Environmental Protection Agency

§ 260.33

(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 Regional Administrator 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 Variances 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 Administrator 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 Administrator will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed controlled flame combustion devices as boilers, or applications for non-waste determinations.

(a) The applicant must apply to the Administrator for the variance or non-waste determination. The application must address the relevant criteria contained in §260.10, §260.32, or §260.34, as applicable.

(b) The Administrator 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 Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Administrator will issue a final decision after receipt of comments and after the hearing (if any).

(c) For non-waste determinations, in the event of a change in circumstances that affect how a hazardous secondary...
material meets the relevant criteria contained in §260.34 upon which a non-
waste determination has been based, the applicant must re-apply to the Ad-
ministrator for a formal determination that the hazardous secondary material continues to meet the relevant criteria and therefore is not a solid waste.


§ 260.34 Standards and criteria for non-waste determinations.

(a) An applicant may apply to the Administrator for a formal determina-
tion that a hazardous secondary mate-
rial 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). Determinations may also be granted by the State if the State is ei-
ther authorized for this provision or if the following conditions are met:

(1) The State determines the haz-
ardous secondary material meets the criteria in paragraphs (b) or (c) of this section, as applicable;

(2) The State requests that EPA re-
view its determination; and

(3) EPA approves the State deter-
mination.

(b) The Administrator 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 sec-
ondary material is legitimately recy-
cled 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 treat-
ment;

(2) Whether the capacity of the pro-
duction process would use the haz-
ardous secondary material in a reason-
able time frame such that the hazardous secondary material will not be abandoned (for example, based on past practices, market factors, the na-
ture of the hazardous secondary mate-
rual, or any contractual arrangements);

(3) Whether the hazardous constitu-
teins in the hazardous secondary mate-
rnal are reclaimed rather than released to the air, water or land at signifi-
cantly higher levels from either a sta-
tistical or from a health and environ-
mental risk perspective than would otherwise be released by the produc-
tion process; and

(4) Other relevant factors that dem-
onstrate the hazardous secondary ma-
terial is not discarded.

(c) The Administrator may grant a non-waste determination for hazardous secondary material which is indistin-
guishable in all relevant aspects from a product or intermediate if the appli-
cant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is not dis-
carded. The determination will be based on whether the hazardous sec-
ondary material is legitimately recy-
cled as specified in §260.43 and 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 de-
mand, or any contractual arrange-
ments);

(2) Whether the chemical and phys-
ical identity of the hazardous sec-
ondary material is comparable to com-
mercial products or intermediates;

(3) Whether the capacity of the mar-
ket would use the hazardous secondary material in a reasonable time frame and ensure that the hazardous sec-
ondary material will not be abandoned (for example, based on past practices, market factors, the nature of the haz-
ardous secondary material, or any con-
tractual arrangements);

(4) Whether the hazardous constitu-
teins in the hazardous secondary mate-
rnal are reclaimed rather than released to the air, water or land at signifi-
cantly higher levels from either a sta-
tistical or from a health and environ-
mental risk perspective than would otherwise be released by the produc-
tion process; and