used to obtain water samples for water quality analysis or to measure groundwater levels.

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

"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".)

"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 July 14, 1986; 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.")

"NPDES" means National Pollutant Discharge Elimination System.

"On-ground 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.

"Onsite" 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 crossroads intersection, and access is by crossing as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered onsite property (12/92)

"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".)

"Operator" means the person responsible for the overall operation of a facility.

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

"Partial closure" means the closure of a hazardous waste management unit in accordance with the applicable closure requirements of 264 and 265 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 systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate (11/90; 12/92).

"Person" means an individual, trust, firm, joint stock company, Federal Agency, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body (12/92).

"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 264 or 265.

"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: (5/96)

(1) Is a new animal drug under FFDCA section 201(w), 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 definition.

"Pile" means any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building (12/93).

"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 (12/92; 12/93).

"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 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 (12/92).

"Quarter" means a three- (3) month period ending on the last day of March, June, September, and December.

"Reporting Year" means the twelve-month time period starting on January 1 of each year and ending on the last day of December.

"Regional Administrator" means the Regional Administrator for the EPA Region in which the facility is located, or his designee (12/93).

"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. (12/93, 8/00, 6/03)

"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, but is subject to corrective action requirements if the site is located in such a facility. (8/00)

"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 (12/93).

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

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

"Runon" 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.

"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 treatment 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 (12/92).

"Small quantity generator" means a generator who generates less than 1000 kg of hazardous waste in a calendar month (11/90; 12/92).

"Solid Waste" means a solid waste as defined in 261.2

"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 (12/93).

"South Carolina Underground Injection Control" R.61-87 (6/04)

"South Carolina Water Classification and Standards," R.61-68 (6/04)

"South Carolina Water Pollution Control Act" 48-1-10 *et seq.* (6/04)

"South Carolina Water Pollution Control Permits" R.61-9 (6/04)

"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 Department according to the requirements of 264.554. (8/00)

"State" means the State of South Carolina.

"State Primary Drinking Water" R.61-58 (6/04)

"State Safe Drinking Water Act" 44-55-10 *et seq.* (6/04)

"Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

"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 (12/93).

"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 nonearthen 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-dioxin.

"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".)

"Thermostat" means a temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 273.13(c)(2) or 273.33(c)(2). (5/96)

"These regulations" refers to all regulations contained under R.61-79 of the State Regulations which have been promulgated by the Board as authorized under Section 44-56-30 of the 1976 Code of Laws, as amended.

"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.

"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" means the movement of hazardous waste by air, rail, highway, or water.

"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. (11/90)

"Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume.

"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 as defined in R.61-87 (12/92).

"Underground tank" means a device meeting the definition of "tank" in section 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 273: (5/96; 8/00)

- (1) Batteries as described in 273.2;
- (2) Pesticides as described in 273.3;
- (3) Mercury-containing equipment as described in 273.4; and (6/07)
- (4) Lamps as described in 273.5 of this chapter.

"Universal Waste Handler": (5/96)

(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) or (c), or 273.33 (a) or (c)), 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.

(3) Mercury-containing equipment as described in 273.4 of this chapter; and (6/07)

(4) Lamps as described in 273.5.

"Universal Waste Transporter" means a person engaged in the off-site transportation of universal waste by air, rail, highway, or water. (5/96)

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

"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 (6/89; 12/93).

"Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water. (11/90)

"Wastewater treatment unit" means a device which:

(1) Is part of a wastewater treatment facility that is subject to regulation under The Pollution Control Act Sections 48-1-10 *et seq.* of the Code of Laws of 1976 as amended, and either section 402 or 307(b) of the Clean Water Act; and (11/90)

(2) Receives and treats or stores an influent wastewater that is a hazardous waste as defined in 261.3, or that generates and accumulates a wastewater treatment sludge that is a hazardous waste as defined by Section 261.3, or treats or stores a wastewater treatment sludge which is a hazardous waste as defined in Section 261.3 of these Regulations; and

(3) Meets the definition of tank or tank system in Section 260.10. (11/90; 12/92)

"Water (bulk shipment)" means the bulk transportation of hazardous waste which is loaded or carried on board a vessel without containers or labels.

"Well" means any excavation which is cored, bored, drilled, jetted, dug or otherwise constructed the depth of which is greater than its largest surface dimension.

"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 groundwater or surface water.

260.11 References

(a) When used in 260 through 270, the following publications are incorporated by reference. These references will be applied to necessary testing to be performed by a certified laboratory (6/95).

(1) "ASTM Standard Test Methods for Flash Point of Liquids by Setaflash Closed Tester," ASTM Standard D-3278-78, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(2) "ASTM Standard Test Methods for Flash Point by Pensky-Martens Closed Tester," ASTM Standard D-93-79 or D-93-80. D-93-80 is available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(3) "ASTM Standard Method for Analysis of Reformed Gas by Gas Chromatography," ASTM Standard D 1946-82, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(4) "ASTM Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High Precision Method)," ASTM Standard D 2382-83, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(5) "ASTM Standard Practices for General Techniques of Ultraviolet Visible Quantitative Analysis," ASTM Standard E 169-87, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(6) "ASTM Standard Practices for General Techniques of Infrared Quantitative Analysis," ASTM Standard E 168-88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(7) "ASTM Standard Practice for Packed Column Gas Chromatography," ASTM Standard E 260-85, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(8) "ASTM Standard Test Method for Aromatics in Light Naphthas and Aviation Gasolines by Gas Chromatography," ASTM Standard D 2267-88, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(9) "APTI Course 415: Control of Gaseous Emissions," EPA Publication EPA450/2-81-005, December 1981, available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(10) "Flammable and Combustible Liquids Code" (1977 or 1981), available from the National Fire Protection Association, 470 Atlantic Avenue, Boston, MA 02210.

(11) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846 [Third Edition (November 1986), as amended by Updates I, (dated July, 1992), II (dated September, 1994), IIA (dated August, 1993), IIB (dated January, 1995) and III] (dated December 1996) and IIIA (dated April 1998)]. The Third Edition of SW-846 and Updates I, II, IIA, IIB, and III (document number 955-001-0000-1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512-1800. Update IIIA is available through EPA's Methods Information Communication Exchange (MICE) Service. MICE can be contacted by phone at (703) 821-4690. Update IIIA can also be obtained by contacting the U.S. Environmental Protection Agency, Office of Solid Waste (5307W), OSW Methods Team, 1200 Pennsylvania Ave. NW, Washington, DC, 20460. Copies of the Third Edition and all of its updates are also

260.21 Petitions for equivalent testing or analytical methods

available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605-6000 or (800) 553-6847. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC. (11/99; 8/00, 6/02)

(12) "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources, Revised," October 1992, EPA Publication No. EPA-450/R-92-019, Environmental Protection Agency, Research Triangle Park, NC. (12/94)

(13) "ASTM Standard Test Methods for Preparing Refuse-Derived Fuel (RDF) Samples for Analysis of Metals," ASTM Standard E926-88, Test Method C - Bomb, Acid Digestion Method, available from American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103.

(14) "API Publication 2517, Third Edition," February 1989, "Evaporative Loss from External Floating-Roof Tanks," available from the American Petroleum Institute, 1220 L Street, Northwest, Washington, DC 20005.

(15) "ASTM Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope," ASTM Standard D 2879-92, available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

(16) 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. Available at NTIS, PB99-949, U.S. Department of Commerce, 5285 Port Royal, Springfield, Virginia 22161. (8/00)

(b) The references listed in paragraph (a) of this section are also available for inspection at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington DC. These incorporations by reference were approved by the Director of the Federal Register. 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 (12/93, 9/98).

Subpart C - Rulemaking Petitions

260.20 General

(a) Any person may petition the Department to modify or revoke any provision in parts 260 through 266, 268 and 273. 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. Section 260.22 sets forth additional requirements for petitions to exclude a waste or waste-derived material at a particular facility from 261.3 or the lists of hazardous wastes in subpart D of part 261. Section 260.23 sets forth additional requirements for petitions to amend 40 CFR 273 to include additional hazardous wastes or categories of hazardous waste as universal waste. (11/90, 12/92, 5/96).

(b) Each petition must be submitted to the Department 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 Department 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 State and Federal Registers for written public comment (12/92).

(d) Upon the written request of any interested person, the Department 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 Department may in any case decide on its own motion to hold an informal public hearing (12/92).

(e) After evaluating all public comments the Department will make a final decision by publishing in the State Register a regulatory amendment or a denial of the petition (12/92).

260.21 Petitions for equivalent testing or analytical methods

(a) Any person seeking to add a testing or analytical method to part 261, 264, 265 or 266 may petition for a regulatory amendment under this section and 260.20. To be successful, the person must demonstrate to the satisfaction of the Department and the Regional Administrator of EPA that the proposed method is equal to or

260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility (11/90)

superior to the corresponding method prescribed in 261, 264 and 265, in terms of its sensitivity, accuracy, and precision (i.e., reproducibility) (12/92, 6/04).

(b) Each petition must include, in addition to the information required by section 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;
- (3) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in 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 Department and the Regional Administrator may request any additional information on the proposed method which he may reasonably require to evaluate the method. (6/04)

(d) If the USEPA amends the regulations to permit use of a new testing method, the method will be incorporated in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW-846, U.S. Environmental Protection Agency, Office of Solid Waste, Washington, DC 20460. As the Federal Regulations incorporate new testing methods, these will be incorporated by reference. (12/94; 6/95)

260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility (11/90)

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in 261 subpart D may petition for a regulatory amendment under this section and section 260.20 to be successful: (12/92)

(1) The petitioner must demonstrate to the satisfaction of the Department and to the Regional Administrator 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 (06/04)

(2) Based on a complete application, the Department and the Regional Administrator 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 261. (06/04)

(b) The procedures in this Section and 260.20 may also be used to petition the Department and the Regional Administrator 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 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. (11/90, 12/92, 06/04)

(c) If the waste is listed with codes "I," "C," "R," or "E" in 261 subpart D (moved 11/90),

(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; (11/90)

(2) Based on a complete application, the Department and the Regional Administrator 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 261.

(d) If the waste is listed with code "T" in 261 subpart D, (11/90)

(1) The petitioner must demonstrate that the waste:

(i) Does not contain the constituent or constituents (as defined in appendix VII of 261) that caused the Department to list the waste, using the appropriate test methods prescribed in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 261.11; or (12/93)

260.22 Petitions to amend part 261 to exclude a waste produced at a particular facility (11/90)

(ii) Although containing one or more of the hazardous constituents (as defined in appendix VII of 261) that caused the Department and the EPA to list the waste, does not meet the criterion of 261.11 (a)(3) when considering the factors used by the Department and the EPA in 261.11(a)(3)(i) through (xi) under which the waste was listed as hazardous; and (06/04)

(2) Based on a complete application, the Department and the EPA 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, (11/90, 12/92, 06/04))

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in sections 261.21, 261.22, 261.23, and 261.24 using any applicable methods prescribed therein; (11/90)

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of subpart C of 261 (moved 11/90).

(e) If the waste is listed with the code "H" in subpart D (12/92; 12/93):

(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 Department and the EPA 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 (06/04)

(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;

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

(f) A waste which is excluded under paragraphs (a), (c), (d), and (e) still may be a hazardous waste by operation of 261 Subpart C.

(g) [Reserved]

(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 section 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);

(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 his 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 Department and the EPA may request any additional information which it may reasonably require to evaluate the petition. (06/04)

(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 Department and the EPA may exclude only part of the waste for which the demonstration is submitted where he has reason to believe that variability of the waste justifies a partial exclusion. (06/04)

(m)[Reserved 12/92]

Editorial Note: For information on the availability of a guidance manual for petitions to delist hazardous wastes, see 50 FR 21607, May 28, 1985 (12/93).

260.23 Petitions to amend 40 CFR part 273 to include additional hazardous wastes (5/96)

(a) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste regulations of 40 CFR 273 may petition for a regulatory amendment under this section, 40 CFR 260.20, and subpart G of 40 CFR part 273.

(b) To be successful, the petitioner must demonstrate to the satisfaction of the Administrator that regulation under the universal waste regulations of 40 CFR 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 40 CFR 260.20(b). The petition should also address as many of the factors listed in 40 CFR 273.81 as are appropriate for the waste or category of waste addressed in the petition.

(c) The Administrator will grant or deny a petition using the factors listed in 40 CFR 273.81. The decision will be based on the weight of evidence showing that regulation under 40 CFR 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 Administrator may request additional information needed to evaluate the merits of the petition.

260.24 - 260.29 [Reserved 5/96]

260.30 Variances from classification as a solid waste

In accordance with the standards and criteria in section 260.31 and the procedures in section 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(c)(8));

(b) Materials that are reclaimed and then reused within the original production process in which they were generated; and (5/96)

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

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 criteria: (5/96)

(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;

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

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

(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: (5/96)

(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;

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

(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 materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

(1) The degree of processing the material has undergone and the degree of further processing that is required;

(2) The value of the material after it has been reclaimed;

(3) The degree to which the reclaimed material is like an analogous raw material;

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

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

(6) Other relevant factors.

260.32 Variance to be classified as a boiler

In accordance with the standards and criteria in section 260.10 (definition of "boiler"), and the procedures in section 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 section 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 or to be classified as a boiler

The Department will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers:(5/96)

(a) The applicant must apply to the Department for the variance. The application must address the relevant criteria contained in sections 260.31 or 260.32 (12/92; 5/96).

(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 and 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 request or at its discretion. The Department will issue a final decision after receipt of comments and after the hearing (if any). (5/96)

260.34 - 260.39 [Reserved]

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) should be regulated under 261.6 (b) and (c). 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 (12/92; 12/93):

(1) The types of materials accumulated or stored and the amounts accumulated or stored;

(2) The method of accumulation or storage;

(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

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

(5) Other relevant factors. The procedures for this decision are set forth in section 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)(iii) under the provisions of 261.6 (b) and (c), rather than under the provisions of subpart F of 266 (12/92).

(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 262. The notice will become final within thirty (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 or unless review by the Department is requested. The order may be appealed to the Department by any person who participated in the public hearing. The Department may choose to grant or to deny the appeal. Final Department action occurs when a final order is issued and Department review procedures are exhausted.

(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 270 and 124. 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 may do so in his 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. The question of whether the Department's decision was proper will remain open for consideration during the public comment period discussed under 124.11 and in any subsequent hearing.