

1                   **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
2

3                   **Solid and Hazardous Waste Commission/Hazardous Materials and**  
4                   **Waste Management Division**

5   **6 CCR 1007-3**  
6  
7

8   **HAZARDOUS WASTE**  
9

10           **Definition of Solid Waste Amendments**  
11

12  
13           **1) Section 260.10 is amended by adding the definitions of “Contained” and “Hazardous**  
14           **secondary material” in alphabetical order to read as follows:**

15  
16           **§ 260.10 Definitions**  
17

18           \*\*\*\*\*  
19

20           **“Contained”** means held in a unit (including a land-based unit as defined in this subpart) that meets the  
21 following criteria:

22           (1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases  
23 of the hazardous secondary materials to the environment, and is designed, as appropriate for the  
24 hazardous secondary materials, to prevent releases of hazardous secondary materials to the  
25 environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to  
26 discharge to water or air) and may include, but are not limited to, releases through surface transport  
27 by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and  
28 catastrophic unit failures;  
29

30           (2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the  
31 hazardous secondary materials in the unit; and  
32

33           (3) The unit holds hazardous secondary materials that are compatible with other hazardous  
34 secondary materials placed in the unit and is compatible with the materials used to construct the unit  
35 and addresses any potential risks of fires or explosions.  
36

37           (4) Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts  
38 264 or 265 are presumptively contained.  
39

40           \*\*\*\*\*  
41

42           **“Hazardous secondary material”** means a secondary material (e.g., spent material, by-product, or  
43 sludge) that, when discarded, would be identified as hazardous waste under Part 261 of these  
44 regulations.  
45

46           \*\*\*\*\*

47 **2) Section 260.30 is amended by revising the section heading; revising paragraph (a);**  
48 **and adding paragraphs (d) and (e) to read as follows:**

49  
50 **§ 260.30 Non-Waste determinations and Variances from classification as a solid waste.**

51  
52 In accordance with the standards and criteria in § 260.31 **and § 260.34** and the procedures in § 260.33,  
53 the Department may determine on a case by case basis that the following recycled materials are not solid  
54 wastes:

55  
56 (a) Materials that are accumulated speculatively without sufficient amounts being recycled (as defined in  
57 § 261.1(e)(d)(8) of these regulations);

58  
59 (b) \*\*\*\*\*

60  
61 (c) \*\*\*\*\*

62  
63 **(d) Hazardous secondary materials that are reclaimed in a continuous industrial process; and**

64  
65 **(e) Hazardous secondary materials that are indistinguishable in all relevant aspects from a**  
66 **product or intermediate.**

67  
68  
69  
70 \*\*\*\*\*

71  
72  
73 **3) Section 260.31 is amended by revising paragraph (c) to read as follows:**

74  
75 **§ 260.31 Standards and criteria for variances from classification as a solid waste.**

76  
77 \*\*\*\*\*

78 (c) The Department may grant requests for a variance from classifying as a solid waste those **hazardous**  
79 **secondary** materials that have been **partially** reclaimed, but must be reclaimed further before recovery is  
80 completed, if, ~~after initial reclamation, and resulting material is commodity like (even though it is not yet a~~  
81 ~~commercial product, and has to be reclaimed further).~~ This determination will be based on the following  
82 ~~factors:~~ **the partial reclamation has produced a commodity-like material. A determination that a**  
83 **partially-reclaimed material for which the variance is sought is commodity-like will be based on**  
84 **whether the hazardous secondary material is legitimately recycled as specified in § 260.43 of this**  
85 **part and on whether all of the following decision criteria are satisfied:**

86  
87 (1) ~~The degree of processing the materials had undergone and the degree of further processing that~~  
88 ~~is required;~~ **Whether the degree of partial reclamation the material has undergone is substantial**  
89 **as demonstrated by using a partial reclamation process other than the process that generated**  
90 **the hazardous waste;**

91  
92 (2) ~~The value of the material after it has been reclaimed;~~ **Whether the partially-reclaimed material**  
93 **has sufficient economic value that it will be purchased for further reclamation;**

94  
95 (3) ~~The degree to which the reclaimed material is like an analogous raw material;~~ **Whether the**  
96 **partially-reclaimed material is a viable substitute for a product or intermediate produced from**  
97 **virgin or raw materials which is used in subsequent production steps;**

98

99 ~~(4) The extent to which an end market for the reclaimed material is guaranteed;~~ **Whether there is a**  
100 **market for the partially-reclaimed material as demonstrated by known customer(s) who are**  
101 **further reclaiming the material (e.g., records of sales and/or contracts and evidence of**  
102 **subsequent use, such as bills of lading); and**

104 ~~(5) The extent to which the reclaimed material is handled to minimize loss;~~ **Whether the partially-**  
105 **reclaimed material is handled to minimize loss.**

106  
107 ~~(6) Other relevant factors.~~

110 **4) Section 260.33 is amended by revising the section heading and paragraph (a), and**  
111 **adding paragraphs (c), (d) and (e) to read as follows:**

112 **§ 260.33 Procedures for variances from classification as a solid waste, for variances to be**  
113 **classified as a boiler, or for non-waste determinations.**

114 The Department will use the following procedures in evaluating applications for variances from  
115 classification as a solid waste or applications to classify particular enclosed controlled flame combustion  
116 devices as boilers:

117  
118 (a) The applicant must apply to the Department for the variance **or non-waste determination**. The  
119 application must address the relevant criteria contained in § 260.31, ~~or § 260.32,~~ **or § 260.34** of this Part,  
120 **as applicable**.

121  
122 (b) \*\*\*\*\*

123  
124 **(c) In the event of a change in circumstances that affect how a hazardous secondary material**  
125 **meets the relevant criteria contained in § 260.31, § 260.32, or § 260.34 upon which a variance or**  
126 **non-waste determination has been based, the applicant must send a description of the change in**  
127 **circumstances to the Department. The Department may issue a determination that the hazardous**  
128 **secondary material continues to meet the relevant criteria of the variance or non-waste**  
129 **determination or may require the facility to re-apply for the variance or non-waste determination.**

130  
131 **(d) Variances and non-waste determinations shall be effective for a fixed term not to exceed ten**  
132 **years. No later than six months prior to the end of this term, facilities must re-apply for a variance**  
133 **or non-waste determination. If a facility re-applies for a variance or non-waste determination**  
134 **within six months, the facility may continue to operate under an expired variance or non-waste**  
135 **determination until receiving a decision on their re-application from the Department.**

136  
137 **(e) Facilities receiving a variance or non-waste determination must provide notification as**  
138 **required by § 260.42 of these regulations.**

139  
140  
141 **5) The existing Section 260.34 (Standards and Criteria for Non-waste Confirmations) is**  
142 **being deleted in its entirety and replaced with a new Section 260.34 (Standards and**  
143 **criteria for non-waste determinations) to read as follows:**

144  
145 **§ 260.34 Standards and criteria for non-waste determinations.**

146  
147 **(a) An applicant may apply to the Department for a formal determination that a hazardous**  
148 **secondary material is not discarded and therefore not a solid waste. The determinations will be**

149 based on the criteria contained in paragraphs (b) or (c) of this section, as applicable. If an  
150 application is denied, the hazardous secondary material might still be eligible for a solid waste  
151 variance or exclusion (for example, one of the solid waste variances under § 260.31).  
152

153 (b) The Department may grant a non-waste determination for hazardous secondary material which  
154 is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous  
155 secondary material is a part of the production process and is not discarded. The determination  
156 will be based on whether the hazardous secondary material is legitimately recycled as specified in  
157 § 260.43 and on the following criteria:  
158

159 (1) The extent that the management of the hazardous secondary material is part of the  
160 continuous primary production process and is not waste treatment;  
161

162 (2) Whether the capacity of the production process would use the hazardous secondary  
163 material in a reasonable time frame and ensure that the hazardous secondary material will not  
164 be abandoned (for example, based on past practices, market factors, the nature of the  
165 hazardous secondary material, or any contractual arrangements);  
166

167 (3) Whether the hazardous constituents in the hazardous secondary material are reclaimed  
168 rather than released to the air, water or land at significantly higher levels from either a  
169 statistical or from a health and environmental risk perspective than would otherwise be  
170 released by the production process; and  
171

172 (4) Other relevant factors that demonstrate the hazardous secondary material is not discarded,  
173 including why the hazardous secondary material cannot meet, or should not have to meet, the  
174 conditions of an exclusion under § 261.2 or § 261.4 of these regulations.  
175

176 (c) The Department may grant a non-waste determination for hazardous secondary material which  
177 is indistinguishable in all relevant aspects from a product or intermediate if the applicant  
178 demonstrates that the hazardous secondary material is comparable to a product or intermediate  
179 and is not discarded. The determination will be based on whether the hazardous secondary  
180 material is legitimately recycled as specified in § 260.43 and on the following criteria:  
181

182 (1) Whether market participants treat the hazardous secondary material as a product or  
183 intermediate rather than a waste (for example, based on the current positive value of the  
184 hazardous secondary material, stability of demand, or any contractual arrangements);  
185

186 (2) Whether the chemical and physical identity of the hazardous secondary material is  
187 comparable to commercial products or intermediates;  
188

189 (3) Whether the capacity of the market would use the hazardous secondary material in a  
190 reasonable time frame and ensure that the hazardous secondary material will not be  
191 abandoned (for example, based on past practices, market factors, the nature of the hazardous  
192 secondary material, or any contractual arrangements);  
193

194 (4) Whether the hazardous constituents in the hazardous secondary material are reclaimed  
195 rather than released to the air, water or land at significantly higher levels from either a  
196 statistical or from a health and environmental risk perspective than would otherwise be  
197 released by the production process; and  
198

199 (5) Other relevant factors that demonstrate the hazardous secondary material is not discarded,  
200 including why the hazardous secondary material cannot meet, or should not have to meet, the  
201 conditions of an exclusion under § 261.2 or § 261.4 of these regulations.  
202

203 6) Part 260 is amended by adding Section 260.42 (Notification requirement for hazardous  
204 secondary materials) to read as follows:  
205

206 **§ 260.42 Notification requirement for hazardous secondary materials.**  
207

208 **(a) Facilities managing hazardous secondary materials under § 260.30 must send a notification**  
209 **prior to operating under the regulatory provision and by March 1 of each even-numbered year**  
210 **thereafter to the Department using the Colorado Hazardous Waste Notification Form that includes**  
211 **the following information:**  
212

213 **(1) The name, address, and EPA ID number (if applicable) of the facility;**  
214

215 **(2) The name and telephone number of a contact person;**  
216

217 **(3) The NAICS code of the facility;**  
218

219 **(4) The regulation under which the hazardous secondary materials will be managed;**  
220

221 **(5) When the facility began or expects to begin managing the hazardous secondary materials**  
222 **in accordance with the regulation;**  
223

224 **(6) A list of hazardous secondary materials that will be managed according to the regulation**  
225 **(reported as the EPA hazardous waste numbers that would apply if the hazardous secondary**  
226 **materials were managed as hazardous wastes);**  
227

228 **(7) For each hazardous secondary material, whether the hazardous secondary material, or any**  
229 **portion thereof, will be managed in a land-based unit;**  
230

231 **(8) The quantity of each hazardous secondary material to be managed annually; and**  
232

233 **(9) The certification (included in the Colorado Hazardous Waste Notification Form) signed and**  
234 **dated by an authorized representative of the facility.**  
235

236 **(b) If a facility managing hazardous secondary materials has submitted a notification, but then**  
237 **subsequently stops managing hazardous secondary materials in accordance with the**  
238 **regulation(s) listed above, the facility must notify the Department within thirty (30) days using the**  
239 **Colorado Hazardous Waste Notification Form. For purposes of this section, a facility has stopped**  
240 **managing hazardous secondary materials if the facility no longer generates, manages and/or**  
241 **reclaims hazardous secondary materials under the regulation(s) above and does not expect to**  
242 **manage any amount of hazardous secondary materials for at least 1 year.**  
243

244  
245 7) Part 260 is amended by adding Section 260.43 (Legitimate recycling of hazardous  
246 secondary materials) to read as follows:  
247

248 **§ 260.43 Legitimate recycling of hazardous secondary materials.**  
249

250 **(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions**  
251 **from the hazardous waste regulations must be legitimate. Hazardous secondary material that is**  
252 **not legitimately recycled is discarded material and is a solid waste. In determining if their**  
253 **recycling is legitimate, persons must address all the requirements of this paragraph.**  
254

255 **(1) Legitimate recycling must involve a hazardous secondary material that provides a useful**  
256 **contribution to the recycling process or to a product or intermediate of the recycling process.**  
257 **The hazardous secondary material provides a useful contribution if it:**  
258

259 **(i) Contributes valuable ingredients to a product or intermediate; or**

260 **(ii) Replaces a catalyst or carrier in the recycling process; or**

261 **(iii) Is the source of a valuable constituent recovered in the recycling process; or**

262 **(iv) Is recovered or regenerated by the recycling process; or**

263 **(v) Is used as an effective substitute for a commercial product.**

264  
265  
266  
267  
268  
269 **(2) The recycling process must produce a valuable product or intermediate. The product or**  
270 **intermediate is valuable if it is:**

271 **(i) Sold to a third party; or**

272 **(ii) Used by the recycler or the generator as an effective substitute for a commercial**  
273 **product or as an ingredient or intermediate in an industrial process.**

274  
275  
276  
277 **(3) The generator and the recycler must manage the hazardous secondary material as a**  
278 **valuable commodity when it is under their control. Where there is an analogous raw material,**  
279 **the hazardous secondary material must be managed, at a minimum, in a manner consistent**  
280 **with the management of the raw material or in an equally protective manner. Where there is no**  
281 **analogous raw material, the hazardous secondary material must be contained. Hazardous**  
282 **secondary materials that are released to the environment and are not recovered immediately**  
283 **are discarded.**

284  
285 **(4) The product of the recycling process must be comparable to a legitimate product or**  
286 **intermediate:**

287 **(i) Where there is an analogous product or intermediate, the product of the recycling**  
288 **process is comparable to a legitimate product or intermediate if:**

289 **(A) The product of the recycling process does not exhibit a hazardous characteristic**  
290 **(as defined in Part 261 Subpart C) that analogous products do not exhibit, and**

291 **(B) The concentrations of any hazardous constituents found in Appendix VIII of Part**  
292 **261 of these regulations that are in the product or intermediate are at levels that are**  
293 **comparable to or lower than those found in analogous products or at levels that meet**  
294 **widely-recognized commodity standards and specifications, in the case where the**  
295 **commodity standards and specifications include levels that specifically address those**  
296 **hazardous constituents.**

297  
298  
299  
300  
301 **(ii) Where there is no analogous product, the product of the recycling process is**  
302 **comparable to a legitimate product or intermediate if:**

303 **(A) The product of the recycling process is a commodity that meets widely recognized**  
304 **commodity standards and specifications (e.g., commodity specification grades for**  
305 **common metals), or**

308 (B) The hazardous secondary materials being recycled are returned to the original  
309 process or processes from which they were generated to be reused (e.g., closed loop  
310 recycling).

311  
312 (iii) If the product of the recycling process has levels of hazardous constituents that are  
313 not comparable to or unable to be compared to a legitimate product or intermediate per  
314 paragraph (a)(4)(i) or (ii) of this section, the recycling still may be shown to be legitimate, if  
315 it meets the following specified requirements. The person performing the recycling must  
316 conduct the necessary assessment and prepare documentation showing why the  
317 recycling is, in fact, still legitimate. The recycling can be shown to be legitimate based on  
318 lack of exposure from toxics in the product, lack of the bioavailability of the toxics in the  
319 product, or other relevant considerations which show that the recycled product does not  
320 contain levels of hazardous constituents that pose a significant human health or  
321 environmental risk. The documentation must include a certification statement that the  
322 recycling is legitimate and must be maintained on-site for three years after the recycling  
323 operation has ceased. The person performing the recycling must notify the Department of  
324 this activity using the Colorado Hazardous Waste Notification Form.

325  
326 **(b)-(c) [Reserved]**

327  
328  
329  
330 **8) Section 261.1 is amended by revising paragraphs (d)(8) to read as follows:**

331  
332 **§ 261.1 Purpose and scope.**

333  
334 \*\*\*\*\*

335  
336 (d) For the purposes of §§ 261.2 and 261.6:

337  
338 \*\*\*\*\*

339  
340 (8) A material is "accumulated speculatively" if it is accumulated before recycled. A material is not  
341 accumulated speculatively, however, if the person accumulating it can show that the material is  
342 potentially recyclable and has a feasible means of being recycled; and that—during the calendar year  
343 (commencing on January 1)—the amount of material that is recycled, or transferred to a different site  
344 for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at  
345 the beginning of the period. **Materials must be placed in a storage unit with a label indicating**  
346 **the first date that the material began to be accumulated. If placing a label on the storage unit**  
347 **is not practicable, the accumulation period must be documented through an inventory log or**  
348 **other appropriate method.** In calculating the percentage of turnover, the 75% requirement is to be  
349 applied to each material of the same type (e.g., slags from a single smelting process) that is recycled  
350 in the same way (i.e., from which the same material is recovered or that is used in the same way).  
351 Materials accumulating in units that would be exempt from regulation under § 261.4(c) are not to be  
352 included in making the calculation. ~~Materials that are already defined as solid wastes also are not to~~  
353 ~~be included in making the calculation.~~ Materials are no longer in this category once they are  
354 removed from accumulation for recycling, however.

355  
356 \*\*\*\*\*

357 **9) Section 261.2 is amended by revising paragraph (b)(3); adding paragraph (b)(4);**  
 358 **revising paragraph (c)(3); and revising table 1 in paragraph (c)(4) to read as follows:**

359  
 360 **§ 261.2 Definition of solid waste.**

361  
 362 \*\*\*\*\*

363  
 364 (b) Materials are solid waste if they are abandoned by being:

365  
 366 \*\*\*\*\*

367  
 368 (3) Accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being  
 369 disposed of, burned, or incinerated ~~or~~ or

370  
 371 **(4) Sham recycled, as explained in paragraph (g) of this section.**

372  
 373 (c) Materials are solid wastes if they are recycled or accumulated, stored, or treated before recycling  
 374 as specified in paragraphs (c)(1) through (c)(4) of this section.

375  
 376 \*\*\*\*\*

377  
 378 (3) **Reclaimed. Materials noted with a "---" in column 3 of Table 1 are not solid wastes when**  
 379 **reclaimed.** Materials noted with a "\*" in column 3 of Table 1 are solid wastes when reclaimed **unless**  
 380 **they meet the requirements of (except as provided under §§ 261.4(a)(17), or 261.4(a)(23),**  
 381 **261.4(a)(24), or 261.4(a)(27), of these regulations).** ~~Materials noted with a "---" in column 3 of Table~~  
 382 ~~1 are not solid wastes when reclaimed.~~

383  
 384 (4) **Accumulated speculatively.** Materials noted with a "\*" in column 4 of Table 1 are solid wastes  
 385 when accumulated speculatively.

386  
 387

Table 1

	Use constituting disposal (§ 261.2(c)(1))	Energy recovery/fuel (§ 261.2(c)(2))	Reclamation (§ 261.2(c)(3)) (except as provided in § 261.4(a)(17) for mineral processing secondary materials)	Speculative accumulation (§ 261.2(c)(4))
	(1)	(2)	(3)	(4)
Spent Materials	(*)	(*)	(*)	(*)

Sludges (listed in § 261.31 or § 261.32)	(*)	(*)	(*)	(*)
Sludges exhibiting a characteristic of hazardous waste	(*)	(*)	(---)	(*)
By-products (listed in § 261.31 or § 261.32)	(*)	(*)	(*)	(*)
By-products exhibiting a characteristic of hazardous waste	(*)	(*)	(---)	(*)
Commercial chemical products listed in § 261.33	(*)	(*)	(---)	(---)
Scrap metal <del>other than</del> <u>that is not</u> excluded <u>under § 261.4(a)(14)</u> <del>scrap metal (see § 261.4(d)(9))</del>	(*)	(*)	(*)	(*)

388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416

Note: The terms "spent materials", "sludges", "by-products", "scrap metal", and "processed scrap metal" are defined in § 261.1.

\*\*\*\*\*

**10) Section 261.2 is amended by deleting and reserving paragraph (f)(2) and adding paragraph (g) to read as follows:**

\*\*\*\*\*

(f)(1) **Documentation of claims that materials are not solid wastes or are conditionally exempt from regulation.** In order to claim that a certain material is not a solid waste or is conditionally exempt from regulation, owners or operators 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. Materials that are not legitimately recycled are discarded and are solid waste. In determining whether their recycling is legitimate, owners or operators must address the requirements below.

(2) ~~**Reserved.** Legitimate recycling must involve a material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process, and the recycling process must produce a valuable product or intermediate.~~

~~i. The material provides a useful contribution if it:~~

- 417  
418 ~~A. Contributes valuable ingredients to a product or intermediate; or~~  
419  
420 ~~B. Replaces a catalyst or carrier in the recycling process; or~~  
421  
422 ~~C. Is the source of a valuable constituent recovered in the recycling process; or~~  
423  
424 ~~D. Is recovered or regenerated by the recycling process; or~~  
425  
426 ~~E. Is used as an effective substitute for a commercial product.~~  
427  
428 ~~ii. The product or intermediate is valuable if it is:~~  
429  
430 ~~A. Sold to a third party; or~~  
431  
432  
433 ~~B. Used by the recycler or the generator as an effective substitute for a commercial product~~  
434 ~~or as an ingredient or intermediate in an industrial process.~~  
435  
436 ~~iii. The generator and the recycler must manage the material as a valuable commodity. Where~~  
437 ~~there is an analogous raw material, the material must be managed, at a minimum, in a manner~~  
438 ~~consistent with the management of the raw material. Where there is no analogous raw material,~~  
439 ~~the material must be contained. Materials that are released to the environment and are not~~  
440 ~~recovered immediately are discarded.~~  
441  
442 ~~iv. The product of the recycling process must not:~~  
443  
444 ~~A. Contain significant concentrations of any hazardous constituents found in Appendix VIII of~~  
445 ~~Part 261 that are not found in analogous products; or~~  
446  
447 ~~B. Contain concentrations of any hazardous constituents found in Appendix VIII of Part 261~~  
448 ~~at levels that are significantly elevated from those found in analogous products; or~~  
449  
450 ~~C. Exhibit a hazardous characteristic (as defined in Part 261 Subpart C) that analogous~~  
451 ~~products do not exhibit.~~  
452

453 **(g) Sham recycling. A hazardous secondary material found to be sham recycled is considered**  
454 **discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as**  
455 **defined in § 260.43.**  
456

457  
458  
459 **11) Section 8.85 (Statement of Basis and Purpose for the Rulemaking Hearing of**  
460 **February 16, 2016) is added to Part 8 of the Regulations to read as follows:**

461 **Statement of Basis and Purpose**  
462 **Rulemaking Hearing of February 16, 2016**

463 **8.85 Basis and Purpose.**

464 These amendments to 6 CCR 1007-3, Parts 260 and 261 are made pursuant to the authority granted to  
465 the Solid and Hazardous Waste Commission in § 25-15-302(2), C.R.S.

466 **Definition of Solid Waste Amendments**

467  
468 On January 13, 2015, the Environmental Protection Agency published a final rule in the Federal Register  
469 {80 FR 1694-1814} that revised several recycling-related provisions associated with the definition of solid  
470 waste (DSW) used to determine hazardous waste regulation under Subtitle C of the Resource  
471 Conservation and Recovery Act (RCRA). The 2015 DSW rule revised the previous 2008 DSW rule to  
472 provide additional oversight and minimize potential risk of releases to surrounding communities. The rule  
473 establishes a clear, uniform legitimate recycling standard for all hazardous secondary materials recycling  
474 to improve compliance and help ensure that the hazardous secondary materials are in fact legitimately  
475 recycled, rather than illegally disposed of. Establishing standards in the regulations for legitimate  
476 recycling makes it substantially harder for facilities who are illegally disposing under the guise of recycling  
477 to continue to operate in the marketplace. The intent of these revisions is to ensure that the hazardous  
478 secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not  
479 result in the increased risk to human health and the environment from discarded hazardous secondary  
480 material.

481  
482 Today's amendments to Parts 260 and 261 of the Colorado Hazardous Waste Regulations (6 CCR 1007-  
483 3) adopt states analogs to the federal provisions of the January 2015 DSW rule that are considered to be  
484 more stringent than the current federal requirements, including: 1) the prohibition of sham recycling and  
485 the definition of legitimate recycling (including the definition of "contained"); 2) accumulation date tracking  
486 requirements for speculative accumulation provisions; and 3) changes to the standards and criteria for the  
487 solid waste variance and non-waste determinations.

488  
489 The specific amendments being adopted at this time include the following:

- 490  
491 1) Addition of definition of "Contained" in § 260.10 – As defined in § 260.10, "*Contained*" means held  
492 in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:  
493  
494 (i) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted  
495 releases of the hazardous secondary materials to the environment, and is designed, as  
496 appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary  
497 materials to the environment. Unpermitted releases are releases that are not covered by a permit  
498 (such as a permit to discharge to water or air) and may include, but are not limited to, releases  
499 through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown  
500 dust, fugitive air emissions, and catastrophic unit failures;  
501  
502 (ii) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify  
503 the hazardous secondary materials in the unit; and  
504  
505 (iii) The unit holds hazardous secondary materials that are compatible with other hazardous  
506 secondary materials placed in the unit and is compatible with the materials used to construct the  
507 unit and addresses any potential risks of fires or explosions.  
508  
509 (iv) Hazardous secondary materials in units that meet the applicable requirements of Parts 264 or  
510 265 are presumptively contained.  
511  
512 2) Addition of definition of "Hazardous secondary material" in § 260.10 – As defined in § 260.10,  
513 "*Hazardous secondary material*" means a secondary material (e.g., spent material, by-product, or  
514 sludge) that, when discarded, would be identified as hazardous waste under Part 261 of these  
515 regulations.  
516  
517 3) Amendment of § 260.31 Standards and criteria for variances from classification as a solid waste –  
518 Section 260.31(c) provides the specific standards that a partially-reclaimed material must meet in  
519 order to be eligible for a variance from classification from solid waste. The criteria for the partial

520 reclamation variance in § 260.31(c) clarifies when the variance applies and requires, among other  
521 things, that such reclamation meet the § 260.43 legitimacy criteria.  
522

523 4) Amendment of § 260.33 Procedures for variances from classification as a solid waste, for  
524 variances to be classified as a boiler, or for non-waste determinations. – Section 260.33(c) requires  
525 facilities to send a notice to the Director and potentially re-apply for a variance in the event of a  
526 change in circumstances that affects how a hazardous secondary material meets the criteria upon  
527 which a solid waste variance or non-waste determination has been based. Section 260.33(d)  
528 establishes a fixed term limit of ten years for variance and non-waste determinations, unless the  
529 petitioner re-applies to the Department to have variance or non-waste determination renewed.  
530 Section 260.33(e) requires facilities to re-notify every two years under § 260.42 with updated  
531 information.  
532

533 5) Amendment of § 260.34 Standards and criteria for non-waste determinations. – The existing  
534 Section 260.34 (Standards and Criteria for Non-waste Confirmations) is being deleted in its entirety  
535 and replaced with a new Section 260.34 (Standards and criteria for non-waste determinations) to  
536 match the federal language. The criteria for non-waste determinations in § 260.34(b)(4) and §  
537 260.34(c)(5) require that petitioners for a non-waste determination explain or demonstrate why their  
538 hazardous secondary materials cannot meet, or should not have to meet, the conditions for a solid  
539 waste exclusion under § 261.2 or § 261.4.  
540

541 6) Addition of § 260.42 Notification requirement for hazardous secondary materials. – Section 260.42  
542 specifies the requirements that a facility managing hazardous secondary materials under § 260.30  
543 must comply with. Facilities receiving variances or non-waste determinations must send a notification  
544 of this activity prior to operating under this regulatory provision and by March 1 of each even-  
545 numbered year thereafter to the Department. Additionally, these facilities must notify within 30 days  
546 of stopping management of hazardous secondary materials under the variance or non-waste  
547 determination.  
548

549 7) Addition of § 260.43 Legitimate recycling of hazardous secondary materials. – The provisions of §  
550 260.43 are designed to distinguish between real recycling activities(i.e., legitimate recycling) and  
551 “sham” recycling, and specifies the four mandatory factors that must be met for recycling to be  
552 legitimate. The four legitimacy factors are: 1) the hazardous secondary material must provide a  
553 useful contribution to the recycling process or product; 2) the recycling process must produce a  
554 valuable product or intermediate; 3) the hazardous secondary material must be managed as a  
555 valuable commodity; and 4) the recycled product must be comparable to a legitimate product or  
556 intermediate. **Note:** As part of this amendment, the existing legitimate recycling criteria currently  
557 found at § 261.2(f) are being deleted.  
558

559 8) Amendment of § 261.1(d)(8) – Pursuant to the speculative accumulation requirements at §  
560 261.1(d)(8), all persons subject to § 261.1(d)(8) must place materials subject to those requirements in  
561 a storage unit with a label indicating the first date that the material began to be accumulated. If  
562 placing a label on the storage unit is not practicable, the accumulation period must be documented  
563 through an inventory log or other appropriate method.  
564

565 9) Amendment of § 261.2 – Section 261.2 is being amended to add materials that are “sham  
566 recycled” as the fourth type of abandoned materials that are solid waste under § 261.2(b), and adding  
567 a prohibition on sham recycling at § 261.2(g). A hazardous secondary material found to be sham  
568 recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate  
569 recycling as defined in § 260.43 of the Regulations.  
570

571 This Basis and Purpose incorporates by reference the applicable portions of the preamble language for  
572 the EPA regulations as published in the Federal Register at 80 FR 1694-1814, January 13, 2015.