Environmental Protection Agency

§ 260.34 Standards and criteria for non-waste determinations.

(a) An applicant may apply to the Administrator 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). Determinations may also be granted by the State if the State is either authorized for this provision or if the following conditions are met:

1. The State determines the hazardous 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 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
(4) Other relevant factors that demonstrate the hazardous secondary material is not discarded.

(73 FR 64758, Oct. 30, 2008)
§ 260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.
(a) The Regional Administrator may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in §261.6(a)(2)(iii) of this chapter should be regulated under §261.6 (b) and (c) of this chapter. 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 Regional Administrator 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;