

REUSE RELIEFS

► (e) *Materials that are not solid waste when recycled.*

(1) Materials are not solid wastes when they can be shown to be recycled by being:

Used to Make a Product

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

Used as a Product

(ii) Used or reused as effective substitutes for commercial products; or

Returned to the Process

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at §261.4(a)(17) apply rather than this paragraph.

Unless...

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in paragraphs (e)(1)(i)–(iii) of this section:

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively;

or

(iv) Materials listed in paragraph (d)(1) and (d)(2) of this section.

PROVE IT!

► (f) *Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation.* Respondents in actions to enforce regulations implementing Subtitle C of RCRA who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

[Source Note: At 50 FR 664, January 4, 1985, revised 261.2; and at 50 FR 33542 August 20, 1985, revised (c)(1)(i)(B) and (c)(2)(i)(B) and removed (c)(2)(i)(C); and at 56 FR 7206, February 21, 1991, changed (d)(2) to (3) and added new (2), effective August 21, 1991; and at 56 FR 42512, August 27, 1991, revised (d)(2), effective August 21, 1991; and at 57 FR 38564, August 25, 1992, revised (e)(2)(iv); and at 59 FR 48041, September 19, 1994, revised (e)(1)(iii). At 62 FR 6651, February 12, 1997, revised (a)(2)(iii) and added (a)(2)(iv). At 62 FR 26018, May 12, 1997, revised (c) Table 1. At 63 FR 28636, May 26, 1998, revised (c)(3), (c)(4) Table 1, and (e)(1)(iii). At 64 FR 25413, May 11, 1999, revised (c)(3), column 3 heading in (c)(4) Table 1, and (e)(1)(iii).]