

## Redefinition of Solid/Hazardous Waste

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### **What is the issue?**

The U.S. Environmental Protection Agency (EPA) published a proposed rule (72 FR 14171) on March 26, 2007. The proposed rule would remove a great deal of what is currently regulated as hazardous waste from solid or hazardous waste regulation. Material that is currently regulated as hazardous waste could be excluded from solid or hazardous waste regulation if it could be treated or reclaimed to recover or create anything potentially useful. Even if the material has no real value (i.e., the receiver would have to be paid to take it or use it, and it had no market value in itself) and the “recycling” only involved a small amount of what was being processed, the material would not be regulated from the point it was generated, through the point it was “recycled.” The material could potentially pass through many communities and be managed multiple places, while still remaining unregulated.

Under the proposed rule, wastes that are burned for energy recovery (as a fuel), used in a manner involving contact or placement in or on the land (earthen contact), or that are inherently waste-like (contain highly toxic dioxin and/or dibenzofuran components), would still be regulated despite being recycled in some manner. The two primary scenarios for which EPA is proposing to exclude materials from regulation are:

- Generation and recycling under the control of a single generator or company; and
- A “transfer-based” exclusion allowing third parties outside of the generator’s control to do the recycling.

### **Why is this important?**

EPA has conservatively estimated this proposed rule to apply to approximately 650 million tons of hazardous waste per year. If adopted as proposed, that material will no longer be regulated as solid or hazardous waste. This would eliminate Missouri’s Resource Recovery Certification process, because the materials being processed would not be solid or hazardous wastes.

Anything involving hazardous waste recycling, even if there was storage or treatment that currently requires a permit, could become unregulated. The operations of large commercial hazardous waste firms, like Safety-Kleen and Heritage Environmental, could become largely unregulated.

Worse, new firms with less capability and financial stability could spring up and try to undercut the large commercial hazardous waste firms price. Situations could easily arise that would be similar to what existed in Missouri before Resource Recovery regulations. Resource Recovery regulations required that facilities have adequate provisions for operating, closure and financial assurances. This proposed regulation, if adopted, could shield facilities that pose a threat to human health or the environment from action under the Missouri Hazardous Waste Management Law and Regulations.

### **Where are we in the process?**

Since this proposed regulation is less stringent than current regulations, states will not be required to adopt it. At this time, the department's Hazardous Waste Program staff have identified a number of aspects of the proposed rule that appear to be poorly written and poorly defined. The Hazardous Waste Program intends to provide comments to EPA. The comment period for this proposed rule remains open until June 25, 2007. Information on how to submit comments can be obtained from the proposed rule at [www.epa.gov/epaoswer/hazwaste/dsw/abr-rule/fr3-26-07.pdf](http://www.epa.gov/epaoswer/hazwaste/dsw/abr-rule/fr3-26-07.pdf).

### **What are the challenges?**

Since EPA first promulgated hazardous waste regulation in 1980, EPA's regulations have recognized that certain waste products being recycled were close enough to raw materials that they did not require management as hazardous waste. On Oct. 28, 2003, EPA proposed a rule to expand the deregulation of hazardous waste being recycled (68 FR 61558). EPA received so many negative comments on its proposed rule that it has substantially revised and re-proposed its rule.

The Resource Conservation and Recovery Act (RCRA) was intended to provide "cradle to grave" responsibility and accountability for wastes, especially hazardous wastes. This current proposed rule, if implemented as proposed, would create a situation where large amounts of currently regulated hazardous wastes – posing recognized hazards to human health and the environment – would disappear "off the radar screen" of regulators, government officials with concerns about health and safety, and the public. Worse, these same groups would never be aware of newly generated materials – where they are, how they are moving through communities, etc.